

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Saidumar Husaini, Muhammadali Faizmuhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Kuramdzhonovich Avazov, Abduqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Mamadalievich Nabiev, and Abdusamat Ghayratov
Citizens of the Republic of Tajikistan
(“Applicants”)

v.

Government of the Republic of Tajikistan
(“Government”)

URGENT ACTION REQUESTED

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7¹

Submitted By:

Freedom Now, Hogan Lovells US LLP

May 21, 2019

¹ Resolutions 1991/41, 1994/32, 1997/50, 2000/36, and 2003/31 were adopted by the UN Commission on Human Rights to extend the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume{d}... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” pursuant to UN General Assembly Resolution 60/251, GA Res. 60/251, March 15, 2006, at ¶ 6, later extended the mandate through Resolutions 6/4, 15/18, and 24/7.

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BASIS FOR URGENT ACTION REQUEST

As established in the attached petition, the Government of the Tajikistan (“Government”) has arbitrarily deprived Saidumar Husaini, Muhammadali Faizmuhammad, Rahmatulloi Rajab, Zubaidulloi Roziq, Vohidkhon Kosidinov, Kiyomiddin Kuramdzhonovich Avazov, Abdurqahar Davlatov, Hikmatulloh Sayfulloza, Sadidin Rustamov, Sharif Mamadalievich Nabiev, and Abdusamat Ghayratov (“the Applicants”) of their liberty.

The Applicants are members of the Islamic Renaissance Party of Tajikistan (“IRPT”) political party. In September 2015, the Government accused IRPT members of initiating a failed coup. Thirteen senior IRPT leaders were arrested on September 16, 2015, despite the absence of evidence that any IRPT members were involved in the failed coup. On June 2, 2016, the Supreme Court of Tajikistan convicted the IRPT members and handed down sentences ranging from 14 years to life in prison.

There is reason to believe that the Applicants’ continued detention places their lives at risk. Although it has been very difficult for international observers to gain access to prisons and detention facilities to fully review the state of Tajikistan’s prison conditions, prison conditions² in Tajikistan are poor to the point of being “life threatening” for prisoners.³ Political prisoners in Tajikistan are frequently targeted for torture and other significant mistreatment and abuse.⁴ In August of 2016, two political prisoners linked to the IRPT, Kurbon Mannonov and Nozimdzhon Tashripov, were killed in prison. Tashripov’s body showed visible signs of torture and his neck had been broken.⁵

Recent events suggest a heightened danger to the IRPT members. On the evening of May 19, 2019, a deadly riot broke out at a maximum security prison in the Vahdat district of Tajikstan, approximately nine miles east of the capital Dushanbe. The prison holds numerous political prisoners, including members of the IRPT. Tajikistan’s Justice Ministry said three prison guards and 29 inmates were killed in the riot, including IPRT members Sattor Karimov, Saeed Qiyomiddin Ghozi, and Jomahmad Boev.⁶ Karimov was attacked with a knife and stabbed in the neck and heart. Ghozi was beheaded by members of the Islamic State.⁷ The other Applicants

² Martha Brill Olcott, *Tajikistan’s Difficult Development Path* 33 (2012), <http://carnegieendowment.org/2012/10/15/tajikistan-s-difficult-development-path-pub-49587>

³ U.S. Dep’t of State, *Tajikistan: Country Reports on Human Rights Practices* (Feb. 23, 2001), <https://www.state.gov/j/drl/rls/hrpt/2000/eur/840.htm>

⁴ The torture and abuse suffered by the Applicants is detailed in the attached petition.

⁵ Edward James Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, Amnesty Int’l (Aug. 22, 2016), <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/>

⁶ Radio Free Europe/Radio Liberty, *Tajik Opposition Members Among 32 Killed In Prison Riot* (May 20, 2019), <https://www.rferl.org/a/29951879.html>.

⁷ Communication RS, on file with author.

were also beaten and sustained injuries, including broken ribs.⁸ Karimov's family had previously given Freedom Now and Hogan Lovells explicit permission to file a petition to the UN Working Group on Arbitrary Detention ("Working Group") on his behalf.

The remaining IRPT prisoners are in more danger now than ever. IRPT members have been threatened by at least one Twitter account commonly believed to be controlled by the Government. The account tweeted a picture of Mr. Hayit (an IRPT member who was arrested with, and tried alongside, the Applicants) with the word "NEXT," suggesting that Mr. Hayit would be the next to die.⁹ The May 20, 2019, riots also led to the burning of the prison's hospital, further depriving the Applicants of access to healthcare that is vital to their survival.¹⁰ As described in the attached petition, the Applicants were already in constant danger due to the Government torturing them and depriving them of access to basic needs (including healthcare). After the murders and riots on May 20, 2019, that danger has reached a new level.

Given the danger of grave prison conditions and the Tajik government's inability to ensure the safety of prisoners, the Applicants' continued detention places their lives at risk. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the "Urgent Action" procedure.¹¹ In addition, it is requested that the attached Petition be considered a communication and formal request for an opinion of the Working Group pursuant to Resolution 1991/42, 1994/32, 1997/50 of the Commission on Human Rights as reconfirmed by Resolution 2000/36, 2003/31, and Human Rights Council Resolutions 6/4, 15/18 and 24/7.¹²

⁸ Communication RS, on file with author. Although the precise details of the other Applicants' condition is unknown in the immediate aftermath of the riot, Communication RS explains that all of the IRPT members were "probably" under attack, and Mr. Rustamov was beaten and broke his ribs.

⁹ Communication RS, on file with author; <https://twitter.com/mahmudjan/status/1130523127052685313>

¹⁰ Radio Free Europe/Radio Liberty, *Tajik Opposition Members Among 32 Killed In Prison Riot* (May 20, 2019), <https://www.rferl.org/a/29951879.html>. As explained in the attached petition, many of the Applicants have serious and chronic medical conditions that make access to medical care an absolute necessity.

¹¹ *Methods of Work of the Working Group on Arbitrary Detention*, UN Doc. A/HRC/33/66 ¶22-24 (July 12, 2016).

¹² *Id.* at ¶ 9-20.

PART 1

QUESTIONNAIRE TO BE COMPLETE D BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

Mr. Saidumar Husaini (Sections I-III)

I. IDENTITY

1. **Family name:** Husaini (and Hisainov)
2. **First name:** Saidumar (and Umarali)
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Diplomatic Passport
(b) **Issued by:** Republic of Tajikistan
(c) **On (date):** []
(d) **No.:** []
7. **Profession:** Prior to his imprisonment, Mr. Husaini was the first deputy chairman of the Islamic Renaissance Party of Tajikistan (“IRPT”) and member of the IRPT Supreme Political Council. Additionally, Mr. Husaini served as a member of the Parliament of Tajikistan from March 2010 to March 2015.
8. **Address of usual residence:** Before his arrest, Mr. Husaini resided at []. Following the Applicants’ sentencing in June 2016, he was moved to the maximum security Prison No. ЯТ-9/1 Mirzo Tursunzoda Street in Dushanbe, where he remains incarcerated today.

II. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan, at the Dushanbe Airport. Details of Mr. Husaini’s arrest are provided at Part 3.0.2 of this application.

3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Husaini's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Husaini are believed to have been brought under Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power); Article 313 (armed rebellion); and Article 170 (polygamy) of the Tajikistan Criminal Code.

III.DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Husaini has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Husaini has been sentenced to life imprisonment (in maximum security facilities) by the Tajikistan judiciary after a joint trial of Mr. Husaini and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the "Government").
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Husaini was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). As of 2 June 2016, he has been imprisoned at the maximum security penal colony No. 1 of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Husaini is believed to have been charged and convicted under the following articles of the Criminal Code:

Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power); Article 313 (armed rebellion); and Article 170 (polygamy) of the Tajikistan Criminal Code.

Mr. Muhammadali Faiz-Muhammad (Sections IV-VI)

IV. IDENTITY

1. **Family name:** Faiz-Muhammad
2. **First name:** Muhammadali
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Faiz-Muhammad was a member of the IRPT Supreme Political Council.
8. **Address of usual residence:** Before his arrest, Mr. Faiz-Muhammad resided at []. Following the Applicants' sentencing in June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.

V. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan at Mr. Faiz-Muhammad's home []. Details of Mr. Faiz-Muhammad's arrest are provided in Part 3.0.2 of this application.

3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Faiz-Muhammad's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Faiz-Muhammad are believed to have been brought under Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

VI. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Faiz-Muhammad has been held in detention since 16 September 2015. As of 2 June 2016, Mr. Faiz-Muhammad has been sentenced to 23 years' imprisonment by the Tajikistan judiciary after a joint trial of Mr. Faiz-Muhammad and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan.
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Faiz-Muhammad was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). As of 2 June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Faiz-Muhammad is believed to have been charged and convicted under the following articles of the Criminal

Code: Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

Mr. Rahmatulloi Rajab (Sections VII-IX)

VII. IDENTITY

1. **Family name:** Rajab
2. **First name:** Rahmatulloi
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Rajab was a member of the IRPT Supreme Political Council and head of the IRPT Chapter in the Districts of Republican Subordination.
8. **Address of usual residence:** Before his arrest, Mr. Rajab resided at []. Since his conviction/sentencing on 2 June 2016, he has been imprisoned at the maximum security penal colony No. 1 of Dushanbe.

VIII. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan at Mr. Rajab's home []. Details of Mr. Rajab's arrest are provided in Part 3.0.2 of this application.

3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not Applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Rajab's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Rajab are believed to have been brought under Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

IX. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Rajab has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Rajab has been sentenced to 28 years' imprisonment by the Tajikistan judiciary after a joint trial of Mr. Rajab and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan.
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Rajab was kept a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). Following his sentencing in June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Rajab is believed to have been charged and convicted under the following articles of the Criminal Code: Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

Mr. Zubaidulloi Roziq (Sections X-XII)

X. IDENTITY

1. **Family name:** Roziq (sometimes spelled: Raziqov, Roziqov and Rozikov)
2. **First Name:** Zubaidulloi (sometimes spelled: Zubaydullah)
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Roziq was a member of the IRPT Supreme Political Council and he was the Chief of the IRPT Department of Sciences and Relations with Scholars.
8. **Address of usual residence:** Before his arrest, Mr. Roziq resided at []. Following the Applicants' sentencing in June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.

XI. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan inside Mr. Roziq's apartment []. More details regarding Mr. Roziq's arrest are provided at Part 3.0.2 of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Three officers of the State Committee for National Security in civilian dress.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.

6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Roziq's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Roziq are believed to have been brought under Article 187, Parts 1 and 2 (organizing and participating in a criminal community); Article 189, Part 3(a) (arousing national, racial, local or religious hostility as an organized group); Article 307, Parts 1 and 3 (public calls to forcibly change the constitutional system of the Republic of Tajikistan and its territorial integrity); Article 131, Part 3(a) (illegal deprivation of liberty by an organized group); Article 32, Part 3 (preparation for a crime and intentional attempt to commit a crime); Article 309, Part 2(b) (sabotage by an organized group); Article 199, Part 4(a)(b)(c) (stealing of weapons, ammunitions, and explosives by an organized group using an official position and violence); Article 195, Part 3 (illegal buying, selling, keeping, transporting, or carrying weapons, explosives, or ammunitions; by a group using mass destruction weapons); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power or forcible keeping of power); Article 313 (armed rebellion); and Article 170 (polygamy) of the Tajikistan Criminal Code.

XII. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Roziq has been held in detention since 16 September 2015. As of 2 June 2016, Mr. Roziq has been sentenced to 25 years' imprisonment by the Tajikistan judiciary after a joint trial of Mr. Rajab and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan.
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Roziq was kept in a temporary detention facility (следственный изолятор), commonly known as SIZO (СИЗО). After 10 months in SIZO, he was transferred to the maximum security penal colony No. 1 of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Roziq is believed to have been charged and convicted under the following articles of the Criminal Code: Article 187, Parts 1 and 2 (organizing and participating in a criminal community); Article 189,

Part 3(a) (arousing national, racial, local or religious hostility as an organized group); Article 307, Parts 1 and 3 (public calls to forcibly change the constitutional system of the Republic of Tajikistan and its territorial integrity); Article 131, Part 3(a) (illegal deprivation of liberty by an organized group); Article 32, Part 3(preparation for a crime and intentional attempt to commit a crime); Article 309, Part 2(b) (sabotage by an organized group); Article 199, Part 4(a)(b)(c) (stealing of weapons, ammunitions, and explosives by an organized group using an official position and violence); Article 195, Part 3 (illegal buying, selling, keeping, transporting, or carrying weapons, explosives, or ammunitions; by a group using mass destruction weapons); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power or forcible keeping of power); Article 313(armed rebellion); and Article 170 (polygamy) of the Tajikistan Criminal Code.

Mr. Vohidkhon Kosidinov (Sections XIII-XV)

XIII. IDENTITY

1. **Family name:** Kosidinov
2. **First name:** Vohidkhon
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his arrest, Mr. Kosidinov was a member of the IRPT Supreme Political Council and the Chief of the Election Department of the IRPT.
8. **Address of usual residence:** Before his imprisonment, Mr. Kosidinov resided at []. Following the Applicants' sentencing in June 2016, Mr. Kosidinov has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.

XIV. ARREST

1. **Date of arrest:** 16 September 2015

2. **Place of arrest (as detailed as possible):** In Northern Tajikistan, at the Batken/Isfara border crossing, while Mr. Kosidinov was crossing into Kyrgyzstan. Details of Mr. Kosidinov's arrest are provided at Part 3.0.2 of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Kosidinov's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Kosidinov are believed to have been brought under Article 187, part 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); and Article 195, Part 3 (arms trade) of the Tajikistan Criminal Code.

XV. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Kosidinov has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Kosidinov has been sentenced to 16 years' imprisonment by the Tajikistan judiciary after a joint trial of Mr. Kosidinov and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan.
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Kosidinov was kept in a temporary detention facility (следственный изолятор) in Dushanbe commonly known as SIZO (СИЗО). Following his sentencing in June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Kosidinov is believed to have been charged and convicted under the following articles of the Criminal Code:

Article 187, part 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); and Article 195, Part 3 (arms trade) of the Tajikistan Criminal Code.

Mr. Kiyomiddin Kuramdzhonovich Avazov (Sections XVI-XVIII)

XVI. IDENTITY

1. **Family name:** Avazov
2. **First name:** Kiyomiddin Kuramdzhonovich (Qiyamiddin Kurumjanovich)
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Avazov was a politician, public activist, chairman of the IRPT Dushanbe Chapter, former chairman of the Youth and Sports Department of the IRPT, a former employee of the party apparatus and a specialist in the Arabic language. He was an active member of the IRPT Supreme Political Council.
8. **Address of usual residence:** Before his arrest, Mr. Avazov resided at []. Following the conclusion of the Applicants' trial in June 2016, he was moved to Vahdat Prison No. 3/2, outside of Dushanbe, where he remains incarcerated today.

XVII. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan, at Mr. Avazov's home [].
3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.

4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
1. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Avazov's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Avazov are believed to have been brought under Article 187, Parts 1 and 2 (criminal organization); Article 189, Part 3(a) (arousing national, racial, local, or religious hostility); Article 307, Parts 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(m) (murder); Article 179 (terrorism) of the Tajikistan Criminal Code.

XVIII. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Avazov has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Avazov has been sentenced to 28 years imprisonment (in maximum security facilities) by the Tajikistan judiciary after a joint trial of Mr. Avazov and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the "Government").
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Avazov was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). Following his sentencing in June 2016, he has been imprisoned at Vahdat Prison No. 3/2, outside of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Avazov is believed to have been charged and convicted under the following articles of the Criminal Code: As noted above, Mr. Avazov is believed to have been charged and convicted under the following articles of the Criminal Code: Article 187, Parts 1 and 2 (criminal organization); Article 189, Part 3(a) (arousing national, racial, local, or religious hostility); Article 307, Parts 3 (extremism); Article 131, Part 3(a) (illegal deprivation of

liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(m) (murder); Article 179 (terrorism) of the Tajikistan Criminal Code.

Mr. Abduqahar Davlatov (Sections XIX-XXI)

XIX. IDENTITY

- 1. Family Name:** Davlatov
- 2. First Name:** Abduqahar
- 3. Sex:** Male
- 4. Birth date:** []
- 5. Nationality:** Tajik
- 6. (a) Identity document (if any):** Unknown.
(b) Issued by: N/A.
(c) On (date): N/A.
(d) No.: N/A.
- 7. Profession:** Prior to his imprisonment, Mr. Davlatov was a member of the IRPT Supreme Political Council and Chief of the IRPT Foreign Relations Department.
- 8. Address of usual residence:** Before his arrest, Mr. Davlatov resided at []. After the conclusion of the Applicants' trial in June 2016, he was moved to Vahdat Prison No. 3/2, outside of Dushanbe, where he remains incarcerated today.

XX. ARREST

- 1. Date of arrest:** 16 September 2015
- 2. Place of arrest (as detailed as possible):** Dushanbe, Tajikistan at Mr. Davlatov's home [].
- 3. Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.

4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Davlatov's arrest, trial, and detention are sealed from the public. However, the charges against Mr. Davlatov are believed to have been brought under Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, Part 1, 2, and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(g)(h)(i)(k)(l)(m) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l) (murder); Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

XXI. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Davlatov has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Davlatov has been sentenced to 28 years by the Tajikistan judiciary after a joint trial of Mr. Davlatov and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan.
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Davlatov was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). Following his sentencing in June 2016, he has been imprisoned at Vahdat Prison No. 3/2, outside of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Davlatov is believed to have been charged and convicted under the following articles of the Criminal Code: Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(j)(k)(l)(o) (murder); Article 179,

Part 3(a) (terrorism); Article 306 (forcible capture of power); and Article 313 (armed rebellion) of the Tajikistan Criminal Code.

Mr. Hikmatulloh Sayfulloza (Sections XXII-XXIV)

XXII. IDENTITY

1. **Family name:** Sayfulloza
2. **First name:** Hikmatulloh
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Sayfulloza was a member of the IRPT Supreme Political Council and editor-in-chief of the *Najat Newspaper*.
8. **Address of usual residence:** Before his arrest, Mr. Sayfulloza resided at []. After the conclusion of the Applicants' trial in June 2016, he was moved to the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55 in Dushanbe, where he remains incarcerated today.

XXIII. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan, at Mr. Sayfulloza's home []. Details of Mr. Sayfulloza's arrest are provided at Part 3.0.2 of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.

4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Sayfulloza's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Sayfulloza's are believed to have been brought under Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(k)(l)(o) (murder); and Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power) of the Tajikistan Criminal Code.

XXIV. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Sayfulloza has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Sayfulloza has been sentenced to 16 years in prison by the Tajikistan judiciary after a joint trial of Mr. Sayfulloza and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the "Government").
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Sayfulloza was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). Following the Applicants' sentencing in June 2016, he has been imprisoned at the maximum security Prison No. 1 of Dushanbe (No. 3/1), Mirsaid Mirshakar Street 55.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Sayfulloza is believed to have been charged and convicted under the following articles of the Criminal Code: Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, parts 1 and 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt);

Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(k)(l)(o) (murder); and Article 179, Part 3(a) (terrorism); Article 306 (forcible capture of power) of the Tajikistan Criminal Code.

Mr. Sadidin Rustamov (Sections XXV-XVII)

XXV. IDENTITY

9. **Family name:** Sadidin

10. **First name:** Rustamov

11. **Sex:** Male

12. **Birth date:** [].

13. **Nationality:** Tajik

14. (a) **Identity document (if any):** Unknown.

(b) **Issued by:** N/A.

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

(d) **No.:** N/A.

15. **Profession:** Prior to his imprisonment, Mr. Rustamov was a member of the IRPT Supreme Political Council.

16. **Address of usual residence:** Before his arrest, Mr. Rustamov resided at []. After the conclusion of the Applicants' trial in June 2016, he was moved to Vahdat Prison No. 3/2, outside of Dushanbe, where he remains incarcerated today.

XXVI. ARREST

7. **Date of arrest:** 16 September 2015

8. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan, at Mr. Rustamov's home []. Details of Mr. Rustamov's arrest are provided at Part 3 of this application.

9. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.

10. **Did they show a warrant or other decision by a public authority?** No.

11. **Authority who issued the warrant or decision:** Not applicable.

12. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Rustamov's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Rustamov are believed to have been brought under Article 187, part 2, Article 189, part 3(a), and Article 307, part 2 and part 3.

XXVII. DETENTION

8. **Date of detention:** 16 September 2015 to present day.

9. **Duration of detention (if not known, probable duration):** Mr. Rustamov has been held in detention since 26 September 2015. As of 2 June 2016 Mr. Rustamov has been sentenced to 20 years in prison by the Tajikistan judiciary after a joint trial of Mr. Rustamov and other members of the IRPT.

10. **Forces holding the detainee under custody:** Government of Tajikistan (the "Government").

11. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Rustamov was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). Since the Applicants' sentencing in June 2016, he has been imprisoned at the maximum security Vahdat Prison No. 3/2.

12. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.

13. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government arbitrarily accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.

14. **Relevant legislation applied (if known):** As noted above, Mr. Rustamov is believed to have been charged and convicted under the following articles of the Criminal Code: Article 187, part 2; Article 189, part 3(a); and Article 307, part 2 and part 3.

Mr. Sharif Mamadalievich Nabiev (Sections XXVII-XXX)

XXVIII. IDENTITY

1. **Family name:** Nabiev (sometimes spelled "Nabiyev")

2. **First name:** Sharif
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.
(b) **Issued by:** N/A.
(c) **On (date):** N/A.
(d) **No.:** N/A.
7. **Profession:** Prior to his imprisonment, Mr. Nabiev was a member of the IRPT Supreme Political Council and head of the IRPT Chapter in the Kulab region.
8. **Address of usual residence:** Before his arrest, Mr. Nabiev resided at []. After the conclusion of the Applicants' sentencing in June 2016, he was moved to the maximum security penal colony No. 1 of Dushanbe, where he remains incarcerated today.

XXIX. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Kulab, Tajikistan, at Mr. Nabiev's home []. Details of Mr. Nabiev's arrest are provided at Part 3 of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Nabiev's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Nabiev are believed to have been brought under Article 189, part 2(a)(c)(d) and Article 307, part 1 and 2.

XXX. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Nabiev has been held in detention since 19 September 2015. As of 2 June 2016 Mr. Nabiev has been sentenced to 14 years in prison by the Tajikistan judiciary after a joint trial of Mr. Nabiev and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the “Government”).
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Nabiev was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). As of 2 June 2016, he has been imprisoned at the maximum security penal colony No. 1 of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Nabiev is believed to have been charged and convicted under the following articles of the Criminal Code: Article 189, part 2(a)(c)(d) and Article 307, part 1 and 2.

Mr. Abdusamat Ghayratov (Sections XXXI-XXXIII)

XXXI. IDENTITY

1. **Family name:** Ghayratov
2. **First name:** Abdusamat Ismailovich
3. **Sex:** Male
4. **Birth date:** [].
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Unknown.

(b) **Issued by:** N/A.

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

(d) **No.:** N/A.

7. **Profession:** Prior to his imprisonment, Mr. Ghayratov was a member of the IRPT Supreme Political Council.
8. **Address of usual residence:** Before his arrest, Mr. Ghayratov resided at []. After the conclusion of the Applicants' trial in June 2016, he was moved to the maximum security penal colony No. 1 of Dushanbe, where he remains incarcerated today.

XXXII. ARREST

1. **Date of arrest:** 16 September 2015
2. **Place of arrest (as detailed as possible):** Kulab, Tajikistan, at Mr. Ghayratov's home []. Details of Mr. Sayfulloza's arrest are provided at Part 3.0.2 of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Tajikistani law enforcement officers.
4. **Did they show a warrant or other decision by a public authority?** No.
5. **Authority who issued the warrant or decision:** Not applicable.
6. **Relevant legislation applied (if known):** Many of the specific details associated with Mr. Ghayratov's arrest, trial, and incarceration are sealed from the public. However, the charges against Mr. Ghayratov's are believed to have been brought under Article 189, part 2(a)(c)(d) and Article 307, part 1 and 2.

XXXIII. DETENTION

1. **Date of detention:** 16 September 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Ghayratov has been held in detention since 16 September 2015. As of 2 June 2016 Mr. Ghayratov has been sentenced to 14 years in prison by the Tajikistan judiciary after a joint trial of Mr. Ghayratov and other members of the IRPT.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the "Government").

4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Ghayratov was kept in a temporary detention facility (следственный изолятор) commonly known as SIZO (СИЗО). As of 2 June 2016, he has been imprisoned at the maximum security penal colony No. 1 of Dushanbe.
5. **Authorities that ordered the detention:** Tajik Criminal Court presided over by the Tajik Chief Military Judge.
6. **Reasons for the detention imputed by the authorities:** The Government did not provide reasons for the Applicants' detention with any specificity. Rather, the Government vaguely accused the IRPT of being responsible for an attempted coup and called the Applicants enemies of the state.
7. **Relevant legislation applied (if known):** As noted above, Mr. Ghayratov is believed to have been charged and convicted under the following articles of the Criminal Code: Article 189, part 2(a)(c)(d) and Article 307, part 1 and 2.

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

PART 2

BACKGROUND

I. Political Background of the Republic of Tajikistan

1. The Republic of Tajikistan (“Tajikistan” or the “Government”) became an independent nation in 1991 after the breakup of the Soviet Union.¹³ Almost immediately afterwards, the country plunged into a bloody civil war, lasting from 1992 to 1997. The insurgents and the Government signed a United Nations-brokered peace agreement in 1997, which resulted in a political compromise that recognized the insurgent-led United Tajik Opposition (the “UTO”) as a legitimate political party.¹⁴ Since the war’s end, tensions have persisted between the ruling government and opposition groups. Although the Constitution of Tajikistan (the “Constitution”) provides for a multi-party system, one man has ruled the country since before the war began: President Emomali Rahmon, the current leader of the People’s Democratic Party (the “PDP”).¹⁵

2. International observers have widely criticized President Rahmon’s initial election and three subsequent re-elections as neither “free nor fair.”¹⁶ In 1999, President Rahmon was re-elected in the first post-civil war election—but only after the “government {} excluded opposition presidential candidates from the ballot, sought to restrict the activities of political parties, and imposed additional curbs on the media.”¹⁷ In 2006, President Rahmon was re-elected to a third term—but this election likewise “failed to meet international standards.”¹⁸ In the most recent presidential election in 2013, President Rahmon won a fourth term—but international observers concluded that voters “lacked a real choice” and that, once again, the election failed to meet international standards of fairness.¹⁹

¹³ United Nations Information Service, *Tajikistan: Rising from the Ashes of Civil War* http://www.unis.unvienna.org/documents/unis/ten_stories/05tajikistan.pdf (last visited March 2, 2019).

¹⁴ Colin P. Clarke & Christopher Paul, *From Stalemate to Settlement* 42 (2014).

¹⁵ Freedom House, *Tajikistan: Freedom in the World 2018*, <https://freedomhouse.org/report/freedom-world/2018/tajikistan> (last visited Sept. 28, 2018). See Dagikhudo Dagev, *Regime Transition in Central Asia: Stateness, Nationalism and Political Change in Tajikistan and Uzbekistan*, app. A (2014).

¹⁶ Joshua Norman, *The World’s Enduring Dictators: Emomali Rahmon, Tajikistan*, CBS News (June 19, 2011), <https://www.cbsnews.com/news/the-worlds-enduring-dictators-emomali-rahmon-tajikistan/> (2006 re-election); see also, e.g., *Tajikistan Profile – Timeline*, BBC News (July 31, 2018), <https://www.bbc.com/news/world-asia-16201087>; Human Rights Watch, *Presidential Elections in Tajikistan a Farce* (Oct. 27, 1999), <https://www.hrw.org/news/1999/10/27/presidential-elections-tajikistan-farce> (describing the first post-civil war reelection in 1999 as a “demonstrate{ion} . . . {of} blatant bad faith in creating conditions for a fair and open vote”).

¹⁷ *Tajikistan Profile – Timeline*, supra note 16; *Presidential Elections in Tajikistan a Farce*, supra note 16.

¹⁸ Heritage Found., *Tajikistan: 2011 Index of Economic Freedom* 393, <http://rai-see.org/wp-content/uploads/2016/01/Economic-Freedom-Index-2011.pdf> (last visited Sept. 28, 2018); see *Tajikistan: Freedom in the World 2018*, supra note 15.

¹⁹ *Tajikistan: Freedom in the World 2018*, supra note 15.

3. Tajikistan's parliamentary elections in the era of the Rahmon presidency have been equally problematic. Corruption predominates; indeed, elections have been marred by “*{n}umerous cases of proxy voting and ballot-box stuffing*” and “*various {other} problems that harmed the credibility of the elections.*”²⁰ The OSCE’s Office for Democratic Institutions and Human Rights concluded that the most recent parliamentary elections, held in March 2015, took place in a “*restricted political space*” and “*failed to provide a level playing field for candidates.*”²¹ Specifically, the campaigns were plagued by biased reporting on the part of the dominant state-owned media, voting irregularities, and political pressure on—and even arrests of—opposition politicians, candidates, and election officials.²² In this context, it was not surprising that the PDP was awarded 51 of the 63 seats in the 2015 elections.²³ All 12 remaining seats were divided among other pro-government parties.²⁴

4. President Rahmon has also manipulated the Constitution to consolidate his grip on power. In December 2015, the PDP-dominated Tajikistani parliament declared President Rahmon to be the “*Leader of the Nation,*” and granted him and his family lifelong immunity from prosecution.²⁵ In 2016, the Constitution was amended to eliminate term limits, effectively allowing President Rahmon to rule the country until his death.²⁶ Although the amendment was ostensibly approved by a voter referendum, international observers pointed out that the referendum was held only after the Government banned leading political opposition groups and had “*systematically eliminated {} rivals and critics . . . to keep {} hold on power.*”²⁷ Similarly, the Constitution was amended to lower the age requirement to serve as president, which would allow President Rahmon’s eldest son, who is now 30 years old, to succeed his father.²⁸ In 2017, President Rahmon appointed his eldest son as mayor of Tajikistan’s capital, Dushanbe.²⁹

²⁰ European Forum for Democracy & Solidarity, *Tajikistan* 2 (Jun. 11, 2018), <https://www.europeanforum.net/uploads/countries/pdf/tajikistan.pdf>.

²¹ Press Release, Org. for Sec. & Co-operation in Eur., Although Tajikistan’s Parliamentary Elections Provided Some Political Alternatives, Campaign Space was Restricted and a Fair Count Could Not be Guaranteed, International Observers Say (Mar. 2, 2015), <http://www.osce.org/odihr/elections/tajikistan/143311>.

²² Org. for Sec. & Co-operation in Eur., *Republic of Tajikistan, Parliamentary Elections, 1 March 2015: Final Report* 13-15 (May 15, 2015) {hereinafter “2015 OSCE Final Report”}.

²³ *Id.* at 30.

²⁴ *Id.* at 30.

²⁵ Hashmat Moslih, *Tajikistan Poised to Slide Back Towards War*, Al Jazeera (Jan. 13, 2016), <http://www.aljazeera.com/news/2016/01/tajikistan-poised-slide-war-160113160347274.html> (their property is likewise immunized from seizure in legal proceedings).

²⁶ *Tajikistan Votes to Allow President to Rule Indefinitely*, The Guardian (May 23, 2016), <https://www.theguardian.com/world/2016/may/23/tajikistan-votes-to-allow-president-emomali-rahmon-to-rule-indefinitely>.

²⁷ Reid Standish, *How Tajikistan’s President Extended his Term—for Life*, Foreign Policy Magazine (May 25, 2016), <http://foreignpolicy.com/2016/05/25/how-tajikistans-president-extended-his-term-for-life-rahmon-isis-migrant-imf/>.

²⁸ *Tajikistan Votes to Allow President to Rule Indefinitely*, supra note 26.

²⁹ RadioFreeEurope/RadioLiberty, *Tajik Official Defends Appointment of President’s Son As Mayor* (Feb. 6, 2017), <https://www.rferl.org/a/tajikistan-dushanbe-mayor-president-son-rahmon/28284911.html>.

II. Interference with Political Participation and Persecution of the Islamic Renaissance Party

5. Tajikistan's Parliament has little autonomy. This is largely due to the lack of free and fair elections. Since at least 1999, the Government has taken comprehensive steps to deny the people of Tajikistan any meaningful opportunity to participate in politics and government.³⁰

6. Freedom House rates Tajikistan as "Not Free" based, in part, on the consistent dominance of the ruling PDP in elections and the Government's persecution of opposition parties and opposition candidates.³¹ In 2013, Freedom House's evaluation of Tajikistan's civil liberties led to a lowering of the country's score from 5 to 6—with 7 being the worst possible score. That same study noted that Tajikistan's overall freedom rating declined from 5.5 to 6, while its political rights rating remained continuously steady at 6.³² In 2017, Tajikistan's freedom rating declined even further to 6.5, its political rights rating plunged to a rock-bottom 7, and its civil liberties rating remained at 6, where these ratings remain to this day.³³

7. The PDP-controlled Government dominates the political process in two major ways. First, it uses state-owned media to limit political coverage.³⁴ Second, it has imposed an extremely high threshold of nominations (signatures) required to run for office.³⁵ The Government has also implemented various other restrictions on voting and political participation, including harassment and imprisonment of opposition party members.³⁶ As a result, there are a limited number of independent political parties and an extremely curtailed political opposition.

8. The Islamic Renaissance Party of Tajikistan (the "IRPT") is likely the best-known opposition political party in Tajikistan. Prior to its dissolution by the Government in 2015, it was also the country's largest opposition party.³⁷ Founded in 1990, the IRPT began as one of the combatants in the Tajikistani Civil War³⁸ and formed the backbone of the UTO.³⁹ After the war ended, the IRPT reoriented itself to become a leading moderate Islamic voice in the region.⁴⁰ Although historically the IRPT held only a small number of seats (usually two) in the Tajikistani

³⁰ See generally *Tajikistan: Freedom in the World 2018*, *supra* note 15.

³¹ *Id.*

³² Freedom House, *Tajikistan: Freedom in the World 2013*, <https://freedomhouse.org/report/freedom-world/2013/tajikistan> (last visited Sept. 24, 2018).

³³ *Id.; Tajikistan: Freedom in the World 2018*, *supra* note 15.

³⁴ See *Tajikistan: Freedom in the World 2018*, *supra* note 15.

³⁵ *Id.*

³⁶ *Id.*

³⁷ Parvina Khamidova, *Interview with Muhiddin Kabiri, Leader of the Islamic Renaissance Party of Tajikistan In-Exile*, 33 Cent. Asia Policy Br. 1, 2 (Jan. 2016), <https://app.box.com/s/mx8rxb3iz4lf1igekx3qvkdjipwkk2> (**Kabiri fled to Germany after the IRPT was dissolved**); Freedom House, *Tajikistan: Freedom in the World 2015*, <https://freedomhouse.org/report/freedom-world/2015/tajikistan> (last visited Oct. 12, 2018).

³⁸ See ABC-CLIO, *War and Religion: An Encyclopedia of Faith and Conflict* 779 (Jeffrey M. Shaw & Timothy J. Demy eds., 2017).

³⁹ Human Rights Watch, *Tajikistan: Reverse Political Party Closure* (Sept. 14, 2015), <https://www.hrw.org/news/2015/09/14/tajikistan-reverse-political-party-closure>.

⁴⁰ Steve Swerdlow, *Tajikistan's Fight Against Political Islam*, Foreign Affairs (Mar. 14, 2016), <https://www.foreignaffairs.com/articles/tajikistan/2016-03-14/tajikistans-fight-against-political-islam>; see also Ihsan Yilmaz, *An Islamist Party, Constraints, Opportunities and Transformation to Post-Islamism: The Tajik Case*, 5 Uluslarasi Hukukve Politika 133, 141-45 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1777195.

parliament, this modest representation reflected the lack of free and fair elections in Tajikistan, rather than an absence of popular support for the IRPT.⁴¹ For example, in 2005, the IRPT officially won only 8.9% of votes in parliamentary elections (a proportion approximately equivalent to two seats).⁴² However, “*domestic observers maintained that the IRPT would have received perhaps up to 30 per cent of votes in free and fair elections.*”⁴³ It is suggested that prior to its involuntary dissolution by the Government in September 2015, the IRPT was the most viable opposition party in the country.⁴⁴

9. Perhaps in reaction to the IRPT’s popularity, in 2015, the Government increased pressure on, and harassment of, that party.⁴⁵ In March 2015, for the first time since 1999, the IRPT lost all of its seats in an election fraught with fraud and government-sponsored oppression.⁴⁶ Before the election, Tajikistan’s state-owned media mounted a smear campaign against the party, attempting to falsely link the IRPT and its members to extremism and moral degeneracy.⁴⁷ Freedom House reported that IRPT members were beaten, harassed, and imprisoned before, during, and after the election.⁴⁸ In addition, “*{r}eports of election fraud were issued {} by {} local and international organizations*” in association with the election—suggesting that the IRPT only lost its seats because of fraud committed by the Government.⁴⁹

10. This was only the beginning. After the Parliamentary election, the Government increased its repression of the IRPT. In July 2015, pressure from the Government resulted in mass resignations from the IRPT.⁵⁰ On August 24, 2015, the Prosecutor General’s Office closed IRPT headquarters, explaining only that the building was sealed as it had been illegally purchased.⁵¹ On August 28, 2015, authorities notified the IRPT that it had ten days to cease all activities because it no longer had sufficient registered field offices, as required to continue operations as a legitimate party.⁵²

⁴¹ European Forum for Democracy & Solidarity, *Tajik Parliamentary Elections Results: Opposition Parties Fail to Meet 5% Threshold* (Mar. 3, 2015), https://www.europeanforum.net/headlines/tajik_parliamentary_elections_results_opposition_parties_fail_to_meet_5_threshold; Martha Brill Olcott, *Tajikistan’s Difficult Development Path* 44 (2012).

⁴² Islamic Education in the Soviet Union and Its Successor States 336 (Michael Kemper et al. eds., 2010).

⁴³ *Id.*

⁴⁴ *Tajikistan: Reverse Political Party Closure*, *supra* note 39.

⁴⁵ See *id.*

⁴⁶ *Tajikistan: Freedom in the World 2018*, *supra* note 15; The Jamestown Found., *Marginalization of Tajikistan’s Political Opposition Could Threaten Security*, 12 Eurasia Daily Monitor (Mar. 24, 2015), <https://jamestown.org/program/marginalization-of-tajikistans-political-opposition-could-threaten-security/>.

⁴⁷ *Tajikistan: Reverse Political Party Closure*, *supra* note 39.

⁴⁸ *Freedom in the World 2018*, *supra* note 15.

⁴⁹ Oleg Salimov, *Tajikistan’s Elections Expel Opposition from Parliament*, The Cent. Asia-Caucasus (Mar. 18, 2015), <https://www.cacianalyst.org/publications/field-reports/item/13159-tajikistan%20%99s-elections-expel-opposition-from-parliament.html>.

⁵⁰ See Edward Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores 4*, Freedom House (2016), https://freedomhouse.org/sites/default/files/NIT2016_Tajikistan.pdf.

⁵¹ Catherine Putz, *Tajik Authorities Close Opposition Political Office*, The Diplomat (Aug. 25, 2015).

⁵² U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report* 16, <https://www.state.gov/documents/organization/253189.pdf> (last visited March 2, 2019).

11. On September 4, 2015, tensions escalated following clashes between Government forces and armed groups at police sites in Dushanbe and Vahdat.⁵³ The Government accused the IRPT of having ties to the clashes, which resulted in the death of 14 law enforcement officers and 25 militants.⁵⁴ The September 4 incident served as the Government's justification for detaining and ultimately arresting at least thirteen members of the IRPT leadership and for instigating a series of targeted raids beginning on September 16, 2015.⁵⁵

12. International observers have concluded that the Government failed to produce any credible evidence that the IRPT—which had been a peaceful opposition political party, not a violent extremist organization—was actually involved in the September 4 incident.⁵⁶ It was later revealed that the September 4 clashes involved government forces and militants loyal to Deputy Defense Minister General Abduhalim Nazarzoda.⁵⁷ Significantly, General Nazarzoda was not an IRPT member, nor was he affiliated with the party in any way at the time of the September 4 clashes.⁵⁸ The Government nevertheless used the incident in its anti-IRPT narrative to justify banning the party.⁵⁹ Without presenting any credible evidence to support its assertions,⁶⁰ the Government alleged that the September 4 clashes involved not only the IRPT, but also ISIS, and denounced the incident, and the deaths of law enforcement officers, as acts of Islamic terrorism.⁶¹ The state-owned media repeatedly blamed the IRPT for the incident, and President Rahmon branded the IRPT “*terrorists with evil consciences*,” for their alleged role in the September 4 incident.⁶²

⁵³ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 52, at 16; Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 41, at 7.

⁵⁴ 2017 Special Rapporteur Report, at ¶ 41; Lemon, *supra* note 50, at 7; UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party, UN News Centre (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>.

⁵⁵ 2017 Special Rapporteur Report, *supra* note 43, at ¶ 42.

⁵⁶ Steve Swerdlow, *supra* note 40 (noting that no “credible evidence” supported the Government’s ban of the IRPT); *see also* U.S. Comm’n on Int’l Religious Freedom, *Tajikistan* 1, 4 (2017), <http://www.uscirf.gov/sites/default/files/Tajikistan.2017.pdf>; U.S. Org. for Sec. & Co-operation in Eur., *On Political Opposition in Tajikistan: Statement to the PC* (Oct. 8, 2015), <https://osce.usmission.gov/political-opposition-tajikistan/>; Catherine Putz, *Tajikistan’s Terror Group List Just Got Bigger*, The Diplomat (Sept. 30, 2015), <http://thediplomat.com/2015/09/tajikistans-terror-group-list-just-got-bigger/>.

⁵⁷ Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, The Cent. Asia-Caucasus (Sept. 23, 2015), <https://www.cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>.

⁵⁸ Nazarzoda was a field commander for the IRPT at the start of the civil war in 1992. However, Nazarzoda officially relinquished his membership in the IRPT in connection with joining the armed forces in 1997. *See* Bruce Pannier, *Are Economics Again at The Root of Tajikistan’s Current Armed Conflict?* Radio Free Eur. (Sept. 7, 2015), <https://www.rferl.org/a/tajikistan-armed-conflict-nazarzoda/27231431.html>; *see also* Catherine Putz, *Tajikistan’s Recent Violence: What We Know (and Don’t Know)*, The Diplomat (Sept. 8, 2015), <http://thediplomat.com/2015/09/tajikistans-recent-violence-what-we-know-and-dont-know/>.

⁵⁹ *See* EurasiaNet, *U.S. Voices Concern at Obliteration of Tajikistan’s Opposition* (Sept. 30, 2015), <http://www.eurasianet.org/node/75326>.

⁶⁰ *See* Steve Swerdlow, *supra* note 40.

⁶¹ Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 50, at 4; Catherine Putz, *Tajikistan Arrest 14 for Allegedly Hoisting an ISIS Flag*, The Diplomat (Sept. 1, 2015), <https://thediplomat.com/2015/09/tajikistan-arrests-14-for-allegedly-hoisting-an-isis-flag/>; Putz, *Tajikistan’s Recent Violence: What We Know (and Don’t Know)*, *supra* note 58.

⁶² Casey Michel, *Tajikistan’s Campaign Against the IRPT Continues*, The Diplomat (Dec. 15, 2015) <http://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>.

13. On September 29, 2015,⁶³ the Tajikistan Supreme Court declared the IRPT a terrorist organization engaged in extremist activities, as it had done nearly a year earlier to the exiled opposition parties Group 24 and Youth for the Revival of Tajikistan.⁶⁴ The Supreme Court concluded that the IRPT had violated Article 4 of the Tajikistan Law on Political Parties because the party and its membership had engaged in “*terrorist and extremist activities, violent overthrow of the constitutional regime, establishment of armed groups, or propaganda of hatred on the basis of race, ethnicity, nationality, or religion.*”⁶⁵ The Supreme Court’s decision authorized the Government to close IRPT offices and arrest dozens of additional IRPT members.⁶⁶ Sources indicate that “{t}he Supreme Court assessed the criminality of the party as a whole in making its decision”; “allegedly relied only on the information provided by the Prosecutor General”; and declined to give any material consideration to exculpatory evidence.⁶⁷ Using the Law on Combating Terrorism, the Supreme Court banned all future activities by the party, including distribution of newspapers, videos, audio recordings, literature, and leaflets connected to the IRPT.⁶⁸

III. Interference with Freedom of Expression and Freedom of Association

14. The Government has also severely curtailed the exercise of freedoms of expression and association, particularly following the parliamentary election of 2015. The Government has introduced restrictions impeding the development of independent 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;⁶⁹ however, the Criminal Code reflects a different reality.⁷⁰ For example, the Criminal Code criminalizes insulting the President and state officials.⁷¹ National legislation concerning terrorism and extremism has further restricted the exercise of freedom of expression in Tajikistan.⁷² Moreover, the Licensing Committee, a subgroup within the State Committee on Television and Radio that issues production licenses to state-owned and independent media companies, has increasingly wielded its power against

⁶³ Global Freedom of Expression, *The Case of the Islamic Renaissance Party of Tajikistan*, Colum. Univ. (Sept. 29, 2015), <https://globalfreedomofexpression.columbia.edu/cases/case-islamic-renaissance-party-tajikistan/>.

⁶⁴ 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>.

⁶⁵ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 63; see also Law of the Rep. of Tajikistan on Political Parties art. 4 (Nov. 13, 1998), <http://www.icnl.org/research/library/files/Tajikistan/POLITICALPARTIES.pdf>.

⁶⁶ Freedom House, *Tajikistan: Freedom in the World 2016*, <https://freedomhouse.org/report/freedom-world/2016/tajikistan> (last visited Sept. 28, 2018). 28, 2018); see also *Tajikistan: Severe Crackdown on Political Opposition*, *supra* note 64.

⁶⁷ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 63.

⁶⁸ Putz, *Tajikistan's Terror Group List Just Got Bigger*, *supra* note 56. The Government has a history of using similar tactics to oppress opposition parties. For example, the Government sentenced Zayd Saidov to 26 years in prison after he formed an opposition party in 2013. And it banned a small opposition party, Group 24, in October 2014. Casey Michel, *Trouble in Tajikistan*, Al Jazeera (Nov. 5, 2015), <http://www.aljazeera.com/indepth/features/2015/11/trouble-tajikistan-151104085616528.html>.

⁶⁹ Tajikistan Const. art. 30, <http://www.wipo.int/edocs/lexdocs/laws/en/tj/tj001en.pdf>.

⁷⁰ See Tajikistan Crim. Code, arts. 135, 136, 137 & 330.

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

⁷¹ *Id.* arts. 137 & 330.

⁷² 2017 Special Rapporteur Report, *supra* note 43, at ¶ 16.

independent media outlets critical of the Government by withholding or revoking licenses to silence dissent.⁷³ As a result, state-run media outlets control the Tajikistani media environment.

15. In recent years, President Rahmon's Government has used its control over the media to silence political opposition.⁷⁴ Following the Supreme Court's proclamation of IRPT as a terrorist organization in September 2015, the distribution of any newspapers, videos, audio recordings, literature and leaflets connected to the IRPT was prohibited and the party's website was (and remains) blocked.⁷⁵ The Government's efforts have also reached social media outlets. During 2015, the Government restricted access to websites such as Facebook and YouTube, and to text messaging.⁷⁶ A 2014 amendment to the Tajikistan Law on "emergency situations" also granted the Government the power to limit the use of recording equipment, as well as mobile and internet networks.⁷⁷ That amendment also permitted the Government to censor independent media during emergencies.⁷⁸ Furthermore, legislation adopted in November 2015 doubled down on these restrictions by allowing the State Committee for National Security (the successor to the Soviet-era KGB)⁷⁹ to block access to internet and cell phone services during anti-terrorism operations - throughout the entire country if necessary.⁸⁰

16. In addition to restrictive laws and regulations, the Government has used violence and intimidation to suppress the rights of free speech and political association. In late 2016, Human Rights Watch reported that Government security services were detaining and interrogating the family members of peaceful protesters and intimidating protesters with threats of violence.⁸¹ Human Rights Watch further determined that the Government was threatening, detaining, and injuring family members of political dissidents and journalists in order to silence protest and reporting.⁸²

IV. Lack of Judicial Independence

17. Tajikistan's justice system remains highly politicized and lacks transparency. In theory, the Constitution establishes a tripartite government, with each branch separate and equal under the law; in practice, however, the executive branch—headed by President Rahmon and

⁷³ Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 50, at 7; 2017 Special Rapporteur Report, *supra* note 43, at ¶ 25.

⁷⁴ Freedom House, *Tajikistan: Freedom of the Press 2016*, <https://freedomhouse.org/report/freedom-press/2016/tajikistan> (last visited Sept. 27, 2018).

⁷⁵ 2017 Special Rapporteur Report, *supra* note 43, at ¶ 41.

⁷⁶ Int'l P'ship for Human Rights, et al., *Spotlight: Fundamental Rights in Central Asia* 3-4 (Dec. 2015), <http://iphronline.org/wp-content/uploads/2015/12/Tajikistan-fundamental-rights-overview-December-2015.pdf>.

⁷⁷ Freedom of the Press 2016, *supra* note 74.

⁷⁸ *Id.*

⁷⁹ Suzanne Levi-Sanchez, The Afghan-Central Asia Borderland: The State and Local Leaders 107 (2017).

⁸⁰ *Spotlight: Fundamental Rights in Central Asia*, *supra* note 76, at 3-4.

⁸¹ Human Rights Watch, *Tajikistan: Abuse of Dissidents' Families* (Dec. 20, 2016),

<https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>; Human Rights Watch, *Tajikistan: Violent Retaliation Against Activists* (Sept. 28, 2016), <https://www.hrw.org/news/2016/09/28/tajikistan-violent-retaliation-against-activists>.

⁸² *Id.*

dominated by the PDP—controls the judicial branch.⁸³ Indeed, the President possesses the power to appoint and dismiss judges and prosecutors with few constitutional checks, and even fewer political checks, to ensure that this power is not abused.⁸⁴ Moreover, judicial proceedings in Tajikistan are riddled with corruption, and reports of bribery are common.⁸⁵ Further, although trials must be held in public, the Government has conducted politically motivated covert proceedings, justifying their secrecy under the pretext of national security.⁸⁶ Finally, law enforcement authorities frequently use violent interrogation tactics, including torture, to extract confessions from detained individuals.⁸⁷

18. Citizens are also routinely denied due process protections enumerated in the Constitution. Arbitrary arrests are commonplace.⁸⁸ There is no requirement that warrants be issued for arrests, which allows police and security officials to arrest or detain citizens with little to no immediate oversight.⁸⁹ Although the Government typically provides a rationale for arrests, reports of falsified charges abound.⁹⁰ Defendants are frequently denied the right to an attorney during pretrial and investigatory periods, particularly in politically sensitive cases.⁹¹ While “in principle, all testimony receives equal consideration,” in practice the courts “{give} prosecutorial testimony far greater weight than defense testimony.”⁹² Judges give the executive branch almost complete deference, finding nearly all defendants guilty.⁹³ A Freedom House report from 2016 noted that the rate of acquittal is almost zero.⁹⁴

⁸³ Freedom House, *Tajikistan: Nations in Transit 2013*, <https://freedomhouse.org/report/nations-transit/2013/tajikistan> (last visited Sept. 28, 2018).

⁸⁴ *Id.*; U.S. Dep’t of State, *Tajikistan 2014 Human Rights Report*, <https://www.state.gov/documents/organization/236864.pdf> (last visited Sept. 28, 2018).

⁸⁵ *Id.*

⁸⁶ *Id.* The trials of Zaid Saidov and Mahmadali Hayit exemplify this problem. Journalists and international organizations were denied access to both trials—even though the Court had granted Saidov’s request for an open trial. Hayit’s trial was closed to the public under the guise of national security concerns, although sources report that the trial and the verdict focused heavily on his involvement in the IRPT—at the time, a legal political party. *See id.*; Human Rights Watch, *Tajikistan: Verdicts of Opposition Activists Travesty of Justice* (7 June 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁸⁷ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014* (29 January 2015); Amnesty International, *Annual Report: Tajikistan 2013* (May 23, 2013);, <http://www.refworld.org/docid/519f516718.html>; Amnesty International, *Tajikistan: Torture is ‘routine’, show ‘Routine’, Shows New Amnesty Report* (Jul. 12, 2012); <https://www.amnesty.org.uk/press-releases/tajikistan-torture-routine-shows-new-amnesty-report>; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017* (2017.), <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF> .

⁸⁸ *Id.*

⁸⁹ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014*, *supra* note 87.

⁹⁰ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 52, at 5; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017*, *supra* note 76, at 355 – 56.

⁹¹ Amnesty Int’l, *Annual Report: Tajikistan 2013*, *supra* note 76.

⁹² U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 52, at 6.

⁹³ Freedom House, *Tajikistan: Freedom in the World 2016*, *supra* note 15.

⁹⁴ *See supra*, note 15; *see also* U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 52, at 6 (describing that during the first six months of the year, there were four acquittals in 5,981 cases, of which two were full acquittals, and the remaining two were partial acquittals with convictions on lesser charges).

V. Prison Conditions

19. Prison conditions in Tajikistan are reportedly so poor that they are “life threatening.”⁹⁵ Prisoners are subjected to “extreme overcrowding and unsanitary conditions” and “disease and hunger {are} serious problems.”⁹⁶ Indeed, the “lack of food and adequate medical treatment {has} resulted in a significant number of deaths of prisoners while in custody.”⁹⁷ UN agencies have also reported that infection rates of tuberculosis⁹⁸ and HIV⁹⁹ in Tajikistan’s prisons are major problems, underscoring the poor quality of their medical treatment.¹⁰⁰

20. For prisoners who are sentenced to life imprisonment, the prison regime and physical conditions are “especially harsh . . . compared with those in the general prison population.”¹⁰¹ Prisoners serving a life sentence are “confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures;” and are “subject to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and/or any other type of prison activities.”¹⁰²

21. Torture is also widespread in police stations, prisons, and other places of detention throughout the country.¹⁰³ Although torture is officially prohibited, law enforcement officers frequently torture individuals in order to extract self-incriminating evidence, confessions, and money.¹⁰⁴ Political prisoners in Tajikistan are often targeted for further

⁹⁵ U.S. Dep’t of State, *Tajikistan: Country Reports on Human Rights Practices* (Feb. 23, 2001), <https://www.state.gov/j/drl/rls/hrprt/2000/eur/840.htm>.

⁹⁶ U.S. Dep’t of State, Tajikistan 2015 Human Rights Report, *supra* note 52, at 2.

⁹⁷ Robert Winslow, Tajikistan, Crime and Society: A Comparative Criminology Tour of the World (2013).

⁹⁸ See World Health Org., *HIV Programme in Review in Tajikistan* 21 (Sept. 2014), http://www.euro.who.int/__data/assets/pdf_file/0008/270539/HIV-Programme-Review-in-Tajikistan.pdf?ua=1 (noting that tuberculosis incidence rates are 800 cases per 100,000 in Tajikistan prisons—versus 70 per 100,000 among the general Tajikistan population).

⁹⁹ See *id.* at 8 (estimating that, in 2013, the HIV prevalence among prisoners was 8.4% and that about 1/3 of all prisoners had a history of injection drug use prior to conviction).

¹⁰⁰ See U.S. Dep’t of State, Tajikistan 2015 Human Rights Report, *supra* note 52, at 2–3 (describing the findings of UN agencies); see also Daniel E. Winetsky et al., *Prevalence, Risk Factors and Social Context of Active Pulmonary Tuberculosis among Prison Inmates in Tajikistan*, 9 PLOS One 1–9 (Jan. 2014), <http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0086046&type=printable>.

¹⁰¹ U.N. Secretariat, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, ¶ 78, Human Rights Council, 22d Sess., U.N. Doc. A/HRC/22/53/Add.1 (Jan. 28, 2013), http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf {hereinafter “2013 Special Rapporteur Report”}.

¹⁰² *Id.* (also noting that recent changes in law introduced “unnecessary and inexplicably harsh” restrictions for family contacts and parcel delivery).

¹⁰³ Matilda Bogner, United Nations, *Human Rights in Rights Opposing Environments* 41–42 (July 31, 2014), https://hr.un.org/sites/hr.un.org/files/Human%20Rights%20in%20Rights%20Opposing%20Environments_0.pdf.

¹⁰⁴ 2013 Special Rapporteur Report, *supra* note 101, at ¶¶ 9, 31, 71 (noting reports of “consistent, broad patterns of the application of various methods of torture and ill-treatment during arrest and investigation, as well as denial of access to legal counsel”); United Nations, *Torture: “Tajikistan Still Needs to Bridge the Gap between Policies and Reality” – UN Rights Expert* (Feb. 12, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14245&LangID=E#sthash.7Nj1VSzL.dpuf>.

mistreatment and abuse.¹⁰⁵ For example, in August 2016, representatives of Tajikistan’s civil society reported that two political prisoners linked to the IRPT, Kurbon Mannonov and Nozimdzhon Tashripov, were killed in prison.¹⁰⁶ Tashripov’s body showed visible signs of torture and his neck had been broken.¹⁰⁷ Other IRPT members have been denied medical treatment, even when seriously ill, and “authorities have consistently prevented relatives and human rights lawyers from visiting them.”¹⁰⁸

¹⁰⁵ See Amnesty Int’l, *Annual Report: Tajikistan 2016/2017*, <https://www.amnesty.org/en/countries/europe-and-central-asia/tajikistan/report-tajikistan/> (last visited Sept. 27, 2018); Edward James Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, Amnesty Int’l (Aug. 22, 2016), <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/>.

¹⁰⁶ Edward James Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, Amnesty Int’l (Aug. 22, 2016), <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/>

¹⁰⁷ *Id.*

¹⁰⁸ Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, supra note 105.

PART 3

ARBITRARY DETENTION OF THE APPLICANTS

I. The Applicants' Arbitrary Arrest and Detention

1. Background

22. The Government accused the IRPT of organizing a violent encounter on 4 September 2015 ("the attempted coup"), which resulted in 39 deaths.¹⁰⁹ Although the Government produced no credible evidence that the IRPT had any involvement in this incident,¹¹⁰ the Government nonetheless used the attempted coup to justify the detention and arrest of at least thirteen members of the IRPT leadership, including all twelve Applicants, and began a series of targeted raids beginning on 16 September 2015. Seizing on a climate of Islamophobia, the Government painted IRPT members as extremists with ties to the terrorist group ISIS—the very same group that was responsible for recently executing IRPT leader Sattor Karimov during an ISIS initiated prison riot.¹¹¹

23. Notably, the United Nations Working Group on Arbitrary Detention (the "Working Group") has already issued an opinion finding that the detention of Mahmudali Hayit, with whom the Applicants were prosecuted as a group, to be arbitrary and unlawful.¹¹² This decision should be given significant weight, as the Applicants were arrested in the same raid, accused of committing the same crimes, and subsequently prosecuted as a group with Mr. Hayit. In fact, the Working Group decision specifically notes that "the Government simultaneously arrested 12 other Islamic Renaissance Party political leaders" with Mr. Hayit, which includes the Applicants.¹¹³

24. The Working Group's opinion regarding Mr. Hayit emphasizes the procedural flaws with the Applicants' joint trial, limited access to counsel, and the Government's lack of a legal basis for their continued detention.¹¹⁴ Moreover, the Working Group opinion notes serious deficiencies with both the trial court decision and the Supreme Court appeal, which provide nothing beyond recitation of Government-proffered evidence and full acceptance of Government

¹⁰⁹ UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party, UN News Centre (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>; Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, The Cent. Asia-Caucasus (Sept. 23, 2015), <https://www.cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>; 2017 Special Rapporteur Report, supra note 43, at ¶ 41.

¹¹⁰ *The Death of Tajikistan's Islamic Renaissance*, Organized Crime and Corruption Reporting Project (June 5, 2018), <https://www.occrp.org/en/moneybymarriage/the-death-of-tajikistans-islamic-renaissance>

¹¹¹ See *Tajikistan blames Islamic State for prison riot, 32 killed*, Reuters (May 20, 2019) available at <https://www.reuters.com/article/us-tajikistan-prison-riot-idUSKCN1SQ0AW>.

¹¹² *Opinions Adopted by the Working Group on Arbitrary Detention: Opinion No. 2/2018 concerning Haritos Mahmudali Rahmonovich Hayit (Tajikistan)*, ¶ 79, U.N. Doc. No. A/HRC/WGAD/2018, https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf. ("Hayit Decision").

¹¹³ *Id.* at ¶ 8.

¹¹⁴ *Id.* at ¶ 44-78.

allegations with “no weight to the evidence presented by the defence.”¹¹⁵ The Government failed to adequately address its many violations of international law to the Working Group’s satisfaction. This failure led the Working Group to find that the Government’s continuing detention of political prisoners like Mr. Hayit violates international law. The Applicants here are political prisoners of the same kind and degree, swept up in the same politically motivated purge, detention, and flawed criminal proceeding as Mr. Hayit. As such, the Working Group’s opinion regarding Mr. Hayit should be highly probative in the evaluation of the Applicants’ arbitrary arrest and ongoing detention.

2. Arrest

25. September 2015 marked a tumultuous period in Tajikistan, with the clashes in two cities setting the tone for an increased crackdown on opposition. The Government took the opportunity of the September 4 failed coup by forces loyal to Deputy Defense Minister General Abduhalim Nazarzoda to crack down on the IRPT.¹¹⁶ In the attempted coup’s aftermath, the Government arrested thirteen high-ranking IRPT members, including all twelve of the Applicants.

26. Mr. Husaini was arrested on the morning of 16 September 2015 in the Dushanbe airport.¹¹⁷ After Mr. Husaini cleared passport control, uniformed officers from the State Committee for National Security (“GKNB”) approached and arrested him.¹¹⁸ They did not present a warrant for his arrest.¹¹⁹ [

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27. Mr. Faiz-Muhammad was arrested on 16 September 2015 at 17:00 while he was driving to his home in Dushanbe, Tajikistan.¹²³ Mr. Faiz-Muhammad was detained by what appeared to be officers of the National Clinical Hospital of Tajikistan, though they did not identify the agency that they worked for, show an arrest warrant, or state the reason for his arrest.¹²⁴ Later, Mr. Faiz-Muhammad learned that the officers were from the State Committee for National Security.¹²⁵ No information was provided to Mr. Faiz-Muhammad regarding the

¹¹⁵ *Id.* at ¶ 14, 77-78.

¹¹⁶ See Part 3, para. 23.

¹¹⁷ Communication AB, on file with author.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Communication BC, on file with author.

¹²³ Communication LM, on file with author.

¹²⁴ *Id.*

¹²⁵ *Id.*

charges against him or the legal basis for his arrest.¹²⁶ [

] Additionally, Mr. Faiz-Muhammad was beaten, interrogated, and tortured during and after his arrest.¹²⁸ From the time he was arrested until after the trial was completed, Mr. Faiz-Muhammad was held in pre-trial detention at SIZO.

28. Mr. Rajab was arrested by the GKNB on the evening of 16 September 2015.¹²⁹ Two men dressed in civilian clothes arrived at Mr. Rajab's home. They informed Mr. Rajab's family that they needed to have a few words with Mr. Rajab, and that they would bring him back shortly. However, Mr. Rajab never returned.¹³⁰ Approximately thirty minutes after the two officers departed with Mr. Rajab, ten additional officers from the GKNB, Ministry of Internal Affairs, and General Prosecutor's Office arrived to Mr. Rajab's home and conducted a search without presenting a warrant.¹³¹ [

] Following his arrest, Mr. Rajab was badly beaten and tortured for three consecutive days.¹³³

29. Mr. Roziq was arrested on the evening of 16 September 2015 outside of his home as he was returning from his mosque.¹³⁴ Three GKNB officers dressed in civilian clothes approached Mr. Roziq, identified themselves as officers, and asked him to take a walk with them.¹³⁵ The officers stated that they would return Mr. Roziq in an hour or two, but Mr. Roziq never returned.¹³⁶ The officers did not present a warrant or any other documentation authorizing his arrest.¹³⁷ Mr. Roziq was taken to the GKNB pre-trial detention center and interrogated, but the details of his interrogation are unknown.¹³⁸

30. Mr. Kosidinov was arrested on 16 September 2015 in Northern Tajikistan at the Tajik-Kyrgyz border crossing of Batken/Isfara.¹³⁹ Mr. Kosidinov was departing Tajikistan for Kyrgyzstan when he was arrested.

31. Mr. Avazov, Mr. Davlatov, Mr. Sayfullloza, Mr. Rustamov, Mr. Nabiev, and Mr. Ghayratov were arrested on 16 September 2015. Precise details surrounding their arrest are

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ Communication FG, on file with author.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² The Tajikistan Constitution states that the home is inviolable. Moreover, under Tajikistan law, police may not enter and search a private home without the approval of a judge. See Constitution of Tajikistan, XXX; Article X. See also Communication FG, on file with author.

¹³³ *Id.*; Human Rights Watch, *Tajikistan: Abuse of Dissidents' Families* (Dec. 20, 2016),

<https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>.

¹³⁴ Communication GH, on file with author.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

unobtainable. Publicly available reports on the Tajikistan government's campaign against the IRPT have included Mr. Avazov, Mr. Davlatov, Mr. Sayfulloza, Mr. Rustamov, Mr. Nabiev, and Mr. Ghayratov in the group of individuals arrested by the Tajikistan government.¹⁴⁰

32. According to one source, the GKNB conducted warrantless searches of every Applicant's home, and the homes of many of the Applicants' relatives following the Applicants' arrests.¹⁴¹

3. Pre-Trial Detention

33. Following their arrests, the Applicants were taken to the GKNB's pre-trial detention facility in Dushanbe. The Applicants remained in pre-trial detention from the time of their arrests on 16 September 2015 until their sentencing on 2 June 2016. In the GKNB pre-trial detention facility, the Applicants were denied bail,¹⁴² regularly abused, tortured,¹⁴³ and lacked access to necessary medicine and critical healthcare.¹⁴⁴

34. The Constitution of Tajikistan prohibits the use of torture.¹⁴⁵ Although the Government amended the criminal code in 2012 to add a separate article to define torture in accordance with international law, the Applicants were beaten, tortured, and subjected to other forms of Government coercion for purposes of extracting a confession following their arrests during interrogation sessions. The Applicants were also denied access to necessary medical care throughout their time in pre-trial detention.

35. On the night of his arrest, Mr. Husaini was beaten when he refused the Government's offer to provide him with a government position if he appeared on television to declare the IPRT's activity illegal and publicly withdraw from the party.¹⁴⁶ When Mr. Husaini refused the Government's offer, they put a bag on his head and beat him.¹⁴⁷ The Government continued to beat Mr. Husaini throughout his time in pre-trial detention. Moreover, Mr. Husaini was detained in solitary confinement at the pre-trial detention facility and, although Tajikistan law allows for [

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¹³⁹ See Communication NO, on file with author.

¹⁴⁰ See, e.g., *Tajikistan: Opposition Activists Detained*, Human Rights Watch (Sept. 18, 2015) available at <https://www.hrw.org/news/2015/09/18/tajikistan-opposition-activists-detained>.

¹⁴¹ See Communication NO, on file with author.

¹⁴² Communication JK, on file with author.

¹⁴³ See, e.g., Joint Letter to the EU Regarding the Human Rights Situation in Tajikistan, European Commission (July 23, 2018); Communication FG, on file with author; Communication AB, on file with author.

¹⁴⁴ See Communication FG, on file with author.

¹⁴⁵ Tajikistan Constitution, Art. 18.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ Communication CD, on file with author; see also U.S. Dep't of State, *Tajikistan 2018 Human Rights Report* 5 (2018).

36. Mr. Faiz-Muhammad was also beaten and tortured during his pre-trial detention.¹⁴⁹ During one interrogation, the Government demanded that Mr. Faiz-Muhammad denounce the IRPT and its leaders.¹⁵⁰ When Mr. Faiz-Muhammad refused, Government authorities beat and tortured him.¹⁵¹ Throughout pre-trial detention, Mr. Faiz-Muhammad was tortured with electric shocks and, on one occasion, he was shot with a Makarov pistol.¹⁵² Additionally, Mr. Faiz-Muhammad suffers from kidney disease. With that knowledge, the GKNB officers would use a baton to beat the area of his body where his kidneys are located.¹⁵³

37. Mr. Rajab was beaten the first three days of his pre-trial detention for the purpose of obtaining a “confession.”¹⁵⁴ [

].¹⁵⁵ [

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38. Sources report that the nine other Applicants also suffered abuse and torture during pre-trial detention.¹⁵⁶ Details concerning the abuse and torture they endured, however, are not known.

4. Lack of Access to an Attorney

39. The Applicants were not given access to legal counsel immediately following their arrests.¹⁵⁷ In fact, they were deprived access to legal counsel until 26 September 2015, ten days after their arrests. Even after the Applicants were permitted to meet with legal counsel on 26 September, the Government went to great lengths to prevent them from receiving effective legal assistance.

40. One of the most egregious violations of the Applicants’ right to receive legal counsel was the Government’s decision to arrest one of the Applicants’ lawyers, prominent Tajik human rights lawyer Buzurgmehr Yorov. Shortly after the Applicants’ arrest, Mr. Yorov publicly announced that he was representing the Applicants and organizing a committee to provide all 13 detained IRPT members with legal representation.¹⁵⁸ In response, Government law enforcement officials arrested Mr. Yorov and demanded that he withdraw his representation of the IRPT members; the Government also raided Mr. Yorov’s home and office, and seized

¹⁴⁹ *Id.*

¹⁵⁰ Communication LM, on file with author.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Communication FG, on file with author.

¹⁵⁵ Communication FG, on file with author.

¹⁵⁶ Communication NO, on file with author.

¹⁵⁷ Communications AB, LM, on file with author.

¹⁵⁸ Summary of Petition to the United Nations Working Group on Arbitrary Detention In the Matter of Buzurgmehr Yorov, ¶¶ 6 (Oct. 22, 2018), <https://lawyersforlawyers.org/wp-content/uploads/Yorov-Petition-Executive-Summary-22-Oct-2018-FINAL.pdf>.

privileged legal documents related to his representation of the Applicants.¹⁵⁹ He was sentenced to a combined 28 years in prison and remains imprisoned today.¹⁶⁰

41. Mr. Yorov's arrest was only one of the many tactics employed by the Government to prevent the Applicants from receiving effective legal assistance. The Government also told the Applicants' lawyers that they could not provide the Applicants or the public with information about the case (other than information that the Government instructed them to share) because the case was "top secret." To ensure compliance, the Government threatened to arrest or disbar any lawyer that failed to obey the Government's instructions.¹⁶¹ As a result, one of the Applicants' lawyers, [], told the Applicants that [] could only meet with them and convey their needs to their families, but could not defend them or attempt to change the result of the trial for fear of Government reprisal.¹⁶² Similarly, [] refused to provide information about the trial to [], and eventually left the legal profession altogether.¹⁶³ The Government's flagrant use of threats and intimidation wholly deprived the Applicants of access to effective legal counsel.

42. None of the Applicants were made aware of the charges against them until, at most, approximately two weeks before their trial, making effective legal representation all but impossible. Certain Applicants did not learn of the charges against them until the trial.¹⁶⁴ Further, the Government refused to share any information about the trial with the Applicants, their families, or the general public. The government-controlled media outlets did not provide any factual information about the charges or the trial, and the Government prevented the Applicants' lawyers from sharing information with the Applicants, their families, or the public. When human rights lawyer Buzurgmehr Yorov spoke publicly about the Applicants' detention and his representation of them, the Government arrested him shortly thereafter.¹⁶⁵

43. In addition to using threats and intimidation, the Government did not allow the Applicants or their lawyers to view evidence or the witness list in advance, and monitored the Applicants' meetings with their lawyers.¹⁶⁶

II. Applicants' Arbitrary Prosecution and Conviction

1. Closed Trial

¹⁵⁹ *Id.* at ¶ 7.

¹⁶⁰ Defending Freedoms Project: Tajikistan, Buzurgmehr Yorov, Tom Lantos Human Rights Commission, <https://humanrightscommission.house.gov/defending-freedom-project/prisoners-by-country/Tajikistan/Buzurgmehr-Yorov>.

¹⁶¹ Communication NO, on file with author.

¹⁶² Communication NO, on file with author.

¹⁶³ Communication GH, on file with author.

¹⁶⁴ Communication JK, on file with author.

¹⁶⁵ Defending Freedoms Project: Tajikistan, Buzurgmehr Yorov, Tom Lantos Human Rights Commission, <https://humanrightscommission.house.gov/defending-freedom-project/prisoners-by-country/Tajikistan/Buzurgmehr-Yorov>.

¹⁶⁶ Communication NO, on file with author.

44. In February 2016, the Applicants, along with Mr. Hayit, were tried as a group in a highly secretive, closed-door trial. The Applicants and their lawyers were not given adequate means to prepare a defense for their trial. Some Applicants were given approximately two weeks to review the Government’s allegations, while others were given less time to prepare. The Government prevented information about Mr. Rajab’s arrest, detention, and trial from being made public. [

].¹⁶⁷

However, the lawyer avoided [] because the Government forbade him from sharing any information about the trial.¹⁶⁸ Further, the Applicants and their lawyers were denied pretrial access to most of the Government’s evidence, which the Government deemed “classified.” The Applicants and their lawyers were not permitted to see the Government’s witness list or communicate with any witnesses. Even after the Applicants were allowed to view the complaint against them, their access to the complaint was time-restricted.

45. Immediately prior to being presented in court, the Applicants were forced to run to the courthouse while chained together, which resulted in injuries when anyone stumbled or fell.¹⁶⁹ The thirteen IRPT members were then presented in court—still shackled together—with visible bloody injuries and bruises on their faces.¹⁷⁰

46. The trial was not a standard civilian-led proceeding. Rather, the Chief Military Judge presided, even though the Applicants were not in military service and had been charged with crimes under the Criminal Code. The rest of the judges were civilian criminal court judges. The Applicants’ defense case was severely limited due to the many obstacles imposed by the Government.

47. Sources report that the trial lasted several months, during which time the prosecution set forth a litany of witnesses and allegations. At least two witnesses were beaten and coerced into giving testimony. The Chief of the Expert Committee was also called to testify as an expert witness, concluding that Applicants had extremist ideas without any specific proof or factual support. Virtually all of the Government’s evidence lacked specific factual details. Instead, it consisted of broad and conclusory accusations that the IRPT was somehow linked to terrorism. Although the defense was permitted to cross examine the witnesses, it was given no advance notice of the witnesses’ identities or what their testimony would be. The defense was also repeatedly denied the opportunity to present expert witnesses, despite numerous requests to do so.

¹⁶⁷ Communication FG, on file with author.

¹⁶⁸ *Id.*

¹⁶⁹ See *Hayit v. Tajikistan*, Working Grp. on Arbitrary Detention, Commc’n No. 2/2018, ¶ 35, 81st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2018/2 (May 10, 2018).

¹⁷⁰ *Id.*

48. During the trial, one of the witnesses for the Government recanted his prosecution testimony while on the witness stand, but the Court chose to ignore his recantation and only recognize his initial testimony (which was, by the witness's own admission, entirely false).¹⁷¹ Another witness, Sarabek Myrodov, testified that, despite his previous testimony, he had never heard the Applicants or their co-defendants discussing potential armed rebellion. Mr. Myrodov further testified that the Government had coerced him to testify otherwise previously, pursuant to a deal that he had made to avoid further prosecution. In response to his honest testimony recanting the earlier falsehoods, Government authorities brutally beat Mr. Myrodov. After that, he only testified, in response to each question: "I don't know."¹⁷²

49. On 2 June 2016, the Supreme Court found all of the Applicants and their co-defendant Mr. Hayit guilty and sentenced them to terms ranging from life in prison to 14 years.¹⁷³ Mr. Husaini was sentenced to life imprisonment, Mr. Faiz-Muhammad was sentenced to 23 years, Mr. Rajab was sentenced to 28 years, Mr. Avazov was sentenced to 28 years, Mr. Sayfulloza was sentenced to 16 years, Mr. Davlatov was sentenced to 28 years, Mr. Kosidinov was sentenced to 16 years, Mr. Roziq was sentenced to 25 years, Mr. Rustamov was sentenced to 20 years, Mr. Nabiev was sentenced to 14 years, and Mr. Ghayratov was sentenced to 14 years.

III. Applicants' Imprisonment

1. Prison Conditions

50. As of May 2019, the Applicants were being held at the maximum security penal colonies No.1 in Dushanbe and Vahdat Prison No. 3/2, outside of Dushanbe. IRPT leader Sattor Karimov was murdered in Vahdat Prison on 19 May 2019.¹⁷⁴

51. The UN Committee Against Torture has reported extremely poor conditions in Tajik prisons, including overcrowding, lack of adequate food and drinking water, no heating or ventilation, inadequate sanitary and hygiene facilities, no meaningful activities and outdoor exercise, lack of access to lawyers, minimal opportunities to communicate with family members, and lack of adequate health care.¹⁷⁵

52. Reliable information about the Applicants' current detention conditions is difficult to obtain; however, information about the conditions in SIZO, the pre-trial detention center where the Applicants were held before trial, reveals an extraordinarily harsh environment. Each SIZO group cell has the capacity to hold 14 or 16 prisoners, but typically holds up to 25

¹⁷¹ See Petition to the United Nations Working Group on Arbitrary Detention in the Matter of Mahmadali Hayit, p. 24 (Sept. 8, 2016), <http://www.freedom-now.org/wp-content/uploads/2018/03/Hayit-Full-Petition-FINAL-Sept-8-2017-Redacted.pdf>

¹⁷² Id.

¹⁷³ See Annex N.

¹⁷⁴ See Tajikistan blames Islamic State for prison riot, 32 killed, Reuters (May 20, 2019) available at <https://www.reuters.com/article/us-tajikistan-prison-riot-idUSKCN1SQ0AW>

¹⁷⁵ Committee Against Torture, *Concluding Observations on the Third Periodic Report of Tajikistan*, ¶¶ 17, 33, U.N. Doc. CAT/C/TJK/CO/3 (June 18, 2018).

prisoners.¹⁷⁶ Bed sheets are dirty and infested with bed bugs.¹⁷⁷ Because of overcrowding, prisoners sleep on the concrete floor.¹⁷⁸ Conditions in the prison cells are unsanitary and the entire building is infested with cockroaches and rodents.¹⁷⁹ In the summer, SIZO is extremely hot and humid.¹⁸⁰ There is no access to fresh air.¹⁸¹ The windows are covered with metal shutters, which hardly allow for any air circulation, and the sky is not visible.¹⁸² The door of each cell has a small window, but the guards usually keep the windows closed, opening them for 10 to 15 minute periods only when the prisoners bribe them to do so.¹⁸³ Tap water is tainted with rust from the pipes.¹⁸⁴ The water tap is located next to the toilet in each cell.¹⁸⁵ There are no bathroom stalls, so the view of the toilet is wide open to all the prisoners in the cell.¹⁸⁶ A shower is provided only once a week.¹⁸⁷ On those occasions, the whole population of a cell is led into a single shower room, where they receive only 30 minutes to shower in crowded conditions.¹⁸⁸

53. For 15 minutes per day, the prisoners are led for a walk to a fenced area that looks like a cell, but does not have a roof.¹⁸⁹ Because of the dirt and overcrowding, the only possible physical exercise is walking and doing squats.¹⁹⁰ There is no exercise equipment in SIZO.¹⁹¹ The prisoners are woken up at 6:00 am and ordered to sleep at 10:00 pm.¹⁹² Between 6:00 am and 10:00 pm, the prisoners are not allowed to lie down or to fall sleep.¹⁹³ If those rules are violated by any prisoner, the entire cell population may be punished.¹⁹⁴ The punishment may vary from beatings of the entire cell population to orders to stand still for several hours in a row (sometimes completely naked).¹⁹⁵ In cases of insubordination, prisoners are threatened with torture by means of the so-called “*LG machine*” (a device that passes electric current through the body).¹⁹⁶

54. The sick prisoners are not isolated from the rest of the prison population.¹⁹⁷ There is little access to medical care.¹⁹⁸ When Mr. Rajab suffered a “micro-stroke,” he was not allowed

¹⁷⁶ Communication AB, on file with author.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ Communication AB, on file with author.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Communication AB, on file with author.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ Communication AB, on file with author.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ Communication AB, on file with author.

to see a doctor.¹⁹⁹ Later, Mr. Rajab began to suffer from severe inflammation and pain in his gums. He was eventually taken to a dentist, but the dentist's instruments were dirty and unsterilized, and some were covered in other patients' blood.²⁰⁰ Fearing infection, Mr. Rajab was forced to decline the necessary dental care, and his suffering has continued.

55. Many of the Applicants have health problems for which they are not receiving adequate treatment. Mr. Roziq has heart pain and breathing difficulty, and his health has declined precipitously since his imprisonment began. Mr. Faiz-Muhammad suffers from kidney disease, for which he has not received any treatment.

56. Prisoners in Tajik prisons generally have minimal contact with the outside world. Under Tajik law, prisoners should be permitted two visits a month and each should last for up to three hours.²⁰¹ However, [] is only allowed to see him [].²⁰² [] were allowed to visit every [], but at present are not allowed to visit at all due to the prison being on “lockdown.”²⁰³

3. Continued Harassment

57. [

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58. [

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¹⁹⁹ Communication EF, on file with author.

²⁰⁰ Communication DE, on file with author.

²⁰¹ Communication AB, on file with author.

²⁰² Communication AB, on file with author.

²⁰³ Communication GH, on file with author.

²⁰⁴ Communication DE, on file with author; Tajikistan: Abuse of Dissidents’ Families, Human Rights Watch (Dec. 20, 2016), <https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Communication GH, on file with author.

²⁰⁹ *Id.*

59. [

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PART 4

LEGAL ANALYSIS

60. The Working Group regards the deprivation of liberty as arbitrary under the following circumstances:²¹¹

- Category I - When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him);
- Category II - When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;
- Category III - When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights 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.
- Category V - When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings.

61. For the reasons set forth below, the continued detention of the applicants constitutes an arbitrary deprivation of their liberty under Category I, Category II, Category III, and Category V as outlined by the Working Group. In addition to being bound to respect the Universal Declaration of Human Rights (the “UHDR”), Tajikistan is a party to the International Covenant on Civil and Political Rights (the “ICCPR”) and is obligated to abide by its provisions.²¹²

²¹⁰ Communication BC, on file with author.

²¹¹ The Working Group also will consider deprivation of liberty arbitrary under one categories not relevant to the Applicants’ case: A Category IV classification (related to administrative custody for asylum seekers, immigrants or refugees). See *Report of the Working Group on Arbitrary Detention*, 16th session, A/HRC/16/47, Annex 8(a)-(c) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement> {hereinafter “Revised Methods of Work”}.

²¹² International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> {hereinafter “ICCPR”}.

62. Article 10 of the Tajikistan Constitution states, “International legal documents recognized by Tajikistan shall be a component part of the legal system of the republic. In case the republican laws do not stipulate to the recognized international legal documents, the rules of the international documents shall apply.”²¹³ By continuing to detain the Applicants, Tajikistan is in violation of its obligations under the ICCPR, the UDHR, and other international obligations as stipulated below.

I. Category I: Deprivation of Liberty without Legal Justification

63. The continued detentions of the Applicants resulting from their politically motivated arrests and their convictions for alleged violations of various provisions of the Criminal Code of Tajikistan is arbitrary under Category I. A detention is arbitrary under Category I when there is no legal basis or justification for it.²¹⁴ The Working Group has found detentions arbitrary under Category I when at least one of the following violations is present: (A) the government has arrested an individual without a warrant and without promptly informing the individual of the charges against him; (B) vague laws are used to prosecute individuals; (C) an individual is convicted without substantive evidence to justify such a conviction; and/or (D) when laws are used to target government critics.²¹⁵

64. Here, because the Tajikistan authorities arrested the Applicants without a warrant, without informing them of the charges against them for months, without promptly presenting them before a judicial authority for a *habeas corpus* hearing; prosecuted them under overly vague Criminal Code provisions; and did not provide adequate material evidence to justify their convictions (tactics that it often uses to imprison its critics), the Applicants’ detentions were without legal basis and therefore arbitrary under Category I.

1. The Applicants Were Arrested Without a Warrant, Without Knowledge of the Charges Against Them, and Held Without Prompt Access to Judicial Review of their Arrests

65. Article 9(2) of the ICCPR states that “{a}nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”²¹⁶ Article 9(3) of the ICCPR calls for “anyone arrested or detained on a criminal charge {to} be brought promptly before a judge or other officer authorized by law to exercise

²¹³ President of the Rep. of Tajikistan, *Constitution (Basic Law) of the Republic of Tajikistan* art. 10 {hereinafter “Constitution of Tajikistan”}, <http://www.president.tj/en/taxonomy/term/5/28>.

²¹⁴ Revised Methods of Work, *supra* note 190. In particular, a Category I deprivation of liberty occurs “{w}hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual...” *Id.* at ¶ 8(b).

²¹⁵ See, e.g., *Bettar v. Morocco*, Working Grp. on Arbitrary Detention, Commc’n No. 3/2013, ¶¶ 30-314 (Apr. 30, 2013); *61 Individuals v. United Arab Emirates*, Working Grp. On Arbitrary Detention, Commc’n No. 60/2013, ¶ 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>; *Judicaël et al. v. Republic of Congo*, Working Grp. On Arbitrary Detention, Commc’n No. 44/2014, ¶¶ 26-37 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>; *Astorga v. Bolivia*, Working Grp. on Arbitrary Detention, Commc’n No. 28/2014, ¶¶ 41, 45 (Aug. 18, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/199/56/PDF/G1419956.pdf?OpenElement>.

²¹⁶ ICCPR, *supra* note 191.

judicial power and shall be entitled to trial within a reasonable time or to release;”²¹⁷ this obligation for a habeas corpus hearing “without delay” is reiterated in Article 9(4) of the ICCPR.²¹⁸ The United Nations Human Rights Committee (the “Human Rights Committee”) has interpreted the term “promptly” to mean within about 48 hours, except in exceptional circumstances,²¹⁹ and noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”²²⁰

66. In contravention of these obligations, as mentioned in part 3.I above, the Applicants were initially arrested without a written warrant, and they were not brought “promptly” before a judge to challenge the legality of their detentions. In addition, the Applicants were not made aware of the charges against them until, at most, approximately two weeks before their trial in February 2016. Some of the Applicants were not informed of the charges against them at all before the trial.²²¹

67. Tajikistan law allows the police to hold “*suspicious objects*” for ten days (known as the conviction period) based on an alleged violation of any Criminal Code article, provided that a court reviews the evidence immediately after that time to determine if the detention is lawful. This allowance of an extended period of time where a detainee can be held without appearing before a judge to adjudicate the legality of his detention, and the specific experience of the Applicants - being arrested without warrants, without being promptly informed of why they were being arrested, and being held without access to judicial review of the legality of their detentions - is at odds with the requirements of Article 9 of the ICCPR for a lawful detention.

2. Tajikistan’s Criminal Code is Overly Broad and Vague

68. Article 15(1) of the ICCPR²²² and Article 11(2) of the UDHR²²³ both guarantee individuals the right to know what the law is and what conduct violates the law. In its General Comment No. 35, the Human Rights Committee states that “*{a}ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.*”²²⁴ Moreover, the UN Special

²¹⁷ *Id.*, art. 9(3).

²¹⁸ *Id.*, art. 9(4).

²¹⁹ *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 33, Human Rights. Comm., U.N. Doc. CCPR/C/GC/35 (Dec. 16, 204), <http://www.refworld.org/docid/553e0f984.html>. {hereinafter “General Comment No. 35”}.

²²⁰ *Id.*, at ¶ 32.

²²¹ Communication JK, on file with author.

²²² ICCPR, art. 9(1) (“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”).

²²³ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 11(2), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), <http://www.un-documents.net/a3r217a.htm>, (“No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”) {hereafter “UDHR”}.

²²⁴ General Comment No. 35, *supra* note 198, ¶ 22; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Mauritius*, ¶ 12, Human Rights. Comm., 83rd Sess., U.N. Doc. CCPR/CO/83/MUS (Apr. 27, 2005),

Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism has explained that the standard for legal certainty requires framing laws “*in such a way that{...} the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and {that} the law {be} formulated with sufficient precision so that the individual can regulate his or her conduct.*”²²⁵

69. Tajikistan’s Criminal Code defines criminal acts in a manner that is overly broad and vague. Individuals are unable to know or predict what conduct may violate the law. This allows the State to abuse the statute so as to crack down on legitimate forms of political dissent and leaves citizens vulnerable to severe criminal sanctions without prior knowledge that their actions might be considered illegal.

70. A number of the Tajikistan Criminal Code provisions under which the Applicants were charged lack the necessary precision.

71. For example, all Applicants except for Mr. Kosidinov were charged under Article 306 of the Criminal Code, which defines the offense of Forcible Capture of Power or Forcible Keeping Power as:

*Actions aimed at forcible capture of power or forcible keeping power against the Constitution of the Republic of Tajikistan, as well as aimed at forcible changing the constitutional system of the Republic of Tajikistan, or forcible violation of the territorial integrity of the Republic of Tajikistan, are punishable by imprisonment for a period of 12 to 20 years simultaneously with confiscation of property or death penalty.*²²⁶

72. The phrase “forcible violation of the territorial integrity of the Republic of Tajikistan” is so vague as to render the article without meaning. Moreover, use of the word “actions” without further definition lacks specificity. Absent elaboration or context, the State is free to make arrests for anything it deems an “action” under the statute. The Applicants were also charged under Article 307, Forcible Calls to Changing the Constitutional System of Tajikistan, which suffers from the same defect.²²⁷

73. In addition, all Applicants were charged under Article 189 of the Criminal Code, which nebulously criminalizes:

<http://www.refworld.org/docid/42d16bf94.html>; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Russian Federation*, ¶ 24, Human Rights Comm., 97th Sess., U.N. Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), <http://www.refworld.org/docid/4b2603442.html>.

²²⁵ Martin Scheinin, Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ¶ 42, Comm. on Human Rights, 62nd Sess., U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>; 62nd Rep. of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, ¶ 48, Human Rights Council, 28th Sess., U.N. Doc. A/HRC/28/28 (Dec. 19, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages>ListReports.aspx>.

²²⁶ Tajikistan Criminal Code, *supra* note 70, art. 306.

²²⁷ Tajikistan Criminal Code, art. 307.

*{t}he 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 {...}.*²²⁸

74. The use of blanket clauses is part of every legislator's toolbox. Making use of this technique is not problematic as long as the standards of the principle of legal certainty are met at the same time. The necessity of legal certainty is most crucial in the realm of criminal law since criminal penalties are the harshest sanction a state can impose on its citizens. Legal uncertainty must therefore be avoided under all circumstances.

75. However, Article 189 of the Criminal Code lacks any plain meaning and gives individuals no fair notice of what conduct is prohibited. The phrases “*arousing national, racial, local or religious hostility*,” “*humiliating national dignity*,” and “*propaganda*” have no discernible scope or limitation. Rather, these provisions seem deliberately open to (mis)interpretation and thus enable the Government’s ability to crack down on activities – such as protesting, alternative discourse, or campaigning for a dissenting party – that constitute the exercise of an individual’s right to freedom of expression, association or political participation.²²⁹ Without limiting provisions or clarifying language, Article 189 targets a staggeringly broad range of “*actions*” and could be applied virtually to any expression of political opposition against the Government. Instead of protecting the citizens or the Tajik state – which is the universal purpose of criminal law provisions – this provision is rather used to assist the Government in suppressing dissenting opinions. This provision functions as a mere pretext to justify arbitrary detention.

76. Article 9(1) of the ICCPR also establishes the principle of due process, part of which is guaranteeing that the law is specific enough for individuals to tell the difference between legal and illegal conduct. Broad, ambiguous and vague law provisions violate this principle. The Human Rights Committee has specifically confirmed that:

The third sentence of paragraph 1 of article 9 provides that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Any substantive grounds for arrest or detention must be prescribed by law and should be defined

²²⁸ Tajikistan Criminal Code, art. 189.

²²⁹ ICCPR, art. 9(1); UDHR, arts. 19, 20.

with sufficient precision to avoid overly broad or arbitrary interpretation or application.²³⁰ Deprivation of liberty without such legal authorization is unlawful.²³¹

77. With respect to the extremism charge, the Working Group has been seized by cases involving broad criminal sanctions in the past and noted with concern the

frequent attempts by Governments to use normal legislation or to have recourse to emergency or special laws and procedures to combat terrorism and thereby permit, or at least increase, the risk of arbitrary detention. Such laws, both per se or in their application, by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike, and thereby increase the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances.²³²

78. For the Applicants, the Criminal Code's ill-defined provisions have resulted in arbitrary prosecutions for acts that are both unforeseeable as criminal and protected under the ICCPR, the UDHR, and other international norms and standards.

3. The Government of Tajikistan Did Not Support the Applicants' Convictions with Substantive Evidence

79. The Applicants' illegitimate arrest and prosecution exemplify the Government's use of its Criminal Code to bring politically-motived prosecutions. Tajikistan failed to present facts justifying their arrests, detentions, and convictions as being necessary for reasons of national security or their alleged participation in criminal activities. Rather, the paucity of evidence shows that the Government used an ill-defined Criminal Code to manufacture charges against the Applicants. Moreover, the Government's attempt to paint IRPT members as ISIS sympathizers defies logic in the face of recent ISIS-perpetrated attacks that resulted in the execution of a known IRPT leader.²³³

80. As stated above in part 3.II.1, during the months-long trial, evidence presented by the prosecution lacked authenticity and factual details (for example, the Government's expert witness concluded that the Applicants had extremist ideas without been able to provide any

²³⁰ Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Philippines, ¶ 14, Human Rights Comm., 79th Sess., U.N. Doc. CCPR/CO/79/PHL (Dec. 1, 2003), <http://www.refworld.org/docid/3fdc69224.html>; Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Mauritius, *supra* note 203, ¶ 12; Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Russian Federation, *supra* note 203. ¶ 24; Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Honduras. ¶ 13, Human Rights Comm., 88th Sess., CCPR/C/HND/CO/1 (Dec. 13, 2006), <http://www.refworld.org/docid/45f6c1ac2.html>.

²³¹ McLawrence v. Jamaica, Commc'n No. 702/1996, ¶ 5.5, 60th Sess., Human Rights Comm., U.N. Doc.

CCPR/C/60/D/702/1996 (Sept. 29, 1997), <http://hrlibrary.umn.edu/undocs/702-1996.html> ("{T}he principle of legality is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation")."

²³² Saleh bin Awad bin Saleh Al-Hweiti, Working Grp. On Arbitrary Detention, Commc'n No. 18/2011, ¶20, 61st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2011/18 (Feb. 17, 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/112/46/PDF/G1211246.pdf?OpenElement>.

²³³ See Tajikistan blames Islamic State for prison riot, 32 killed, Reuters (May 20, 2019) available at <https://www.reuters.com/article/us-tajikistan-prison-riot-idUSKCN1SQ0AW>.

specific proof or factual support), and the Government beat or otherwise coerced witnesses into testifying against the Applicants, rendering their incriminatory statements impermissibly tainted.

81. Moreover, the Applicants' counsel were denied pre-trial access to most of the Government's evidence (including witness list and their testimony) and were repeatedly prevented from introducing expert witnesses in support of the Applicants' case.

82. Thus, given that evidence presented against the Applicants was coerced, false, or not containing factual details, it is clear that the Applicants' convictions were not based on sufficient evidence. The resulting convictions and lengthy prison sentences (ranging from 14 years to life) therefore, lack a proper legal basis.

4. Tajikistan Employs an Overly Broad and Vague Criminal Code to Crackdown on Critics

83. Because the Criminal Code is broadly and vaguely written, it facilitates the Government's pursuit of politically motivated charges against opponents of the regime. The Working Group has previously stated that restrictions on freedom of expression cannot be justified by vague and general references to interests of national security or public order, and that detentions based on these statutes are arbitrary under a Category I classification.²³⁴ Yet, that is exactly what occurs in Tajikistan: President Rahmon's regime exploits the Criminal Code to maintain power and quash legitimate opposition, effectively using the law as a tool of oppression in an already repressive political climate.

84. The use of vague laws to crack down on opposition is part of a larger pattern in Rahmon's Tajikistan. In 2015, the International Partnership for Human Rights warned of the dangers of a proposed Law on Public Assemblies, which was aimed at "restricting the funding and activities of NGOs."²³⁵ The law provided for no registration procedure and specified "no minimum amount to which it would apply."²³⁶ This 2015 proposal followed a similar 2014 adopted law that limited the "right to hold peaceful assemblies in ways that are not compatible with international standards."²³⁷ The U.S. State Department has similarly noted a pattern of using vague laws to arbitrarily detain and arrest peaceful political dissidents and others with whom the Government disagrees.²³⁸

²³⁴ See, e.g., *Mbanza Judicael v. Rep. of Congo: Opinion adopted by the Working Group on Arbitrary Detention*, ¶ 26, Human Rights Council, 71st Sess., U.N. Doc. A/HRC/WGAD/2014/44 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

²³⁵ *Stifling Civil Society in Kazakhstan, Tajikistan and Turkmenistan: Current Concerns*, IPHR (Apr. 15, 2015), <http://iphronline.org/stifling-civil-society-in-kazakhstan-tajikistan-and-turkmenistan-20150415.html#arch5>.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ See U.S. Dep't of State, *Tajikistan: 2016 Country Reports on Human Rights Practices* (Mar. 3, 2017), <https://www.state.gov/j/drl/rls/hrpt/2016/sca/265550.htm>.

85. The broad provisions of the Criminal Code used to charge the Applicants are unreasonably vague for all the reasons discussed above. The cumulative effect of the Applicants being arrested without a warrant, not being brought before a judge for a bail hearing, being convicted without any substantive evidence under overly vague and broad laws, and the larger context of Tajikistan intentionally misusing such laws against critics, reveals the detentions that are objectively arbitrary for lack of a legal basis, in violation of Category I.

II. Category II: Detention Due to the Exercise of a Fundamental Right

86. A detention is arbitrary under Category II when it results from the exercise of fundamental rights protected by international law.²³⁹ In this case, the Applicants' arrests, detentions and convictions resulted from their exercise of their rights to free expression, association and participation in public affairs.

1. The Tajikistan Government Detained the Applicants Because They Exercised Their Rights to Freedom of Opinion and Expression.

87. Freedom of opinion and expression are protected by Article 19 of the ICCPR and Article 19 of the UDHR. Article 19(2) of the ICCPR provides that “*{e}veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*”²⁴⁰ Domestically, Article 30 of the Constitution expressly protects the right to freedom of expression, stating “*{e}ach person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden.*”²⁴¹ The right to express dissenting political opinions is also specifically guaranteed by Article 30 of the Constitution, which provides that “*{s}tate censorship and prosecution for criticism shall be prohibited.*”

88. Article 19 of the ICCPR is of special importance for members of political opposition groups. The Human Rights Committee has recognized that the protection of free expression must include the right to express dissenting political opinions. It is broad enough to “{include} the right of individuals to criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”

89. The Government arbitrarily detained and prosecuted the Applicants in retribution for exercising their rights to freedom of opinion and expression as members of a political party that has openly criticized the Government. In fact, the Government repeatedly attempted to

²³⁹ According to the Working Group's Revised Methods of Work, a detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” *Opinions adopted by the Working Group on Arbitrary Detention No. 60/2013 (United Arab Emirates)*, ¶ 2, Human Rights Council, Nov. 13-Nov. 22, 2013, 68th Sess., U.N. Doc. A/HRC/35/22/Add. 2 (Apr. 2, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/131/83/PDF/G1413183.pdf?OpenElement>.

²⁴⁰ ICCPR, *supra* note 207, art. 19(2).

²⁴¹ Constitution of Tajikistan, *supra* note 192, art. 30.

silence IRPT members through violence and intimidation. Mr. Rajab, for instance, was under constant government surveillance and felt being watched wherever he went even prior to his arrest at issue.²⁴² Mr. Husaini, during his pre-trial detention, was offered political positions by the Government in exchange for his public abandonment of IRPT membership and acknowledgment of IRPT illegality, and was tortured when he refused the offer.²⁴³

90. Further, the harassment of the Applicants, followed by their mass arrests and highly politicized trial, fits into the Government's pattern of silencing dissenting voices in Tajikistan.²⁴⁴ When the Supreme Court declared the IRPT a terrorist organization and banned all future activities by the party in September 2015, its ruling included a ban on the distribution of any newspapers, videos, audio recordings, literature and leaflets connected to the IRPT.²⁴⁵ The Government has systematically targeted and arrested opposition party members, journalists, and even those who post critical statements on social media.²⁴⁶ The Government even continues to target perceived critics who have fled Tajikistan, seeking their extradition and arrest.²⁴⁷

91. The Government has also tried to intimidate the Applicants' by threatening their family members in an attempt to silencing critical voices in and outside Tajikistan. As stated in Section III.3.3, [

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92. The Applicants' detentions are consistent with the Government's broader pattern of suppressing all voices critical of President Rahmon and the ruling party that controls the Tajikistan Government — and the Government's actions against the Applicants constitute a violation of Article 19(2) of the ICCPR, which renders their detention arbitrary under Category II.

2. The Tajikistan Government Detained the Applicants Because They Exercised Their Rights to Freedom of Association

93. Article 20(1) of the UDHR provides that “{e}veryone has the right to freedom of peaceful assembly and association.” Article 22(1) of the ICCPR provides that “{e}veryone shall have the right to freedom of association with others . . .” The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views and human rights

²⁴² Communication DE, on file with author.

²⁴³ Lawyer: Arrested members of the IRPT deny involvement in the insurgency, Asia-Plus (Sept. 28, 2015), <https://news.tj/ru/news/advokat-arestovannyе-chleny-pivt-otritsayut-prichastnost-k-myatezhu>

²⁴⁴ 2017 Special Rapporteur Report, *supra* note 43, ¶ 16.

²⁴⁵ 2017 Special Rapporteur Report, *supra* note 43, ¶ 41.

²⁴⁶ Human Rights Watch, *Tajikistan: Video Spotlights Crackdown*, (Sept. 21, 2016), <https://www.hrw.org/news/2016/09/21/tajikistan-video-spotlights-crackdown>.

²⁴⁷ *Id.*

defenders.²⁴⁸ In General Comment No. 25 to the ICCPR, the Human Rights Committee noted that “the right to freedom of association, including the right to form and join organizations and associations concerned with political and public affairs, is an essential adjunct to the rights protected by Article 25 {right to participate in public affairs}.”²⁴⁹ Similarly, Tajik law ensures the right to freedom of association. Article 28 of the Constitution affirms that citizens “have the right of association,” including “the right to participate in the formation of political parties.”²⁵⁰

94. In defiance of these international standards and guarantees, the Government has sought to criminalize the association of IRPT members, as is obvious through its treatment of the Applicants and other IRPT members. The Government viewed the IRPT as a threat to its power because the IRPT was the largest opposition party in Tajikistan before Tajikistan’s Supreme Court officially banned the group on September 29, 2015.²⁵¹ The Applicants are long-term members of IRPT. At the time of their arrests, the Applicants held leadership positions in the party. Though the Applicants have the right to associate with the political party of their choice and express their political opinions through such party, the Government has systematically persecuted them as a means to punish their involvement with the IRPT.

95. The Applicants were accused of conspiring to plan a coup to overthrow the Government. On its face, this charge turns the fact of their association with IRPT into a criminal act. The Government’s decision to try the Applicants (all of them are IRPT members) jointly, and to use much of the same weak evidence against them, also demonstrates its focus on tarring all members with the same brush. Moreover, the prosecution’s allegations about the IRPT’s participation in the coup were devoid of any meaningful supporting details and were unsubstantiated by evidence. The U.S. delegation to the OSCE publicly stated that it has “seen no evidence that the IRPT as an organization was involved with the attacks in Dushanbe and surrounding towns.”²⁵² Clearly, charging all of the IRPT leaders with participating in the coup was simply a pretext for the Government to rid itself of an unpleasant association of opposition voices.

96. In addition to punishing IRPT leaders, the Government has arbitrarily detained lawyers associated with their defense.²⁵³ For instance, Buzurgmekhr Yorov was arrested on 29 September 2015 shortly after he agreed to represent the Applicants.²⁹³ Nuriddin Mahkamov was arrested on 22 October 2015 after he sought to represent Mr. Yorov.²⁵⁴ On 6 October 2016, Mr.

²⁴⁸ G.A Res. 15/21, ¶ 1, U.N. Doc. A/HRC/RES/15/21 (Oct. 6, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.

²⁴⁹ *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* (Art. 25), ¶ 26, Human Rights Comm., 57th Sess., U.N. Doc. CCPR/C/21/Rev.1/Add.7 (Aug. 27, 1996), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.7&Lang=en. {hereinafter “General Comment No. 25”}.

²⁵⁰ Constitution of Tajikistan, *supra* note 192, art. 28.

²⁵¹ 2017 Special Rapporteur Report, *supra* note 43, ¶ 41.

²⁵² *On Political Opposition in Tajikistan: Statement to the PC*, *supra* note 46.

²⁵³ 2017 Special Rapporteur Report, *supra* note 43, ¶ 49.

²⁵⁴ 2017 Special Rapporteur Report, *supra* note 43, ¶ 49.

Yorov and Mr. Mahkamov were sentenced to 21 and 23 years imprisonment respectively for frivolous charges including inciting ethnic enmity, calling for an overthrow of the government, support of extremist activity, fraud, and forgery.²⁵⁵

97. Thus, the Government's history of past intimidation and harassment of the Applicants, the fact that one of the charges leveled against the Applicants explicitly criminalized their association with the IRPT on the grounds of conspiracy, the joint trial of the IRPT members, conviction without any substantiating evidence, and the wider context of repression against the IRPT as a whole, including banning the organization and attacking those attorneys defending them, demonstrate that the Applicants' arrests, detentions, and convictions were driven by their mere association with the IRPT and were in violation of international law.

3. The Government Detained the Applicants Because They Exercised Their Rights to Freedom of Political Participation

98. Article 25(a) of the ICCPR protects a citizen's right "to take part in the conduct of public affairs, directly or through freely chosen representatives . . ."²⁵⁶ Similarly, Article 27 of the Constitution states that "{e}ach citizen has the right, directly or through representatives, to participate in political life and in the governing of the state," and further states that each citizen has a right to vote and be elected.²⁵⁷

99. In General Comment No. 25, the Committee has confirmed that the right to take part in the conduct of public affairs goes beyond the mere protection of the electoral process, and protects citizens' ability to "*take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.*"²⁵⁸ Thus, a state interferes with this right when it unreasonably restrains and censors members of opposition parties from communicating political ideas or detains opposition party members based on such association.²⁵⁹ In such context, the Committee clarified that:

{Article 25} requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold

²⁵⁵ On March 15, 2017 Yorov's sentence was extended by two additional years to 25 years after he was found guilty of contempt of court and insulting a government official. 2017 Special Rapporteur Report, *supra* note 43, ¶ 49.

²⁵⁶ ICCPR, *supra* note 191, art. 25(a).

²⁵⁷ Constitution of Tajikistan, *supra* note 192, art. 27.

²⁵⁸ General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25), ¶ 8, Human Rights Comm., U.N. Doc. CCPR/C/21/Rev.1/Add.7, ¶ 8, (Aug. 27, 1996) {hereinafter "General Comment No. 25"}, <http://www.refworld.org/docid/453883fc22.html>.

²⁵⁹ See e.g., *Tran Thi Thuy and Ors. v. Vietnam*, Working Grp. on Arbitrary Detention, Commc'n No. 46/2011, ¶ 21, U.N. Doc. A/HRC/WGAD/2011/46 (Sept 2., 2011), <http://hrlibrary.umn.edu/wgad/46-2011.html2011>) (finding that Vietnam had arbitrarily detained members of an opposition party based on its violation of their rights to free association and to participate in public affairs).

*peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.*²⁶⁰

100. Specifically, membership in political parties “play{s} a significant role in the conduct of public affairs and the election process.”²⁶¹

101. The Guidelines on Political Party Regulation, identified as a relevant regional standard on association rights for Tajikistan,²⁶² confirm the fundamental importance of free association in the context of political parties: “*Political parties are collective platforms for the expression of individuals’ fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic process. Further, they are the most widely utilized means for political participation and the exercise of related rights.*”²⁶³ Because of the importance of political parties in a democratic society, “*{t}he right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference.*”²⁶⁴ Moreover, “*groups of individuals choosing to associate themselves as a political party must also be awarded the full protection of related rights.*”²⁶⁵

102. In addition, Working Group jurisprudence supports this right; it has held that individuals who have been deprived of liberty “solely for their exercise of the right to freedom of association and the right to take part in the conduct of public affairs fall{...} within category II violations.”²⁶⁶

103. The Applicants’ detentions were a direct response to their exercise of their right to participate in the conduct of public affairs as members and leaders of the IRPT opposition party. The charges brought against them were fabricated and designed to justify the Government’s banning of the IRPT. At the time of their arrests, the Applicants were senior party leaders: Mr. Husaini was deputy head of the IRPT; Mr. Rajab was the head of the IRPT chapter in the District of Republican Subordination; Mr. Roziq was the head of the party’s scientific committee; Mr. Kosidinov was Chief of the Election Department; Mr. Avazov was chairman of the IRPT Dushanbe chapter; Mr. Davlatov was Chief of the IRPT Foreign Relations Department; and Mr. Nabiev was head of the IRPT chapter in the Kulab region.²⁶⁷ Additionally, these Applicants, along with Mr. Faiz-Muhammad, Mr. Sayulloza, Mr. Rustamov, and Mr. Ghayratov, were all

²⁶⁰ General Comment No. 25, *supra* note 227, ¶ 25.

²⁶¹ *Id.*, ¶ 26.

²⁶² See United Nations Office of the High Comm'r of Human Rights , *International Standards*, <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/InternationalStandards.aspx>.

²⁶³ OSCE Office for Democratic Institutions and Human Rights, *Guidelines of Political Party Regulation*, ¶ 10 (2011), <http://www.osce.org/odihr/77812?download=true>.

²⁶⁴ *Id.*, ¶ 14.

²⁶⁵ *Id.*, ¶ 11.

²⁶⁶ See *Thuy v. Gov't of Viet Nam*, Working Grp. Arbitrary Detention, Opinion No. 46/2011, ¶¶ 21, 22, 26, Human Rights Council, 61st Sess., U.N. Doc. A/HRC/WGAD/2011/46 (Sept. 2, 2011), <http://hrlibrary.umn.edu/wgad/46-2011.html>.

²⁶⁷ Communication PQ, on file with author.

members of the IRPT Supreme Council.²⁶⁸ The Applicants played a critical role in the party's political activities, including running for public office and making public remarks critical of the Government. Their current detentions are consistent with the Government's previous attempts to prevent them and other IRPT members from participating in politics or influencing public affairs through intimidation and harassment.

104. The IRPT and its members have long been under attack by President Rahmon. Since the 1997 peace accord mandated 30 percent of senior government posts to the IRPT, President Rahmon has consistently harassed, threatened, and intimidated IRPT members.²⁶⁹ The IRPT also had suspicions that the government's "official" statistics regarding the percentage of votes for the IRPT in the 2010 parliamentary elections were far lower than the actual number,²⁷⁰ a serious possibility given the frequent anomalies observed in the election process in Tajikistan.²⁷¹ In February 2012, minutes of a secret meeting, known as "Protocol 32-20," were leaked. The minutes included notes about President Rahmon and the Security Service of Tajikistan discussing how to put pressure on the IRPT.²⁷² Attacks and harassment of other IPRT members have also occurred in recent years,²⁷³ including the arrest and detention of Umed Tojiev, who was detained by Tajik police in October of 2013 and was allegedly tortured by the police in an effort to get him to incriminate himself before dying in prison in January of 2014.²⁷⁴ This political repression has accelerated since the September 4, 2015, attacks in Dushanbe, which were used as a pretext to launch unfair criminal proceedings and suppress opposition voices and civil society. The State's actions were clearly intended to shut down the political activities of and deal a fatal blow to the IRPT.

105. Additionally, the circumstances surrounding the Applicants' arrests, detentions, and convictions are part and parcel of the Government's documented pattern and practice of suppressing opposition politicians and activists. Since the end of the civil war in 1997, President Rahmon has gradually "forced nearly all oppositionists out of government—some are in prison,

²⁶⁸ *Id.*

²⁶⁹ Freedom in the World 2016, *supra* note 4.

²⁷⁰ Abdulfatoh Shafiev, *A new move in digital wars in Central Asia: The Tajik Islamic Party under 'digital porn' attack*, The Central Eurasia-Religion in International Affairs Initiative, CERIA Brief No. 4 (Nov. 2014), <http://ceriainitiative.org/likepomeps/wp-content/uploads/2015/08/CERIA-brief-4-November-2014.pdf>; Alexander Sodiqov, *Presidential Party Wins Landslide in Tajik Parliamentary Election*, The Cent. Asia-Caucasus (Mar. 18, 2010), <http://caciyanalyst.org/publications/field-reports/item/12020-field-reports-caci-analyst-2010-3-18-art-12020.html> ("Mukhiddin Kabiri argues that the IRPT won around 30 percent of the vote through party list voting, but the final ballot results were falsified in favor of the ruling party.").

²⁷¹ See Int'l Election Observation Mission, *Republic of Tajikistan, Parliamentary Elections – 28 February 2010: Preliminary Conclusions* (Mar. 1, 2010), <https://www.oscepa.org/documents/all-documents/election-observation/election-observation-statements/tajikistan/statements-22/2145-2010-parliamentary-3/file>.

²⁷² Abdulfatoh Shafiev, *supra* note 246.

²⁷³ Freedom in the World 2016, *supra* note 4.

²⁷⁴ Human Rights Watch, *Tajikistan: Reverse Political Party Closure*, *supra* note 35; Qishloq Ovozi, *The Painful Last Days of Umed Tojiev*, Radio Free Eur. (Jan. 22, 2014), <http://www.rferl.org/a/last-days-of-umed-tojiev/25238683.html>.

some {have} left the country, and others {have} died mysteriously.”²⁷⁵ Although members of the IRPT have been the most aggressively targeted, the Government has also persecuted other opposition groups. For example, in 2013, former Minister of Industry, Zayd Saidov, was arrested shortly after he announced the establishment of the New Tajikistan Party.²⁷⁶ Following a closed trial, Saidov was convicted and sentenced to 29 years in prison on specious charges of sexual offenses and corruption.²⁷⁷ Additionally, after Group 24, a peaceful political movement group, called for democratic reform, it was declared “extremist” and persons accused of association with the group also became subject to investigation, potential criminal charges, and detention.²⁷⁸ Its leader, Umraili Kuvvatov, was killed in Turkey on March 5, 2015.²⁷⁹ Another member of Group 24, Safarali Hasanov, was sentenced in May 2016 to 5 years in prison on charges of “organization of activity of an extremist group: for participating in a meeting calling on Tajik labor migrants to demonstrate against the Government.²⁸⁰

106. Finally, the effect of the judgment against the Applicants is not only to punish because of their past political participation, but also to hinder directly their future ability to exercise their right to political participation. The lengthy to life imprisonment sentences against the Applicants evidence an intent to silence the Applicants, and to prevent their being able to participate in Tajik politics ever again. The Applicants’ convictions sent a loud and clear message to the people of Tajikistan that any opposition to the Rahmon regime will not be tolerated.

107. The Government’s harassment of IRPT party members leading up to their September 2015 arrests, and the subsequent convictions and lengthy sentences, demonstrates its intent to silence the IRPT and other political opposition groups in Tajikistan. Moreover, the Government’s action serves not only to punish the Applicants for their participation in public affairs and to prevent their future participation in public affairs, but also to chill future political reform by other individuals. Such actions constitute violations of Article 21(1) of the UDHR, Article 25(a) of the ICCPR, and Article 27 of the Constitution.

²⁷⁵ Thomas Ruttig, *End of a Peace Process? Pressure on Islamist Party Undemines Tajik Post-Civil War Consensus*, Afghanistan Analysts Network (Sept. 9, 2013), <https://www.afghanistan-analysts.org/end-of-a-peace-process-pressure-on-islamist-party-undermines-tajik-post-civil-war-consensus/>.

²⁷⁶ 2017 Special Rapporteur Report, *supra* note 43, ¶ 41.

²⁷⁷ 2017 Special Rapporteur Report, *supra* note 43, ¶ 41.

²⁷⁸ 2017 Special Rapporteur Report, *supra* note 43, ¶ 48.

²⁷⁹ 2017 Special Rapporteur Report, *supra* note 43, ¶ 48.

²⁸⁰ *One More Member of Group 24 Jailed in Tajikistan*, Asia-Plus (May 5, 2016), <https://news.tj/en/news/one-more-member-group-24-jailed-tajikistan>.

4. This Case Does Not Come Within the Narrow Exceptions Under Articles 19 and 22 of the ICCPR

108. Articles 19²⁸¹ and 22²⁸² of the ICCPR provide limited exceptions for national security, public safety, and public order. Article 22 additionally provides for exceptions for the protection of the rights and freedoms of others.

109. Although governments frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. The Human Rights Committee has confirmed that restrictions “*may not put in jeopardy the right itself*”²⁸³ and has set forth a “*strict test of justification;*”²⁸⁴ any permissible restrictions on individuals’ freedom of expression or association must be: (1) provided by law, (2) for the protection of national security, public order, or public health and morals, and (3) necessary to achieve one of these enumerated purposes.²⁸⁵ The Government must present and specify the “*precise nature of the threat*” which it believes is posed by an individual’s exercise of the right to freedom of expression or association²⁸⁶ and must also demonstrate the proportionality of the limitation by establishing a “*direct and immediate connection between the expression and the threat.*”²⁸⁷

110. The Human Rights Committee specifically noted that:

{S}tate parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression. Paragraph 3 may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights. Nor, under any circumstance, can an attack on a person, because of the exercise of his or her freedom of opinion or expression, including such forms of attack as arbitrary arrest, torture, threats to life and killing, be compatible with article 19. Journalists are frequently subjected to such threats, intimidation and attacks because of their activities. So too

²⁸¹ Article 19(3) of the ICCPR provides that: “The exercise of the {right to freedom of expression} carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For the respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health and morals.” See ICCPR, *supra* note 191, art. 19(3).

²⁸² Article 22(2) of the ICCPR provides that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

²⁸³ See General Comment No. 34: Article 19: Freedom of Opinion and Expression, 102d Sess., UN Doc.

CCPR/C/G/34, ¶ 21(Sept. 12, 2011), <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf> {hereinafter “General Comment No. 34”}.

²⁸⁴ Park v. Rep. of Korea, Commc’n No. 628/1995, ¶ 10.3, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/628/1995 (Nov. 3, 1998), {hereinafter “Park v. Rep. of Korea”}, https://digitallibrary.un.org/record/269863/files/CCPR_C_64_D_628_1995-EN.pdf. The Working Group has also applied this test to freedom of association.

²⁸⁵ Shin v. Rep. of Korea, Commc’n No. 926/2000, ¶ 7.2, 80th Sess., Human Rights Comm., U.N. Doc. CCPR/C/80/D/926/2000 (Mar. 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>.

²⁸⁶ Park v. Rep. of Korea, *supra* note 260, ¶ 10.3.

²⁸⁷ General Comment No. 34, *supra* note 259, ¶ 35. See also Sohn v. Rep. of Korea, Commc’n No. 518/1992, ¶ 10.4, Human Rights Comm., U.N. Doc. CCPR/C/54/518/1992 (July 19, 1995), <http://hrlibrary.umn.edu/undocs/html/vws518.htm>.

are persons who engage in the gathering and analysis of information on the human rights situation and who publish human rights-related reports, including (...) lawyers.

111. The Human Rights Committee has additionally stated it is insufficient for a Government to invoke the “*general situation*” regarding national security as a reason for restricting the rights to free speech or association.²⁸⁸ The Government must instead be able to show an “*individualized justification*” for why the restrictions on the rights were necessary.²⁸⁹ General allegations claiming that an individual’s expression or association threatened national security—without evidence of a specific threat and a proportional response—will not meet this high threshold.²⁹⁰ Where a State fails to demonstrate these essential elements a violation of the relevant article will be deemed to have taken place.²⁹¹

112. While the Applicants’ convictions for extremism and arousing hostility might be improperly construed as *prima facie* falling within the national security and public order exception, the narrow limitations on the right to freedom of expression and association contained in Articles 19(3) and 22(2) of the ICCPR do not apply in this case.

113. The Government’s restrictions on the Applicants’ rights to freedom of expression and association were not for a proper purpose. The Government was merely using the veil of national security as a pretext to silence criticism and disband an opposition party. In fact, the international community has recognized that the IRPT’s political dissent did not threaten Tajikistan’s national security.²⁹² Similarly, the Government’s vague factual allegations against the Applicants fail to specify with any precision the nature of the threat posed by their expression of peaceful political dissent or their IRPT membership. The Applicants’ criticism of the Government is precisely the kind of expression—criticizing government authorities and advocating for “multi-party democracy, democratic tenets and human rights”—that the Human Rights Committee has recognized cannot be properly punished under the narrow national security exception.²⁹³

114. Further, even if the Government could properly invoke the national security rationale, the limitation on the Applicants freedom of expression in this case was not “necessary” to achieve that purpose. It is not sufficient that a certain limitation on free expression or association merely advance the Government’s purpose. Rather, the Human Rights Committee

²⁸⁸ Park v. Rep. of Korea, *supra* note 260, ¶ 10.3.

²⁸⁹ Shin v. Rep. of Korea, *supra* note 261, ¶ 7.2.

²⁹⁰ In *Kim v. Republic of Korea*, the Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for the protection of national security. The Human Rights Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also *Sohn v. Republic of Korea*, *supra* note 261, ¶ 10.4.

²⁹¹ Shin v. Rep. of Korea, *supra* note 252, ¶ 7.2.

²⁹² 2017 Special Rapporteur Report, *supra* note 43.

²⁹³ General Comment No. 34, *supra* note 259, ¶ 23.

has consistently observed that “the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on the freedom of expression must be proportional to the value which the restriction serves to protect.”²⁹⁴ This requires the Government to establish a “direct and immediate connection between the expression and the threat.” However, as demonstrated above, the Government has failed to indicate with any specificity how the Applicants’ criticism of the Government or IRPT membership threatened the country’s national security. The Applicants’ sentence, ranging from 14 years to life imprisonment, is therefore vastly disproportionate to any conceivable threat posed by their IRPT membership or expression of political views. As such, limiting their expression and association rights in this way cannot be considered “necessary” for a national security purpose.

115. Because the Applicants’ criticism of the Government and their IRPT membership are protected rights under Articles 19(2), 22(1) and 25(a), and because the Government’s limitation on these does not fall within the narrow exceptions contained in Articles 19(3) and 22(2), the Applicants’ continued detentions are arbitrary pursuant to Category II.

III. Category III: Detention Due to a failure of Due Process Protections

116. According to the Methods of Work of the Working Group (“Methods of Work”), a deprivation of liberty 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, spelled out in the Universal Declaration of Human Rights 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.*”²⁹⁵ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).²⁹⁶

117. Article 9(1) of the ICCPR confirms the right to liberty and freedom from arbitrary detention and guarantees that: “No one shall be deprived of his liberty except on such grounds in accordance with such procedure as are established by law.” This right is reiterated by Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles). The Human Rights Committee has interpreted this right to mean that “procedures for carrying out legally authorized deprivation{s} of liberty should {} be established by law and States parties should

²⁹⁴ *Kim v. Republic of Korea*, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998),

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also *Sohn v. Republic of Korea*, *supra* note 261, ¶ 10.4.

²⁹⁵ *Methods of work of the Working Group on Arbitrary Detention*, Human Rights Council, 36th Sess., U.N. Doc. A/HRC/36/38, Sec. III (July 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf?OpenElement>.

²⁹⁶ In making a Category III determination, the Working Group will look to the norms “established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned.” *Id.*, ¶ 8(c). However, the

ensure compliance with their legally prescribed procedures.” Article 9(1) requires compliance with domestic rules that define such procedures for arrest, such as identifying the officials who are authorized to make arrest, specifying when a warrant is required, and permitting access to counsel.

118. As detailed below, the Tajik government’s violations of the fundamental international norms and minimal standards for due process in its arrest, detention, trial and conviction of the Applicants were so grave as to render their deprivation of liberty arbitrary. The Government failed to comply with the internationally-recognized procedural requirements enumerated in the ICCPR, the UDHR, the Body of Principles and the Mandela Rules. Moreover, it even failed to satisfy certain procedural protections guaranteed under Tajik law.²⁹⁷

119. The Government’s prosecution of the Applicants was a *pro forma* exercise designed to ensure that the applicants were convicted and given disproportionately severe sentences. The judiciary’s objective was not to render an impartial judgment, but to silence and punish critics of the Government and repress a peaceful, minority opposition party that had, at the time, grown to become the largest opposition party in Tajikistan.

1. Violation of Freedom from Arbitrary Arrest

120. Article 9(1) of the ICCPR provides for the right to liberty and freedom from arbitrary arrest and guarantees that “{n}o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”²⁹⁸ Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles reiterate this right.²⁹⁹ Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and {} be promptly informed of any charges against him.” This right is reiterated in Principle 10 of the Body of Principles.³⁰⁰ The purpose of this requirement is to provide a detainee with notice of the reason for his detention, and to enable the detainee to request a prompt decision on the lawfulness of his detention if the reasons provided are invalid or unfounded.³⁰¹ The Government must provide “not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.”³⁰²

Revised Methods of Work also explain that where appropriate, the Working Group will refer to standards established under the Body of Principles. *Id.*, ¶ 7(a).

²⁹⁷ Tajikistan Crim. Code Exec. Code, <http://www.legislationonline.org/download/action/download/id/1708/file/91ce853088d818e69f2c5bd8358d.htm/preview> (last visited Sept. 7, 2017); *see id.* art. 8 (“Principle of Legality”); *id.* art. 9 (“Principle of Equality Before Law”); *id.* art. 10 (“Principle of Humanity”); *id.* art. 11 (“Principle of Democracy”).

²⁹⁸ ICCPR, *supra* note 191, art. 9(1).

²⁹⁹ UDHR, *supra* note 202, art. 9; *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, principles 2, 36(2), 76th plen. mtg., U.N. Doc. A/RES/43/173 {hereinafter “Body of Principles”}.

³⁰⁰ Body of Principles, Principle 10.

³⁰¹ General Comment No. 35 , ¶ 25; *Campbell v. Jamaica, Commc’n No. 248/1987*, ¶ 6.3, (Mar. 30, 1992), <http://opil.ouplaw.com/view/10.1093/law:ihrl/2371unhrc92.case.1/law-ihrl-2371unhrc92>.

³⁰² General Comment No. 35, *supra* note 198, ¶ 25.

121. As explained in Part 3.I.2 above, Government actors arrested the Applicants without informing the Applicants [] of the charges against them. Some of the Applicants [] demanded to know why the Applicants were being arrested, and on what grounds, but they were denied that information.³⁰³ In fact, the Applicants did not learn of the charges against them until, at most, about two weeks before their trial,³⁰⁴ and some of the Applicants did not learn of the charges against them at all prior to the trial.³⁰⁵ Accordingly, the arbitrary arrest and detention of the Applicants constitutes a violation of international norms, Article 9 of the ICCPR, Article 9 of the UDHR, and Principles 2 and 36(2) of the Body of Principles.

122. Further, the Government actors who carried out the arrests did not present warrants, and, in most cases, did not identify themselves or their authority for making the arrests.³⁰⁶ Many of the arresting officers wore civilian clothes.³⁰⁷ The officers that detained Mr. Faiz-Muhammad appeared to be from the National Clinical Hospital of Tajikistan; Mr. Faiz-Muhammad later learned that they were in fact officers of the National Committee for Civil Defense.³⁰⁸

123. Because the Applicants' arrests were not based on a genuine or reasonable suspicions that they had committed a crime, but was rather a pretext to detain them for exercising their fundamental rights, the arrests were in violation of Article 9(1) under the ICCPR, Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles.

2. Violation of Right to Privacy and Prohibition on Warrantless Searches

124. Article 17 of the ICCPR ensures the right to privacy and states that “{n}o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.”³⁰⁹ This right is reiterated by Article 12 of the UDHR. The Constitution of Tajikistan also recognizes a right to privacy in the home and prohibits searches and seizures without a warrant. Specifically, Article 22 of the Constitution states that “{t}he home shall be inviolable. It shall be prohibited to enter the home of a person by force and deprive a person of a home except in cases stipulated by

³⁰³ See, e.g., Communication BC, on file with author.

³⁰⁴ Hayit Decision, *supra* note 100, ¶ 65.

³⁰⁵ Communication JK, on file with author.

³⁰⁶ Communications LM, GH, DE, on file with author.

³⁰⁷ *Id.*

³⁰⁸ Communication LM, on file with author.

³⁰⁹ ICCPR, *supra* note 191, art. 17. *See also* UDHR, *supra* note 202, art. 12. *See also* Art. (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”)

law.”³¹⁰ Article 192 of the Tajikistan Code of Criminal Procedure further states that police may not enter and search a private home without the approval of a judge.”³¹¹

125. As explained in Part 3.I.2 above, the Government did not present (or obtain) a warrant for any of the searches and seizures conducted in the homes of the Applicants, nor did they present (or obtain) warrants for their searches and seizures of the offices of the lawyers the Applicants originally hired.

126. [

]³¹² [

].³¹³ Sources report that Government officers also searched the homes of the other Applicants following their arrests without warrants.³¹⁴ Details concerning these warrantless searches were not known.

127. The Government also seized important legal documents from the Applicants’ lawyer without a warrant. When Buzurgmehr Yorov publicly announced that he was representing the Applicants and was organizing a committee for their representation, Government officials arrested him, raided his law office, and seized documents related to the Applicants’ case.³¹⁵ The Government officials did not have warrants for these searches and seizures.

128. Such warrantless searches and seizures violate Article 17 of the ICCPR, Article 12 of the UDHR and Tajik domestic law.

3. Violation of the Right to Be Informed of the Reason for Arrest or Charges Against the Person

129. Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and {} be promptly informed of any charges against him.” This right is reiterated in Principle 10 of the Body of Principles.³¹⁶ The purpose for this requirement is to enable a detainee to request a prompt decision on the lawfulness of his detention if the reasons given are invalid or unfounded.³¹⁷ Moreover, the Government authorities

³¹⁰ Constitution of Tajikistan, *supra* note 192, art. 22.

³¹¹ U.S. Dep’t of State, Tajikistan 2015 Human Rights Report, *supra* note 52.; Am. Bar Ass’n Rule of Law Inst., Implementation of Criminal Procedure Legislation of the Republic of Tajikistan and Recommendations for its Improvement 89 (2012), https://www.americanbar.org/content/dam/aba/directories/rol/tajikistan/tajikistan_implementation_of_criminal_procedure_legislation_2012.authcheckdam.pdf.

³¹² Communication FG, on file with author.

³¹³ Communication FG, on file with author.

³¹⁴ Communication NO, on file with author.

³²¹ Freedom Now, Lawyers for Lawyers, Hogan Lovells LLP, and DLA Piper UK LLP, *Petition to the UN Working Group on Arbitrary Detention in the Matter of Buzurgmehr Yorov* (Oct. 22, 2018) ¶ 43-50, <http://www.freedom-now.org/wp-content/uploads/2018/10/Yorov-Petition-22-Oct-2018-FINAL-REDACTED.pdf>.

³¹⁶ Body of Principles, *supra* note 275, principle 10 (“Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”).

³¹⁷ General Comment No. 35, *supra* note 198, ¶ 25; *Campbell v. Jamaica*, Commc’n No. 248/1987, ¶ 6.3,

must provide “not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.”³¹⁸

130. Regarding the requirement that the detainee be “promptly informed” of any charges against him or her, the Human Rights Committee has not confirmed precisely what time frame would be considered “prompt.” However, the Human Rights Committee has indicated that where a detainee is arrested on pre-existing charges, “the authorities may explain the legal basis of the detention some hours later.”³¹⁹ Moreover, in the context of a detainee’s *habeas corpus* rights, the Human Rights Committee has interpreted “prompt” to mean about 48 hours.

131. None of the Applicants were informed of the charges against them in a timeframe that could reasonably be interpreted as “prompt.” Because the Applicants are currently detained in prisons that are “locked down,” and cannot be reached for communication,³²⁰ it is difficult to determine exactly when they were informed of the charges against them. Some applicants were never informed of the charges against them prior to their trial.³²¹ The earliest account of the detained IRPT members being informed of the charges against them is approximately two weeks prior to their trial.³²²

4. Violation of the Right to Be Brought Promptly Before a Judge for Arraignment

132. Articles 9(3) and (4) of the ICCPR protect an individual’s right to challenge the legality of his continued detention. This right is reiterated by Principles 4, 11, 32 and 37 of the Body of Principles.³²³ Article 9(3) of the ICCPR requires that a detainee “be brought promptly before a judge or other officer authorized by law to exercise judicial power”³²⁴ and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”³²⁵ Article 9(4) of the ICCPR extends this principle of *habeas corpus* to non-criminal detainees as well.³²⁶ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances.³²⁷ Most recently, in its Opinion No. 2/2018 concerning Haritos Mohammadali Rahmonovich Hayit, the Working Group confirmed that Tajikistan’s holding of an individual for three days before

(Mar. 30, 1992), <http://opil.ouplaw.com/view/10.1093/law:ihrl/2371unhrc92.case.1/law-ihrl-2371unhrc92>.

³¹⁸ General Comment No. 35, ¶ 25.

³¹⁹ *Id.* ¶ 30.

³²⁰ Communication FG, on file with author.

³²¹ Communication JK, on file with author.

³²² Hayit Decision, ¶ 65.

³²³ Body of Principles, *supra* note 275, principles 4, 11, 32, 37.

³²⁴ ICCPR, *supra* note 191, art. 17(1); UDHR, *supra* note 202, art 12.

³²⁵ General Comment No. 35, *supra* note 219, ¶ 32.

³²⁶ *Id.* ¶ 39.

³²⁷ *Id.* ¶ 33.

allowing him to appear before a judge was a violation of his rights resulting in an arbitrary detention.³²⁸

133. Because the Applicants are currently detained in prisons that are “locked down,” and cannot be reached for communication,³²⁹ it is difficult to determine exactly when they were first brought before a judge. However, [

], and there is no evidence of the Applicants being brought before a judge earlier than Mr. Hayit who was arrested and tried with the Applicants.³³⁰ Tajikistan did not argue or provide any explanation of what exception circumstances might have delayed the Applicants’ *habeas corpus* hearing. Tajikistan thus violated the Applicants rights under Articles 9(3) and 9(4) of the ICCPR and Principles 4, 11, 32 and 37 of the Body of Principles by refusing to let them challenge their detentions within a reasonably prompt amount of time. The harm caused by this human rights violation extends beyond deprivation of the Applicants’ right to be informed and their ability to challenge their wrongful imprisonment; in the time before the Applicants were brought before a judge they were subjected to other human rights violations, including torture, and [

]

5. Violation of the Right to Release Pending Trial

134. Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial by confirming that “{i}t shall not be the general rule that persons awaiting trial shall be detained in custody . . .”³³¹ The Human Rights Committee has found that “{d}etention pending trial must be based on an individualized determination that it 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.”³³² 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.³³³

135. In contravention of these obligations, the Applicants were held in detention pending trial based on vague assertions of affiliated-group malfeasance. Applicants were detained following arrest for anywhere from four to ten days, with multiple Applicants denied access to lawyers or not informed of the criminal charges of their arrest. Mr. Husaini was not informed of charges at the time of arrest and was detained from September 2015 to July 2016. Moreover, Mr. Husaini was detained for five days without access to a lawyer and was not

³²⁸ *Hayit v. Tajikistan*, Working Grp. on Arbitrary Detention, Commc’n No. 2/2018, ¶ 57, 81st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2018/2 (May 10, 2018), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf.

³²⁹ Communication FG, on file with author.

³³⁰ Hayit Decision, at ¶ 57.

³³¹ ICCPR, *supra* note 191, art. 9(3).

³³² General Comment No. 35, *supra* note 198, ¶ 38.

³³³ Body of Principles, *supra* note 275, principles 38, 39.

permitted to challenge his detention.³³⁴ Mr. Faiz-Muhammad was detained for 10 days without access to a lawyer or information regarding the criminal charges against him.³³⁵ Just as feared by the Human Rights Committee, Tajikistan's violation of Article 9(3) enabled other violations, such as torture, to occur while the Applicants were being held without access to their attorneys [].

³³⁶ Applicants were subjected to a closed-door trial that drastically limited the flow of information to potential witnesses, making it difficult to ascertain the reasoning behind the ongoing detention. However, the uniform detention of Applicants from the time of arrest through trial based on generic, group-wide accusations strongly suggests that the court impermissibly defaulted to treating pre-trial detention as a general rule. In fact, this denial of bail falls squarely within a pattern by which Government critics are commonly held for lengthy periods of pre-trial detention because it is the Government's main purpose to have these detainees silenced behind bars, a release would defeat this object.³³⁷ Thus, in contradiction to the requirement that pre-trial detention be the exception rather than the rule and that such pre-trial detention be based on an individualized determination that it is both reasonable and necessary to deny release given a defendant's circumstances, the judge impermissibly defaulted to continuing the pre-trial detention of the Applicants in violation of Article 9(3) of the ICCPR and Principles 38 and 39 of the Body of Principles.

6. Violation of the Right to Communicate with and Have Assistance of Counsel

136. Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right "to communicate with counsel of his own choosing."³³⁸ The Human Rights Committee has clarified that such guarantee "requires that the accused is granted prompt access to counsel"³³⁹ and that "{s}tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."³⁴⁰ Additionally, Article 14(3)(d) of the ICCPR provides that everyone has the right "to defend himself in person or through legal assistance of his own choosing"³⁴¹ Mandela Rule 41(3) and 61 and Principles 11(1), 17(1), 18(1) and (3) of the Body of Principles further provide for the right of a detainee to be assisted by and communicate with his or her legal counsel without delay and that such right "may not be suspended or restricted save in exceptional circumstances"³⁴² Principles 15 and 19 of the Body of

³³⁴ Communication AB, on file with author.

³³⁵ Communication LM, on file with author.

³³⁶ Communication BC, on file with author.

³³⁷ Mahmudali Hayit, Zayd Saidov and Shukhrat Kudratov are all examples of government critics who were held for months in pre-trial detention. See e.g., Hayit v. Tajikistan, *supra* note 301; Human Rights Watch, *Tajikistan: Long Sentence a Blow to Free Expression* (February 7, 2014), <https://www.hrw.org/news/2014/02/07/tajikistan-long-sentence-blow-free-expression>; Human Rights Watch, *Tajikistan: Human Rights Lawyer Imprisoned* (January 14, 2015), <https://www.hrw.org/news/2015/01/14/tajikistan-human-rights-lawyer-imprisoned>.

³³⁸ ICCPR, *supra* note 189, art. 14(3)(b).

³³⁹ General Comment No. 32: Article 14: Right to Equality before the Courts and Tribunals and to a Fair Trial, ¶ 34 Human Rights Comm., 90th Sess., U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) {hereinafter "General Comment No. 32"}, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en.

³⁴⁰ General Comment No. 35, ¶ 35.

³⁴¹ ICCPR, art. 14(3)(d).

³⁴² Body of Principles, *supra* note 275, principle 11(1), 17(1) 18(1) and (3); 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 (Rules 41(3) and 61) {hereinafter "Mandela Rules"}, <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>.

Principles also call for “*a detained or imprisoned person*” to have the right to “communicate with the outside world,” and in particular his counsel.³⁴³ Moreover, Paragraph 1 of the Basic Principles on the Role of Lawyers confirms that the right to assistance of an attorney covers all stages of criminal proceedings and that access to an attorney should be granted in no case later than 48 hours after the individual’s arrest.³⁴⁴ Article 19 of the Constitution also guarantees that “*From the moment of detainment, a person has the right to employ the services of a lawyer.*”³⁴⁵

137. The right to communicate with counsel includes the requirement that “Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications.”³⁴⁶ Moreover, Principle 18(4) of the Body of Principles confirms that client-attorney interviews may not be held within the hearing of a law enforcement official.³⁴⁷

138. As detailed in part 3.I.3 above, the Applicants were not given access to legal counsel immediately following their arrests. Mr. Husaini was not permitted to meet with a lawyer until four or five days after he was arrested.³⁴⁸ Mr. Faiz-Muhammad was not permitted to meet with a lawyer until ten days after he was arrested, and even then the meeting was limited to “a very short time.”³⁴⁹ The timing of the other Applicants’ first opportunity to meet with a lawyer is difficult to determine because the sources are unsure and the Applicants have not been able to communicate with anyone outside of their prison due to the prison being “locked down.”³⁵⁰

139. Even when the Applicants were eventually allowed to meet with lawyers, the Government went to great lengths to prevent the Applicants from receiving effective legal counsel. As explained in part 3.I and 3.II above, the Government used intimidation tactics to prevent lawyers from providing necessary information to the Applicants [] and to generally prevent the lawyers from providing even the most basic legal assistance. When lawyers, such as Mr. Yorov, were not deterred by the Government’s intimidation tactics, the Government had them arrested. Ultimately, the Government ensured that the Applicants’ “legal counsel” were lawyers who the Government controlled, and prevented those lawyers from effectively assisting the Applicants. Other Government interference with the Applicants’ ability to receive effective legal counsel includes supervising the Applicants’ meetings with their lawyers and refusing to provide information and documents crucial to trial preparation, such as key evidence, a list of witnesses, and a list of the charges being brought against the Applicants.

140. By preventing the Applicants from communicating with attorneys from the onset of their detention and by creating a climate of intimidation such that the Applicants could not

³⁴³ Body of Principles, *supra* note 275, principles 15 and 19.

³⁴⁴ Basic Principles on the Role of Lawyers, ¶¶ 1, 7.

³⁴⁵ Constitution of Tajikistan, art. 19.

³⁴⁶ General Comment No. 32, ¶ 34.

³⁴⁷ Body of Principles, principle 18(4).

³⁴⁸ Communication BC, on file with author.

³⁴⁹ Communication LM, on file with author.

³⁵⁰ Communication DE, on file with author.

find competent attorneys to represent them at trial, the Government violated the Applicants' rights under Article 14(3)(b) and (d) of the ICCPR, Mandela Rules 41(3) and 61, Principles 11(1), 15, 17(1), 18(1), (3) and (4), and 19 of the Body of Principles and Paragraph 1 of the Basic Principles on the Role of Lawyers in an impermissible attempt to undermine their legal defense.

7. Violation of the Right to Have Adequate Time and Opportunity to Prepare a Defense

141. Under Article 14(3)(b) of the ICCPR, an individual enjoys the right "*to have adequate time and facilities for the preparation of his defence.*" This right is reiterated specifically by Principle 18(2) of the Body of Principles and, more generally, by Principle 11(1) of the Body of Principles which provide for a right to defense. The Human Rights Committee has confirmed that "*{t}his provision is an important element of the guarantee of a fair trial and an application of the principle of equality of arms . . . what counts as 'adequate time' depends on the circumstances of each case.*"³⁵¹

142. As discussed throughout this Category III analysis, the Government repeatedly infringed upon the Applicants' rights to prepare a defense. The Applicants and their lawyers were drastically restricted in their ability to access the evidence that would be used against them, the witnesses that would testify for the Government at trial, and even the charges being brought against them. In some instances the Government outright denied the Applicants and their lawyers access to information that was critically necessary to their trial preparation, and in other instances the Government severely restricted access to that information. As discussed in part 4.III.6 above, the Government also denied the Applicants adequate access to legal counsel.

143. As discussed in parts 4.III.6, 3.I and 3.II above, the Applicants and their lawyers did not even have access to the Government's *complaint* against them until at most two weeks immediately preceding trial, and even then they were limited to short periods of time in which they were allowed to view the complaint.

144. Additionally, the Applicants and their lawyers were denied pre-trial access to information about the evidence that would be used against them because the Government deemed it "classified." The Government also denied the Applicants and their lawyers access to the Government's witness list.

145. In preventing the Applicants from accessing competent legal representation, severely limiting the time that the Applicants and their lawyers had to prepare a defense, and preventing them from accessing the prosecution's materials such as a witness list and the evidence against the Applicants, the Government violated the Applicants rights under Article 14(3)(b) of the ICCPR and Principles 11(1) and 18(2) of the Body of Principles.

³⁵¹ General Comment No. 32, ¶32.

8. Violation of the Right to a Public Hearing

146. Article 14(1) of the ICCPR and Article 10 of the UDHR entitle persons facing criminal charges the right to a fair and public hearing before a competent, independent, and impartial tribunal established by law.³⁵²

147. The right to a public hearing is a necessary protection to ensure the fairness and impartiality of a tribunal's decision-making. As the Human Rights Committee has emphasized, public hearings “ensure{} the transparency of proceedings and thus provide an important safeguard for the interest of individuals and of society at large.”³⁵³ 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.³⁵⁴

148. Although Article 14(1) of the ICCPR does allow for the public to be excused from a trial for reasons of national security, it still requires that “any judgement rendered in a criminal case or in a suit at law shall be made public.”³⁵⁵ This judgment must include “the essential findings, evidence and legal reasoning.”³⁵⁶ Moreover, the UN Working Group on Protecting Human Rights While Countering Terrorism has confirmed that “{a}ny restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate.”³⁵⁷ Any such exclusion of the public for reasons of national security “should nevertheless be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing” and the exclusion of the public should be limited only to those portions of the hearing in which it is necessary.³⁵⁸

149. In stark contrast to these principals, the Government kept the Applicants trial entirely secret. The Applicants were tried behind closed doors,³⁵⁹ [

], nor was any information about the trial released to the public.³⁶⁰ In thus closing the Applicants' trial partially or fully to the public, the government violated their rights under Article 14(1) of the ICCPR and Article 10 of the UDHR.

150. The Working Group has already determined that the Applicants' trial constituted a breach of article 14 (1), (2), (3) (a), (e), and (g), and (5) of the ICCPR, and that none of the

³⁵² ICCPR; UDHR.

³⁵³ General Comment No. 32, ¶28.

³⁵⁴ *Id.* ¶ 29.

³⁵⁵ ICCPR, *supra* note 191, art. 14(1).

³⁵⁶ General Comment No. 32, ¶ 29.

³⁵⁷ United Nations Working Group on Protecting Human Rights While Countering Terrorism, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, § 3 (Oct. 2014), <http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>.

³⁵⁸ *Id.* § 3.2.

³⁵⁹ Communications BC, FG, GH, LM on file with author.

³⁶⁰ *Id.*

exceptions to that rule are applicable to the Applicants' trial.³⁶¹ Because the Applicants were tried with Mr. Hayit, and the Working Group has already determined that that trial breached article 14 (1) of the Covenant, it follows that by closing the Applicants' trial to the public, the government violated their rights under Article 14(1) of the ICCPR and Article 10 of the UDHR.

9. Violation of Right to Equality Before the Courts with an Independent and Impartial Tribunal

151. Article 14(1) of the ICCPR and Article 10 of the UDHR guarantee a fair trial before an independent and impartial tribunal. Article 14(1) establishes an objective standard, which is treated as an “*absolute requirement{}* not capable of limitation.”³⁶² “*The requirement of independence refers, in particular, to . . . the actual independence of the judiciary from political interference by the executive branch and the legislature.*”³⁶³ Moreover, the fairness standard must be measured by an objective “reasonableness standard;” that is, the court must appear to a reasonable observer to be impartial.³⁶⁴ If, for example, a court fails to prevent or remedy serious procedural mistakes or to provide a duly-reasoned judgment, this would indicate to a reasonable observer that the proceedings are not “fair.”

152. Article 14(1) of the ICCPR also demands that “*all persons shall be equal before the courts and tribunals*” which means that the prosecution and the defense must enjoy equality of arms.³⁶⁵ Effectively, equality of arms requires that both parties have the same procedural rights and, specifically, that “*each side be given the opportunity to contest all the arguments and evidence adduced by the other party.*”³⁶⁶

153. In line with international standards, Tajik law also demands that its courts be competent, impartial and independent. Article 19 of the Constitution requires that “*{e}very person {be} guaranteed judicial protection. Every person has the right to demand review of her or his case by a competent and non-partisan court.*”³⁶⁷ The requirement for an independent judiciary is echoed by chapter 8, article 87 of the Constitution, which guarantees that judges be “*independent and subordinate only to the Constitution and the law.*”³⁶⁸

154. The court that adjudicated claims against the Applicants was not independent and unbiased, and provided an unfair proceeding which did not afford the Applicants equality of arms.

155. First, the court system in Tajikistan is not independent. In practice “*{t}he president has nearly complete control over the national-level judiciary through the Ministry of*

³⁶¹ Hayit Decision, *supra* note 98, ¶ 78.

³⁶² Alex Conte & Richard Burchill, *Defining Civil and Political Rights* 165 (2d ed. 2009).

³⁶³ *Id.*

³⁶⁴ *Id.* General Comment No. 32, ¶ 21.

³⁶⁵ ICCPR, *supra* note 191, art 14(1).

³⁶⁶ General Comment No. 32, ¶ 13.

³⁶⁷ Constitution of Tajikistan, art. 19.

³⁶⁸ *Id.* art. 87.

*Justice.*³⁶⁹ As discussed in Paragraph 1.a.i.17 above, President Rahmon exerts extreme influence over the judiciary, which additionally lacks the resources needed to function independently. A court system where the rate of acquittal is almost zero cannot be considered to function independently from the executive's wishes.

156. The information available about the Applicants' trial demonstrates the courts were biased and did not afford the defense and the prosecution equal procedural rights. As discussed above, the judge permitted the Applicants to be presented in shackles, bruised and bleeding from their torment at the hands of Government actors. The judge allowed the Government to intimidate witnesses and, at one point, allowed a witness to be beat physically for not lying as the Government instructed him to. The judge allowed evidence to be introduced that had been obtained through illegal searches and seizures, and in some cases falsified entirely. Perhaps most telling, the judge did not give any weight to witness Saraek Myrodov's testimony that the Government coerced him into giving false testimony about the Applicants, and the judge then accepted Myrodov's prior false testimony despite his recantation.³⁷⁰ Finally, the court found the Applicants guilty on all counts despite the Government's lack of evidence providing any legitimate connection between the Applicants and their alleged conduct.

157. As with the other violations related to the Applicants' trial, it should be noted that the Working Group already determined that the trial was fundamentally unfair and violated the ICCPR.³⁷¹

158. By subjecting the Applicants to an unfair trial by a non-independent and biased court that did not respect the principle of equality of arms, Tajikistan violated the Applicants' rights under Article 14(1) and (3) (e) of the ICCPR and Article 10 of the UDHR.

10. Violation of the Presumption of Innocence

159. Article 14(2) of the ICCPR guarantees that "*everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.*"³⁷² Article 11(1) of the UDHR similarly dictates that the right to a presumption of innocence extends "*until proved guilty according to law in a public trial at which {the defendant} has had all the guarantees necessary for his {or her} defense.*"³⁷³ Principle 36 of the Body of Principles similarly guarantees a presumption of innocence until proven guilty in a public trial, as does Mandela Rule 111(2). The Human Rights Committee has specifically confirmed that the presumption of innocence creates a "*duty for all public authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the*

³⁶⁹ Martha Brill Olcott, *supra* note 41, at 31; *see also* David Kaye, Preliminary Observations by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression (Mar. 9, 2015), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17193&LangID=E9, 2015>, (noting that the law does not even provide a clear definition of "extremism" or "terrorism" or explain what evidence is sufficient to prove such crimes).

³⁷⁰ See Hayit Decision, ¶ 12.

³⁷¹ *Id.*, ¶ 70.

³⁷² ICCPR.

³⁷³ UDHR, *supra* note 202.

accused" and that "*{d}efendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.*"³⁷⁴

160. The Government did not afford the Applicants' a presumption of innocence. First, the Government (through the President and state-owned media) expressed virtual certainty about the Applicants' guilt prior to their trial by publicly referring to them as terrorists and "enemy of the people."³⁷⁵ The Applicants were brought into the courtroom in a manner suggesting their guilt: shackled, bruised, and bloody.³⁷⁶ More telling, though, was the manner in which the trial was conducted. The extreme bias of the court, discussed throughout this petition, was evidence that, in the eyes of the court, the Applicants' guilt was a foregone conclusion. Nadejda Atayeva, president of the Association for Human Rights in Central Asia, explained that "the only purpose of this trial was to dress up political repression in the trappings of legal proceedings....The defendants' crimes appear to be fabricated, yet their fate was predetermined. This is a travesty of justice."³⁷⁷

161. By publicly asserting the Applicants' guilt, forcing them to appear in court shackled, bruised, and bloodied, and displaying extreme bias against the Applicants throughout the trial, Tajikistan violated the Applicants' right to a presumption of innocence in violation of Article 14(2) of the ICCPR, Article 11(1) of the UDHR, Principle 36 of the Body of Principles and Mandela Rule 111(2).

11. Violation of the Right to Examine Witnesses

162. Article 14(3)(e) of the ICCPR provides that "*{i}n the determination of criminal charges against {a defendant} everyone shall be entitled ... (e) {t}o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.*"³⁷⁸ The Human Rights Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.³⁷⁹ Tajik criminal procedure requires that all evidence and proof should be examined during the trial.³⁸⁰

163. At trial, the Applicants and their lawyers were unable to effectively examine witnesses because they were not given advanced notice of the witness list, and thus could not properly prepare for cross-examination. Further, the court did not permit the Applicants to

³⁷⁴ General Comment No. 32, *supra* note 314, ¶ 30.

³⁷⁵ Communication FG, on file with author.

³⁷⁶ Hayit Decision, ¶ 35.

³⁷⁷ Human Rights Watch, *Tajikistan: Verdicts of Opposition Activists Travesty of Justice* (June 7, 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

³⁷⁸ ICCPR, *supra* note 191, art. 14(3)(e).

³⁷⁹ General Comment No. 32, ¶ 39.

³⁸⁰ Criminal Procedure Code.

present expert witnesses, despite permitting the Government to present “expert witnesses” against the Applicants.³⁸¹

164. By thus preventing the Applicants from fully challenging the Government’s evidence and from fully presenting their own witnesses and evidence, Tajikistan violated the Applicants’ rights under Article 14(3)(e) of the ICCPR.

12. Violation of the Right to be Free from Torture and Cruel, Inhuman, or Degrading Treatment or Punishment

165. Article 7 of the ICCPR guarantees that: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”³⁸² Article 10(1) of the ICCPR further provides that: “*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*”³⁸³ This right is reiterated by the Articles 1, 2 and 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), to which Tajikistan is party,³⁸⁴ Article 5 of the UDHR, Principles 1 and 6 of the Body of Principles, and Mandela Rule 1.³⁸⁵

166. Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.³⁸⁶ International law’s particular concern with torture as an interrogatory tool is further reflected in the definition of torture in Convention Against Torture, which defines the term as “*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . .*”,³⁸⁷ as well as in Principle 21(2) of the Body of Principles which guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”³⁸⁸ Principle 21 of the Body of Principles also prohibits Tajikistan from taking “*undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person,*”³⁸⁹ and from violence, threats, or methods of interrogation that impair a detained person’s judgment or decision-making capacity while the person is being interrogated.³⁹⁰

³⁸¹ Hayit Decision, ¶ 35.

³⁸² ICCPR, *supra* note 191, art. 7.

³⁸³ *Id.* art. 10(1).

³⁸⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 83, {hereinafter “Convention Against Torture”}, <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>.

³⁸⁵ UDHR, art. 5; Convention Against Torture; Body of Principles, principles 1, 6; *Mandela Rules*, Rule 1.

³⁸⁶ ICCPR, art. 14(3)(g).

³⁸⁷ Convention Against Torture, art. 1(1).

³⁸⁸ Body of Principles, principle 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess...” *Id.* principle 21(1).

³⁸⁹ *Id.* (this language was contained in a note to the original Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment).

³⁹⁰ *Id.*

167. In addition, Tajikistan has adopted domestic legislation that brings the definition of torture in line with the Convention against Torture and a Tajikistan Supreme Court decree that guarantees the availability of safeguards to prevent torture from the time of arrest. Prohibitions against torture have also been adopted into Chapter 2, Article 18 of the Constitution, which states: “*The inviolability of the individual is guaranteed by the government. No one may be subjected to torture or cruel and inhuman treatment.*”³⁹¹

168. Although Tajikistan has ratified these prohibitions against torture, in practice torture and other cruel and inhuman abuse of prisoners—and impunity for the perpetrators—remains widespread.³⁹²

169. Applicants shared common experiences with subpar prison conditions, physical abuse at the hands of law enforcement and prison officials, and, in some cases, denial of even the most basic medical care. Mr. Husaini was detained for five days after arrest, []], and physically beaten in custody.³⁹³

170. Mr. Rajab was subjected to freezing cell temperatures in the winter and oppressively hot conditions in the summer.³⁹⁴ He was badly beaten on his first day and tortured for three days in a row in an attempt to coerce a confession.³⁹⁵ He suffered through severe gum deterioration and inflammation due to the poor conditions. Mr. Rajab was denied adequate medical care as prison officials only allowed access to a dentist with visibly contaminated instruments. To make matters worse, Mr. Rajab’s cell was infected with bed bugs that caused painful bites. Prison officials [

].³⁹⁶

171. Mr. Faiz-Muhammad was tortured while being transported to a detention center and at the detention center for days as he awaited trial.³⁹⁷ []]. The torture included

physical beatings that lead to kidney damage, as well as brutal electric shock. Mr. Faiz-Muhammad was even shot by prison officials during his detention.³⁹⁸

13. Violation of the Right to Appeal

172. Article 14(5) of the ICCPR guarantees that everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law. The right to appeal guaranteed by Article 14(5) of the ICCPR also “*imposes on the State*

³⁹¹ Constitution of Tajikistan, art. 18.

³⁹² U.S. Dep’t of State, *Tajikistan: 2009 Country Reports on Human Rights Practices* (Mar. 11, 2010), <https://www.state.gov/j/drl/rls/rrpt/2009/sca/136094.htm>.

³⁹³ Communication AB, on file with author.

³⁹⁴ Communication DE, on file with author.

³⁹⁵ Communication EF, on file with author.

³⁹⁶ Communication DE, on file with author.

³⁹⁷ Communication LM, on file with author.

³⁹⁸ *Id.*

party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.”³⁹⁹ To pass muster, a review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal.⁴⁰⁰

173. Here, there is no indication that the appellate review by the Tajikistan Supreme Court included any meaningful engagement with the allegations in Applicants’ cases. Like the trial court below, the Supreme Court simply restated and adopted the allegations of the Government. No appeal to the Supreme Court in its capacity for cassation review is available.

174. In its decision, the Supreme Court does not attend to any exculpatory evidence or claims of bias. The Court provides no discussion of the merits of the government’s arguments and does not inquire into the credibility of any Government piece of evidence. Such deference to Government accusations and evidence, without any effort to weigh credibility, belies any argument that Applicants were given a full and fair trial before an impartial decision-making body.

175. There is also no indication that the Supreme Court even considered whether the numerous procedural defects warranted reversal of the trial court’s decision. Among other things, the Supreme Court did not consider whether Applicants were deprived of adequate access to counsel or adequate time or opportunity to prepare a defense. The Supreme Court also did not consider whether the Government’s warrantless search of Applicants’ homes violated Tajik law, nor did the Supreme Court consider whether reversal was mandated due to prosecutorial misconduct, such as the use of torture and other coercion in order to obtain a confession.

176. The Supreme Court’s cursory affirmation of all of the Government’s allegations does not constitute adequate appellate review and therefore reflects a violation of Applicants’ right to an appeal.

IV. Category V: Detention Due to Discrimination

177. The Working Group regards a deprivation of liberty to be arbitrary under Category V when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on a prohibited ground.⁴⁰¹ This principle of non-discrimination is deeply enshrined in international law. Article 7 of the UDHR and Article 26 of the ICCPR guarantee equal protection under the law without discrimination. Article 2(1) of the ICCPR requires state parties “*to ensure to all individuals within its territory and subject to its*

³⁹⁹ ICCPR.

⁴⁰⁰ *Id.*

⁴⁰¹ Methods of work of the Working Group on Arbitrary Detention.

jurisdiction the rights recognized in the present Covenant, without distinction of any kind.”⁴⁰² This guarantee is further reiterated in principle 5(1) of the Body of Principles.⁴⁰³

178. The prohibited grounds enumerated in Articles 2(1) and 26 of the ICCPR include both a list of particular characteristics—“*race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth*”—as well as a general catch-all : “*or other status.*” This “*or other status*” ground suggests that any unjust and prejudicial treatment of a group based on *any* particular status could be considered a violation of a State’s obligations to ensure an individuals’ enjoyment of their fundamental rights and equality before the law.

179. The Working Group has consistently found impermissible discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct group.⁴⁰⁴ As the Working Group has recently clarified in the Basic Principles on the Role of Lawyers and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before Court, discrimination in the context of the deprivation of liberty may occur on a “*variety of grounds that aim at or may result in undermining the equality of human beings.*”⁴⁰⁵ The Working Group has confirmed that the deprivation of liberty on discriminatory grounds may also occur in relation to a broad range of groups, including but not limited to: women and children; persons with disabilities, including psychosocial and intellectual disabilities; human rights defenders and activists.⁴⁰⁶

180. Discrimination due to a perceived distinguishing characteristic or suspected membership is prohibited.⁴⁰⁷ In Tajikistan, the ongoing clampdown has also focused on the persecution of those associated or perceived to be associated with various banned opposition groups and political parties, such as the IRPT.⁴⁰⁸

181. In considering whether the source of a communication has demonstrated a *prima facie* case of deprivation of liberty on discriminatory grounds, the Working Group will take into account a number of considerations, some of which are outlined below,⁴⁰⁹ and will look to whether the totality of the circumstances “*strongly suggest*” a discriminatory basis for the arrest.⁴¹⁰

⁴⁰² ICCPR.

⁴⁰³ Body of Principles, principle 5(1).

⁴⁰⁴ Report of the Working Group on Arbitrary Detention, U.N.Doc. A/HRC/36/37, ¶46-9 (July 19, 2017), <http://undocs.org/A/HRC/36/37>.

⁴⁰⁵ *Id.*, ¶46.

⁴⁰⁶ *Id.*

⁴⁰⁷ See e.g., General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para 2, of the International Covenant on Economic, Social and Cultural Rights), ¶ 15-6, UN Comm. On Econ. Social and Cultural Rights, 42nd Sess., U.N. Doc. E/C.12/GC/20 (July 2, 2009), <https://undocs.org/E/C.12/GC/20>.

⁴⁰⁸ Amnesty Int'l, *supra* note 76, at 4.

⁴⁰⁹ Report of the Working Group on Arbitrary Detention, *supra* note 380, ¶ 48.

⁴¹⁰ *Nasheed v. Maldives*, Working Grp. on Arbitrary Detention, Commc'n No. 33/2015, ¶ 97 (Oct. 12, 2015), https://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2033_Maldives_Naheed_AUV.pdf.

(a) The deprivation of liberty was part of a pattern of persecution against the detained persons; other persons with similarly distinguishing characteristics have also been persecuted (e.g. several members of a particular ethnic group are detained for no apparent reason, other than their ethnicity);

182. As discussed throughout this petition, the Applicants were detained, tried, and sentenced as part of the Government's attempt to extinguish the IRPT and silence its members and followers. The President and state-controlled media publicly called the IRPT terrorists and enemies of the state,⁴¹¹ and took numerous steps to ensure the destruction of the IRPT. From shutting down the IRPT as a political party to arresting its leaders en masse, the Government's "campaign against the IRPT has left the group in tatters."⁴¹²

183. Not only did the Government detain the Applicants as part of a larger persecution of IRPT members, it also persecuted people who tried to help the Applicants with basic human rights, such as legal representation and notice of the charges being brought against them. The arrest of lawyers who attempted to provide representation to the Applicants, and the punitive actions taken against [

] and subsequent inhumane treatment, provide salient examples of the Government's targeted campaign against the IRPT and its members.

(c) The authorities have made statements to, or conducted themselves toward, the detained persons in a manner that indicates a discriminatory attitude;

184. The Tajik authorities made it clear that the charges brought against the Applicants were initiated as a result of their association with the IRPT. During their initial interrogations, Government officials tried to coerce the Applicants to renounce the IRPT and ask for "forgiveness."⁴¹³ Further, the Government publicly stated that the IRPT was responsible for the attempted coup and terrorism, despite lacking even a scintilla of evidence that those assertions were true.⁴¹⁴ The fabricated charges and predetermined convictions were merely a thinly veiled cover-up for the Government's true motive: to extinguish the largest and most viable political opposition party in Tajikistan.⁴¹⁵

(d) The context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights (e.g. political leaders detained

⁴¹¹ See Casey Michel, *Tajikistan's Campaign Against the IRPT Continues*, The Diplomat (15 Dec. 2015), <https://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>; see also, *Tajikistan: Verdicts of Opposition Activists Travesty of Justice*, Human Rights Watch (7 June 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁴¹² See Casey Michel, *Tajikistan's Campaign Against the IRPT Continues*, The Diplomat (15 Dec. 2015), <https://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>.

⁴¹³ Communications BC, LM on file with author; Lawyer: Arrested members of the IRPT deny involvement in the insurgency, Asia-Plus (28 Sept. 2015), <https://news.tj/ru/news/advokat-arestovannye-chleny-pivt-otritsayut-prichastnost-k-myatezhu>.

⁴¹⁴ Casey Michel, *Tajikistan's Campaign Against the IRPT Continues*, The Diplomat (15 Dec. 2015), <https://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>.

after expressing their political opinions or detained for offences that disqualify them from holding political office).

185. As discussed above, the Applicants were targeted due to exercise of their rights to free speech, association, and participation in public affairs. The Applicants were vocal opponents of the Government,⁴¹⁶ published papers criticizing the Government and expressed views that conflicted with the Government's policies. In response to the Applicants exercising their basic human rights, the Government shut down the IRPT and arrested its leaders and other members, including the Applicants.

186. The Government also arrested the Applicants' lawyers who tried to help them assert – and defend their right to exercise – their basic human rights. For example, when Buzurgmehr Yorov made public statements acting as the Applicants' lawyer, that exposed the Government's human rights violations, the Government arrested him. The immediacy between Mr. Yorov's representation of the Applicants, his public statements on their behalf, and the punitive reaction of the Government demonstrates that the detention of Mr. Yorov was a direct result of his representation of the Applicants and his comments exposing the Government's human rights violations.

⁴¹⁵ See *Tajikistan: Verdicts of Opposition Activists Travesty of Justice*, Human Rights Watch (7 June 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁴¹⁶ See Ilya Lozovsky, *The Death of Tajikistan's Islamic Renaissance*, Organized Crime and Corruption Reporting Project (5 June 2018), <https://www.occrp.org/en/moneybymarriage/the-death-of-tajikistans-islamic-renaissance>.

PART 5

CONCLUSION

187. The arrest, trial, conviction, and ongoing imprisonment of the Applicants represent outrageous and extraordinary violations of their fundamental human rights. Moreover, the past and continued actions of the Government in its treatment of the Applicants violate international obligations under the ICCPR, the UDHR, the Body of Principles, and the Mandela Rules.

188. We hereby request that the Working Group issue an opinion finding the Applicants' ongoing detention to be in violation of Tajikistan's obligations under the relevant provisions of the abovementioned documents; call for their immediate release; request that the Government investigate and hold to account all those responsible for the Applicants' unlawful arrest, detention, trial, and imprisonment; and request that the Government award the Applicants compensation for the harm caused by the Government's illegal actions.

I. Domestic Remedies

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.

On 2 June 2016, the Applicants were convicted under multiple articles of the Tajikistan Criminal Code. The specific charges against each individual Applicant are noted above in Part I, paragraphs 8(f) and 9(g). Collectively, the Applicants were charged under the following articles of the Tajikistan Criminal Code:

Article 187, parts 1 and 2 (criminal organization); Article 189, part 3(a) (arousing national, racial, local, or religious hostility); Article 307, part 3 (extremism); Article 131, Part 3(a) (illegal deprivation of liberty); Article 32, Part 3 (criminal attempt); Article 309, Part 2(b) (sabotage); Article 199, Part 4(a)(b)(c) (arms theft); Article 195, Part 3 (arms trade); Article 104, Part 2(a)(b)(g)(h)(i)(k)(l)(o)(m) (murder); Article 179, Part 3 (terrorism); Article 306 (forcible capture of power); Article 313 (armed rebellion); and Article 170 (polygamy).

The Applicants appealed their 2 June 2016 convictions to the Tajikistan Constitutional Court, which upheld the decision made by the Tajikistan Supreme Court. There are no further appeals available to the Applicants.

II. Contact Details

Full Name and Address of the Persons Submitting the Information (Telephone and Fax Number, If Possible).

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