

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

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In the Matter of

Azamat Gaidarovich Umbetaliyev, Beket Tastanbekovich Mynbasov, Samat Asylkhanovich Adilov, Zhuldyzbek Abikenovich Taurbekov, Zhasulan Meiramovich Iskakov, Nazim Alimzhanovich Abdrakhmanov, Ernar Samatovich Samatov, and Bolatbek Dyusenbekovich Nurgaliyev
Citizens of the Republic of Kazakhstan

v.

Government of the Republic of Kazakhstan

Petition for Relief Pursuant to Resolutions 1991/42, 1994/32, 1997/50, 2000/36, 2003/31, 6/4, 15/18, 24/7

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TABLE OF CONTENTS

I. **PETITIONER 1** 3

II. **PETITIONER 2** 4

III. **PETITIONER 3** 5

IV. **PETITIONER 4** 6

V. **PETITIONER 5** 7

VI. **PETITIONER 6** 8

VII. **PETITIONER 7** 9

VIII. **PETITIONER 8** 10

IX. **DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY** 11

 A. *Statement of Facts* 11

 B. *Legal Analysis* 17

X. **INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHROITIES, PARTICULARLY FOR THE PURPOSE O F ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN** 25

XI. **FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION**. 26

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

I. PETITIONER 1

A. Identity

1. *Family Name:* Umbetaliyev (Умбеталиев)
2. *First Name:* Azamat Gaidarovich (Азамат Гайдарович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 26 (born January 10, 1992)
5. *Nationality:* Kazakh
6. (a) *Identity Document (if any):* Unknown
- (b) *Place of Issue:*
- (c) *On (date):*
- (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Besekbaev Street N35A, Village Bereke, Yeltai County, Karasay District of Almaty Region.

B. Arrest

1. *Date of arrest:* October 27, 2018
2. *Place of arrest (as detailed as possible):* At Mr. Umbetaliyev's place of residence.
3. *Did they show a warrant or other decision by a public authority?* No. Under Kazakh law, presentation of a warrant is not required at the time of arrest.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, Article 174(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 27, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Umbetaliyev was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. ICH-167/3, where he is currently detained.
5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.

6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) of the Kazakhstan Criminal Code.

II. PETITIONER 2

A. Identity

1. *Family Name:* Мунбасов (Мынбасов)
2. *First Name:* Beket Tastanbekovich (Бекет Тастанбекович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 35 (born January 10, 1983)
5. *Nationality:* Kazakh
6. (a) *Identity Document (if any):* Unknown
- (b) *Place of Issue:*
- (c) *On (date):*
- (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Saks kaya Street No. 41, Karasu Microdistrict, Almaty, Kazakhstan.

B. Arrest

1. *Date of arrest:* October 27, 2018
2. *Place of arrest (as detailed as possible):* At the entrance of Mechet Ali Mukhammad, on Zhumabayev street.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, and Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 27, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Mynbasov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. 162/3, where he is currently detained.
5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.

6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

III. PETITIONER 3

A. Identity

1. *Family Name:* Adilov (АДИЛОВ)
2. *First Name:* Samat Asylkhanovich (САМАТ АСЫЛХАНОВИЧ)
3. *Sex:* Male
4. *Age at the Time of Detention:* 32 (born August 28, 1986)
5. *Nationality:* Kazakh
6.
 - (a) *Identity Document (if any):* Unknown
 - (b) *Place of Issue:*
 - (c) *On (date):*
 - (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Aldabergenov Street, House N72, Ozhet Micro District, Alatau District, Almaty

B. Arrest

1. *Date of arrest:* October 28, 2018
2. *Place of arrest (as detailed as possible):* Mr. Adilov was arrested at the Committee on National Security building in Almaty.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, Article 174(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 28, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Adilov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. UKA-168/2 in Aktobe, where he is currently detained.

5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) of the Kazakhstan Criminal Code.

IV. PETITIONER 4

A. Identity

1. *Family Name:* Taurbekov (Таурбеков)
2. *First Name:* Zhuldyzbek Abikenovich (Жулдыз Абикенович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 40 (born September 20, 1978)
5. *Nationality:* Kazakh
6. (a) *Identity Document (if any):* Unknown
- (b) *Place of Issue:*
- (c) *On (date):*
- (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Zhan Gasir Street No. 52, Almaty, Kazakhstan.

B. Arrest

1. *Date of arrest:* October 28, 2018
2. *Place of arrest (as detailed as possible):* At Mr. Taurbekov's place of residence.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, and Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 28, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Taurbekov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. 164/3, where he is currently detained.

5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

V. PETITIONER 5

A. Identity

1. *Family Name:* Iskakov (Искаков)
2. *First Name:* Zhasulan Meiramovich (Жасулан Мейрамович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 34 (born October 22, 1984)
5. *Nationality:* Kazakh
6.
 - (a) *Identity Document (if any):* Unknown
 - (b) *Place of Issue:*
 - (c) *On (date):*
 - (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Alashkhan Street, House No. 34, Apartment No. 34, Zhezkazgan City, Karaganda Region, Kazakhstan.

B. Arrest

1. *Date of arrest:* October 27, 2018
2. *Place of arrest (as detailed as possible):* Mr. Iskakov was arrested at his place of employment, at the “Medical Center” in Zhezkazgan.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, and Article 174(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 27, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Iskakov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was

transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. N 159/18 in Karaganda, where he is currently detained.

5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.6.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) of the Kazakhstan Criminal Code.

VI. PETITIONER 6

A. Identity

1. *Family Name:* Abdrakhmanov (Абдрахманов)
2. *First Name:* Nazim Alimzhanovich (Назим АЛИМЖАНОВИЧ)
3. *Sex:* Male
4. *Age at the Time of Detention:* 30 (born March 10, 1988)
5. *Nationality:* Kazakh
6.
 - (a) *Identity Document (if any):* Unknown
 - (b) *Place of Issue:*
 - (c) *On (date):*
 - (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Zhangeldin Street, House No. 67/2, Apartment No. 26, Algas Microdistrict, Almaty, Kazakhstan.

B. Arrest

1. *Date of arrest:* October 28, 2018
2. *Place of arrest (as detailed as possible):* Mr. Abdrakhmanov was arrested outside of his place of residence while taking a walk with his child.
3. *Did they show a warrant or other decision by a public authority?* Yes.
4. *Authority who issued the warrant or decision:* Committee on National Security of the Republic of Kazakhstan.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, Article 174(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 28, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.

3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Abdrakhmanov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. 166/2, where he is currently detained.
5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) of the Kazakhstan Criminal Code.

VII. PETITIONER 7

A. Identity

1. *Family Name:* Samatov (Саматов)
2. *First Name:* Ernar Samatovich (Ернар Саматович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 38 (born March 19, 1980)
5. *Nationality:* Kazakh
6. (a) *Identity Document (if any):* Unknown
(b) *Place of Issue:*
(c) *On (date):*
(d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* Umbetalov Street #64, City Kaskelen of Karasay District in Almaty Region.

B. Arrest

1. *Date of arrest:* October 27, 2018
2. *Place of arrest (as detailed as possible):* The city of Kaskilen.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, and Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 27, 2018
2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.

3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Samatov was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. UP-156/3, where he is currently detained.
5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

VIII. PETITIONER 8

A. Identity

1. *Family Name:* Nurgaliyev (Нургалиев)
2. *First Name:* Bolatbek Dyusenbekovich (Болатбек Дюсенбекович)
3. *Sex:* Male
4. *Age at the Time of Detention:* 39 (born December 12, 1978)
5. *Nationality:* Kazakh
6.
 - (a) *Identity Document (if any):* Unknown
 - (b) *Place of Issue:*
 - (c) *On (date):*
 - (d) *No.:*
7. *Profession and/or activity (if believed to be relevant to the arrest/detention):* Not relevant.
8. *Address of usual residence:* House No. 32 ‘A’, Apartment No. 107, Ainabulak-2 Microdistrict, Almaty, Kazakhstan.

B. Arrest

1. *Date of arrest:* October 27, 2018
2. *Place of arrest (as detailed as possible):* At Kenzhekhan Market.
3. *Did they show a warrant or other decision by a public authority?* No.
4. *Authority who issued the warrant or decision:* N/A.
5. *Relevant legislation applied (if known):* Article 131 of the Kazakhstan Criminal-Procedural Code, and Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

C. Detention

1. *Date of detention:* October 27, 2018

2. *Duration of detention (if not known, probable duration):* Currently detained at the time of submission.
3. *Forces holding the detainee under custody:* Ministry of Internal Affairs
4. *Places of Detention (indicate any transfer and present place of detention):* On the day of arrest, Mr. Nurgaliyev was held at the KNB Detention Center in Almaty. On October 29, 2018, he was transferred to Pre-trial Detention Center LA-155/18, where he remained until the end of trial. Following trial, he was transferred to Prison No. 106/25 in Akmola. On September 26, 2020 he was transferred to Prison No. ZK-169/5, where he is currently detained.
5. *Authorities that ordered the detention:* Committee on National Security of the Republic of Kazakhstan (KNB) and Investigative Judge of the Specialized Inter-District Court on Criminal Cases.
6. *Reasons for the detention imputed by the authorities:* Authorities alleged that he made statements amounting to propaganda of terrorism and incitement of racial discord.
7. *Relevant legislation applied (if known):* Article 174(2) and Article 256(2) of the Kazakhstan Criminal Code.

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

A. Statement of Facts

Part 1 of the Statement of Facts provides background information on the current human rights context in Kazakhstan in order to illustrate the Kazakh Government’s pattern of using overbroad legislation to restrict civil freedoms. Part 2 of the Statement of Facts details the circumstances surrounding the arrest and continuing detention of the petitioners.

1. Relevant Human Rights Context in Kazakhstan

In its most recent review of Kazakhstan, the UN Human Rights Committee expressed concern over the Government’s practice of using Article 174 of the Kazakh Criminal Code to target individuals for merely exercising their right to freedom of expression.¹ Multiple international human rights monitors have found that the Government uses Article 174, which penalizes incitement of “social, national, generic, racial, class or religious discord,” to prosecute those expressing views critical of the Government.² In connection with its observations on Article 174, the Human Rights Committee emphasized the need for Kazakhstan to “[r]efrain from using its criminal provisions and other regulations as tools to suppress the expression of dissenting opinions”³

The Committee’s concerns about Article 174 have been echoed by the Special Rapporteur on the promotion and protection for human rights and fundamental freedoms while countering terrorism, who stated, following her visit to Kazakhstan in 2019, that “Article 174 of the Criminal Code . . . broadly criminalizes incitement to social, national, tribal, class, racial, or religious discord, all of which are

¹ United Nations Human Rights Committee, *Concluding Observations on Kazakhstan*, UN Doc. CCPR/C/KAZ/CO/2, para. 49 (Aug. 9, 2016), available at <https://undocs.org/ccpr/c/kaz/co/2>.

² Human Rights Watch, *World Report 2019: Kazakhstan*, <https://www.hrw.org/world-report/2019/country-chapters/kazakhstan>; Freedom House, *Freedom in the World 2019: Kazakhstan*, <https://freedomhouse.org/report/freedom-world/2019/kazakhstan>.

³ UN Human Rights Committee, *supra* note 1, para. 50.

extremely vague grounds, and fails to provide genuine protection to individual minority groups.”⁴ The Special Rapporteur further notes that convictions under Article 174 are largely based on “the opinions of government-appointed and security-cleared ‘experts’ . . . who are called upon to determine whether any document, statement or group contains extremist elements [and] [o]nce this opinion is obtained, it is very difficult in practice to counter.”⁵

Furthermore, the Special Rapporteur identified similar problems with Article 256 of the Criminal Code, which criminalizes “propaganda of terrorism or public calls for commission of an act of terrorism.”⁶ The Special Rapporteur found that Article 256 is phrased in “extremely general terms, rendering it liable to arbitrary application and silencing legitimate expression,”⁷ and that the Article lacks the essential element of “intent to incite terrorist acts” as well as the element that there be a “direct and immediate connection between the . . . expressive act . . . and the actual (*i.e.* objective) risk of terrorist acts being committed.”⁸

2. The Situation of the Petitioners

a. Background Information on Petitioners

The eight petitioners resided in various regions of Kazakhstan, and the majority of the men had not met one another in person before October 2018. Each is a practicing Muslim, and prior to the arrests concerned in the present petition, none of the men had a criminal history.

On December 2, 2013, Mr. Nurgaliyev, Petitioner 8, created a text message group, called “Ahli Sunnah Val Jamagat,” on the popular messaging application WhatsApp.⁹ According to Mr. Nurgaliyev, the purpose of the group was to share information and engage in discussions concerning Islam.¹⁰ Furthermore, Mr. Nurgaliyev stated that he had hoped that by sharing information about the theological tenants of Islam, his relatives, friends, and others in the group would refrain from engaging in terrorist activities, with which Mr. Nurgaliyev strongly disagreed.¹¹ Between 2013 and 2018, the group grew to 171 members and thousands of messages were exchanged.¹²

All eight petitioners were members of Mr. Nurgaliyev’s WhatsApp group in October 2018, but the involvement of each of the petitioners in the group varied. The majority of engagement in the group involved sharing articles published by Islamic scholars. Some petitioners posted articles and comments more frequently than others. However, Mr. Abdrakhmanov, Petitioner 6, had only ever sent one message to the group, consisting of a section of text that he copied and reposted from an earlier message in the group.¹³ Furthermore, Mr. Adilov, Petitioner 3, had only joined the group 12 days prior to his arrest, and during his time in group he only shared quotes of Islamic scholars, never presenting his own opinions or analysis.¹⁴ Similarly, Mr. Umbetaliyev only ever shared articles from scholars with the group, never

⁴ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46/Add.1, para. 15 (Jan. 22, 2020), <https://undocs.org/a/hrc/43/46/add.1>.

⁵ *Id.*

⁶ *Id.* at para. 14.

⁷ *Id.*

⁸ *Id.*

⁹ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497.

¹⁰ *Id.*

¹¹ See Judgment, on file with author.

¹² Indictment in Case No. 187500041000107, February 18, 2019, on file with author.

¹³ See Indictment, on file with author.

¹⁴ See Judgment, on file with author.

providing commentary or analysis.¹⁵ Since the arrest of Mr. Nurgaliyev, the WhatsApp group has been deleted.

b. *KNB Investigation*

The National Security Committee (KNB) first obtained messages from the WhatsApp group as early as August 2018.¹⁶ In September 2018, KNB secret police investigator, Lieutenant-Colonel Rakhat Rustemov commissioned an “expert analysis” of texts circulated in the discussion group from a political science expert, who concluded that messages exchanged in the group showed “signs of agitating of religious discord.”¹⁷ Subsequently, in early October 2018, another expert report was commissioned to review the messages by an expert on religion, who concluded that the texts contained “ideas of the Salafi trend of Whabbism Islam” and that the messages propagated “religious-radical views.”¹⁸

Subsequent to the commission of the above reports, a criminal case was opened on October 18, 2018 after the KNB received a written statement from an anonymous source, identified as “B.K.Sh.,” who notified officials that the participants of the group actively discussed “religious topics.”¹⁹

c. *Arrest & Indictment*

On October 27 and 28, 2018, KNB officers arrested seven of the eight petitioners (excluding Mr. Adilov) either at the petitioners’ homes or at public locations near their residences. Notably, to arrest Mr. Umbetaliyev, officers lured him outside of his home under the pretense that they wished to discuss some religious matters with him, and after Mr. Umbetaliyev exited his home he was “attacked” by a group of plainclothes officers who pushed him into one of the eight cars that the officers arrived in.²⁰ Moreover, to arrest Mr. Nurgaliyev, officers anonymously lured him to a nearby market, Kenzhekhan Market, under the pretense that they wanted to engage in a business deal. Once Mr. Nurgaliyev arrived at the market, masked men seized him.²¹ None of the seven petitioners arrested during this time were presented with a warrant.²²

The eight arrested petitioners were transported to the KNB’s Detention Center in Almaty.²³ At the time of arrest, each petitioner’s home was searched.²⁴ No illegal items or evidence of wrongdoing were

¹⁵ *Id.*

¹⁶ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497; Kazis Toguzbaev, *The Independent Expert Did Not Find Propaganda of Terrorism in the Actions of Persons Involved in the Case of the “Nine Jihadists”*, RFE/RL (June 4, 2019), <https://rus.azattyq.org/a/29981358.html> (in Russian).

¹⁷ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497; Kazis Toguzbaev, *The Independent Expert Did Not Find Propaganda of Terrorism in the Actions of Persons Involved in the Case of the “Nine Jihadists”*, RFE/RL (June 4, 2019), <https://rus.azattyq.org/a/29981358.html> (in Russian).

¹⁸ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497; Kazis Toguzbaev, *The Independent Expert Did Not Find Propaganda of Terrorism in the Actions of Persons Involved in the Case of the “Nine Jihadists”*, RFE/RL (June 4, 2019), <https://rus.azattyq.org/a/29981358.html> (in Russian).

¹⁹ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497; Kazis Toguzbaev, *The Independent Expert Did Not Find Propaganda of Terrorism in the Actions of Persons Involved in the Case of the “Nine Jihadists”*, RFE/RL (June 4, 2019), <https://rus.azattyq.org/a/29981358.html> (in Russian).

²⁰ Conversation with Confidential Source A.B., on file with author.

²¹ Conversation with Confidential Source C.D., on file with author.

²² Conversations with Confidential Sources A.B, C.D., E.F., G.H., J.K., L.M., N.O., and P.Q., on file with author.

²³ Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497

²⁴ See Judgment, on file with author.

found during these searches.²⁵ Nothing from the searches was introduced at trial or relied upon in the judgment.²⁶

On October 28, 2018, upon hearing of the arrest of Mr. Nurgaliyev from an acquaintance, Mr. Adilov visited the KNB in Almaty to inform them that the group was not involved in any illegal activities and that it was a forum for religious discussion.²⁷ However, this resulted in Mr. Adilov being interrogated, arrested, and placed under investigation with the other petitioners.²⁸

All eight petitioners were interrogated without a lawyer present.²⁹ Four of the petitioners—including Mr. Nurgaliyev, Mr. Mynbasov, Mr. Umbetaliyev, and Mr. Adilov—explicitly requested access to private lawyers during their interrogation, but the interrogating KNB officers refused to oblige.³⁰ During the interrogation, investigators instructed Mr. Nurgaliyev to convince the other petitioners to refuse the assistance of a private lawyer.³¹ In the absence of a lawyer, three of the petitioners—Mr. Mynbasov, Mr. Iskakov, and Mr. Abdrakhmanov—alleged at trial that investigators pressured them into signing false statements and a guilty plea.³² Neither the police, the prosecution, or the judge conducted any investigation into the allegations of forced and coerced confessions.

On October 29, 2018, an Investigative Judge of the Specialized Inter-District Court on Criminal Cases ordered the petitioners to be held in pre-trial detention.³³ The Investigative Judge did not provide any grounds for denying bail and ordering detention other than referencing the allegations presented in the indictment.³⁴ The Judge ordered that petitioners be held in the Pre-trial Detention Center LA-155/18, where they remained until trial.

In February 18, 2019, all eight petitioners were indicted along with a ninth individual who was part of the same WhatsApp group.³⁵ The indictment alleged that the nine men “acting with a common intention, aware of the illegality of their actions . . . actively discussed religious themes . . . deliberately made radical statements which represented propaganda of terrorism and agitation of racial discord.”³⁶ The indictment supports this allegation by claiming that because the WhatsApp group’s founder Mr. Nurgaliyev is a Salafi Muslim and because terrorist groups following similar ideology have conducted terrorist activities, therefore the WhatsApp group promoted terrorism.³⁷

Under the indictment, all nine men were charged with violating Article 174, paragraph 2 of the Kazakhstan Criminal Code. Article 174 paragraph 1 states,

Intentional actions, directed to agitation of social, national, generic, racial, class or religious discord, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, generic or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media,

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Conversation with Confidential Source A.B., on file with author; Judgment, on file with author.

³⁰ Judgment, on file with author.

³¹ Judgment, on file with author.

³² *Id.*

³³ Indictment, on file with author.

³⁴ Conversations with Confidential Sources A.B, C.D., E.F., G.H., J.K., L.M., N.O., and P.Q., on file with author.

³⁵ Indictment, on file with author.

³⁶ *Id.*

³⁷ Indictment, on file with author; Felix Corley, *Kazakhstan: Nine Years’ Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497.

promoting social, national, generic, racial, class or religious discord—shall be punished by restriction of liberty for the term of two to seven years or imprisonment for the same term.³⁸

Paragraph 2 of Article 174 provides for a sentence of 5 to 10 years for those guilty of violating paragraph 1 along with a group of people.³⁹

The indictment also charged four of the petitioners—Mr. Nurgaliyev, Mr. Mynbasov, Mr. Samatov, and Mr. Taurbekov—with violating Article 256, paragraph 2 of the Criminal Code. Article 256, paragraph 1 states,

Propaganda of terrorism or public calls to commit terrorism, which includes the production, storage for distribution or distribution of specified materials, carries a punishment of five to nine years' imprisonment plus confiscation of property.⁴⁰

Paragraph 2 of the Article provides for a sentence of 7 to 12 years if the action criminalized under paragraph 1 is “committed by an individual using a state or non-state official position, or with the use of the mass media or other communication networks, or with foreign support, or in a group.”⁴¹

d. *Trial*

On February 27, 2019, the indictment was filed with the Almalinsky District Court in Almaty.⁴² The trial officially began on March 12, 2019 and spanned for the next five months.⁴³ At trial, the government, represented by a series of four successive prosecutors, presented no evidence that any members of the group—particularly Mr. Nurgaliyev, Mr. Mynbasov, or Mr. Samatov who were charged under Article 256—were advocating, encouraging, or condoning acts of terrorism.⁴⁴ The only connection made between the petitioners and terrorism was the allegation that their denomination of Islam was Salafism.⁴⁵ The prosecution presented an expert witness on religion who testified that certain messages within the group exhibit ideas associated with Salafist Islam.⁴⁶ Additionally, the prosecution introduced testimony from the KNB investigator, Lieutenant-Colonel Rakhat Rustemov—the official responsible for initiating the investigation into the petitioners—who claimed at trial that because (1) the group's creator, Mr. Nurgaliyev, is a Salafi Muslim, (2) Salafism is similar in ideology to the Islamic State, and (3) the Islamic State has conducted terrorist activity, therefore the WhatsApp group, by promoting Salafism, is promoting terrorism.⁴⁷ Despite the Lieutenant-Colonel's reference to the Islamic State, there was no evidence presented at trial that any of the defendants has any connection with the Islamic State or had made any comments in support.⁴⁸ One of the petitioners' defense counsels brought this fact to the attention of the Court, but the trial judge disregarded defense counsel's observation.⁴⁹

On the issue of agitation of religious discord, the prosecution called for testimony from four of the WhatsApp group members that were not indicted. Although one of the four claimed that some of the messages agitated religious discord against other people, the three other group members testified that the group was for religious education purposes and messages exchanged were scholarly articles or passages

³⁸ Kazakhstan Criminal Code, art. 174(1).

³⁹ Kazakhstan Criminal Code, art. 174(2).

⁴⁰ Kazakhstan Criminal Code, art. 256(1).

⁴¹ Kazakhstan Criminal Code, art. 256(2).

⁴² Judgment, on file with author.

⁴³ Felix Corley, *Kazakhstan: Nine Years' Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Judgment, on file with author.

⁴⁷ Felix Corley, *Kazakhstan: Nine Years' Jail for Online Discussion Group?*, Forum 18 (July 31, 2019), http://www.forum18.org/archive.php?article_id=2497.

⁴⁸ *Id.*

⁴⁹ *Id.*; Judgment, on file with author.

directly from religious texts.⁵⁰ The prosecution also introduced an expert witness specializing in political science, who testified that the messages contain agitation to religious discord and signs of religious superiority.⁵¹ The expert also testified that some of the messages would have the effect of offending the religious feelings of other people.⁵² However, the political science expert, in contradiction to the government's religion experts, also testified that the messages do not contain advocacy of a violent overthrow of the government, violent change of the constitution, or propaganda of terrorism or incitement to terrorism.⁵³

The primary evidence presented by defense counsel was the testimony of an independent expert in the area of philology. After reviewing the messages, the defense expert concluded that the messages did not contain incitement to hostility towards others based on their religion and did not contain any incitement to aggression, violence or terrorism towards others.⁵⁴

On July 3, 2019, before the end of the trial, Mr. Taurbekov, Petitioner 4, began to suffer significant medical issues related to his heart.⁵⁵ Because Mr. Taurbekov required prolonged hospitalization, the trial judge determined that he was temporarily unable to stand trial and severed his case from the other eight petitioners. The trial proceeded against the remaining eight petitioners, with the trial against Taurbekov resuming at a later date.

On August 5, 2019, the Almalinsky District Court of Almaty found the remaining seven petitioners guilty of violating Article 174(2) and found Mr. Nurgaliyev, Mr. Samatov, and Mr. Mynbasov additionally guilty of violating Article 256(2).⁵⁶ The court sentenced Mr. Abdrakhmanov, Mr. Adilov, Mr. Iskakov, and Mr. Umbetaliyev to five and a half years imprisonment, while it sentenced Mr. Samatov and Mr. Mynbasov to seven and a half years imprisonment and Mr. Nurgaliyev to eight years imprisonment.

In the judgment, the trial judge explicitly refused to consider the testimony of the expert witness presented by the defense.⁵⁷ The judge also considered the fact that several of the defendants had signed guilty pleas which supported the view of the prosecution experts over the defense expert.⁵⁸ Furthermore, the judge cites, without context, fourteen messages in the trial judgement, one or more sent from each petitioner, intended to demonstrate their guilt. The Source has English translations of the messages cited in the judgement on file. For several petitioners' messages, the message only involved reposting text from an article by an Islamic scholar.

After spending significant time in a hospital receiving treatment for his heart condition, Mr. Taurbekov's trial resumed on December 3, 2019. He was subsequently convicted on January 6, 2020 under both Article 174(2) and Article 256(2) and sentenced to seven years in prison. The evidence presented at Mr. Taurbekov's trial mirrored the evidence presented at the prior trial of the other eight group members.

e. *Current Status*

As noted above, the petitioners were transferred to various prisons across Kazakhstan where they remain in detention. The seven petitioners who were convicted on August 5, 2019 appealed their conviction to the Almaty City Court. However, their appeal was denied on November 20, 2019. Similarly, once Mr. Taurbekov was convicted, he appealed his conviction to the same court, but his appeal was also denied on April 9, 2020.

⁵⁰ Judgment, on file with author.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Judgment, on file with author; Expert Testimony of Karymsakova, on file with author.

⁵⁵ Conversation with Confidential Source A.B., on file with author.

⁵⁶ Judgment, on file with author.

⁵⁷ *Id.*

⁵⁸ *Id.*

At the time of submission, none of the other 162 members of the WhatsApp group have been arrested, indicted, or tried in relation to their membership in the group.

B. Legal Analysis

The arrest and continuing detention of petitioners is arbitrary under Categories I, II, and III of the Working Group's Revised Methods of Work.⁵⁹ The detention is arbitrary under Category I because petitioners are detained without adequate legal basis. The detention is arbitrary under Category II because it resulted from petitioners peaceful and legitimate exercise of their rights to freedom of expression and religion. The detention is arbitrary under Category III because the Government's arrest and detention of petitioners failed to meet the minimum international standards of due process.

1. **Arbitrary Deprivation of Liberty under Category I**

A detention is arbitrary under Category I when there is no legal basis or justification for it.⁶⁰ The Working Group has found lack a legal basis for the purposes of Category I when an individual is arrested without substantive evidence to justify the arrest⁶¹ and when the Government uses vague and/or overbroad laws to prosecute an individual.⁶² In the present case, petitioners' detention is arbitrary under Category I because the Government lacks any substantive evidence to justify their detention and because the Government charged and convicted petitioners under a vague and overbroad provision of the Kazakh Criminal Code.

a. *The Government of Kazakhstan Did Not Have Evidence to Justify Detaining Petitioners*

The Government's pre-trial detention and sentencing of petitioners is not founded on any reasonable evidence against petitioners. The UN Special Rapporteur on the freedom of religion or belief has warned that "strategies to prevent violent extremism have tended to alienate a range of religious or belief communities, undermining the enjoyment of several fundamental freedoms," and that "some policy practices for countering violent extremism have 'securitized' religion or belief, wherein religion is perceived as a threat requiring extraordinary punitive legal and policy measures."⁶³ To avoid these pitfalls,

⁵⁹ An arbitrary deprivation of liberty is defined as any "depriv[ation] of liberty exception on such grounds and in accordance with such procedures as are established by law." *International Covenant on Civil and Political Rights*, G.A. Res 2200A (XXI), 21 UN GAOR Supp. (No. 16), at 52, U.N. Doc. A/6316 (1966), 999 UNTS 171, entered into force on Mar. 23, 1976 (hereinafter "ICCPR"), at art. 9(1). An arbitrary deprivation of liberty is expressly prohibited under international law. *Id.*; *See also Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter "UDHR"), at art. 9, (1948) ("No one shall be subjected to arbitrary arrest, detention or exile."); *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, 43 UN GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (hereinafter "Body of Principles"), at principle 2 ("Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law . . .").

⁶⁰ 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 . . ." Report of the Working Group on Arbitrary Detention, 16th session, A/HRC/16/47, Annex 8(b) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement>.

⁶¹ *Gargari v. Mexico*, UN Working Group on Arbitrary Detention, Opinion No. 58/2016, para. 21 (Nov. 25, 2016), <https://www.unwgadatabase.org/un/Document.aspx?id=3283>.

⁶² *61 Individuals v. United Arab Emirates*, UN Working Group on Arbitrary Detention, Opinion No. 60/2013, para. 22 (Nov. 22, 2013), <http://hrlibrary.umn.edu/wgad/60-2013.html>; *Judicaël et al. v. Republic of Congo*, UN Working Group on Arbitrary Detention, Opinion No. 44/2014, paras. 26-37 (Feb. 4, 2015), <http://hrlibrary.umn.edu/wgad/44-2014.pdf>.

⁶³ UN Special Rapporteur on the freedom of religion or belief, *Interim report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/73/362, para. 14 (Sep. 5, 2018), <https://undocs.org/A/73/362>.

the Special Rapporteur affirms that “States must demonstrate with clear evidence that individuals or groups of individuals have been involved in activities that incite discrimination or violence, or that they are undermining the rights and freedoms of others in tangible ways, before any punitive steps are taken.”⁶⁴

The Government is detaining petitioners entirely on the basis of their messages exchanged in a WhatsApp group dedicated to religious discussions of the theology of Islam. Petitioners and witnesses both testified that the group was dedicated to theological discussions and the sharing of religious expert opinion on Islam. Such discussions do not constitute either incitement or propaganda for terrorism, and the government presented no evidence that the discussions in the group or the messages sent by the petitioners, in any way, amounts to “undermining the rights and freedoms of other in tangible ways.” Furthermore, despite the prosecution’s and investigator’s invocation of the Islamic State, there was absolutely no evidence that any of the petitioners in the group condones, promoted, or issued propaganda for such a group. In fact, in their testimony the petitioners openly condemned the Islamic State as well as acts of violence in the name of Islam. Moreover, as noted above, the purpose of the creation of the group, according to its founder, Mr. Nurgaliyev, was partly to dissuade violence through education in the tenants of Islam.

The context surrounding petitioners’ statements demonstrates that their speech falls within the scope of the law. The Special Rapporteur has observed that when purportedly acting in the interest of public safety to restrict religious engagement, “State[s] may use such an excuse to limit the rights of person belonging to a religion or belief community that it finds inconvenient, and some have taken the public safety and order limitation to mean ‘public interest restrictions.’” Here, because the State was unable to present evidence of a tangible threat to society exhibited in the petitioners’ private messages, it strongly suggests that their punishment relates to their religious expression being undesirable. Such a motivation lacks a legitimate basis in law. Accordingly, petitioners’ detention is arbitrary under Category 1 because there is no basis, in either evidence presented or in fact, for the detention.

b. *Article 174 of the Kazakh Criminal Code Is Vague and Overbroad*

Article 15(1) of the International Covenant on Civil and Political Rights (“ICCPR”)⁶⁵ and Article 11(2) of the Universal Declaration of Human Rights (“UDHR”)⁶⁶ 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

⁶⁴ UN Special Rapporteur on the freedom of religion or belief, *Interim report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/73/362, para. 27 (Sep. 5, 2018), <https://undocs.org/A/73/362>.

⁶⁵ ICCPR, *supra* note 59, 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.”).

⁶⁶ UDHR, *supra* note 59, art. 11(2) (“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.”).

application.”⁶⁷ Moreover, the Human Rights Committee finds that a law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly. . .”⁶⁸

Article 174 of Kazakhstan’s Criminal Code defines criminal activity in a manner that is overly broad and vague. Under Article 174, the prohibited activities consist of

Intentional actions, directed to agitation of social, national, generic, racial, class or religious discord, insult of the national honour and dignity or religious feelings of citizens, as well as propaganda of exclusivity, superiority or inferiority of citizens on grounds of their relation to religion, class, national, generic or racial assignment, if these actions are committed publicly or with the use of mass media or information and communication networks, as well as by production or distribution of literature or other information media, promoting social, national, generic, racial, class or religious discord . . .

The section heavily relies on indeterminate language, such as “discord” or “insult of national honour and dignity or religious feelings.” This language fails to provide a clear description of which activities are prohibited. Moreover, many actions that are seemingly criminalized under this section are otherwise protected by international human rights law. Indeed, the UN Human Rights Committee, in its review of Kazakhstan, has identified Article 174 as a “broadly formulated offence” and has recommended, with respect to Article 174, that the Government “[c]larify the vague and broad definitions of key terms . . .”⁶⁹ Furthermore, the Working Group on Arbitrary Detention has echoed the concerns of the Committee with respect to Article 174.⁷⁰ Due to the pervasive inclusion of indeterminate and subjective terms in Article 174, there is no way for an individual to determine *ex ante* whether their actions will, for example, have the effect of insulting someone or, potentially, cause someone to engage activities that could fall within the broad category of discord.

Article 174’s vagueness and overbreadth permit the Kazakh authorities to abuse the statute and crack down on legitimate forms of political dissent. As identified by the UN Human Rights Committee, Article 174 is applied extensively to individuals exercising their legitimate rights under international human rights law.⁷¹ Here, all petitioners were convicted under Article 174 for an instance of their legitimate exercise of their right to freedoms of expression and religion. Accordingly, petitioners’ continuing detention is arbitrary under Category I because the law that provides the basis for their detention, Article 174 of the Criminal Code, is both vague and overbroad in violation of the ICCPR and UDHR.

c. *Article 256 of the Kazakh Criminal Code Is Vague and Overbroad*

Article 256 of the Criminal Code is also too vague to provide a “legal basis” for the conviction of petitioners, as the government has applied it to them. Article 256 defines criminal activity as follows:

⁶⁷ UN Human Rights Committee, General Comment No. 35: Article 9 (Liberty and Security of Persons), UN Doc. CCPR/C/GC/35, para. 22 (Dec. 16, 2014), available at <https://undocs.org/ccpr/c/gc/35> [hereinafter “General Comment No. 35”]; UN Human Rights Committee, *Concluding Observations on Mauritius*, UN Doc. CCPR/CO/83/MUS, para. 12 (Apr. 27, 2005), available at <https://undocs.org/CCPR/CO/83/MUS>; UN Human Rights Committee, *Concluding Observations on Russia*, UN Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), para. 24, available at <https://undocs.org/CCPR/C/RUS/CO/6>.

⁶⁸ UN Human Rights Committee, General Comment No. 34: Article 19 (Freedom of Expression), UN Doc. CCPR/C/GC/34, para. 25 (Sep. 12, 2011), available at <https://undocs.org/CCPR/C/GC/34> [hereinafter “General Comment No. 34”].

⁶⁹ UN Human Rights Committee, *supra* note 1, paras. 49-50.

⁷⁰ *Bilash v. Kazakhstan*, UN Working Group on Arbitrary Detention, Opinion No. 43/2029, para. 69 (Aug. 25, 2020), on file with author.

⁷¹ *Id.* at paras. 47, 49.

Propaganda of terrorism or public calls to commit terrorism, which includes the production, storage for distribution or distribution of specified materials, carries a punishment of five to nine years' imprisonment plus confiscation of property.⁷²

The above provision utilizes extremely general terms, that render the article liable to arbitrary application to silence legitimate expression. The very act that it is intended to criminalize, “propaganda of terrorism,” is not defined, either in the article or elsewhere in the criminal code. Such vagueness leads to arbitrary application and censorship of speech that should otherwise find protection under the law. Given that none of the petitioners convicted under Article 256 supported, condoned, or advocated terrorist activities in the messages that the government used to convict them, the government’s application of “propaganda of terrorism” to the applicants demonstrates the existence of vagueness in the term and the existence of arbitrariness in its application.

As identified by the Special Rapporteur on the promotion and protection for human rights and fundamental freedoms while countering terrorism, international standards require that criminal measures for tackling terrorism or “extremism” draw a direct and immediate connection between the action—including an expressive act—and the actual (i.e. objective) risk of terrorist acts being committed as a result.⁷³ Article 256 fails to require such a connection. Moreover, Article 256 contains no explicit element requiring that the government demonstrate intent on behalf of perpetrators, such as an intent to promote extremist content or an intent to promote violence. Accordingly, Article 256 is too vague to provide a legal basis for the four petitioners who were convicted under the law. Accordingly, their conviction violates the ICCPR and UDHR, and their detention falls under Category I.

2. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II of the Working Group’s Revised Methods of Work when it results from the exercise of fundamental rights or freedoms protected under international law, including the rights to freedom of expression and religion.⁷⁴ The Government arrested and detained petitioners on the basis of their exercise of both of these rights.

a. *Petitioners’ Detention Is a Restriction on Their Right to Freedom of Religion and Expression*

The rights to freedoms of religion and expression are protected under both international and Kazakh law. Article 18(1) of the ICCPR, to which Kazakhstan is a party, provides that

[e]veryone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.⁷⁵

⁷² Kazakhstan Criminal Code, art. 256(1).

⁷³ *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, UN Doc. A/HRC/43/46/Add.1, para. 14 (Jan. 22, 2020), <https://undocs.org/a/hrc/43/46/add.1>.

⁷⁴ 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 and 18-21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights.” *Methods of Work of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/33/66, para. 8b [hereinafter “Revised Methods of Work”].

⁷⁵ ICCPR, *supra* note 59, art. 18(1).

This right is similarly protected under Article 18 of the UDHR as well as Article 14 of the Kazakhstan Constitution.⁷⁶ In its General Comment 22, the Human Rights Committee explicitly stated that “[t]he freedom to manifest religion or belief may be exercised ‘either individually or in community with others and in public or private.’”⁷⁷ 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.”⁷⁸ The Human Rights Committee has explicitly stated that religious discourse is protected under the right to freedom of expression.⁷⁹ As noted by the UN Special Rapporteur on the freedom of religion or belief, freedom of expression is necessary for the meaningful enjoyment of the freedoms of thought conscience, and religion or belief.⁸⁰ Furthermore, the right to freedom of expression is also protected under Article 19 of the UDHR as well as under Article 20(1) of the Constitution of Kazakhstan.⁸¹

In the present case, the petitioners were arrested, tried, and convicted for their participation in a messaging group engaged in sharing and discussing religion, religious texts, and theological writings. The activity for which petitioners are currently detained is, in both subject matter and form, an exercise of their freedom of religion and expression. Their activities fall within the scope of freedom of religion as their messages amount to the sharing of religious information on Islam. Their activities fall within the scope of freedom of expression as they used a messaging app to share ideas of others on religion.

All of the messages cited in the trial judgement as evidence of criminal culpability fall within the scope of the rights to freedom of religion and expression. The messages cited in the judgement against the defendants were all quotes or paraphrases from religious texts or scholars. For Mr. Umbetaliyev, the single message for which he was tried and convicted was an Islamic scholar's quote that he re-posted from an earlier message in the chat—notably, the person who initially posted the quote was not tried in these proceedings, and as far as the Source is aware, has not been arrested.⁸² For Mr. Samatov, two messages were cited in the judgment.⁸³ The first message was a quote from a religious text that was cut short in the judgement and removed from its context, and the second message was a question about Namaz, and whether his interpretation was correct or not. For Mr. Taurbekov, the messages cited in the judgment against him were quotes from the Hadith, which is a collection of sayings of the Islamic Prophet Muhammad.⁸⁴ The single message cited against Mr. Adilov was a quote that he shared of an Islamic theologian, Sheikh Mukbil.⁸⁵ For Mr. Abdrakhmanov, the single message cited against him was a quote from an Islamic scholar, Sheik Abdul Aziz Az Rojikh. ⁸⁶ Similar to the case of Mr. Umbetaliyev, the quote shared by Mr.

⁷⁶ UDHR, *supra* note 59, art. 18 (stating “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”); Constitution of Kazakhstan, art. 14(2) (stating “No one shall be subject to any discrimination for reasons of . . . attitude towards religion [or] convictions . . .”).

⁷⁷ UN Human Rights Committee, General Comment No. 22: Article 18 (Freedom of Religion), UN Doc. CCPR/C/GC/32, para. 4 (Sep. 12, 2011), *available at* <https://undocs.org/CCPR/C/GC/32> [hereinafter “General Comment No. 22”].

⁷⁸ ICCPR, *supra* note 59, art. 19(2).

⁷⁹ General Comment No. 34, *supra* note 68, para. 11.

⁸⁰ UN Special Rapporteur on the freedom of religion or belief, *Report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/HRC/40/58, para. 10 (Mar. 5, 2019), <https://undocs.org/A/HRC/40/58>.

⁸¹ UDHR, *supra* note 59, art. 19 (stating “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”); Constitution of Kazakhstan, art. 20(1) (stating “The freedom of speech and creative activities shall be guaranteed. Censorship shall be prohibited”).

⁸² Conversation with Confidential Source A.B., on file with author.

⁸³ Conversation with Confidential Source E.F., on file with author.

⁸⁴ Conversation with Confidential Source G.H., on file with author.

⁸⁵ Conversation with Confidential Source J.K., on file with author.

⁸⁶ Conversation with Confidential Source L.M., on file with author.

Abdrakhmanov had been shared earlier in the group, but Mr. Abdrakhmanov merely reposted it.⁸⁷ As far as the Source is aware, the original poster of that quote was neither investigated nor tried in relation to sending that message. For Mr. Iskakov, the two messages cited against him were quotes of two Islamic scholars, Ibn Taymiyyah and al Hajawi al-Hanbali.⁸⁸ For Mr. Nurgaliyev, the messages cited against him are all quotes taken from the Hadith.⁸⁹

For the messages cited against Mr. Mynbasov, the Source is unable to identify their origin. Nonetheless, the messages appear to also be quotes of scholars, discussing topics addressed in Islamic texts. Out of the three messages sent by Mr. Mynbasov, only one references anything that could be construed as discussing violence. In that comment, which appears to be a quote, the message states that it is the responsibility of Muslims to fight for the interests of their religion. The message does not specify whether any such “fighting” implies violence or violent acts. In light of the fact that religious texts, such as the Quran, mention violence, any thorough discussion of religion will have to address how religious texts deal with violence. Accordingly, the mere mention of violence by Mr. Mynbasov is, without more, protected religious expression.

In none of the comments referenced in the judgment do any of the men call for specific acts of violence against any identifiable group of people. Accordingly, the Government’s detention of petitioners constitutes a violation of their rights to freedom of expression and religion.

b. *None of the Exceptions under Articles 18 or 19 Apply in This Case*

Although the rights to freedom of religion and expression are not absolute, none of the exceptions to these rights apply to Kazakhstan’s restriction of petitioners’ rights. Under international law, the rights to freedom of expression⁹⁰ and religion⁹¹ may only be restricted in limited circumstances, and the Human Rights Committee has established a three-part “strict test of justification” in analyzing limitations on such fundamental rights.⁹² For a given limitation to be permissible, the limitation must (1) be provided for by law, (2) serve an enumerated purpose, and (3) be necessary to achieve that purpose.⁹³ The enumerated purposes for which a Government may restrict these fundamental rights are to protect national security, public safety and public order, public health, and the fundamental rights and freedoms of others.

The Human Rights Committee has emphasized that such restrictions must not “put in jeopardy the right itself.”⁹⁴ It is not sufficient for a government to merely invoke one of the enumerated exceptions, but must “specify the precise nature of the threat” posed by the protected activity,⁹⁵ establish a “direct and

⁸⁷ *Id.*

⁸⁸ Conversation with Confidential Source N.O., on file with author.

⁸⁹ Conversation with Confidential Source P.Q., on file with author.

⁹⁰ 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 59, art. 19(3).

⁹¹ Article 18(3) of the ICCPR provides that “Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.” See ICCPR, *supra* note 59, art. 18(3).

⁹² *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, UN Doc. CCPR/C/64/D/628/1995, para. 10.3, (3 Nov. 1998).

⁹³ *Shin v. Republic of Korea*, UN Human Rights Committee, Communication No. 926/2000, UN Doc. CCPR/C/80/D/926/2000, para 7.2 (16 March 2004).

⁹⁴ General Comment No. 34, *supra* note 68, para. 21.

⁹⁵ *Sohn v. Republic of Korea*, UN Human Rights Committee, Communication No. 518/1992, UN Doc. CCPR/C/54/518/1992, para. 10.4 (July 19, 1992).

immediate connection between the expression and the threat,” and demonstrate why the limitation was necessary.⁹⁶

The UN Special Rapporteur on the freedom of religion or belief has emphasized that in the context of laws criminalizing hate speech, “States must ensure that criminal sanctions are imposed only in the most serious cases and be, based on a number of contextual factors, including intent.”⁹⁷ Similarly, the UN Special Rapporteur on freedom of opinion and expression has emphasized that intent is an essential element of laws criminalizing expression, particularly hate speech and incitement to violence.⁹⁸

The arrest and detention of petitioners fall well outside any possible legitimate restriction on the right to freedom of religion and expression. First, there is no indication that petitioners’ sentences of between 5-8 years in prison are necessary to protect any government interest. None of the petitioners expressed any intention to encourage violence or hatred, and none of the evidence presented by the government suggested that petitioners themselves were engaged in, planning, or condoning acts of violence or hatred. The punishment, in addition to being grossly disproportionate, does not serve any legitimate purpose given the context and content of the messages exchanged by petitioners. Second, as stated above, the laws under which petitioners were convicted are vague and overbroad, which results in the laws failing to satisfy the “provided for by law” condition of any legitimate limitation on either expression or religion.

Accordingly, petitioners’ detention does not fall within the scope of the exceptions to the rights to freedom of expression and religion, and the Government has acted in violation of articles 19 and 18 of the ICCPR as well as articles 19 and 18 of the UDHR, making their arbitrary as defined under Category II.

3. Arbitration Deprivation of Liberty under Category III

According to Category III of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the total or partial non-observance of international norms relating to the right to a fair trial, spelled out in the 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.”⁹⁹

Due process is at the core of the right to a fair trial. The minimum international standards of due process are established in the ICCPR, the UDHR, and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”), and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).¹⁰⁰

a. *Kazakhstan Violated Petitioners’ Right to Release Pending Trial*

Article 9(3) of the ICCPR guarantees an individual’s right to release pending trial, establishing that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”¹⁰¹ The Human Rights Committee has clarified 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. . . .”¹⁰² Moreover,

⁹⁶ General Comment No. 34, *supra* note 68, para. 35.

⁹⁷ UN Special Rapporteur on the freedom of religion or belief, *Report of the Special Rapporteur on freedom of religion or belief*, UN Doc. A/HRC/40/58, para. 14 (Mar. 5, 2019), <https://undocs.org/A/HRC/40/58>.

⁹⁸ UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, *Promotion and Protection of the Right to Freedom of Opinion and Expression*, UN Doc. A/67/357, para. 46 (Sep. 7, 2012), <https://undocs.org/A/67/357>.

⁹⁹ Revised Methods of Work, *supra* note 74, Category III, para. c.

¹⁰⁰ *Id.* at Category III, paras. 7(a)-(b).

¹⁰¹ ICCPR, *supra* note 59, art. 9(3).

¹⁰² General Comment No. 35, *supra* note 67, para. 38.

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.¹⁰³

In the present case, petitioners were brought before a judge on October 29, 2018 and ordered them to remain in pre-trial detention, where remained until trial. The judge did not provide any individualized reasons about petitioners to justify detaining them. Even if the court had attempted to provide a justification for keeping petitioners in detention, the court would not find any legitimate reasons for detention. Petitioners has no history of violence, and thus is not a threat to society. All petitioners currently reside in Kazakhstan and their families live in Kazakhstan, and thus they do not pose a flight risk. Moreover, there is no evidence that the Government could point to that petitioners might destroy if they were released. Accordingly, the pre-trial detention of petitioners is unfounded, and the denial of their pre-trial release is a violation of Article 9(3) of the ICCPR and principles 38 and 39 of the Body of Principles.

b. *Kazakhstan Violated Petitioners' Right to Counsel of Their Own Choosing and to Communicate with Counsel*

Article 14(3)(d) of the ICCPR guarantees the right to defense, by stating that a criminal defendant has the right to “be tried in his presence, and to defend himself in person or through legal assistance of his own choosing.” In addition, Article 14(3)(b) of the ICCPR guarantees a criminal accused the right “to communicate with counsel of his own choosing.”¹⁰⁴ The Human Rights Committee has clarified that such guarantee “requires that the accused is granted prompt access to counsel,”¹⁰⁵ and that “State parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention.”¹⁰⁶ Principles 18(1) and (3) of the Body of Principles further provide for the right of a detainee to “communicate and consult with his legal counsel,” and that such right “may not be suspended or restricted save in exceptional circumstances.”¹⁰⁷ Rule 119 of the Mandela Rules also provides for the right to access legal advice,¹⁰⁸ and the Constitution of Kazakhstan states that “[e]very person detained, arrested and accused of committee crime shall have the right to the assistance of defense lawyer (defender) from the moment of detention, arrest or accusation.”¹⁰⁹

During investigations, several petitioners notified authorities, in no uncertain terms, that they desired legal private representation. Despite these clear requests, investigators refused. Moreover, investigators specifically pressured petitioners not to ask for lawyers and to sign plea deals. The lack of representation led to several petitioners being unduly pressured into signing statements, without assistance of counsel, that were subsequently introduced in trial.

Accordingly, Kazakhstan has violated Articles 14(3)(b) and 14(3)(d) of the ICCPR, principles 18(1) and (3) of the Body of Principles, Rule 119 of the Mandela Rules, and Article 16(3) of the Constitution of the Republic of Kazakhstan.

¹⁰³ Body of Principles, *supra* note 59, prin. 38, 39.

¹⁰⁴ ICCPR, *supra* note 59, art. 14(3)(b).

¹⁰⁵ UN Human Rights Committee, *General Comment No. 32: Article 14 (Right to Equality Before Courts and Tribunals and to a Fair Trial)*, UN Doc. CCPR/C/GC/32, para. 32 (Aug. 23, 2007), available at <https://undocs.org/CCPR/C/GC/32>.

¹⁰⁶ General Comment No. 35, *supra* note 67, para. 35.

¹⁰⁷ Body of Principles, *supra* note 59, prin. 18(1), (3).

¹⁰⁸ *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175, rule 119, available at <https://undocs.org/A/RES/70/175> [hereinafter “Mandela Rules”] (stating “If an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”).

¹⁰⁹ Constitution of Kazakhstan, art. 16(3).

c. *The Government Violated Petitioners' Right to a Presumption of Innocence and Equality of Arms*

Article 14(1) of the ICCPR guarantees the right “to a fair and public hearing by a competent, independent and impartial tribunal.”¹¹⁰ One of the key tenets of a fair hearing is the principle of equality of arms, which requires that both parties have the same procedural rights.¹¹¹ Furthermore, Article 14(2) of the ICCPR guarantees that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty.”¹¹² This right is reiterated in Article 11(1) of the UDHR.¹¹³ The Human Rights Committee has emphasized that States may never “[d]eviat[e] from fundamental principles of fair trial, including the presumption of innocence. . . .”¹¹⁴ This right requires that the prosecution bear the burden of proving the charge against a defendant beyond a reasonable doubt.¹¹⁵

The trial of petitioners was not a fair one. The court did not consider exculpatory evidence in favor of the defendants. In the judgement, the court did not credit the testimony of three members of the group who stated that the group was not inciting hatred or violence, but only involved sharing and discussing religious articles. Instead, the court only considered the testimony of one witness who stated the opposite. Moreover, evidence introduced by petitioners’ counsel demonstrating that the messages did not amount to incitement to hatred or violence was not considered in court’s final judgement. Instead the court only recognized the government’s experts as able to comment on the nature of the messages in the group. This demonstrates a clear bias on behalf of the judge in favor of the prosecution. Accordingly, the trial judge’s selective consideration of the evidence demonstrates a lack of equality of arms, the absence of a presumption of innocence, and unfairness in proceedings.

Accordingly, the conviction of petitioners amounts to a violation of their right to a presumption of innocence. For these reasons, the Government violated Article 14(2) of the ICCPR and Article 11(1) of the UDHR.

X. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHROITIES, PARTICULARLY FOR THE PURPOSE O F ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN

Following their conviction convicted on August 5, 2019, Mr. Umbetaliyev, Mr. Mynbasov, Mr. Adilov, Mr. Iskakov, Mr. Abdrakhmanov, Mr. Samatov, and Mr. Nurgaliyev appealed their conviction to the Almaty City Court. However, their appeal was denied on November 20, 2019. Similarly, once Mr. Taurbekov was convicted, he also appealed his conviction to the same court, but his appeal was also denied on April 9, 2020.

¹¹⁰ ICCPR, *supra* note 59, art. 14(1)

¹¹¹ General Comment No. 32, para. 8.

¹¹² ICCPR, *supra* note 59, art. 14(2).

¹¹³ UDHR, *supra* note 59, art. 11(1).

¹¹⁴ General Comment No. 32, para. 34.

¹¹⁵ *Id.* at para. 30.


XI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION

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Signature: _____