

**PETITION TO:**  
**THE UNITED NATIONS**  
**WORKING GROUP ON ARBITRARY DETENTION**

Chairperson-Rapporteur: Mr. Malick El Hadji Sow (Senegal)  
Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)  
Mr. Mads Andenas (Norway)  
Mr. Aslan Abashidze (Russian Federation)  
Mr. Roberto Garretón (Chile)

**HUMAN RIGHTS COUNCIL**  
**UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of  
**Sapardurdy Khadzhiyev**  
Citizen of the Republic of Turkmenistan

v.

Government of the Republic of Turkmenistan

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**URGENT ACTION REQUESTED**

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

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

After almost four years in detention, Sapardurdy Khadzhiiev continues to languish in the custody of the Turkmen government authorities. Officials of the Turkmen Ministry of National Security arrested Mr. Khadzhiiev on June 18, 2006. Officials admitted arresting him due to his journalism and human rights activities, and later tried and convicted him based on unrelated, fabricated charges.

There are four compelling reasons why the Working Group should consider Mr. Khadzhiiev’s case pursuant to the “Urgent Action” procedure.<sup>1</sup> First, Mr. Khadzhiiev has been subjected to torture and other physical abuse at the hands of the Turkmen government while in custody. According to Mr. Khadzhiiev’s own accounts, he has been physically threatened and abused, held in solitary confinement, and deprived of food, water, medical attention, and even use of the lavatory. He has also been administered psychotropic drugs, forced to confess to fabricated charges, and threatened with harm to his family if he did not cooperate.

Second, it is likely that Mr. Khadzhiiev will continue to be physically abused and tortured. Since Mr. Khadzhiiev has been subjected to physical abuse and torture in the past, this reasonably leads to the conclusion that he will be physically abused and tortured again. In fact, the use of torture in Turkmen prisons is widely reported. Commenting on this, exiled former Turkmenistan Foreign Minister Avdy Kuliev has observed, “I think it’s probably better to be sentenced to a firing squad than to be imprisoned in Turkmenistan.”<sup>2</sup>

Third, both of Mr. Khadzhiiev’s co-defendants have been subject to physical abuse and torture. It has been widely reported that Mr. Khadzhiiev’s sister and colleague, Ogulsapar Muradova, was tortured and murdered by Turkmen government officials. Ms. Muradova was arrested the same day as Mr. Khadzhiiev, and was convicted together with Mr. Khadzhiiev and a third colleague, Annakurban Amanklychev.<sup>3</sup> On September 14, 2006, Turkmen authorities informed Ms. Muradova’s family that she had died in custody. Though the Turkmen government claimed that she died of “natural causes,” her body was badly beaten.<sup>4</sup> In addition, Turkmen officials have admitted to abusing Mr. Khadzhiiev’s other co-defendant, Mr. Amanklychev; soon after their arrests, a Turkmen Interior Ministry official involved in Mr. Amanklychev’s detainment told his family, “You wouldn’t recognize him. After three days of uninterrupted questioning, he’s simply unrecognizable.”<sup>5</sup> As the arrest and prosecution of the three journalists was handled as a single coordinated undertaking, it is likely that all three

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<sup>1</sup> See Report on the Working Group on Arbitrary Detention, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶¶ 22-24.

<sup>2</sup> YouTube video: President for Life – Turkmenistan (Journeyman Pictures 2007), available at <http://www.youtube.com/watch?v=o6XK-yGi7NA> (last visited Dec. 17, 2009).

<sup>3</sup> See INT’L FED’N OF HUMAN RIGHTS, OBSERVATORY FOR THE PROTECTION OF HUM. RTS. DEFENDERS ANNUAL REPORT 2006 - TURKMENISTAN, Mar. 14, 2007, <http://www.unhcr.org/refworld/docid/48747ceec.html> [hereinafter TURKMENISTAN – HUMAN RIGHTS REPORT 2006].

<sup>4</sup> Human Rights Watch, *Human Rights Watch World Report 2007 - Turkmenistan*, Jan. 11 2007, <http://www.unhcr.org/refworld/docid/45aca2a820.html>.

<sup>5</sup> See Jean-Christophe Peuch, *Turkmenistan: Authorities Cast Wide Net in Conspiracy Allegations*, RADIO FREE EUROPE RADIO LIBERTY, June 20, 2006, <http://www.rferl.org/content/article/1069311.html>.

detainees have received, and continue to receive, similar treatment in jail. Ms. Muradova's suspicious death in custody and the Turkmen official's admission to abusing Mr. Amankychev are telling of the circumstances that Mr. Khadzhev likely has endured and continues to face.

Finally, Mr. Khadzhev's case should be considered under "Urgent Action" procedures due to his ailing health. Recent reports indicate that Mr. Khadzhev's "health has deteriorated" and that he is suffering "ailments affecting the stomach, kidneys, legs and joints."<sup>6</sup> His health is further endangered by the conditions in which he is detained. Currently, Mr. Khadzhev is imprisoned in Turkmenbashi high-security prison in the Caspian Sea desert area in Turkmenistan.<sup>7</sup> This prison is known for its extreme hot/cold climate, and its inmates are forced to perform agricultural labor.<sup>8</sup> Furthermore, Turkmen prison facilities are generally reported as being tuberculosis-ridden, overcrowded, and providing inadequate medical attention or nutrition.<sup>9</sup>

This is a case "in which there are sufficiently reliable allegations that a person is being arbitrarily detained and that the continuation of such deprivation constitutes a serious threat to that person's health or even to his life."<sup>10</sup> Consequently, the Petitioner respectfully urges the Working Group to take the urgent nature of Mr. Khadzhev's situation into account.

Finally, the Petitioner respectfully requests that this Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights and reconfirmed by Resolutions 2000/36, 2003/31 and Human Rights Council Resolution 6/4.

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<sup>6</sup> See Reports Without Borders, *Gas Contracts but No Press Freedom*, Sept. 16, 2009, <http://www.rsf.org/Gas-contracts-but-no-press-freedom.html>.

<sup>7</sup> See Radio Free Europe Radio Liberty, *Reporters without Borders Concerned over Conditions Faced by Turkmen Prisoners*, Feb. 19, 2009, [http://www.rferl.org/content/Reporters\\_Without\\_Borders\\_Concerned\\_Over\\_Conditions\\_Faced\\_by\\_Turkmen\\_Prisoners/1495824.html](http://www.rferl.org/content/Reporters_Without_Borders_Concerned_Over_Conditions_Faced_by_Turkmen_Prisoners/1495824.html).

<sup>8</sup> See *id.*

<sup>9</sup> International Regional Information Network (IRIN), *Turkmenistan: Prison Conditions Remain Bleak*, Sept. 30, 2004, <http://www.irinnews.org/report.aspx?reportid=26386>.

<sup>10</sup> See Report on the Working Group on Arbitrary Detention, E/CN.4/1998/44 (Dec. 19, 1997), Annex 1 at ¶ 22(a).

## MODEL QUESTIONNAIRE<sup>11</sup>

### ***I. IDENTITY OF THE PERSON ARRESTED OR DETAINED***

1. ***Family Name:*** Khadzhiev<sup>12</sup>
2. ***First Name:*** Sapardurdy Karlievich
3. ***Sex:*** Male
4. ***Birth date or age (at time of detention):*** August 15, 1959
5. ***Nationality/Nationalities:*** Turkmen
6. ***(a) Identity document (if any):*** Not Available  
***(b) Issued by:***  
***(c) On (date):***  
***(d) No.:***
7. ***Profession and/or activity (if believed to be relevant to the arrest/detention):***  
Sapardurdy Khadzhiev is an independent journalist, human rights advocate, and member of the Turkmenistan Helsinki Foundation (THF),<sup>13</sup> a Bulgaria-based, independent non-profit organization established in 2003 to “watch human rights, freedom and protection of people of Turkmenistan and to sharp [*sic*] the attention of the democratic world to the situation in the country.”<sup>14</sup> He has recently worked with foreign journalists, a French television company called Galaxie Presse and the British Broadcasting Corporation (BBC). Mr. Khadzhiev has also advocated for prison reform in Turkmenistan.
8. ***Address of usual residence:*** Ashgabat, Ul. Vokzalnaya, d. 38

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<sup>11</sup> The Turkmen government’s limitations on access to Mr. Khadzhiev (even by members of his own family) make it extremely difficult to acquire all of the information requested in the Working Group’s questionnaire. Nevertheless, previous Working Group opinions hold that the powerlessness to acquire all of the information “shall not directly or indirectly result in the inadmissibility of the communication.” See, e.g., Report of the Working Group on Arbitrary Detention, E/CN.4/1997/4 (Dec. 17, 1996), Annex 1, at ¶ 8. Consequently, the factual assertions in this Petition are derived from published newspaper and NGO accounts, and from sources close to Mr. Khadzhiev, including his colleagues at the Turkmen Helsinki Foundation, a former attorney, and his family.

<sup>12</sup> In this Petition, Sapardurdy Khadzhiev is also referred to as Mr. Khajiev and Mr. Khajiyev.

<sup>13</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>14</sup> Turkmenistan Helsinki Foundation For Human Rights, <http://www.tmhelsinki.org/en/>.

## **II. ARREST**

- 1. Date of arrest:** June 18, 2006.
- 2. Place of arrest (as detailed as possible):** Mr. Khadzhev was arrested at his home in Ashgebat, Turkmenistan.
- 3. Forces who carried out the arrest or are believed to have carried it out:** The arrest was carried out by officials of the Ministry of National Security of Turkmenistan.
- 4. Did they show a warrant or other decision by a public authority:** The arresting officers did not show a warrant or other decision by a public authority, nor did they disclose to Mr. Khadzhev the basis for his arrest. Rather, Mr. Khadzhev was orally asked to “follow the officials” so as “to clarify certain information.”
- 5. Authority who issued the warrant or decision:** N/A
- 6. Relevant legislation applied (if known):** Mr. Khadzhev was later charged with possession of illegal munitions in violation of Article 287.2 of the Turkmen Criminal Code. He was not formally charged with violating any other laws.

## **III. DETENTION**

- 1. Date of detention:** Mr. Khadzhev has been held in custody since his arrest on June 18, 2006.
- 2. Duration of detention:** Mr. Khadzhev has now been detained for almost four years.
- 3. Forces holding the detainee under custody:** Mr. Khadzhev is being held by the Ministry of National Security of the Government of the Republic of Turkmenistan.
- 4. Places of detention (indicate any transfer and present place of detention):** Following his arrest and throughout his trial, Mr. Khadzhev was held in custody in Ashgebat at the Ministry of National Security’s pre-trial detention center. Following his conviction, Mr. Khadzhev was transferred to and incarcerated in Turkmenbashi Prison, a high-security detention facility located in the Caspian Sea desert area in Turkmenistan.
- 5. Authorities that ordered the detention:** Mr. Khadzhev was convicted and sentenced by the Azatlyk District Court of Ashgebat. However, as explained below, it is suspected that his arrest and prosecution was actually ordered and directed by high officials in the Turkmenistan government, including the then-President of Turkmenistan Saparmyrat Niyazov and then-Minister of National Security Geldimukhammet Asyrmukhammedov.
- 6. Reasons for the detention imputed by the authorities:** Nearly one month after Mr. Khadzhev was detained, Turkmen authorities charged him with illegal possession of munitions. But at the time of his arrest, Mr. Khadzhev was accused publicly by then-President of Turkmenistan Saparmyrat Niyazov and then-Minister of National Security Geldimukhammet

Asyrmukhammedov of “conspiring with foreigners to destabilise the state.”<sup>15</sup> Mr. Asyrmukhammedov stated in a television broadcast that Mr. Khadzhiiev’s co-defendant, Mr. Amanklychev, “was trying to collect defamatory information about Turkmenistan and cause discontent among people on instructions of [...] traitors of the motherland and foreign-based centres of destabilization.”<sup>16</sup> And similarly, a government-sponsored news article accused Mr. Khadzhiiev and his colleagues of involvement in “subversive acts and collection of defamatory information in Turkmenistan in order to create public dissatisfaction.”<sup>17</sup> Mr. Asyrmukhammedov also accused Mr. Khadzhiiev’s co-defendant, Mr. Amanklychev, of being trained in Ukraine for “intelligence gathering and sabotage in Turkmenistan, as well as methods used in the ‘Orange Revolution’ in Ukraine.”<sup>18</sup> These facts indicate that Mr. Khadzhiiev has been illegally detained for his human rights activities and his involvement in the filming of a documentary. They further suggest that the munitions-related charges that form the sole basis of his conviction were fabricated.

7. **Relevant legislation applied (if known):** Mr. Khadzhiiev was charged with possession of illegal munitions in violation of Article 287.2 of the Turkmen Criminal Code. He was never formally charged with violating any other laws.

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

##### **I. Statement of Facts**

Part A of this section of the Petition discusses Turkmenistan and its documented history of arbitrary detention and political suppression. Part B presents the case of the Petitioner, Sapardurdy Khadzhiiev, an independent Turkmen journalist and human rights activist who has been arbitrarily detained by Turkmen authorities for almost four years.

##### **A. The Republic of Turkmenistan and its History of Arbitrary Detention and the Suppression of the Freedoms of Speech and Press**

###### **1. Background Information on the Republic of Turkmenistan**

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<sup>15</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>16</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://www.amnesty.org/ar/library/asset/EUR61/005/2006/ar/8a4905b7-fa03-11dd-b1b0-c961f7df9c35/eur610052006en.pdf>.

<sup>17</sup> Government of Turkmenistan, *Turkmenistan’s Security Services Report Illegal Activities by Certain Turkmen and French Citizens*, June 20, 2006, [http://www.turkmenistan.ru/?page\\_id=3&lang\\_id=en&elem\\_id=8255&type=event&sort=date\\_desc](http://www.turkmenistan.ru/?page_id=3&lang_id=en&elem_id=8255&type=event&sort=date_desc) (last visited Jan. 26, 2010).

<sup>18</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://www.amnesty.org/ar/library/asset/EUR61/005/2006/ar/8a4905b7-fa03-11dd-b1b0-c961f7df9c35/eur610052006en.pdf>.

Although Turkmenistan is formally a democracy and presidential republic, it has largely operated as an authoritarian regime since it declared independence from the Soviet Union in 1991.<sup>19</sup> Until his sudden death in December 2006, Turkmenistan was controlled by dictatorial President-for-life Saparmyrat Niyazov. The former head of the Turkmen Communist Party and leader of the Turkmen Soviet Socialist Republic,<sup>20</sup> President Niyazov insisted on being called “Turkmenbashi,” or “father of the Turkmen.”<sup>21</sup>

After President Niyazov’s death, Turkmenistan elected its current president, Gurbanguly Berdimuhamedov, from a pool of six candidates, all nominated by the Halk Maslahaty (People’s Council).<sup>22</sup> According to the U.S. Department of State’s *2008 Human Rights Report* on Turkmenistan, that election did not meet international standards.<sup>23</sup> In 2008, Turkmenistan adopted a new constitution, which revised many national laws and, in principle, protected rights in an attempt to better conform with international standards.<sup>24</sup> Though the new constitution is an improvement, Turkmenistan continues to lag far behind most of the world in the protection of civil liberties and human rights.

## 2. Turkmenistan’s History of Political Suppression

Turkmenistan operates under a single-party political system in which dissent is not tolerated and opposition to government is characterized as treason.<sup>25</sup> According to the U.S. Department of State, the Turkmenistan government violates its citizens’ civil liberties and human rights through its citizens’ inability to change their government, continued torture and mistreatment of detainees, arbitrary arrests and *incommunicado* detentions, denial of due process and fair trial, restricted freedoms of speech, press, assembly, association, religion and movement, and violence against women.<sup>26</sup> In 2003, the People’s Council on Treason in the Fatherland issued a regulation that prohibited “attempts to sow doubts about the domestic and international policies of the president of Turkmenistan,” and punished these acts with life imprisonment.<sup>27</sup>

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<sup>19</sup> U.S. DEPT. OF STATE, 2008 HUMAN RIGHTS REPORT: TURKMENISTAN, Feb. 25, 2009, at 4, <http://www.state.gov/g/drl/rls/hrrpt/2008/sca/119142.htm> [hereinafter U.S. STATE DEPT REPORT – TURKMENISTAN].

<sup>20</sup> See Freedom House, *Freedom in the World 2009 - Turkmenistan*, July 16, 2009, <http://www.unhcr.org/refworld/docid/4a645277c.html>.

<sup>21</sup> See Lucy Ash, *Grim Legacy of Grandiose Leader*, BBC NEWS, Dec. 21, 2006, <http://news.bbc.co.uk/2/hi/6201669.stm>.

<sup>22</sup> U.S. STATE DEPT. REPORT – TURKMENISTAN, *supra* note 19.

<sup>23</sup> See *id.*

<sup>24</sup> U.S. DEPT. OF STATE, *Advancing Freedom & Democracy Reports: Turkmenistan*, May 2009, <http://www.state.gov/g/drl/rls/afdr/2009/sca/122968.htm>.

<sup>25</sup> See U.S. Dept. of State, *Country Report on Human Rights Practices in Turkmenistan*, Mar. 11, 2008, <http://www.state.gov/g/drl/rls/hrrpt/2007/100622.htm> (describing the status of Turkmenistan’s human rights practices).

<sup>26</sup> U.S. DEPT. OF STATE, *Advancing Freedom & Democracy Reports: Turkmenistan*, May 2009, <http://www.state.gov/g/drl/rls/afdr/2009/sca/122968.htm>.

<sup>27</sup> HUMAN RIGHTS WATCH, HUMAN RIGHTS REFORM IN TURKMENISTAN: RHETORIC OR REALITY? 20 (2007), <http://www.hrw.org/legacy/background/eca/turkmenistan1107/turkmenistan1107web.pdf> (last visited Dec. 17, 2009) [hereinafter “HRW REPORT”].

There exist several reports of journalists and religious individuals who are arbitrarily detained,<sup>28</sup> and of detainees who died under suspicious circumstances while in detention.<sup>29</sup>

One key facet of Turkmenistan's grip on political expression is its complete control of the media. The 2008 edition of the Reporters Without Borders' *Freedom Index* ranks Turkmenistan at 171 out of 173 countries for press freedom.<sup>30</sup> With few exceptions, the state owns all print and electronic media in Turkmenistan, and editors and managerial staff are presidential appointees.<sup>31</sup> The state also regularly harasses foreign journalists or forbids them from entering the country at all.<sup>32</sup> Furthermore, the state, which owns the only Internet service provider in the country, reportedly filters and blocks Internet usage and allegedly tracks Internet usage at Internet cafes.<sup>33</sup> In a 2006 report, the Committee to Protect Journalists ranked Turkmenistan the third-most censored country in the world, behind only North Korea and Burma.<sup>34</sup>

## **B. The Arbitrary Detention of Sapardurdy Khadzhev**

### **1. Background Information on Sapardurdy Khadzhev**

The Petitioner, Sapardurdy Khadzhev, is an independent journalist and member of the Turkmenistan Helsinki Foundation (THF),<sup>35</sup> a Bulgaria-based, independent non-profit organization established in 2003 to “watch human rights, freedom and protection of people of Turkmenistan and to sharp [*sic*] the attention of the democratic world to the situation in the country.”<sup>36</sup> THF also aims to “help and support everyone who suffers because of his convictions and understandings.”<sup>37</sup>

Mr. Khadzhev is a human rights activist who has a history of peaceful and legal human rights work.<sup>38</sup> At the time of his arrest, Mr. Khadzhev was working with French and British journalists to publicly expose the failures of the Turkmen government to deliver adequate health

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<sup>28</sup> U.S. STATE DEPT. REPORT – TURKMENISTAN, *supra* note 19.

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

<sup>30</sup> Reporters Without Borders, *Press Freedom Index 2008 – The Rankings*, Oct. 22, 2008, <http://www.nvj.nl/docs/PressFreedomIndex2008.pdf>.

<sup>31</sup> HRW REPORT, *supra* note 27, at 20.

<sup>32</sup> *See id.* at 20-23.

<sup>33</sup> *See id.* at 23.

<sup>34</sup> COMMITTEE TO PROTECT JOURNALISTS, SPECIAL REPORT: 10 MOST CENSORED COUNTRIES (2006), [http://www.cpj.org/censored/censored\\_06.html](http://www.cpj.org/censored/censored_06.html).

<sup>35</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>36</sup> Turkmenistan Helsinki Foundation For Human Rights, <http://www.tmhelsinki.org/en/>.

<sup>37</sup> *Id.*

<sup>38</sup> *See* International Freedom of Expression eXchange, *Two Jailed Journalists Charged, Investigated for Weapons Possession; International Organisations Say Accusations “Groundless”*, July 20, 2006, [http://www.ifex.org/2006/07/20/two\\_jailed\\_journalists\\_charged/](http://www.ifex.org/2006/07/20/two_jailed_journalists_charged/).



care and respect human rights.<sup>39</sup> He has also worked extensively on prison reform issues, including bringing to light Turkmenistan's practice of arbitrarily detaining opposition leaders and political dissenters. For example, he has conducted interviews of former Turkmen political prisoners who were granted amnesty by the Turkmen government, and he has investigated the whereabouts of political prisoners that have disappeared. Mr. Khadzhiiev has also surveyed former prison employees about the conditions in which political prisoners are detained.

In addition, Mr. Khadzhiiev's family is heavily involved in human rights activities. His brother, Annadurdy Khadzhiiev, is an opposition leader and former central-bank Deputy Chairman who currently lives under humanitarian status in Bulgaria. Mr. Khadzhiiev's sister-in-law, Tajigul Begmedova, is a human rights activist and the head of THF; she also lives in exile in Bulgaria. Mr. Khadzhiiev was previously imprisoned by the Turkmen government in 2002 on orders by then-President Niyazov to detain all of Annadurdy Khadzhiiev's relatives.

Prior to his arrest, Mr. Khadzhiiev lived with and cared for his elderly, bed-ridden, disabled mother. He was the sole income earner in his home. In addition to providing financial support for his mother, Mr. Khadzhiiev also supported his two children (who lived with his former wife), his youngest sister, and his nephew. Since his arrest, Mr. Khadzhiiev's mother has been unable to afford adequate medical care, and his two children have been forced to quit school to seek work. In addition, the adult members of Mr. Khadzhiiev's family have been harassed by Turkmen officials (including having their telephones tapped), prohibited from employment or from receiving government benefits, and banned from leaving the country.

## **2. Arbitrary Arrest, Conviction, and Subsequent Imprisonment**

Turkmen officials from the Ministry of National Security arrested Mr. Khadzhiiev at his home in Ashgabat, Turkmenistan on June 18, 2006.<sup>40</sup> On the same day, they arrested Mr. Khadzhiiev's sister, Ogulsapar Muradova, a reporter for Radio Free Europe/Radio Liberty and a former THF member.<sup>41</sup> Two days prior, on June 16, 2006, police had arrested Annakurban Amanklychev, an independent journalist and fellow member of THF.<sup>42</sup> Amnesty International reports that a total of seven individuals—including Mr. Khadzhiiev, Ms. Muradova, and Mr. Amanklychev—were detained by Turkmen government authorities in June 2006 “solely because they are members, or relatives of members, of the non-governmental human rights organisation Turkmenistan Helsinki Foundation (THF), which has publicised human rights violations in the country.”<sup>43</sup> None of the journalists were notified of the charges against him/her,<sup>44</sup> and they were

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<sup>39</sup> See Reporters Without Borders, *French Festival Awards Prize to TV Documentary for which Three Turkmen Journalists Paid with Their Freedom and one with Their Life*, Dec. 8, 2006, <http://www.rsf.org/French-Festival-Awards-Prize-To-TV.html>.

<sup>40</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

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

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

<sup>43</sup> Amnesty International, TURKMENISTAN: ARBITRARY DETENTION/FEAR OF TORTURE, June 18, 2006, <http://www.amnesty.org/en/library/info/EUR61/003/2006/en>.

<sup>44</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

not formally charged with a crime until July 12, 2006<sup>45</sup>—nearly one month after their initial arrests.

Prior to trial, and for over two months, Turkmen authorities held Mr. Khadzhiyev, Ms. Muradova, and Mr. Amanklychev *incommunicado* at the pretrial detention center of the Ministry of National Security. Mr. Khadzhiyev was held in solitary confinement and under harsh conditions: he was deprived of food and water, and was often prohibited from using the toilet, which was located outside his cell. Turkmen authorities also threatened him and his family, injected him with psychotropic drugs, and deprived him of medical care. Throughout this time, Turkmen authorities provided no notice to Mr. Khadzhiyev of the actual charges against him.

The Turkmen government provided Mr. Khadzhiyev and his co-defendants with a state-appointed attorney, but this attorney avoided meeting them and tried to convince them to concede the charges. Meanwhile, Mr. Khadzhiyev's chosen private attorney, Ata Mukhamedov, was deprived of basic information related to his client: Mr. Mukhamedov learned of the espionage accusation on June 18, 2006 from a televised broadcast by the Minister of National Security, and he only learned of the munitions-related charges against Mr. Khadzhiyev a few days before the trial. In addition, Mr. Mukhamedov was not made aware of Mr. Khadzhiyev's trial date until just before it occurred.

On August 25, 2006, Mr. Khadzhiyev, Mr. Amanklychev, and Ms. Muradova were formally tried for "possession of illegal munitions." It was a brief *in camera* trial that reportedly lasted only minutes.<sup>46</sup> Although their private attorneys were allowed to formally attend the trial, the court denied Mr. Khadzhiyev and his co-defendants' requests to call witnesses on their behalf. Meanwhile, soldiers prevented the defendants' relatives and other members of the public from accessing the court;<sup>47</sup> soldiers and police officers controlled the building's courtyard and adjacent areas, and recorded everyone who tried to access the court building. Mr. Khadzhiyev, Mr. Amanklychev, and Ms. Muradova were summarily convicted and sentenced to six to seven years imprisonment.<sup>48</sup> Almost four years later, Mr. Khadzhiyev and Mr. Amanklychev remain imprisoned in Turkmenistan. Ms. Muradova died in custody shortly after her conviction.<sup>49</sup>

### 3. Political Motivation for the Arrest

The official reason given for the journalists' detainment was a charge of possession of illegal munitions, in violation of Article 287.2 of the Turkmen Criminal Code. However, credible sources report that these charges were entirely fabricated. The convictions were based on police statements that the police discovered weapons in Mr. Amanklychev's car.<sup>50</sup> But

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<sup>45</sup> Front Line Defenders, *Fears for Three Turkmen Human Rights Defenders Held Incommunicado* (Aug. 3, 2006), <http://www.frontlinedefenders.org/node/109>.

<sup>46</sup> International Federation for Human Rights, *Death in Detention: Turkmenistan*, Sept. 14, 2006, [http://www.fidh.org/IMG/article\\_PDF/article\\_a3633.pdf](http://www.fidh.org/IMG/article_PDF/article_a3633.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

according to a THF report<sup>51</sup> and private statements by relatives, Mr. Amanklychev's family members observed security officers tossing a parcel into Mr. Amanklychev's car on the day of his arrest.<sup>52</sup> Reporters Without Borders, a non-profit organization committed to press freedom,<sup>53</sup> asserts that the weapons conviction was based on nothing more than "trumped up charges."<sup>54</sup> And Front Line, an international foundation for the protection of human rights defenders,<sup>55</sup> also asserts that the charges were fabricated to prevent the journalists from continuing "legitimate and peaceful work in the defence of human rights."<sup>56</sup>

The circumstances of the arrests support these conclusions. At the time of their arrests, Mr. Khadzhev and others were working with French producers at Galaxie Press to create a documentary that criticized the Turkmen government. The film, "Turkmenistan: Welcome to Niyazovland," exposes the failing Turkmen health and education systems, and then-President Niyazov's 'personality cult.'<sup>57</sup> It was later broadcasted on a program called "Envoyé Spécial" on the France 2 television channel on September 28, 2006.<sup>58</sup> Previously, Mr. Amanklychev had also assisted foreign journalists from the British Broadcasting Corporation (BBC) with recording a radio program on Turkmen health care and human rights.<sup>59</sup> That program was broadcasted by the BBC on November 17, 2005.<sup>60</sup>

Furthermore, the journalists were all members of the Bulgaria-based human rights group, the Turkmen Helsinki Foundation. Mr. Khadzhev's colleague, Mr. Amanklychev, had also participated in peaceful and non-violent human rights training exercises held in Ukraine and Poland,<sup>61</sup> which focused on prison reform<sup>62</sup> and the historical and philosophical background of

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<sup>51</sup> Jean-Christophe Peuch, *supra* note 5.

<sup>52</sup> *Id.*

<sup>53</sup> Reporters Without Borders, <http://www.rsf.org/Introduction.html>.

<sup>54</sup> Radio Free Europe Radio Liberty, *Reporters without Borders Concerned over Conditions Faced by Turkmen Prisoners*, Feb. 19, 2009, [http://www.rferl.org/content/Reporters\\_Without\\_Borders\\_Concerned\\_Over\\_Conditions\\_Faced\\_by\\_Turkmen\\_Prisoners/1495824.html](http://www.rferl.org/content/Reporters_Without_Borders_Concerned_Over_Conditions_Faced_by_Turkmen_Prisoners/1495824.html).

<sup>55</sup> *See generally* Front Line, <http://www.frontlinedefenders.org/>.

<sup>56</sup> Front Line, *All News Items from Annakurban Amanklychev*, Aug. 3, 2006, <http://www.frontlinedefenders.org/nodelist/story/477>.

<sup>57</sup> *See* Reporters Without Borders, *French Festival Awards Prize to TV Documentary for which Three Turkmen Journalists Paid with Their Freedom and one with Their Life*, Dec. 8, 2006, <http://www.rsf.org/French-Festival-Awards-Prize-To-TV.html>.

<sup>58</sup> *Id.*

<sup>59</sup> Amnesty International, *Document – Turkmenistan: Further Information on Arbitrary Detention/Fear of Torture*, July 4, 2006, <http://www.amnesty.org/en/library/asset/EUR61/005/2006/en/ceb8eb69-d415-11dd-8743-d305bea2b2c7/eur610052006en.html>.

<sup>60</sup> BBC, *Undercover in Turkmenistan: The First of Four New World Service Investigations* (Nov. 9, 2005), [http://www.bbc.co.uk/print/pressoffice/pressreleases/stories/2005/11\\_november/09/turkmenistan.shtml](http://www.bbc.co.uk/print/pressoffice/pressreleases/stories/2005/11_november/09/turkmenistan.shtml).

<sup>61</sup> Human Rights Watch, *Human Rights Watch World Report 2007 - Turkmenistan*, Jan. 11 2007, <http://www.unhcr.org/refworld/docid/45aca2a820.html>.

<sup>62</sup> Donetsk Memorial, About "Donetsk Memorial," [http://prison.memo.ru/English%20version/aboutus\\_eng.htm](http://prison.memo.ru/English%20version/aboutus_eng.htm).

human rights and international and domestic human rights law.<sup>63</sup> Finally, Mr. Khadzhev is closely related to two renowned political dissidents. His brother, Annadurdy Khadzhev, is an opposition leader, and his sister-in-law, Tajgul Begmedova, is the head of the Turkmen Helsinki Foundation for Human Rights. Both currently live in exile in Bulgaria.

Statements by government officials after the arrests confirm that the journalists were detained due to their journalism-related activities and political associations, and not for possession of illegal munitions. After his arrest, then-President of Turkmenistan Saparmyrat Niyazov and then-Minister of National Security Geldimukhammet Asyrmukhammedov accused Mr. Khadzhev of “conspiring with foreigners to destabilize the state.”<sup>64</sup> In a televised speech, President Niyazov announced:

I don't know why [Mr. Khadzhev and Mr. Amanklychev] are engaged in such dirty business in Turkmenistan, a peaceful country where justice is ruling and where nobody is disgraced [...] Let people condemn the traitors. The entire population is proud of their motherland, whereas they are trying to harm it. Go ahead with your fight against such people.<sup>65</sup>

While Turkmen officials made no specific allegations against Mr. Khadzhev, they emphasized that he was the brother of Annadurdy Khadzhev, and said that he “got [Mr. Amanklychev] involved in the criminal activities related to organization of subversive acts and collection of defamatory information in Turkmenistan in order to create public dissatisfaction.”<sup>66</sup>

Most of Turkmenistan's specific allegations were leveled against Mr. Khadzhev's colleague, Mr. Amanklychev. For example, Mr. Asyrmukhammedov claimed in a television broadcast that Mr. Amanklychev “was trying to collect defamatory information about Turkmenistan and cause discontent among people on instructions of [...] traitors of the motherland and foreign-based centres of destabilization.”<sup>67</sup> And Turkmen authorities also accused Mr. Amanklychev of receiving “secret video equipment” from a French Embassy cultural advisor<sup>68</sup> (in reality, Mr. Amanklychev had been sent standard audiovisual equipment by

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<sup>63</sup> See, e.g., Helsinki Foundation for Human Rights, 20th International Summer School on Human Rights, <http://www.hfhrpol.waw.pl/news196-en.html>.

<sup>64</sup> See TURKMENISTAN – HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>65</sup> See Committee to Protect Journalists, *CPJ Alarmed by Reports of Abuse in Journalist's Detention*, Aug. 14, 2006, <http://cpj.org/2006/08/cpj-alarmed-by-reports-of-abuse-in-journalists-det.php>.

<sup>66</sup> Government of Turkmenistan, *Turkmenistan's Security Services Report Illegal Activities by Certain Turkmen and French Citizens*, June 20, 2006, [http://www.turkmenistan.ru/?page\\_id=3&lang\\_id=en&elem\\_id=8255&type=event&sort=date\\_desc](http://www.turkmenistan.ru/?page_id=3&lang_id=en&elem_id=8255&type=event&sort=date_desc).

<sup>67</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://asiapacific.amnesty.org/library/index/ENGEUR610052006?open&of=ENG-TKM>.

<sup>68</sup> Government of Turkmenistan, *Turkmenistan's Security Services Report Illegal Activities by Certain Turkmen and French Citizens*, June 20, 2006, [http://www.turkmenistan.ru/?page\\_id=3&lang\\_id=en&elem\\_id=8255&type=event&sort=date\\_desc](http://www.turkmenistan.ru/?page_id=3&lang_id=en&elem_id=8255&type=event&sort=date_desc).

a cultural advisor who served as a liaison for foreign journalists, and the French Foreign Ministry, the OSCE, and Galaxie Presse have vigorously denied allegations of espionage<sup>69</sup>).

Turkmen officials and the Turkmenistan State News Service further claimed that Mr. Amanklychev was trained “on the methods of secret gathering of information in order to encourage public discontent and provoke public demonstrations against the government” because he had attended human rights training courses in Donetsk, Ukraine and Warsaw, Poland.<sup>70</sup> And Mr. Asyrmukhammedov accused Mr. Amanklychev of being trained in Ukraine for “intelligence gathering and sabotage in Turkmenistan, as well as methods used in the ‘Orange Revolution’ in Ukraine.”<sup>71</sup> He also expressed suspicion concerning Mr. Amanklychev’s attendance at the International Summer School for human rights activists, which the Helsinki Foundation for Human Rights holds periodically in Warsaw.<sup>72</sup>

It should be noted that the courses’ sponsors—the Donetsk chapter of Memorial and the Polish Helsinki Foundation for Human Rights—confirm that Mr. Amanklychev’s participation was related solely to human rights training. The Turkmenistan Helsinki Foundation further confirms that money given to Mr. Amanklychev at the time was *per diem* payment and reimbursement for his travel expenses, and not payment for “subversive activities,” as the Turkmenistan government claimed.<sup>73</sup>

All of the above statements directly reference—and plainly state that his detainment is based on—Mr. Khadzhev’s work with foreign journalists, his associations with THF and Mr. Amanklychev, and his family relations. Tellingly, the Turkmen government never charged Mr. Khadzhev with espionage, treason, or any other crime that they accused him of committing at the time of his arrest. Instead, they convicted him of weapons possession, a charge that did not come to light until after Mr. Khadzhev had been detained for nearly a month. Given the Turkmen government’s public condemnation and hostile description of Mr. Khadzhev’s journalism and human-rights activities, there is little doubt that the weapons charge for which Mr. Khadzhev was convicted was merely a false pretense offered *post facto* for his arrest. Mr. Khadzhev has been imprisoned for almost four years for one reason only: he exercised his civil liberties.

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<sup>69</sup> See International Freedom of Expression eXchange, *Two Jailed Journalists Charged, Investigated for Weapons Possession; International Organisations Say Accusations “Groundless”*, July 20, 2006, [http://www.ifex.org/2006/07/20/two\\_jailed\\_journalists\\_charged/](http://www.ifex.org/2006/07/20/two_jailed_journalists_charged/).

<sup>70</sup> Government of Turkmenistan, *Turkmenistan’s Security Services Report Illegal Activities by Certain Turkmen and French Citizens*, June 6, 2006, [http://www.turkmenistan.ru/?page\\_id=3&lang\\_id=en&elem\\_id=8255&type=%20event&sort=date\\_desc](http://www.turkmenistan.ru/?page_id=3&lang_id=en&elem_id=8255&type=%20event&sort=date_desc).

<sup>71</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://asiapacific.amnesty.org/library/index/ENGEUR610052006?open&of=ENG-TKM>.

<sup>72</sup> *Id.*

<sup>73</sup> See International Freedom of Expression eXchange, *Two Jailed Journalists Charged, Investigated for Weapons Possession; International Organisations Say Accusations “Groundless”*, July 20, 2006, [http://www.ifex.org/2006/07/20/two\\_jailed\\_journalists\\_charged/](http://www.ifex.org/2006/07/20/two_jailed_journalists_charged/).

#### 4. Mistreatment

While in custody, Mr. Khadzhiev has been subjected to torture and other physical abuse at the hands of the Turkmen government. At times of his detainment, Mr. Khadzhiev has been held in solitary confinement and deprived of food, water, medical attention, and even use of the lavatory. He has been administered psychotropic drugs, and threatened with harm to his family if he did not cooperate.

Moreover, Mr. Khadzhiev's sister, colleague and co-defendant, Ogulsapar Muradova, was evidently tortured and likely murdered by Turkmenistan government officials while in government custody. On September 14, 2006, less than three weeks after the convictions, Turkmen authorities informed Ms. Muradova's family that she had died. Though the government claimed that she died of "natural causes," her body was badly beaten.<sup>74</sup> According to Ms. Muradova's relatives, when they retrieved her body, she had a head wound, bruises from strangulation, puncture marks from injections, and a broken leg.<sup>75</sup>

In addition, Mr. Khadzhiev's other co-defendant, Mr. Amanklychev, has also been subject to physical abuse and torture, and at least one Turkmen official has admitted this publicly. Soon after their arrests, an Interior Ministry official involved in his detainment told Mr. Amanklychev's family, "[y]ou wouldn't recognize him. After three days of uninterrupted questioning, he's simply unrecognizable."<sup>76</sup> If both of Mr. Khadzhiev's co-defendants have been subject to physical abuse, it is likely that Mr. Khadzhiev has as well.

It should be noted that the use of torture in Turkmen prisons is widely reported. Commenting on this fact, exiled former Turkmenistan Foreign Minister Avdy Kuliev has observed, "I think it's probably better to be sentenced to a firing squad than to be imprisoned in Turkmenistan."<sup>77</sup>

In addition to torture and other physical abuse, Mr. Khadzhiev has been held in relative isolation from the time of his arrest. Having detained him since June 2006, Turkmen authorities did not allow Mr. Khadzhiev to receive visitors until 2009. Even now, he can only be visited by his sister, and she is only allowed to see him once per year. Mr. Khadzhiev can only receive parcels from his family once per year.

Finally, recent reports indicate that Mr. Khadzhiev's "health has deteriorated" and that he is suffering "ailments affecting the stomach, kidneys, legs and joints."<sup>78</sup> Turkmen prison facilities are also generally reported as being tuberculosis-ridden, overcrowded, and providing

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<sup>74</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://asiapacific.amnesty.org/library/index/ENGEUR610052006?open&of=ENG-TKM>.

<sup>75</sup> See Lucy Ash, *Grim Legacy of Grandiose Leader*, BBC NEWS, Dec. 21, 2006, <http://news.bbc.co.uk/2/hi/6201669.stm>.

<sup>76</sup> Jean-Christophe Peuch, *supra* note 5.

<sup>77</sup> YouTube video: President for Life – Turkmenistan (Journeyman Pictures 2007), *available at* <http://www.youtube.com/watch?v=o6XK-yGi7NA> (last visited Dec. 17, 2009).

<sup>78</sup> See *Gas Contracts but No Press Freedom*, REPORTS WITHOUT BORDERS, Sept. 16, 2009, <http://www.rsf.org/Gas-contracts-but-no-press-freedom.html>.



inadequate medical attention or nutrition.<sup>79</sup> Mr. Khadzhev is currently imprisoned in the Caspian Sea desert area in Turkmenistan,<sup>80</sup> which is known for its extreme hot/cold climate.<sup>81</sup>

## 5. Public Criticism of the Arrest

The international community has been vocal in publicly criticizing the unlawful arrest and continued arbitrary detention of Mr. Khadzhev. On July 17, 2006, a coalition of nine nongovernmental human rights organizations issued an open letter urging “the unconditional release of Amanklychev, Muradova, and Khajiev [sic], and, pending their release, to allow them immediate access to the attorney of their choice, to their families, to medical care and food in conformity with international minimum standards of treatment of detainees, and to international monitors and physical integrity.”<sup>82</sup> On September 8, 2007, Reporters Without Borders issued a similar open letter to President Gurbanguly Berdimuhamedov that criticized the detention and called for their release.<sup>83</sup>

More recently, a group of eight nongovernmental international human rights organizations issued an open letter to President Berdimuhamedov requesting that the President grant Mr. Khadzhev amnesty as part of National Flag Day in Turkmenistan.<sup>84</sup> In addition, on December 9, 2009, U.S. Senators Durbin, Lieberman, Cardin, and Brownback wrote to President Berdimuhamedov requesting “information and assistance” regarding Mr. Khadzhev and Mr. Amanklychev’s detention, noting that “[t]he legal bases for the detention of these individuals are suspect at best and raise serious concerns of political intimidation, questionable charges, closed trials, and inappropriately punitive punishments.”<sup>85</sup>

Amnesty International USA has also requested that individuals send letters to the President of Turkmenistan asking him to “[i]mmediately and unconditionally release all prisoners of conscience, including Annakurban Amanklychev and Sapardurdy Khadzhev.”<sup>86</sup> The Turkmen Helsinki Foundation for Human Rights has done the same. As of February 2009,

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<sup>79</sup> TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>80</sup> See *Reporters without Borders Concerned over Conditions Faced by Turkmen Prisoners*, RADIO FREE EUROPE RADIO LIBERTY, Feb. 19, 2009, [http://www.rferl.org/content/Reporters\\_Without\\_Borders\\_Concerned\\_Over\\_Conditions\\_Faced\\_by\\_Turkmen\\_Prisoners/1495824.html](http://www.rferl.org/content/Reporters_Without_Borders_Concerned_Over_Conditions_Faced_by_Turkmen_Prisoners/1495824.html).

<sup>81</sup> See *id.*

<sup>82</sup> See Human Rights Watch, *Turkmenistan: Open Letter from a Coalition of Human Rights Organizations*, July 17, 2006, <http://www.hrw.org/en/news/2006/07/17/turkmenistan-open-letter-coalition-human-rights-organizations>.

<sup>83</sup> Reports Without Borders, *Open Letter Urges Acting President to Take Concrete Measures in Favour of Press Freedom*, Feb. 8, 2007, <http://www.rsf.org/Open-letter-urges-acting-president.html>.

<sup>84</sup> See Bulgarian Helsinki Committee, *The BHC and seven other human rights NGOs appeal for release of prisoners of conscience in an open letter to the President of Turkmenistan*, Feb. 3, 2009, <http://www.bghelsinki.org/index.php?module=news&lg=en&id=2020>.

<sup>85</sup> Letter from Sen. Richard J. Durbin, et al., to Pres. Gurbanguly Berdimuhamedov (December 9, 2009) (on file with authors).

<sup>86</sup> See Amnesty International USA, *Annakurban Amanklychev and Sapardurdy Khadzhev, Prisoners of Conscience*, <http://www.amnestyusa.org/individuals-at-risk/priority-cases/annakurban-amanklychev-and-separdurdy-khadzhev/page.do?id=1361055>.

THF had received 5,750 letters “expressing their support for the illegally sentenced Turkmen human rights activists Annakurban Amanklychev and Sapardurdy Khajiyev [sic].”<sup>87</sup>

## II. Analysis

Turkmenistan has committed itself internationally and domestically to protecting certain human rights. Turkmenistan acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1997.<sup>88</sup> In addition, Turkmenistan has been a member of the North Atlantic Treaty Organization’s “Partnership for Peace” Program since 1994, which obligates Turkmenistan to uphold the Universal Declaration of Human Rights (UDHR).<sup>89</sup> Finally, the 2008 and 1992 Turkmenistan Constitutions impose domestic obligations on Turkmenistan to protect certain human rights.<sup>90</sup> The 1992 Turkmenistan Constitution was in effect at the time of Mr. Khadzhev’s arrest in 2006, while the 2008 Turkmenistan Constitution is currently in effect.

Given these international and domestic obligations, Turkmenistan’s detention of Sapardurdy Khadzhev constitutes an arbitrary deprivation of liberty, falling into Categories II and III of cases identified by the Working Group.<sup>91</sup>

Mr. Khadzhev’s case qualifies as a Category II detention because it can be imputed that government authorities in Turkmenistan detained him based on the peaceful exercise of his fundamental right to freedom of expression, which includes the freedoms of association, press and speech. In particular, the Turkmenistan government’s detention of Mr. Khadzhev transgresses Article 19 of the UDHR and Article 19 of the ICCPR, which guarantee the right “to seek, receive and impart information and ideas.” In addition, Mr. Khadzhev’s detention is inconsistent with Article 20 of the UDHR and Article 22 of the ICCPR, which guarantee the freedom of association.

Detaining Mr. Khadzhev based on the peaceful exercise of his fundamental right to freedom of expression also infringes Article 28 (protecting freedom of thought and expression, and freedom to obtain information), Article 29 (protecting the freedom of association), and

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<sup>87</sup> See Bulgarian Helsinki Committee, *The BHC and seven other human rights NGOs appeal for release of prisoners of conscience in an open letter to the President of Turkmenistan*, Feb. 3, 2009, <http://www.bghelsinki.org/index.php?module=news&lg=en&id=2020>.

<sup>88</sup> See Office of the United Nations High Commissioner for Human Rights, *International Covenant on Civil and Political Rights*, [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

<sup>89</sup> See *NATO Topics: The Partnership For Peace*, NORTH ATLANTIC TREATY ORGANIZATION, Apr. 2, 2009, <http://www.nato.int/issues/pfp/index.html>; *Joint Conference Marks the 60<sup>th</sup> Anniversary of the Universal Declaration of HR in Turkmenistan*, UNITED NATIONS DEVELOPMENT PROGRAMME, [http://www.undptkm.org/index.php?option=com\\_content&task=view&id=395&Itemid=43](http://www.undptkm.org/index.php?option=com_content&task=view&id=395&Itemid=43).

<sup>90</sup> See THE 2008 CONSTITUTION OF TURKMENISTAN, [http://www.turkmenistan.gov.tm/\\_ru/laws/?laws=01dw](http://www.turkmenistan.gov.tm/_ru/laws/?laws=01dw) [hereinafter 2008 TURKMENISTAN CONSTITUTION]; THE 1992 CONSTITUTION OF TURKMENISTAN, unofficial English translation, University of Texas at Arlington, <http://www.uta.edu/cpsees/TURKCON.htm> [hereinafter 1992 TURKMENISTAN CONSTITUTION].

<sup>91</sup> See Office of the High Commissioner for Human Rights, *Fact Sheet No. 26, The Working Group on Arbitrary Detention*, United Nations, <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.



Article 39 (protecting artistic and technical expression) of the 2008 Turkmenistan Constitution.<sup>92</sup> At the time of his arrest, these actions were also violations of Article 26 (protecting the freedoms of conviction and expression), Article 28 (protecting the freedom of association) and Article 36 (protecting artistic and technical expression) of the 1992 Turkmenistan Constitution.<sup>93</sup>

Mr. Khadzhev's case also qualifies as a Category III detention because Turkmenistan has denied him a fair trial. Specifically, the failure of the Turkmen authorities to notify Mr. Khadzhev of the charges against him at the time of his arrest is inconsistent with Article 9 of the ICCPR. In addition, the cursory *in camera* trial of Mr. Khadzhev, including his limited access to counsel, the rejection of witnesses on his behalf, and the exclusion of Mr. Khadzhev's relatives and supporters from the court<sup>94</sup> infringed Article 10 and Article 11 of the UDHR (guaranteeing a "public" trial) and Article 14 of the ICCPR (guaranteeing an individual's right to "defend himself in person or through legal assistance of his own choosing" and preserving the right "to a fair and public hearing by a competent, independent and impartial tribunal").

These practices also violated Article 43 and Article 108 of the 2008 Turkmenistan Constitution (protecting the right to judicial defense of one's honor and dignity and guaranteeing the right to professional legal assistance)<sup>95</sup> and Article 108 of the 1992 Turkmenistan Constitution (protecting the right to counsel).<sup>96</sup>

#### **A. Turkmenistan's Detention of Mr. Khadzhev Resulted from the Exercise of His Fundamental Right to Freedom of Expression, including the Rights of Free Association, Free Press and Free Speech**

The UDHR, ICCPR and the Turkmenistan Constitution protect the freedom of expression and the accompanying rights of free association, press and speech. Article 20 of the UDHR guarantees the "right to freedom of peaceful assembly and association."<sup>97</sup> Similarly, Article 22 of the ICCPR guarantees the "right to freedom of association with others,"<sup>98</sup> and Article 29 of the 2008 Turkmenistan Constitution also protects the freedom of assembly.<sup>99</sup> Article 28 of the 1992 Turkmenistan Constitution provides similar protection.<sup>100</sup> In addition, Article 19 of the UDHR guarantees the right "to seek, receive and impart information and ideas through any

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<sup>92</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90.

<sup>93</sup> See 1992 TURKMENISTAN CONSTITUTION, *supra* note 90.

<sup>94</sup> International Federation for Human Rights, *Death in Detention: Turkmenistan*, Sept. 14, 2006, [http://www.fidh.org/IMG/article\\_PDF/article\\_a3633.pdf](http://www.fidh.org/IMG/article_PDF/article_a3633.pdf).

<sup>95</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90.

<sup>96</sup> See 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 108.

<sup>97</sup> The Universal Declaration of Human Rights, art. 20(1) ("Everyone has the right to freedom of peaceful assembly and association.") [hereinafter UDHR].

<sup>98</sup> International Covenant on Civil and Political Rights, art. 22 ("Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.") [hereinafter ICCPR].

<sup>99</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 29.

<sup>100</sup> See 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 28.

media and regardless of frontiers.”<sup>101</sup> This right is augmented by Article 19 of the ICCPR, which similarly provides for the right “to seek, receive and impart information and ideas of all kinds, regardless of frontiers.”<sup>102</sup>

Correspondingly, Article 28 of the 2008 Turkmenistan Constitution protects the freedom of thought and expression, and the freedom to obtain information.<sup>103</sup> Article 26 of the 1992 Constitution similarly protected the right to freedom of conviction and expression of those convictions.<sup>104</sup> Furthermore, Article 39 of the 2008 Turkmenistan Constitution and Article 36 of the 1992 Constitution protect artistic and technical expression.<sup>105</sup>

Mr. Khadzhiiev’s arrest and detention by the Turkmen authorities was intended to infringe, actually infringed, and continues to infringe his right to peaceful assembly and association and therefore directly violates each of these provisions of law.

At the time of his arrest, Mr. Khadzhiiev was a member of the human rights group THF<sup>106</sup> and was working with French producers to create a documentary critical of then-President Niyazov.<sup>107</sup> He is also the brother and brother-in-law of exiled dissidents Annadurdy Khadzhiiev and Tajigul Begmedova, respectively. Statements by high-ranking Turkmen government officials after Mr. Khadzhiiev’s arrest confirm that his detainment is based on journalism-related activities, human rights activities, and his family relations—not for possession of illegal munitions, as subsequently claimed. For example, after his arrest, then-President Niyazov and then-Minister of National Security Geldimukhammet Asyrmukhammedov accused Mr. Khadzhiiev of “conspiring with foreigners to destabilize the state.”<sup>108</sup> Turkmen officials further emphasized that Mr. Khadzhiiev is the brother of exiled opposition leader Annadurdy Khadzhiiev, and accused him of “[getting Mr. Amanklychev] involved in . . . criminal activities related to organization of subversive acts and collection of defamatory information in Turkmenistan in order to create public dissatisfaction.”<sup>109</sup> Mr. Amanklychev, meanwhile, was accused by Mr. Asyrmukhammedov of “trying to collect defamatory information about Turkmenistan and cause

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<sup>101</sup> See UDHR, *supra* note 97, at art. 19 (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”)

<sup>102</sup> See ICCPR, *supra* note 98, at art. 19(2) (“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”).

<sup>103</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 28.

<sup>104</sup> See 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 26.

<sup>105</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 39; 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 36.

<sup>106</sup> See Human Rights Watch, *Human Rights Watch World Report 2007 - Turkmenistan*, Jan. 11 2007, <http://www.unhcr.org/refworld/docid/45aca2a820.html>.

<sup>107</sup> See TURKMENISTAN - HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>108</sup> See *id.*

<sup>109</sup> Government of Turkmenistan, *Turkmenistan’s Security Services Report Illegal Activities by Certain Turkmen and French Citizens*, June 20, 2006, [http://www.turkmenistan.ru/?page\\_id=3&lang\\_id=en&elem\\_id=8255&type=event&sort=date\\_desc](http://www.turkmenistan.ru/?page_id=3&lang_id=en&elem_id=8255&type=event&sort=date_desc).

discontent among people on instructions of [...] traitors of the motherland and foreign-based centres of destabilization,”<sup>110</sup> and of being trained in Ukraine for “intelligence gathering and sabotage in Turkmenistan, as well as methods used in the ‘Orange Revolution’ in Ukraine.”<sup>111</sup> These statements directly reference—and plainly state that his detainment is based on—Mr. Khadzhiiev’s work with foreign journalists, association with THF and Mr. Amanklychev, and his family relations.

It is also widely acknowledged by independent observers that the criminal charges against Mr. Khadzhiiev were fabricated. The official charge against Mr. Khadzhiiev was “possession of illegal munitions” in violation of Article 287-2 of the Turkmen Criminal Code. The charges were based on police statements that weapons were found in the car of his colleague, Mr. Amanklychev. However, eyewitnesses observed security officers tossing the parcel in question into Mr. Amanklychev’s car on the day of his arrest.<sup>112</sup> The clearly stated motives for the arrest, and blatant pretext for his subsequent conviction, have caught the attention of the world community. Reporters Without Borders has concluded that the possession of illegal munitions charges were nothing more than “trumped up charges.”<sup>113</sup> And Frontline, an international foundation for the protection of human rights defenders, has likewise asserted that the charges were invented to prevent Mr. Khadzhiiev from continuing his “legitimate and peaceful work in the defense of human rights.”<sup>114</sup> Because Mr. Khadzhiiev’s detention was based on false charges and was merely a pretense to deny him his freedom of expression, his confinement clearly qualifies as a Category II detention.

Though Articles 19(3) and 22(2) of the ICCPR allow the restriction of the right to freedom of expression in certain circumstances, those circumstances do not present themselves here. The right to freedom of expression can only be constrained when “provided by law” and when either: (i) “necessary for the respect of the rights or reputations of others”; or (ii) “necessary for the protection of national security or of public order (*ordre public*), or of public health or morals.”<sup>115</sup> These conditions are not applicable to Mr. Khadzhiiev’s case because Mr.

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<sup>110</sup> Amnesty International, *Further Info. on UA 172/06* (July 4, 2006), <http://www.amnesty.org/ar/library/asset/EUR61/005/2006/ar/8a4905b7-fa03-11dd-b1b0-c961f7df9c35/eur610052006en.pdf>.

<sup>111</sup> *Id.*

<sup>112</sup> Jean-Christophe Peuch, *supra* note 5.

<sup>113</sup> See *Reporters without Borders Concerned over Conditions Faced by Turkmen Prisoners*, RADIO FREE EUROPE RADIO LIBERTY, Feb. 19, 2009, [http://www.rferl.org/content/Reporters\\_Without\\_Borders\\_Concerned\\_Over\\_Conditions\\_Faced\\_by\\_Turkmen\\_Prisoners/1495824.html](http://www.rferl.org/content/Reporters_Without_Borders_Concerned_Over_Conditions_Faced_by_Turkmen_Prisoners/1495824.html).

<sup>114</sup> Frontline, *All News Items from Annakurban Amanklychev*, Aug. 3, 2006, <http://www.frontlinedefenders.org/node/109>.

<sup>115</sup> See ICCPR, *supra* note 98, at art. 19(3) (“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.”); *id.* at art. 22(2) (“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.”).

Khadzhiev was detained based on false accusations and fabricated evidence.<sup>116</sup> There is no credible evidence that Mr. Khadzhiev was involved in any violent or criminal activity.

Moreover, Turkmen law does not prohibit peaceful association, press or speech. To the contrary, Article 28, Article 29, and Article 39 of the 2008 Turkmenistan Constitution (and Article 26, Article 28, and Article 36 of the 1992 Turkmenistan Constitution) explicitly protect the freedoms of association, press and speech.<sup>117</sup> Therefore, Mr. Khadzhiev's freedom of expression was unlawfully and arbitrarily constrained because he was arrested on "trumped up charges" that were not "provided by law."

The arbitrary arrest and detention of Mr. Khadzhiev was clearly undertaken with the aim of infringing Mr. Khadzhiev's right to freedom of expression, free association, and free press in violation of Articles 19 and 22 of the ICCPR, Articles 19 and 20 of the UDHR, Articles 28, 29 and 39 of the 2008 Turkmenistan Constitution and Articles 26, 28 and 36 of the 1992 Turkmenistan Constitution. As such, his case qualifies as a Class II detention as categorized by the Working Group.

## **B. Turkmenistan's Detention of Mr. Khadzhiev Resulted from the Failure to Provide Mr. Khadzhiev with His Right to a Fair Trial**

The UDHR, ICCPR and the Turkmenistan Constitution protect the right to a fair trial. Article 9 of the ICCPR provides 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."<sup>118</sup> In addition, Article 10 and Article 11 of the UDHR guarantee the right to a "public" trial by an "independent and impartial tribunal."<sup>119</sup> Similarly, Article 14 of the ICCPR preserves the right "to a fair and public hearing by a competent, independent and impartial tribunal."<sup>120</sup>

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<sup>116</sup> See *Reporters without Borders Concerned over Conditions Faced by Turkmen Prisoners*, RADIO FREE EUROPE RADIO LIBERTY, Feb. 19, 2009, [http://www.rferl.org/content/Reporters\\_Without\\_Borders\\_Concerned\\_Over\\_Conditions\\_Faced\\_by\\_Turkmen\\_Prisoners/1495824.html](http://www.rferl.org/content/Reporters_Without_Borders_Concerned_Over_Conditions_Faced_by_Turkmen_Prisoners/1495824.html).

<sup>117</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90; 1992 TURKMENISTAN CONSTITUTION, *supra* note 90.

<sup>118</sup> See ICCPR, *supra* note 98, at art. 9(2) ("Anyone 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.").

<sup>119</sup> See UDHR, *supra* note 97, at art. 10 ("Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."); *id.* at art. 11(1) ("Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.").

<sup>120</sup> See ICCPR, *supra* note 98, at art. 14(1) ("All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.").

Moreover, Article 14 of the ICCPR protects an individual’s right to “defend himself in person or through legal assistance of his own choosing.”<sup>121</sup>

The Turkmenistan Constitution also provides for the right to an attorney: Article 43 of the 2008 Turkmenistan Constitution and Article 40 of the 1992 Constitution preserve the right to judicial defense of honor and dignity,<sup>122</sup> while Article 108 of the 2008 Constitution and Article 108 of the 1992 Constitution guarantee the right to professional legal assistance.<sup>123</sup>

The Turkmen authorities violated each of these provisions of law by failing to provide Mr. Khadzhiiev with a fair trial. Step by step, the Turkmen governmental authorities deprived Mr. Khadzhiiev of his civil liberties. And the Turkmen judicial authorities ultimately convicted Mr. Khadzhiiev for a crime he did not commit and have detained him for nearly four years without providing him with his basic right to a fair trial.

First, the Turkmen government failed to notify Mr. Khadzhiiev of the charges against him at the time of his arrest.<sup>124</sup> Turkmen authorities did not formally charge Mr. Khadzhiiev with a crime until July 12<sup>125</sup>—nearly one month after his arrest—and they based their charges on fabricated evidence for a crime Mr. Khadzhiiev did not commit. Second, throughout the two months following his arrest, Turkmen authorities held Mr. Khadzhiiev *incommunicado*, and deprived his chosen attorney of information regarding his case; his attorney did not even learn the charges or the trial date until just before the trial. Furthermore, the attorney that the Turkmenistan government provided to Mr. Khadzhiiev did not act in Mr. Khadzhiiev’s interest, avoided meeting Mr. Khadzhiiev, and even tried to convince him to confess to the false charges. When Mr. Khadzhiiev was finally tried, the trial occurred *in camera* and reportedly lasted only a few minutes.<sup>126</sup> During the trial, Mr. Khadzhiiev was forbidden from calling witnesses to testify on his behalf. And finally, throughout the proceeding, Mr. Khadzhiiev’s relatives and the general public were physically barred from entering the court,<sup>127</sup> and many were intimidated from even attempting access by soldiers and officers who recorded each person who tried to enter the court building.

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<sup>121</sup> See *id.* at art. 14(3)(d) (“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality . . . to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.”).

<sup>122</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 43; 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 40.

<sup>123</sup> See 2008 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 108; 1992 TURKMENISTAN CONSTITUTION, *supra* note 90, at art. 108.

<sup>124</sup> See TURKMENISTAN – HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>125</sup> Front Line Defenders, *Fears for Three Turkmen Human Rights Defenders Held Incommunicado* (Aug. 3, 2006), <http://www.frontlinedefenders.org/node/109>.

<sup>126</sup> See TURKMENISTAN – HUMAN RIGHTS REPORT 2006, *supra* note 3.

<sup>127</sup> See *id.*

Mr. Khadzhev was, therefore, deprived of his right to a fair and public trial, and prevented from presenting the proper defense to which he was entitled. The facts surrounding Mr. Khadzhev's trial also call into question the independence and impartiality of the Turkmenistan court system. By convicting and detaining Mr. Khadzhev based on falsified evidence, without notice of the charges, without meaningful assistance of counsel, without the right to call witnesses, and without public access to the trial, Turkmenistan deprived Mr. Khadzhev of the basic right to a fair trial.

The failure of the Turkmen authorities to furnish Mr. Khadzhev with a fair trial clearly violates Articles 9(2), 14(1) and 14(3)(4) of the ICCPR, Articles 10 and 11 of the UDHR, and Articles 43 and 48 of the 2008 Turkmenistan Constitution and Articles 40 and 108 of the 1992 Turkmenistan Constitution. As such, his case qualifies as a Class III detention as categorized by the Working Group.

***IV. 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.***

Mr. Khadzhev has taken numerous actions within Turkmenistan since his 2006 arrest, but they have all proved unfruitful. Prior to his conviction, Mr. Khadzhev sought release from Mr. Toyly Durdiev, a supervisory investigator at the Ministry of National Security, and from the Turkmenistan Office of the Attorney General; neither of these parties responded to his requests. On August 30, 2006, Mr. Khadzhev formally appealed his sentence to the Supreme Court of Turkmenistan, but that body did not act on his behalf either. Mr. Khadzhev subsequently sought remedy from President Niyazov, the investigators of the Office of the Attorney General, and the Attorney General himself, but all to no avail.

In February 2007, Mr. Khadzhev filed a complaint with the Commission on Public Complaints Over the Activities of Law Enforcement Bodies, a commission that had recently been established by the new President Berdimuhamedov. Mr. Khadzhev never received a formal response to his complaint and was told unofficially by government officials that no basis existed for granting his request. Mr. Khadzhev has since requested a pardon from President Berdimuhamedov and has applied yearly for inclusion in the President's annual pardon of convicts.

Despite all these steps, Mr. Khadzhev remains unlawfully detained by the Turkmen government nearly four years after his initial arrest.

**V. *REQUEST FOR RELIEF***

Based on the foregoing, Petitioner respectfully requests that the Working Group conclude that Turkmenistan's detention of Sapardurdy Khadzhiiev constitutes an arbitrary deprivation of liberty, falling into Categories II and III of cases identified by the Working Group.

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

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