

PETITION TO:

UNITED NATIONS

WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Mr. José Guevara Bermúdez (Mexico)
Vice-Chair on communications: Ms. Leigh Toomey (Australia)
Vice-Chair on follow-up: Ms. Elina Steinerte (Latvia)
Mr. Seong-Phil Hong (Republic of Korea)
Mr. Sètonджи Adjovi (Benin)

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of
Daler Sharipov,
Citizen of Tajikistan

v.

Government of Tajikistan

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

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May 1, 2020

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

I. IDENTITY

1. *Family Name*: Sharipov (Sharifov)
2. *First Name*: Daler
3. *Sex*: Male
4. *Age at the Time of Detention*: 32 (born January 1, 1988)
5. *Nationality*: Tajikistan
6. (a) *Identity document (if any)*: Unknown
(b) *Place of Issue*: N/A
(c) *On (date)*: N/A
(d) *No.*: N/A
7. *Profession and/or activity (if believed to be relevant to the arrest/detention)*:
Independent journalist, activist, and bookstore owner
8. *Address of usual residence*: Vahdat, Tajikistan

II. ARREST

1. *Date of arrest*: January 28, 2020
2. *Place of arrest (as detailed as possible)*: Tajikistan's State National Security Committee office in the Shohmansur district of Dushanbe
3. *Forces who carried out the arrest or are believed to have carried it out*: Tajikistan's State National Security Committee
4. *Did they show a warrant or other decision by a public authority?* No
5. *Authority who issue the warrant or decision*: N/A
6. *Reasons for the arrest imputed by the authorities*: Arrested on suspicion of inciting religious hatred
7. *Legal basis for the arrest including relevant legislation applied (if known)*: Article 189 of Tajikistan's Penal Code

III. DETENTION

1. *Date of detention*: January 28, 2020
2. *Duration of detention (if not known, probable duration)*: Detained from January 28, 2020 until the time of submission

3. *Forces holding the detainee under custody:* Ministry of Justice
4. *Places of detention (indicate any transfer and present place of detention):* Mr. Sharipov was initially detained on January 28, 2020 at the State National Security Committee of Tajikistan office in Shohmansur. On January 29, 2020, he was transferred to the State National Security Committee's detention center in Dushanbe. On April 20, 2020, following his trial, Mr. Sharipov was transferred to Correctional Colony 3/13 in Yovon District to serve his sentence.
5. *Authorities that ordered the detention:* The Somoni District Court in Dushanbe
6. *Reasons for the detention imputed by authorities:* Mr. Sharipov allegedly incited religious hatred and extremist content.
7. *Legal basis for the detention including relevant legislation applied (if known):* Article 189 of the Penal Code

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 Statement of Facts details the current human rights context in Tajikistan in order to demonstrate the Government's patterns of violating the substantive and procedural rights of its citizens. Part 2 of this Statement of Facts details the circumstances surrounding the arrest and detention of Mr. Daler Sharipov.

1. The Human Rights Context in Tajikistan

The Government of Tajikistan has severely curtailed the exercise of political rights within the country, particularly following the well-publicized human rights crackdown that started in 2015.¹ The Government has introduced restrictions impeding independent expression and media in Tajikistan, despite constitutional protections and legislation intended to promote the free press. Article 30 of the Constitution recognizes citizens' freedom of expression and prohibits state censorship and prosecution for criticism;² however, the Criminal Code reflects a different reality.³ For example, the Criminal Code criminalizes insulting the President and state officials.⁴

¹ Human Rights Watch, *Tajikistan: Severe Crackdown on Political Opposition* (Feb. 17, 2016), <https://www.hrw.org/news/2016/02/17/tajikistan-severe-crackdown-political-opposition#>.

² Tajikistan Const. art. 30, <http://www.wipo.int/edocs/lexdocs/laws/en/tj/tj001en.pdf>.

³ See Tajikistan Crim. Code, arts. 135, 136, 137 & 330.

<http://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm>/preview (unofficial).

⁴ *Id.* arts. 137 & 330.

Government critics, independent journalists, and their families often face harassment from government authorities.⁵ Dozens of journalists have fled the country out of fear.⁶ According to the National Association of Independent Media of Tajikistan, it receives at least ten reports each month from journalists regarding threats and restrictions on access to information.⁷ A recent example of the Government's persecution of independent journalists is the detention of Khayrullo Mirsaidov. Mr. Mirsaidov was arrested in December 2017 and sentenced to 12 years in prison after he wrote an open letter to President Rahmon regarding local corruption. Following sustained international outcry, Mr. Mirsaidov was released after nine months in prison. After leaving the country for safety, he received an additional eight-month prison sentence *in absentia* in January 2019 for allegedly violating a court order.⁸

2. The Case of Daler Sharipov

a. *Mr. Sharipov's Background*

Daler Sharipov is an independent Tajik journalist. He began his career working as a broadcaster at a state-owned television channel Safina. While at Safina, he was a presenter for two programs—Muoshirat (Ethics of Conversation) and Katra az Bahr (Drop from the Sea)—which discussed current youth issues.⁹

In 2012, Mr. Sharipov started a youth organization called Kadam Bakadam (Step by Step) to unite youth from all regions of the country to oppose corruption. However, the Government refused to register the organization,¹⁰ and Mr. Sharipov was thereafter monitored and harassed by authorities. For example, he was often called in for interrogations by police; he was beaten by unidentified assailants in May 2012 (the Ministry of Internal Affairs investigated the case, but never found the perpetrators); and he was detained by security service officials after he filmed the funeral of a famous imam, Domullo Muhammadi Kumsangiri, despite the fact that several other media personnel were present filming the funeral.¹¹

After leaving his broadcasting position, he took up a job as a columnist at an independent newspaper, *Ozodagon* news agency, where he wrote about current issues affecting the country.¹² In his writings, Mr. Sharipov was a strong advocate of press freedom and independence. For example, in a notable blog post from 2013, Mr. Sharipov wrote that “a journalist cannot be

⁵ *Tajikistan: Independent Reporter Charged with Inciting Hatred*, Eurasianet (Jan. 31, 2020), <https://eurasianet.org/tajikistan-independent-reporter-charged-with-inciting-hatred>.

⁶ *Id.*

⁷ Human Rights Watch, *World Report 2020: Tajikistan*, <https://www.hrw.org/world-report/2020/country-chapters/tajikistan>.

⁸ Catherine Putz, *Previously Jailed Tajik Journalist Ordered Back to Prison*, The Diplomat (Jan. 14, 2019), <https://thediplomat.com/2019/01/previously-jailed-tajik-journalist-ordered-back-to-prison/>.

⁹ *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

silent.”¹³ *Ozodagon* was forced to close in 2019 after repeated harassment by authorities, and most of the newspaper’s staff have sought asylum in Europe.¹⁴ Mr. Sharipov remained in Dushanbe after the close of *Ozodagon*, writing frequently about Government campaigns to pressure Muslim women into refraining from wearing hijabs, as well as other rights violations.¹⁵

b. *Arrest*

On January 28, Mr. Sharipov was called to Tajikistan’s State National Security Committee Shohmansur district office for questioning.¹⁶ Once he arrived at the district office, he was detained, without presentation of a warrant and without being informed of the grounds of his arrest.¹⁷ He was then held without access to a lawyer or his family, for three days.¹⁸ During this three-day period, Mr. Sharipov was held at the Shohmansur office until January 29, 2020, when he was transferred to the Dushanbe detention center of the State National Security Committee.¹⁹ Additionally, later in the day on January 28, Dushanbe police raided Mr. Sharipov’s apartment and confiscated a computer and several books in Tajik, Russian, and Arabic.²⁰

In the days following Mr. Sharipov’s detention, his family was not informed of the reasons for his arrest.²¹ When his relatives contacted authorities, the authorities promised them that Mr. Sharipov would be released immediately after interrogation and verification.²² On January 29, Mr. Sharipov was provided a lawyer by the NGO Independent Center for Human Rights Protection.²³ However, at this time neither his counsel nor his family were allowed to meet with him.²⁴

On January 30, Mr. Sharipov was brought before the Ismoili Somoni District Court in Dushanbe.²⁵ At the hearing, Mr. Sharipov was ordered to be held in pre-trial detention for two

¹³ <https://catoday.org/tjru/gde-chnoe-i-gde-beloe>

¹⁴ *Tajikistan: Independent Reporter Charged with Inciting Hatred*, Eurasianet (Jan. 31, 2020), <https://eurasianet.org/tajikistan-independent-reporter-charged-with-inciting-hatred>; *Tajikistan: Journalist Held on Baseless Charge*, Human Rights Watch (Feb. 21, 2020), <https://www.hrw.org/news/2020/02/21/tajikistan-journalist-held-baseless-charges#>.

¹⁵ *Tajikistan: Independent Reporter Charged with Inciting Hatred*, Eurasianet (Jan. 31, 2020), <https://eurasianet.org/tajikistan-independent-reporter-charged-with-inciting-hatred>.

¹⁶ *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>.

¹⁷ Confidential Source B.C..

¹⁸ *Id.*

¹⁹ *Somoni District Court Decided to Detain Journalist Daler Sharipov for Two Months*, Asia-Plus (Jan. 30, 2020), <https://asiaplustj.info/ru/news/tajikistan/society/20200130/sud-raiona-i-somoni-postanovil-na-dva-mesyatsa-zaderzhat-dalera-sharipova>.

²⁰ *Tajik Journalist Daler Sharipov is Under Interrogation for the Second Day*, RFE/RL (Jan. 29, 2020), <https://rus.ozodi.org/a/30403682.html>.

²¹ *Id.*

²² *Id.*

²³ *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>.

²⁴ *Tajik Journalist Daler Sharipov is Under Interrogation for the Second Day*, RFE/RL (Jan. 29, 2020), <https://rus.ozodi.org/a/30403682.html>.

²⁵ *Tajikistan: Journalist Held on Baseless Charge*, Human Rights Watch (Feb. 21, 2020), <https://www.hrw.org/news/2020/02/21/tajikistan-journalist-held-baseless-charges#>.

months pending further investigation into charges that he incited religious discord in violation of Article 189 of the Tajikistan Criminal Code.²⁶ Article 189, titled “Arousing National, Racial, Local or Religious Hostility” reads:

(1) The actions, which lead to arousing national, racial, local or religious hostility, or dissension, humiliating national dignity, as well as propaganda of the exclusiveness of citizens by a sign of their relation to religion, national, racial, or local origin, if these actions were committed in public or using means of mass media are punishable by up to 5 years of restrictions of liberty or imprisonment for the same period of time.²⁷

On the same day, Mr. Sharipov was permitted to meet with his lawyers for the first time.²⁸ In order to obtain access to Mr. Sharipov, his attorneys were compelled by authorities to sign a nondisclosure agreement concerning their representation of Mr. Sharipov.²⁹ On January 31, Mr. Sharipov’s lawyers, Abdurahmon Sharifov and Gulgun Shozodaeva, appealed the court order that Mr. Sharipov remain in pre-trial detention.³⁰ However, the court denied the appeal on February 4.³¹

c. Investigation

On February 1, 2020, the Prosecutor General’s Office issued a statement explaining that the charges against Mr. Sharipov related to more than 200 articles and notes of extremist content between 2013 and 2019.³² The Prosecutor also noted in particular a manuscript with a circulation of around 100 copies published by an underground publisher.³³ The statement alleged the manuscript was written in support of the Muslim Brotherhood, a group banned by Tajikistan.³⁴

Although the Government did not publicly identify the articles that it is basing the indictment upon, the manuscript in question is entitled the *Prophet Muhammad and Terrorism*.

²⁶ *Somoni District Court Decided to Detain Journalist Daler Sharipov for Two Months*, Asia-Plus (Jan. 30, 2020), <https://asiaplustj.info/ru/news/tajikistan/society/20200130/sud-raiona-i-somoni-postanovil-na-dva-mesyatsa-zaderzhat-dalera-sharipova>; *Tajikistan: Journalist Held on Baseless Charge*, Human Rights Watch (Feb. 21, 2020), <https://www.hrw.org/news/2020/02/21/tajikistan-journalist-held-baseless-charges#>.

²⁷ Tajikistan Crim. Code, art. 189.

²⁸ *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>; *Somoni District Court Decided to Detain Journalist Daler Sharipov for Two Months*, Asia-Plus (Jan. 30, 2020), <https://asiaplustj.info/ru/news/tajikistan/society/20200130/sud-raiona-i-somoni-postanovil-na-dva-mesyatsa-zaderzhat-dalera-sharipova>.

²⁹ *Tajikistan: Journalist Held on Baseless Charge*, Human Rights Watch (Feb. 21, 2020), <https://www.hrw.org/news/2020/02/21/tajikistan-journalist-held-baseless-charges#>.

³⁰ Confidential Source B.C..

³¹ *Id.*

³² *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>.

³³ *Id.*

³⁴ *Id.*

The manuscript is 37 pages long and includes a preface and list of references.³⁵ Approximately 99 copies were printed, 20 of which were distributed and the rest were confiscated by the Government.³⁶ The manuscript itself was only a preliminary draft, and was printed in a small batch for the purposes of receiving feedback. In addition to circulating a small number of copies with friends, Mr. Sharipov provided a copy of the manuscript to the Tajik Committee on Religious Affairs, a Government agency, for their comments on the content of the manuscript, before he was arrested.³⁷ On February 5 at a press conference, the Committee on Religious Affairs confirmed that they were indeed involved in examining the manuscript and were scheduled to provide comments.³⁸

Despite the Government's allegations, Mr. Sharipov's manuscript goes out of its way to oppose to terrorism, extremism, and radicalism, using religious doctrine.³⁹ Multiple independent first-hand sources confirm that the manuscript does not promote religious extremism or violence.⁴⁰ According to one journalist who examined the manuscript, the contents discuss Islam through the prism of the life of the Prophet Muhammad, quotes from the Qur'an and spiritual figures who say that terrorism has nothing to do with Islam.⁴¹ This thesis follows closely other publications by Mr. Sharipov, such as a 2019 article for *Rushnoi.tj*, titled "Mohammed was for Peace and Against Terrorism."⁴²

Neither the State National Security Committee nor the Prosecutor General's Office specifically identified aspects of the manuscript that represent "extremism." However, individuals closely associated with the state-media apparatus in Tajikistan have claimed that the primary basis for Mr. Sharipov's arrest is that his manuscript featured quotes by the two prominent Islamic scholars, Yusuf al Qaradawi⁴³ and Sayyid Qutb which have been connected to the Muslim Brotherhood movement.⁴⁴ Although Mr. Sharipov did cite these scholars in the "Sources & Literature" section at the end of the manuscript, he only quoted one passage from Qutb in the text of the manuscript:

The late Sayyid Qutb says Muslims are not allowed to join a war if it is aimed at vesting interests, looting people's property or changing the government. "... Besides

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Confidential Source A.B.; Confidential Source B.C..

⁴⁰ Confidential Source A.B.; Confidential Source B.C..

⁴¹ *Who is Daler Sharifov and Why Was He Arrested?*, Asia-Plus (Feb. 4, 2020), <https://www.asiaplustj.info/ru/node/278122>.

⁴² *Tajikistan Holds Journalist on Extremism Charges*, The Guardian (Feb. 2, 2020), <https://www.theguardian.com/world/2020/feb/02/tajikistan-holds-journalist-on-extremism-charges>.

⁴³ Although al Qaradawi is recognized as an influential scholar within the Muslim Brotherhood, he has denied an official position within the organization on two occasions. See *The Muslim 500, The World's 500 Most Influential Muslims 2020: Yusuf Al-Qaradawi*, <https://www.themuslim500.com/profiles/yusuf-al-qaradawi/>.

⁴⁴ Mullorajab Yusufzoda, Alisher Zarifi, *Is the Arrest of Daler Sharipov a Signal for Tajik Journalists?*, RFE/RL (Feb. 1, 2020), <https://rus.ozodi.org/a/30411593.html>.

(forbidding Muslims from worshiping Allah and the Shari'ah of Muhammad (pbuh), the text is abbreviated), if a war breaks out, it will be illegal and unlawful according to Islamic law, and whoever participates in it will not be rewarded before God." and has no status"⁴⁵

Although Qutb has made statements in his work that would meet the threshold of incitement,⁴⁶ Mr. Sharipov does not mention any of those statements in the manuscript.

On March 30, 2020, the State National Security Committee announced the conclusion of its investigation into Mr. Sharipov and transmitted his case to the Prosecutor for indictment.⁴⁷ On April 4, the Prosecutor filed the indictment against Mr. Sharipov with the Shohmansur District Court,⁴⁸ charging him with violating Article 189 of the Criminal Code, which carries a maximum sentence of five years' imprisonment.⁴⁹

d. Trial

On April 15, 2020, Mr. Sharipov's trial began before the Shohmansur District Court.⁵⁰ Despite Tajik officials repeatedly claiming that there are no cases of COVID-19 in the country,⁵¹ the presiding judge closed the trial to the public "due to warnings by the World Health Organization" about large gatherings during the COVID-19 pandemic.⁵² Members of the media were not allowed to attend the trial.⁵³

The trial lasted for two days. Although the media was unable to learn specifics of the Prosecutor's case at trial, reports indicate that the Prosecutor relied exclusively upon Mr.

⁴⁵ Daler Sharipov, *Mohammed and Terrorism* (2020) (unpublished manuscript, on file with author).

⁴⁶ David von Drehle, *A Lesson in Hate: How an Egyptian Student Came to Study 1950s America and Left Determined to Wage Holy War*, *Smithsonian Magazine* (Feb. 2006), <https://www.smithsonianmag.com/history/a-lesson-in-hate-109822568/>.

⁴⁷ Confidential Source B.C.; *Journalist Daler Sharipov's Investigation Completed*, *Akhbor.com* (Mar. 20, 2020), <https://akhbor.com/-p11589-155.htm>.

⁴⁸ Confidential Source B.C.; Mully Rajab Ysuf, *Daler Sharipov's Case is Being Heard in Shohmansur District Court*, *RFE/RL* (Apr. 4, 2020), <https://www.ozodi.org/a/%D0%BF%D0%B0%D1%80%D0%B2%D0%B0%D0%BD%D0%B4%D0%B0%D0%B8-%D0%B4%D0%B0%D0%BB%D0%B5%D1%80-%D1%88%D0%B0%D1%80%D0%B8%D1%84%D0%BE%D0%B2%D1%80%D0%BE-%D0%B1%D0%B0-%D0%B4%D0%BE%D0%B4%D0%B3%D0%BE%D2%B3-%D1%84%D0%B8%D1%80%D0%B8%D1%81%D1%82%D0%BE%D0%B4%D0%B0%D0%BD%D0%B4/30530474.html>.

⁴⁹ Confidential Source B.C..

⁵⁰ *Trial Begins for Tajik Journalist on Extremism Charges Rights Groups Call 'Absurd'*, *RFE/RL* (Apr. 15, 2020), <https://www.rferl.org/a/trial-begins-for-tajik-journalist-on-extremism-charges-right-groups-call-absurd-/3055558.html>.

⁵¹ *Tajikistan Says It Has No COVID-19, Attributes New Death to Swine Flu*, *EurasiaNet* (Apr. 20, 2020), <https://eurasianet.org/tajikistan-says-it-has-no-covid-19-attributes-new-death-to-swine-flu>.

⁵² *Trial Begins for Tajik Journalist on Extremism Charges Rights Groups Call 'Absurd'*, *RFE/RL* (Apr. 15, 2020), <https://www.rferl.org/a/trial-begins-for-tajik-journalist-on-extremism-charges-right-groups-call-absurd-/3055558.html>.

⁵³ Confidential Source B.C..

Sharipov's manuscript as evidence that he violated Article 189, claiming that the text was extremist propaganda that was published and distributed unofficially.⁵⁴ On April 16, the court convicted him of violating Article 189 sentenced him to one-year imprisonment.⁵⁵ The court has not released a copy of the judgement to the public or the media.⁵⁶

Following the trial, Mr. Sharipov was returned to the State National Security Committee's detention center for four days before being transferred to Correctional Colony 3/13 in Yovon District to serve his sentence.⁵⁷ At the time of submission, Mr. Sharipov remains in Colony 3/13, with limited family access in light of restrictions imposed due to COVID-19.

B. Legal Analysis

The arrest and detention of Mr. Sharipov is arbitrary under Categories I, II and III of the Working Group's Revised Methods of Work.⁵⁸ The detention is arbitrary under Category I because Mr. Sharipov was detained without justification. The detention is arbitrary under Category II because Mr. Sharipov's detention resulted from and amounted to reprisal for the legitimate exercise of his rights to freedom of expression and religion. The detention is arbitrary under Category III because the Tajik Government's arrest, detention, and prosecution of Mr. Sharipov failed to meet minimum standards of due process.

1. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I when there is no legal basis or justification.⁵⁹ The Working Group has found a lack of legal basis for the purposes of Category I when an individual

⁵⁴ *Tajikistan: Court Sentences Journalist Daler Sharipov to 1 Year in Prison*, EurasiaNet (Apr. 16, 2020), <https://eurasianet.org/tajikistan-court-sentences-journalist-daler-sharipov-to-1-year-in-prison>; Amnesty International, *Urgent Action: Independent Journalist Imprisoned for a Year*, <https://www.amnesty.org/download/Documents/EUR6022062020ENGLISH.pdf>.

⁵⁵ *Tajik Journalist Jailed on 'Absurd' Extremism Charges*, RFE/RL (Apr. 16, 2020), <https://www.rferl.org/a/tajikistan-journalist-sharifov-prosecutor-seeks-two-year-prison-term/30558855.html>.

⁵⁶ Confidential Source B.C..

⁵⁷ *Id.*

⁵⁸ 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), U ICCPR, art. 9(1) (Dec. 16, 1996) (hereinafter "ICCPR"). An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III)U.N. Doc. A/810 (hereinafter "UDHR"), at art. 9, (1948) ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter "Body of Principles"), at principle 2 ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law. . .").

⁵⁹ Report of the Working Group on Arbitrary Detention, 16th session, (hereinafter "Revised Work Methods") A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

is arrested without substantive evidence to justify the arrest.⁶⁰ In the present case, the Tajik Government has engaged in this form of Category I detention.

Both at the time of arrest and at trial, the Government failed to present evidence that Mr. Sharipov had engaged in any activity that would be considered a crime at the time of his detention and that was not protected by well-established principles of human rights law. Mr. Sharipov has never engaged in violence, and the Government's allegations that he has published "extremist content" in his writings are baseless. In its February 1 statement, the Prosecutor Office alludes to two sources of extremist content: the first are hundreds of articles that Mr. Sharipov has published and the second is a manuscript. As for the articles, the Government fails to identify in its indictment any specific articles written by Mr. Sharipov that could qualify as extremist or as advocating for any violence. Moreover, a significant portion of Mr. Sharipov's prior reporting during his early career was broadcasted by the State-controlled television network. When taken in the context of Mr. Sharipov's long history of good-faith journalism, the Government's claim that he published "200 articles" of extremist content is not credible. Moreover, the manuscript cited by the Government does not support the Government's claims. As noted above, Mr. Sharipov's manuscript, *The Prophet Muhammad and Terrorism*, specifically makes the case against violence. Given that the Government fails to cite any evidence that would justify Mr. Sharipov's detention, the Government has detained him without legal basis, and accordingly his detention amounts to Category I detention.

2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group's Methods when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and freedom of religion.⁶¹ The Government arbitrarily arrested and detained Mr. Sharipov on the basis of his exercise of both these rights.

a. *Tajikistan violated Mr. Sharipov's Right to Freedom of Expression and Religion*

Article 19(2) of the ICCPR provides, "Everyone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice."⁶² The same right is protected under Article 19 of the UDHR. Freedom of expression is also guaranteed in the Tajikistan Constitution under Article 30.⁶³ The right to freedom of expression as provided in Article 19(2) of the Covenant is not limited by form or subject matter. As the UN Human Rights Committee states in General Comment No. 34, the

⁶⁰ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

⁶¹ Revised Methods of Work, *supra* note 59, Category III, para. 8b.

⁶² ICCPR, *supra* note 58, at art. 19(2).

⁶³ Tajikistan Constitution, art. 30 ("Everyone is guaranteed freedom of speech, press, the right to use means of mass information.").

right protected by Article 19(2) “includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others . . . It includes . . . journalism, cultural and artistic expression, teaching, and religious discourse.”⁶⁴ Moreover, the Human Rights Committee emphasizes that journalists’ work receives strong protection under Article 19.⁶⁵

Additionally, the right to freedom of thought, conscience and religion is a foundational freedom protected under Article 18 of the ICCPR⁶⁶ and under Tajikistan domestic law in Article 26 of the Constitution.⁶⁷ The rights contained in Article 18 of the ICCPR include the “freedom to have or to adopt a religion or belief of [one’s] choice, and freedom, either individually or in community with others and in public or private, to manifest [one’s] religion or belief in worship, observance, practice and teaching.”⁶⁸ In its General Comment No. 22, the UN Human Rights Committee explains that Article 18 “encompasses freedom of thoughts on all matters, personal conviction and the commitment to religion or belief. . . .”⁶⁹

Here, the Government has detained Mr. Sharipov on the basis of his legitimate exercise of his rights to freedom of expression and religion. The Government’s stated justification for initially detaining Mr. Sharipov relates to over 200 articles that he published as a journalist and a pre-publication manuscript that he had distributed for comment. Because the work of journalists is protected under Article 19, the Government’s detention of Mr. Sharipov on the basis of his publication of articles produced in the course of performing his duties as a journalist amounts to a restriction of his freedom of expression. Furthermore, because Mr. Sharipov’s book amounted to an act of religious discourse, it fell within the scope of both the rights to freedom of expression and religion, and accordingly Mr. Sharipov’s detention on the basis of writing, printing, and circulating his book for comment amounts to a restriction on his freedom of religion and his freedom of expression.

Moreover, the Government’s prosecution of Mr. Sharipov fits with the Government’s broader pattern of judicial harassment independent journalists and media workers, which has been recognized by the UN Human Rights Committee in its most recent review of Tajikistan.⁷⁰ Mr. Sharipov was targeted due to his status as one of the few independent journalists that would criticize the Government’s violations of human rights, including their violation of the right to freedom of religion. Furthermore, Mr. Sharipov’s arrest occurred shortly before the Government’s

⁶⁴ UN Human Rights Committee, General Comment No. 34, Article 19 (Freedom of Opinion and Expression). para. 11 (July 29, 2011) [hereinafter General Comment No. 34].

⁶⁵ *Id.*, at paras. 23, 30, 44-46.

⁶⁶ UDHR, *supra* note 58, art. 18.

⁶⁷ Tajikistan Constitution, art. 26 (“Everyone has the right to independently determine his (her) relationship towards religion, to profess any religion individually or together with others, or to profess none, and to participate in the performance of religious cult, rituals, and ceremonies.”)

⁶⁸ *Id.*

⁶⁹ UN Human Rights Committee, General Comment No. 22, Article 18 (Freedom of Thought, Conscience or Religion) ¶ 9 (July 30, 1993).

⁷⁰ UN Human Rights Committee, *Concluding Observations on Tajikistan*, UN Doc. CCPR/C/TJK/CO/3 (Aug. 22, 2019), para. 47, <https://undocs.org/CCPR/C/tjk/co/3>.

most recent election on March 1, and the detention effectively prevented Mr. Sharipov from covering and commenting upon the election.

Accordingly, the Government had detained Mr. Sharipov on the basis of his exercise of his rights to freedom of expression and religion, in violation of articles 18 and 19 of the ICCPR and articles 18 and 19 of the UDHR.

b. *None of the Exceptions Apply*

Although the rights to freedom of expression and religion are not absolute, none of the exceptions to these rights apply to Tajikistan's detention of Mr. Sharipov. Under international law, free expression and manifestations of religion may only be restricted in limited circumstances,⁷¹ and the Human Rights Committee has established a three-part "strict test of justification" in analyzing limitations on such fundamental rights.⁷² For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose.⁷³ The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others.

The Human Rights Committee has emphasized that such restrictions must not "put in jeopardy the right itself."⁷⁴ It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must "specify the precise nature of the threat" posed by the protected activity,⁷⁵ establish a "direct and immediate connection between the expression and the threat," and demonstrate why the limitation was necessary.⁷⁶

Here, the Government's actions do not fall within the scope of the enumerated exceptions in articles 18(3) or 19(3). First, the law under which Mr. Sharipov is detained is too vague and overbroad to satisfy the "provided for by law" element of the three-part test. The UN Human Rights Committee has clarified that the "provided for by law" element requires that laws are "formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. . ."⁷⁷ As noted above, the purported legal grounds for Mr. Sharipov's detention is Article 189 of the Tajik criminal code, which criminalizes activity which leads to "dissent." No

⁷¹ ICCPR, arts. 18(3), 19(3). (Article 18(3): "The freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.") (Article 19(3): "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights and reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.")

⁷² *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998).

⁷³ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

⁷⁴ General Comment No. 34, *supra* note 64, para. 21.

⁷⁵ *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

⁷⁶ General Comment No. 34, *supra* note 64, para. 35.

⁷⁷ *Id.* at para. 25.

speaker can reasonably be expected to know what activity will lead to dissent, given that one is unable to predict how individuals will respond to their speech. Accordingly, Article 189 relies on impermissibly vague language, and prosecutions under this article do not fall within the scope of permissible exceptions to freedom of expression and religion.

Second, the Government's detention of Mr. Sharipov does not serve an enumerated purpose. The Government's stated purpose for restricting fundamental freedoms must be more than a mere pretense. However, in the case of Mr. Sharipov, the Government's primary reason for targeting him was due to his activities as a critic. Because the Government targeted Mr. Sharipov due to his public criticism and independent reporting, his detention does not qualify under any of the enumerated exceptions under articles 18 and 19 of the ICCPR.

Lastly, the Government's detention of Mr. Sharipov is neither necessary nor proportionate to serve the Government's stated goal of stopping the circulation of extremist content. Depriving a speaker of physical liberty is a severe measure for the Government to take while there were alternative options available to achieve the same objective, such as prohibiting the publication of Mr. Sharipov's manuscript and ordering that his articles not be published. Given that Mr. Sharipov had already submitted his manuscript for approval to a Government agency, the Government already possessed the authority to ensure that his manuscript could not go to print, which would have been a significantly less restrictive limitation on Mr. Sharipov's freedoms than holding him in detention. Accordingly, the Government's detention of Mr. Sharipov is neither necessary nor proportionate to achieve its purported objective.

Because the Government cannot meet the elements required to justify restricting Mr. Sharipov's rights to freedom of religion and expression, the Government's detention of Mr. Sharipov on the basis of his exercise of those rights is a violation of articles 18 and 19 of the ICCPR and amounts to arbitrary detention under Category II.

3. Arbitrary Deprivation of Liberty under Category III

According to Category III of the Working Group's Methods, a deprivation of liberty is arbitrary "[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character."⁷⁸ Due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the UDHR, the Body of Principles for the Protection of All persons under any Form of Detention or Imprisonment (the "Body of Principles"), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the "Mandela Rules").⁷⁹

a. *Tajikistan Violated Mr. Sharipov's Right Not to Be Subjected to Arbitrary Arrest*

⁷⁸ Revised Methods of Work, *supra* note 59, Category III, para. c.

⁷⁹ *Id.*, at Category III, paras. 7(a)-(b).

Article 9(1) of the ICCPR, which confirms the right to liberty and freedom from arbitrary detention, guarantees that “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁸⁰ This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles. The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”⁸¹ Moreover, Article 19 of the Tajikistan Constitution guarantees that “[n]o one may be detained and arrested without legal grounds.” Furthermore, both the ICCPR and the Body of Principles require that arrestees be notified of the grounds for their arrest at the moment they are arrested.⁸² Additionally, the Tajik Code of Criminal Procedure requires that arrests occur “according to the decision of the judge or determination of the court.”⁸³

Here, Mr. Sharipov was not provided a warrant or informed of the legal grounds for his arrest at the time he was seized and detained on January 28, 2020, which amounts to a violation of both international law under the ICCPR and Body of Principles as well as Tajik law. Moreover, there is no indication that such a warrant authorized by a judge or court exists. Given that Mr. Sharipov was not arrested *in flagrante delicto*, the Government possessed time to obtain such an order, and its failure to do so is without excuse. Accordingly, the arrest and pre-trial detention of Mr. Sharipov amounts to a violation of his due process rights under Article 9(1) of the ICCPR, Article 9 of the UDHR, principles 2 and 36(2) of the Body of Principles, as well as Article 19 of the Tajik Constitution. Thus, his detention falls under Category III.

b. *Tajikistan Violated Mr. Sharipov’s Right to Pre-Trial Release*

Article 9(3) of the ICCPR provides the right to an individual’s release pending trial.⁸⁴ Pretrial detention under this provision should be the exception not the norm, and must be justified based on the circumstances. The UN Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that [such detention] is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁸⁵ Principles 38 and 39 of the Body of Principles further confirm that, except in special cases, a criminal detainee is entitled to release pending trial.⁸⁶

⁸⁰ ICCPR, art. 9(1).

⁸¹ UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Persons), UN Doc. CCPR/C/GC/35, para. 22 (Dec. 16, 2014), available at <https://undocs.org/ccpr/c/gc/35> [hereinafter “General Comment No. 35”].

⁸² ICCPR, art. 9(2); Body of Principles, prin. 10.

⁸³ Tajikistan Code of Criminal Procedure, arts. 6, 11.

⁸⁴ ICCPR, art. 9(3).

⁸⁵ General Comment No. 35, para. 38.

⁸⁶ Body of Principles, principles 38 and 39.

Here, the Government lacks a sufficient basis to justify detaining Mr. Sharipov before his trial. Mr. Sharipov has no history of violence and is not accused of an act of violence. As such, there is no public safety justification for his detention. Moreover, the Government has seized all the copies his manuscript which means that he is not at risk of destroying evidence. Lastly, his home and family are in Tajikistan, and there is no evidence that he would be a flight-risk. Accordingly, denying Mr. Sharipov pre-trial release amounts to a violation of Article 9(3) of the ICCPR as well as principles 38 and 39 of the Body of Principles. Thus, his detention falls under Category III.

c. Tajikistan Violated Mr. Sharipov's Right to Counsel

Article 14(3)(d) of the ICCPR guarantees the right to a legal defense, by stating that a criminal defendant has the right to “be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.” In addition, Article 14(3)(b) of the ICCPR guarantees a criminal accused the right “to communicate with counsel of his own choosing.” The Human Rights Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel,”⁸⁷ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”⁸⁸ Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel,” and that such right “may not be suspended or restricted save in exceptional circumstances.”⁸⁹ Rule 119 of the Mandela Rules also provides for the right to access legal advice,⁹⁰ and Article 19 of the Tajikistan Constitution guarantees that “[a] person has the right to services of an attorney from the moment of his arrest.”

Here, Mr. Sharipov was denied access to counsel for the first three days of his arrest. Despite the fact that his counsel requested to see him on January 29, they were denied access that day, and not permitted to see him until the following day, on January 30. The day that Mr. Sharipov was allowed access to his attorneys was the same day that his pre-trial detention hearing occurred. As a result, his attorneys were denied the extra day that they would have had to prepare for his hearing had they been allowed to see their client when they initially requested. The Government's refusal to allow his attorneys' access for three days falls far short of the constitutional protections in Tajikistan which guarantee access to an attorney “from the moment of arrest.”

⁸⁷ UN Human Rights Committee, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to a Fair Trial)*, UN Doc. CCPR/C/GC/32, para. 32 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32> [hereinafter *General Comment No. 32*].

⁸⁸ *General Comment No. 35*, para. 35.

⁸⁹ *Body of Principles*, prin. 18(1), (3).

⁹⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, rule 119, available at <https://undocs.org/A/RES/70/175> [hereinafter “Mandela Rules”] (stating “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”).

Moreover, the Government's requirement that Mr. Sharipov's attorneys sign a non-disclosure agreement amounts to interference with his counsel's ability to fully represent him. A non-disclosure agreement prevents his attorneys from seeking consultation or outside assistance. Also, the non-disclosure agreement prevents them from providing the media with updates on their client, which in cases like Mr. Sharipov's, is a crucial component of advocacy.

Accordingly, the Government's interference with Mr. Sharipov's right to representation amounts to a violation of articles 14(3)(b) and 14(3)(d) of the ICCPR, principles 18(1) and (3) of the Body of Principles, Rule 119 of the Mandela Rules, as well as Article 19 of the Tajikistan Constitution. Thus, his detention falls under Category III.

d. *Tajikistan Violated Mr. Sharipov's Right to a Public Trial*

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."⁹¹ Article 10 of the UDHR similarly guarantees the right to a fair and public hearing. As the UN Human Rights Committee has explained, "The publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard for the interest of the individual and the society at large."⁹² The right to a public hearing must include a hearing open to the general public, including media, without limiting entrance to a select group of people.⁹³ Although the right to a public hearing is not absolute, it may only be restricted "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 circumstance where publicity would prejudice the interest of justice."⁹⁴ Even if a State invokes one of the above grounds to close a trial to the public, the government must make the judgment public.⁹⁵

Here, the Government closed Mr. Sharipov's trial to the public and media in violation of Article 14. Although the Government purportedly closed the trial for public health reasons, this purported justification does not stand up to scrutiny. As late as April 20, 2020, the Government has claimed that there are no cases of COVID-19 in the country, which, if true, undermines the judge's reasons for closing the trial. Moreover, restricting all media from the trial is a disproportionate response. Merely allowing one or two members of the media to attend the trial would significantly increase the transparency of the trial at little expense to increased health risks, particularly when the risk is assessed by the Government's own measure of zero cases in the country. Lastly, the Government failed to make the judgement publicly available, for which there is no grounds for exception under Article 14. Accordingly, the Government violated Mr.

⁹¹ ICCPR, art. 14(1).

⁹² General Comment No. 32, para. 28.

⁹³ *Id.* at para. 29.

⁹⁴ ICCPR, art. 14(1).

⁹⁵ *Id.*

Sharipov's rights under Article 14 by closing his trial to the media and public, and his detention is arbitrary under category III.

4. Conclusion

The Government of Tajikistan targeted, arrested, and detained Mr. Sharipov in violation of his rights and fundamental freedoms under both international law as well as Tajik law. For the reasons stated above, the continuing detention of Mr. Sharipov is arbitrary under categories I, II, and III.

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 THEIR REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THERE WERE NOT TAKEN.

On January 31, 2020, Mr. Sharipov's domestic counsel appealed the January 30, 2020 ruling ordering his pre-trial detention. However, on February 4, 2020, the appeal was rejected. Subsequently, at trial Mr. Sharipov denied the charges against him, but was unsuccessful.

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

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