

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

Chair-Rapporteur: Dr. Miriam Estrada-Castillo
Ms. Elina Steinerte
Ms. Leigh Toomey
Mr. Mumba Malia
Ms. Priya Gopalan

**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Saidnuriddin Shamsiddinov
Citizen of the Republic of Tajikistan

v.

Government of the Republic of Tajikistan

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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QUESTIONNAIRE: PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. **Family name:** Shamsiddinov
2. **First name:** Saidnuriddin
3. **Sex:** Male
4. **Birth date or age (at the time of detention):** September 12, 1985
5. **Nationality/Nationalities:** Tajikistan
6. **Identity document (if any):** Unknown
7. **Profession and/or activity:** Anti-Corruption Activist
8. **Address of usual residence:** Vakhsh Region, Jamoat 20 Years of Independence of Tajikstan, Village of Navbunyod

II. ARREST

1. **Date of arrest:** September 19, 2020
2. **Place of arrest (as detailed as possible):** Office of the Vakhsh Prosecutor
3. **Forces who carried out the arrest or are believed to have carried it out:** Employees of the Office of the Vakhsh Prosecutor
4. **Did they show a warrant or other decision by a public authority?** No. Authorities produced a warrant for his arrest only later that day, after the arrest occurred.
5. **Authority who issued the warrant or decision:** The Vakhsh District Court
6. **Reasons for the arrest imputed by the authorities:** To detain him pending trial on charges listed immediately below (excluding the extremism charge, which was brought after the first trial)
7. **Legal basis for the arrest including relevant legislation applied (if known):** Two counts of a violation of the Criminal Code of the Republic of Tajikstan Article 338(1), (2) (illegal provision of a land plot); one count of a violation of Art. 340(1) (sale of forged documents); one count of a violation of Art. 346(3)(a) (knowingly false denunciation committed against a judge, prosecutor, or interrogator); one count of a violation of Art. 245(2)(a), (c), (d) (misappropriation and embezzlement causing significant harm to a citizen and by use of official powers); One count of a violation of Art. 177(1) (malicious evasion of child support); one count of a violation of Art. 247(4)(b) (large-scale fraud); and one count of a violation of Art. 307(3)(2) (participation in the activities of an extremist organization).

III. DETENTION

1. **Date of detention:** September 19, 2020
2. **Duration of detention:** September 19, 2020, to the time of submission.
3. **Forces holding the detainee under custody:** Bokhtar Pretrial Detention Center
4. **Places of detention (indicate any transfer and present place of detention):** From September 19, 2020, to September 21, 2020, petitioner was held at the police station in Vakhsh District. From September 21, 2020, to February 2021, he was held at the pretrial detention center in Bokhtar District. From February 2021 to June 2021, he was held at Correctional Institution No. 3 in Dushanbe. From June 2021 to February 2022, he was held at Correctional Institution No. 7/3 in Bokhtar District. In February 2022, he was transferred to was held at Correctional Institution No. 3 in Dushanbe.
5. **Authorities that ordered the detention:** The Prosecutor's Office of the Vakhsh District; Vakhsh District Court; Bokhtar City Court
6. **Reasons for the detention imputed by the authorities:** Restraint pending trial on the charges, listed *supra* § II(6), followed by imprisonment for having been convicted of those charges.
7. **Legal basis for the detention including relevant legislation:** *See supra* § II(7).

IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST.

1. Statement of Facts

Part (a) of this Statement of Facts details the political climate in Tajikistan in order to demonstrate the government's patterns of violating the substantive and procedural rights of its citizens. Part (b) details the circumstances of the arrest and detention of Mr. Saidnuriddin Shamsiddinov ("Petitioner").

a. **Background: Social, Legal, and Human Rights Context in Tajikistan**

The Government of Tajikistan has severely curtailed the exercise of free speech (especially political speech or criticism of the Government) within the country, particularly following the well-publicized human rights crackdown that started in 2015.¹ Article 30 of the Constitution recognizes citizens' freedom of expression and prohibits state censorship and prosecution for criticism;² however, the Criminal Code reflects a different reality.³ For example, it is a crime to insult state officials,⁴ and legislation purportedly concerning extremism is used to silence government critics.⁵ The Islamic Renaissance Party ("IRPT") was the largest opposition party in Tajikistan⁶ until 2015 when it was formally identified in a dubious decision by the Supreme Court of Tajikistan as a terrorist organization engaged in extremist activities.⁷ The decision criminalized all future activities by the party, including distribution of materials connected to the IRPT.⁸ The Supreme Court had done the same to several other opposition parties, like Group 24, a year earlier.⁹ There are no longer any significant opposition parties in Tajikistan. Political prisoners in Tajikistan, including ones accused of supporting the IRPT or Group 24, have often been targeted for torture.¹⁰

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

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

³ See Tajikistan Crim. Code, arts. 135, 136, 137, 330, <http://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview> (unofficial translation).

⁴ *Id.* at arts. 137, 330.

⁵ U.N. Secretariat, Rep. of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his Mission to Tajikistan, ¶ 16, Human Rights Council, 34th Sess., June 6-June 23, U.N. Doc. A/HRC/35/22/Add.2 (June 9, 2017), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Pages/ListReports.aspx>.

⁶ Parvina Khamidova, *Interview with Muhiddin Kabiri, Leader of the Islamic Renaissance Party of Tajikistan In-Exile*, 33 CENT. ASIA POLICY BR. 1, 2 (Jan. 2016), <https://app.box.com/s/mx8rhxb3iz4lf1igvekx3qvkdpjpwk2>.

⁷ Global Freedom of Expression, *The Case of the Islamic Renaissance Party of Tajikistan*, COLUM. UNIV. (Sept. 29, 2015), <https://globalfreedomofexpression.columbia.edu/cases/case-islamic-renaissance-party-tajikistan/>.

⁸ Catherine Putz, *Tajikistan's Terror Group List Just Got Bigger*, THE DIPLOMAT (Sept. 30, 2015), <https://thediplomat.com/2015/09/tajikistans-terror-group-list-just-got-bigger/>.

⁹ Casey Michel, *Trouble in Tajikistan*, AL JAZEERA (Nov. 5, 2015), <http://www.aljazeera.com/indepth/features/2015/11/trouble-tajikistan-151104085616528.html>; *Tajikistan: Severe Crackdown on Political Opposition*, HUMAN RIGHTS WATCH (Feb. 17, 2016), <https://www.hrw.org/news/2016/02/17/tajikistan-severe-crackdown-political-opposition>.

¹⁰ Amnesty Int'l, Annual Report: Tajikistan 2016/2017, <https://www.amnesty.org/en/countries/europe-and-central-asia/tajikistan/report-tajikistan/> (last visited Sept. 7, 2017) ("Individuals perceived to be threats to national security, including members of religious movements and Islamist groups or parties, [a]re at particular risk of arbitrary arrests, incommunicado detention, torture and other ill-treatment."); Edward James Lemon, Statement by the Representatives of Tajikistan's Civil Society about the Status of Political Prisoners, Amnesty Int'l (Aug. 22, 2016), <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/>.

b. Case of Petitioner Saidnuriddin Shamsiddinov

i. Petitioner's Background

Petitioner was a bailiff in the Jaloliddin Balkhi district of the Khatlon region of Tajikistan until 2017,¹¹ when he became frustrated with being harassed for bribes and other forms of corruption and became a human rights and anti-corruption activist near his home in the Vakhsh district of the Khatlon region.¹² He most recently worked as an activist for Campaign for Human Rights (“CHR”), an NGO that seeks to promote and protect human rights in Tajikistan by, among other things, revealing government corruption.¹³ Petitioner filed many complaints about corruption in the Khatlon region. As the result of his advocacy activities, Petitioner drew increased attention from local officials.¹⁴

ii. The Government's History of Reprisal Against Petitioner

In June 2019, Petitioner filed a complaint with the General Prosecutor's Office, stating that the Prosecutor of the region of Jaloliddin Balkhi (M. Munavarzoda), the Prosecutor's assistant (Z. Abdurozizoda), and the Prosecutor's investigator (D. Rakhmatulozoda), were harassing him and demanding bribes.¹⁵ The General Prosecutor's Office declined to initiate a case against the officials identified in Petitioner's complaint.¹⁶

Frustrated, Petitioner used Facebook to expose the corruption of these officials and to critique others for effectively permitting that corruption.¹⁷ Specifically, he criticized the President, the Director of the Anti-Corruption Agency, the executive office of the President, the Ombudsperson, and even the General Prosecutor (to whom he had filed his June 2019 complaint).¹⁸ Petitioner also sent materials—including a thirty-two minute video, titled “Fraudsters from Balkhi: Corrupted Prosecutor, Investigator, and Judiciary,” in which Petitioner briefly appears to describe the corruption—to journalists at Radio Free Europe (RFE/RL) and other news media organizations, as well as to IRPT leader Sharipov Shavkat.¹⁹ Those news organizations declined to publish the materials, but they were posted on a YouTube channel affiliated with the opposition group National Alliance of Tajikistan: PAYOM.TV.²⁰

The IRPT and Sharipov Shavkat had already been identified by 2015 and 2016 decisions of the Supreme Court of the Republic of Tajikistan as extremist, rendering it unlawful for anyone to participate or assist in their activities.²¹ On August 15, 2019, that Court identified the National Alliance of Tajikistan as an extremist organization, making it unlawful for anyone to participate or assist in its activities, including by means of PAYOM.TV.²² Around that same time, the commissioner of security services initiated an investigation into whether Petitioner was acting in support of extremist organizations, in violation of Art.

¹¹ Confidential Source A.B.'s First Set of Written Responses, Part 2 (Oct. 1, 2021), at 5, on file with Freedom Now [hereinafter Confidential Source A.B.'s Responses Pt. 2].

¹² *Id.* at 1.

¹³ Telephone Interview with Confidential Source A.B. (Oct. 7, 2021), at 1, on file with author [hereinafter Interview]; Confidential Source A.B.'s Responses Pt. 2, at 1.

¹⁴ Prior to the events described in this petition, Petitioner had been convicted of one offense. On September 14, 2011, the Nosiri Khusrav District Court convicted Petitioner of fraud committed by an abuse of official powers, in violation of Art. 247(2) of the Criminal Code of Tajikistan, by seizing property from a litigant but then failing to return that property. First Indictment, at 1; Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 1. The court declined to impose a punishment, citing an amnesty law permitting the court in its discretion to withhold punishment. *Id.*

¹⁵ First Indictment, at 2.

¹⁶ Confidential Source A.B.'s Responses Pt. 2, at 4.

¹⁷ First Indictment, at 1-2; Confidential Source A.B.'s Responses Pt. 2, at 8-9. Specifically, Petitioner used social media to make these claims on the following dates in 2019: June 13, 14, and 17; July 24 and 25; and August 2.

¹⁸ First Indictment, at 2.

¹⁹ Extremism Verdict at 3-5.

²⁰ *Id.* at 3; Confidential Source A.B.'s Responses Pt. 2, at 8-9.

²¹ Extremism Verdict at 7-8; *cf. supra* notes 6-9.

²² Extremism Verdict at 8.

307(3) of the Tajik Criminal Code. However, the Khatlon Prosecutor eventually terminated that investigation for lack of evidence.²³

In September 2019, Petitioner was charged and tried for embezzlement causing significant harm to a citizen, Art. 245(2)(c), and embezzlement using official powers, Art. 245(2)(d).²⁴ Petitioner and another bailiff named Saidov Shamsudin Safarovich were accused of embezzlement. Petitioner denied any wrongdoing. However, under pressure from officials, he admitted guilt in exchange for an offer of immunity from prosecutors.²⁵ In addition to admitting guilt, Prosecutors extracted a bribe from Petitioner to secure immunity.²⁶ That offer of immunity was not honored, and Petitioner was tried and convicted.²⁷ Although initially the court imposed a fine of 22,500 somoni and declared Petitioner ineligible to hold public office for up to two years, the court later exempted him from paying the fine, citing Tajikistan's amnesty law.²⁸ Petitioner appealed but was unable to change the outcome.²⁹ Petitioner and the other bailiff sent complaints to the President of Tajikistan, to the Supreme Court of Tajikistan, and to the media describing this corruption, and Petitioner began regularly criticizing governmental authorities in posts on Facebook.³⁰

In April 2020, Petitioner and other lawyers and human rights activists at CHR began to focus on corruption related to the Tajik government's response to the Covid-19 pandemic³¹—specifically embezzlement and improper distribution of medicines, protective equipment, and other resources.³² The actions of Petitioner and others at CHR led to the firing of hospital administrators and the opening of corruption investigations, but did not result in the removal of any government officials.³³

Petitioner increasingly spoke out online about corruption, including about the politically motivated investigations and court decisions against him.³⁴ In particular, from July to September 2020, Petitioner used Facebook to criticize the Tajik President, ministries, various state agencies, and the Prosecutor's Office of the Khatlon region for corruption and abuses of power.³⁵ He also wrote that investigators of the Khatlon Prosecutor's Office took bribes from various persons to drop charges against those persons.³⁶

iii. Arrest & Pre-trial Detention

On September 19, 2020, employees of the Vakhsh Prosecutor's Office summoned Petitioner to the Prosecutor's Office, where Petitioner was arrested.³⁷ Around the same time, employees of the Vakhsh

²³ Notes From Video Interview with Confidential Source A.B.'s (Dec. 14, 2021), at 5-6. When Petitioner was later tortured during interrogations following his September 2020 arrest, he stated that he had been supporting extremist organizations. The Prosecution then opened another investigation into Petitioner's connections with extremist groups. However, rather than incorporating that investigation into the December 2020 trial held in connection with the September 2020 arrest, the court severed the investigation, *see infra* text accompanying note 47, which eventually led to Petitioner June 2021 charge of supporting extremist ideology, *see infra* text accompanying note 74-80.

²⁴ Confidential Source A.B.'s Responses Pt. 1, at 14-15. Although this is not one of the charges with which we are most directly concerned, insofar as it did not lead to incarceration, it does provide helpful context to show how Petitioner has been targeted for excessively strict applications of law for a long time now as a form of retaliating against him for speaking out about government corruption.

²⁵ Extremism Indictment, at 5; Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 1.

²⁶ *Id.*

²⁷ Confidential Source A.B.'s Responses Pt. 1, at 14-15; Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 1.

²⁸ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 1 (citing Article 3, part 5 of Tajikistan's law "On Amnesty,"); *see also* Confidential Source A.B.'s Responses Pt. 1, at 15; Extremism Verdict, at 1.

²⁹ Confidential Source A.B.'s Responses Pt. 1, at 15.

³⁰ *Id.*; Extremism Indictment at 5-6 (discussing the testimony of Saidov Shamsudin Safarovich).

³¹ Confidential Source A.B.'s Responses Pt. 2, at 13.

³² *Id.* at 13-14.

³³ *Id.*

³⁴ *Id.* at 3.

³⁵ First Indictment, at 2; Confidential Source A.B.'s Responses Pt. 2, at 3.

³⁶ Confidential Source A.B.'s Responses Pt. 2, at 3.

³⁷ First Indictment, at 15; Confidential Source A.B.'s First Set of Written Responses, Part 1 (Oct. 1, 2021), at 1, on file with Freedom Now [hereinafter Confidential Source A.B.'s Responses Pt. 1]; Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 5.

Prosecutor's Office searched Petitioner's home.³⁸ The Vakhsh officials did not produce a warrant for the arrest and search until later in the day on September 19.³⁹ The warrant cited as the basis for his arrest the facts described in connection with several of the charges listed below.

Upon his arrest, Petitioner was placed in a detention cell in the local police station—where he was held for two days⁴⁰—and assigned a state-appointed defense attorney (Makhmaliev Sirochidin) whom Petitioner did not trust. On September 21, Petitioner was transferred to the Bokhtar pretrial detention center.⁴¹ Petitioner was first permitted to meet with his mother and brother, in his pre-trial detention center on October 4, 2020.⁴² Petitioner did not have access to an independent lawyer until October 8, 2020, when Nusratullo Mirzoev (a colleague from CHR) took over Petitioner's defense.⁴³ The Vakhsh Prosecutor's Office permitted Petitioner to meet with Mirzoev in the presence of government investigators on October 15, 2020, but denied all of Petitioner's subsequent requests to meet with his chosen attorney Mirzoev.⁴⁴ During their meeting on October 15, Petitioner told Mirzoev he had been tortured several times by the head of the pre-trial detention center and his deputy.⁴⁵ Specifically, they beat his legs with a truncheon and put him in a solitary confinement cell for up to three days.⁴⁶ Under duress from torture, Petitioner confessed to various crimes suggested by his interrogators, discussed more below, including that he had been supporting extremist organizations.⁴⁷

iv. Trial

On December 22, 2020, Petitioner was charged with one count of a violation of Criminal Code Art. 346(3)(a) (knowingly false denunciation committed against a judge, prosecutor, or interrogator); two counts of a violation of the Art. 338(1), (2) (illegal provision of a land plot); one count of a violation of Art. 340(1) (sale of forged documents); one count of a violation of Art. 245(2)(a), (c), (d) (misappropriation and embezzlement causing significant harm to a citizen and by use of official powers); and one count of a violation of Art. 177(1) (malicious evasion of child support); one count of a violation of Art. 247(4)(b) (large-scale fraud).

Petitioner was tried before Vakhsh District Court. For each of the charges against him, the government relied primarily on witness testimony, as well as videos of Petitioner's own confessions (which had been edited to omit the torture preceding the confessions).⁴⁸ Petitioner asserts that he confessed and pled guilty to the charges only because he was tortured.⁴⁹

Petitioner's charges for knowingly false denunciation under Art. 346(3) stemmed from his use of Facebook to criticize government officials in September 2019 and again on various dates from July to September 2020.⁵⁰ The State presented testimony from several of the officials allegedly defamed by

³⁸ First Indictment, at 16; Confidential Source A.B.'s Responses Pt. 1, at 1.

³⁹ Confidential Source A.B.'s Responses Pt. 1, at 1.

⁴⁰ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 5.

⁴¹ *Id.* at 5.

⁴² Confidential Source A.B.'s Responses Pt. 1, at 3.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Confidential Source A.B.'s Responses Pt. 2, at 12.

⁴⁶ *Id.* at 12; Confidential Source A.B.'s Responses to Email Questions (Feb. 14, 2022), on file with Freedom Now [hereinafter Confidential Source A.B.'s Responses to Email Questions].

⁴⁷ *Id.* at 5-6; Extremism Verdict, at 3. The Prosecution opened another investigation into Petitioner's connections with extremist groups, but the court severed that investigation from the, *see infra* text accompanying note 47, which eventually led to Petitioner's June 2021 charge of supporting extremist ideology, *see infra* text accompanying note 74-80; *see also* Extremism Verdict, at 6.

⁴⁸ First Indictment, at 3-18; Confidential Source A.B.'s Responses Pt. 1, at 12; Confidential Source A.B.'s Responses Pt. 2, at 5-6.

⁴⁹ Confidential Source A.B.'s Responses Pt. 2, at 5-6.

⁵⁰ First Indictment, at 1-2. This charge is not related to Petitioner's communications with the news media or Shairpov Shavkat, or the materials he compiled that were posted on PAYOM.TV, which instead became the basis for a separate criminal investigation, described below.

Petitioner,⁵¹ as well as from Petitioner's mother's brother, who testified that one of the corruption conspiracies about which Petitioner wrote on Facebook was a lie.⁵²

The prosecution's other charges related to various events spanning the previous five years. Petitioner's charges concerning malicious evasion of the payment of child support under Art. 177 related to allegations that Petitioner failed to pay 46 months of child support to his ex-wife while their daughter was in the custody of the ex-wife's sister.⁵³ At trial, the prosecution withheld crucial contextual information and mischaracterized the testimony of witnesses.⁵⁴ Despite Petitioner's wife and mother refuting the prosecution's allegations, the prosecution failed to drop the charges against Petitioner.⁵⁵ All child support payments have always been paid on time and to the satisfaction of Petitioner's ex-wife.⁵⁶

Petitioner's first charge concerning illegal provision of a land plot under Art. 338(1)(2), as well as charge of large-scale fraud under Art. 247(4)(b), concerned a meeting in December 2015 that Petitioner attended with his father, during which his father collected money for the sale of land. After the transaction was complete, Petitioner's father allegedly told the buyer, Khuseynov, that he could start building while Petitioner's father would obtain land registration documentation from relevant authorities. Although Petitioner's father obtained a construction permit, authorities alleged that Petitioner's father never registered the land in Khuseynov's name.⁵⁷ Petitioner denies being aware of any attempt to swindle Khuseynov, in his taped confession under torture, Petitioner stated that he and his father conspired to swindle Khuseynov.⁵⁸

Petitioner's charges concerning embezzlement causing significant harm to a citizen under Art. 245(2)(c) and embezzlement through the use of official power under Art. 245(2)(d) concerned alleged misappropriation of funds while serving as Senior Bailiff from 2016 to 2017.⁵⁹ From 2016 to 2017, while Petitioner was still Senior Bailiff, four persons accused Petitioner of embezzling a total of 8,550 somoni.⁶⁰ Petitioner was audited on three occasions from 2017 to 2020 regarding those complaints, but none of those audits revealed any embezzlement by Petitioner.⁶¹ Shortly after his arrest, an audit commission conducted a fourth audit regarding Petitioner's activities as Senior Bailiff from 2016 to 2017, in response to a direct order from the Office of the Prosecutor of the Jaloliddin Balkhi region.⁶² Unlike the prior three audits, which found no embezzlement, the fourth audit commission reported that Petitioner had embezzled funds from persons and the state totaling 16,745 somoni.⁶³ The audit commission did not consult with the prior commissions to determine why its report contravened the others.⁶⁴

Petitioner's second charge related to illegal provision of a land plot under Art. 338(1)(2) and the charge of sale of forged documents under Art. 340(1) concerned a plot of land that Petitioner bought in July

⁵¹ *Id.* at 6-7, 10.

⁵² *Id.* at 11-12.

⁵³ First Indictment, at 1-2.

⁵⁴ Compare First Indictment, at 7, 15, with Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 2-3.

⁵⁵ Compare First Indictment, at 7-8, with Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 2-3.

⁵⁶ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 2-3.

⁵⁷ *Id.* at 1, 3.

⁵⁸ *Id.* at 3.

⁵⁹ First Indictment, at 1-3.

⁶⁰ *Id.* at 2; Confidential Source A.B.'s Responses Pt. 1, at 10.

⁶¹ Confidential Source A.B.'s Responses Pt. 1, at 10.

⁶² *Id.* at 10; First Indictment, at 2.

⁶³ Confidential Source A.B.'s Responses Pt. 1, at 10; First Indictment, at 2. There is some confusion about the timeline. Whereas the State's indictment states that the October 9 report found embezzlement by Petitioner, First Indictment, at 2, Confidential Source A.B. states that the October 9 report concluded that there was no embezzlement and that the fourth audit occurred thereafter and found embezzlement, Confidential Source A.B.'s Responses Pt. 1, at 10. Additionally, it is unclear why although an audit found embezzlement in the amount of 16,745 somoni, the witnesses produced at trial only testified to embezzlement totaling 8,550 somoni, and why both of those conflict with the earlier audits finding no embezzlement. Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 4.

⁶⁴ Notes From Video Interview with Confidential Source (Dec. 14, 2021), at 4.

and sold in December 2019.⁶⁵ In April 2020—around the time Petitioner and others at CHR began criticizing corruption in the government’s Covid-19 response—the Prosecutor of the Khatlon region initiated a criminal investigation against the Petitioner in connection with the December 2019 land sale,⁶⁶ under a theory that the paperwork Petitioner presented to the registry authority may have contained an inaccuracy to the extent that the plot and building would protrude onto someone else’s land.⁶⁷

During the trial proceedings, three experts testified, one claiming that the land over which Petitioner claimed ownership conformed to the proper boundaries, while another expert opined that the land over which he claimed ownership included someone else’s land, while yet another expert opined that the land over which he claimed ownership conformed to the proper boundaries but the house he built on that land extended beyond those boundaries so as to cover someone else’s land.⁶⁸ Noting these discrepancies among the expert opinions, Petitioner argued that the prosecution could not prove Petitioner’s paperwork was inaccurate or that the location of the land or building was improper.⁶⁹ He noted that because he was not responsible for drafting the land registration documents created by the registry authority, and because he did not use any forged documents to mislead the land registration authority, he could not have committed forgery.⁷⁰ Any mistake was in good faith.

v. Conviction & Appeals

On December 24, 2020, Petitioner was convicted on all counts and sentenced to eight and a half years of incarceration, as well as deprivation of the right to hold certain positions of public employment for three years and six months.⁷¹ Petitioner appealed his conviction and sentence several times—first to the Court of Cassation (Dec. 30, 2020), then to the Court of Supervisory Instance (Feb. 9, 2021), then to the Chairman of the Court of the Khatlon Region (March 10, 2021), and finally to the Supreme Court of Tajikistan (May 2021).⁷² Each appellate court affirmed his conviction and sentence. Having exhausted his appeals under Tajik law with respect to these matters, Petitioner was transferred from the Bokhtar pre-trial detention center to a prison in Dushanbe.⁷³

vi. The Government’s Subsequent Extremism Prosecution

In March 2021 the State opened another criminal investigation into Petitioner’s activities, this time reviving the earlier terminated 2019 investigation into his alleged support of organizations like the IRPT or Group 24 which have been banned as extremist.⁷⁴ The State alleged that Petitioner’s June through August 2019 efforts to expose corruption among Jaloliddin Balkhi Prosecutor’s Office employees and others—which indirectly resulted in the opposition YouTube channel PAYOM.TV publishing materials assembled by Petitioner documenting corruption—amounted to extremism that would harm the constitutional order of Tajikistan.⁷⁵

In April 2021, employees of the State Committee for National Security of Tajikistan visited Petitioner and demanded he stop using social media to denounce government officials, explaining that if he refused to do so he would be prosecuted for his alleged extremism as described above.⁷⁶ Although

⁶⁵ First Indictment, at 1; Confidential Source A.B.’s Responses Pt. 1, at 4.

⁶⁶ *Id.* at 3.

⁶⁷ *Id.* at 2-3.

⁶⁸ Confidential Source A.B.’s Responses Pt. 1, at 10; Confidential Source A.B.’s Responses Pt. 2, at 2-3.

⁶⁹ Confidential Source A.B.’s Responses Pt. 1, at 10-11; Confidential Source A.B.’s Responses Pt. 2, at 2-3.

⁷⁰ Confidential Source A.B.’s Responses Pt. 1, at 10; Confidential Source A.B.’s Responses Pt. 2, at 2-3.

⁷¹ *See* Extremism Verdict, at 7.

⁷² Confidential Source A.B.’s Responses Pt. 1, at 14.

⁷³ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 5.

⁷⁴ Confidential Source A.B.’s Responses Pt. 2, at 7-8; Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 5-6.

⁷⁵ Confidential Source A.B.’s Responses Pt. 2, at 8-10.

⁷⁶ Confidential Source A.B.’s Responses Pt. 2, at 9.

Petitioner promised in writing to stop denouncing officials, in May 2021 he sent his colleague Mirzoev six more complaints to file against authorities at various agencies.⁷⁷ Later that month, the Bokhtar Prosecutor appointed an expert (qualified with expertise on religious matters, political science, and computer science) to assess whether Petitioner's online communications amounted to a call to extremist ideology associated with opposition groups like the IRPT, in violation of Art. 307(3).⁷⁸ The expert concluded that Petitioner's communications did amount to a call to extremism.⁷⁹ Just a few weeks later, on June 12, 2021, the Khatlon Prosecutor publicly announced that it was investigating Petitioner for participation in the activities of an extremist organization, in violation of Art. 307(3).⁸⁰ Group 24 promptly publicly denied any awareness of or connection with Petitioner.⁸¹

Petitioner was transferred back from the Dushanbe prison to the Bokhtar pre-trial detention center, pending trial on the new extremism charge.⁸² His trial began in late October 2021 before the Bokhtar City Court, in the Khatlon Region.⁸³ Petitioner was represented by Allamurodov Salim and Faizi Oli.⁸⁴

The evidence adduced at trial included the following: judicial decisions prohibiting interactions with Sharipov Shavkat, the IRPT, or PAYOM.TV supporting extremist ideology;⁸⁵ snapshots of Petitioner's posts on Facebook and information sent to RFE/RL and other news outlets detailing corruption;⁸⁶ and the "Fraudsters from Balkhi" video and other materials compiled by Petitioner that ended up posted on PAYOM.TV.⁸⁷ The evidence also included testimony from several persons stating that Petitioner was responsible for the posts on PAYOM.TV and spoke in the "Fraudsters from Balkhi" video,⁸⁸ as well as the expert's report concluding that the PAYOM.TV posts represent extremist ideology.⁸⁹ The Prosecutor also presented testimony from Saidov Shamsudin Sararovich (the former bailiff who, along with Petitioner, had been tried for embezzlement and filed complaints about corruption), stating that Petitioner had told him he sent materials describing corruption to RFE/RL and other outlets; that Petitioner had told him he was responsible for the "Fraudsters from Balkhi" video; and that Petitioner had told him he had communicated directly with Sharipov Shavkat for help publicizing the video and materials.⁹⁰

Petitioner testified that although he did contact RFE/RL about publishing certain materials describing corruption, and although those materials did end up posted on PAYOM.TV, he never sent those materials to PAYOM.TV and that he sent them to RFE/RL before August 15, 2019, when PAYOM.TV was held an extremist media platform.⁹¹ Petitioner acknowledged that he once communicated with Sharipov Shavkat, whom he sent certain videos, photos, and audio recordings thought to demonstrate corruption in the Khatlon region.⁹² He stated that he has never been interested in politics or had any interactions with any extremist organizations, adding that when, during interrogations in connection with the 2020 charges, he admitted to engaging in extremist activities, he did so only because he was being tortured.⁹³

⁷⁷ *Id.* at 9.

⁷⁸ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 6; Second Indictment, at 2, 10; Extremism Verdict, at 2.

⁷⁹ Second Indictment, at 2, 10; Extremism Verdict, at 2.

⁸⁰ Confidential Source A.B.'s Responses Pt. 2, at 7; *Jailed Tajik Lawyer Charged Further With Having Links To Banned Political Group*, RFE/RL (June 08, 2021 07:40 GMT), <https://www.rferl.org/a/tajikistan-critic-more-charges/31295929.html>.

⁸¹ Group 24, Convicted Lawyer Shamsiddinov Has Nothing to do with the Group-of 24 and has Never Addressed Us!, GURUHI24 (Sept. 6, 2021), <https://guruhi24.net/language/en/convicted-lawyer-shamsiddinov-has-nothing-to-do-with-the-group-of-24-and-has-never-addressed-us/>.

⁸² Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 5.

⁸³ Second Indictment, at 1; Confidential Source A.B.'s Responses Pt. 2, at 9-10.

⁸⁴ Confidential Source A.B.'s Responses Pt. 2, at 11.

⁸⁵ Extremism Verdict, at 6-8.

⁸⁶ *Id.* at 6.

⁸⁷ *Id.* at 6.

⁸⁸ Extremism Indictment at 4-5, 7; Extremism Verdict at 4-6.

⁸⁹ Extremism Indictment, at 10; Extremism Verdict at 2.

⁹⁰ Extremism Indictment, at 5-6.

⁹¹ Extremism Verdict, at 3-4.

⁹² *Id.* at 4.

⁹³ *Id.* at 3; Confidential Source A.B.'s Responses Pt. 2, at 12.

Considering this evidence, the Khatlon Prosecutor argued that Petitioner was guilty of disseminating information in support of extremist ideology,⁹⁴ whereas Petitioner argued that the Prosecutor was simply retaliating against him for speaking out about corruption, in order to deter him from doing so in the future.⁹⁵

The Court issued a verdict on November 24, 2021, finding Petitioner guilty of a violation of Art. 307(3).⁹⁶ Petitioner was sentenced to five years imprisonment for this violation, to be served consecutive to his eight-and-a-half year term of imprisonment for the December 2020 conviction.⁹⁷

vii. Petitioner's current Status

Petitioner filed an appeal of his extremism conviction to the Court of Cassation.⁹⁸ At the time, of filing he was held Correctional Institution No. 7/3 in Bokhtar District.⁹⁹ On December 14, 2021, there were additional reports that Petitioner had been placed in solitary confinement—where conditions are dangerously inhospitable, including extreme cold—and was being subject to torture as retaliation for his continued denunciation of Tajik authorities.¹⁰⁰

As of February 2022, Petitioner was transferred to Correctional Institution No. 3 in Dushanbe.¹⁰¹

2. Legal Analysis

The arrest and detention of Petitioner is arbitrary under Categories I, II, III, and V of the Working Group's Revised Methods of Work.¹⁰² The detention is arbitrary under Category I because Petitioner was detained without sufficient legal justification. It is arbitrary under Category II because his detention resulted from and amounted to reprisal for the legitimate exercise of his rights to freedom of expression. The detention is arbitrary under Category III because the arrest, detention, and prosecution fail the minimum standards of due process. And it is arbitrary under Category V because Petitioner is being targeted for his political opinions.

a. Arbitrary Deprivation of Liberty under Category I

A detention is arbitrary under Category I when there is no legal basis or justification for it.¹⁰³ The Working Group has found a lack of legal basis for the purposes of Category I when several of the following factors are present: (1) when the government has held an individual incommunicado for a period of time, (2) when vague laws are used to prosecute individuals, (3) when individuals are convicted without substantive evidence to justify such a conviction, and (4) when laws are used to target government critics.¹⁰⁴

⁹⁴ Extremism Indictment, at 1, 9.

⁹⁵ Extremism Verdict, at 3.

⁹⁶ *Id.* at 10.

⁹⁷ *Id.*

⁹⁸ Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 6.

⁹⁹ *Id.* at 5-6.

¹⁰⁰ *Id.* at 6.

¹⁰¹ *Id.*

¹⁰² See Report of the Working Group on Arbitrary Detention, 36th session (hereinafter "Methods of Work") A/HRC/36/38, ¶ 8 (July 13, 2017), <https://undocs.org/A/HRC/36/38>.

¹⁰³ *Id.* at ¶ 8(a).

¹⁰⁴ See, e.g., *Bettar v. Morocco*, Working Grp. on Arbitrary Detention, Commc'n No. 3/2013, ¶¶ 30-31 (Apr. 30, 2013), <https://undocs.org/A/HRC/WGAD/2013/3>; *61 Individuals v. United Arab Emirates*, Working Grp. on Arbitrary Detention, Commc'n No. 60/2013, ¶ 22 (Nov. 22, 2013), <https://undocs.org/A/HRC/WGAD/2013/60>.

1. The Government Held Petitioner Incommunicado

Incommunicado detention occurs whenever an individual is “deprived of their liberty in secret for potentially indefinite periods, held outside the reach of the law, without the possibility of resorting to legal procedures, including habeas corpus.”¹⁰⁵ The Human Rights Committee has stated that incommunicado detention that prevents prompt presentation before a judge inherently violates article 9(3) of the ICCPR¹⁰⁶ and this Body has “consistently argued that holding persons incommunicado breaches the right to challenge the lawfulness of detention before a judge.”¹⁰⁷ Articles 10 and 11 UDHR confirm the impermissibility of incommunicado detention.¹⁰⁸ Similarly, principle 19 of the Body of Principles, states that a “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”¹⁰⁹ The Committee Against Torture has made it clear that incommunicado detention creates conditions that lead to violations of the Convention against Torture,¹¹⁰ and the Special Rapporteur on torture has also consistently argued that the use of incommunicado detention is unlawful.¹¹¹

In the present case, Petitioner was arrested on September 19, 2020, but he did not have access to his family until October 4, 2020.¹¹² Furthermore, he did not have access to his chosen legal representative until October 8, 2020. During this period, the Petitioner’s only access was to a state-appointed legal representative, who the Petitioner did not trust to convey information to the outside world. As a result, from the time of Petitioner’s arrest to the time that he was first able to access his family members, Petitioner was effectively cut-off from the outside world. Accordingly, Petitioner was held incommunicado during this period, and Petitioner’s detention during this period falls within the scope of Category I.

2. Petitioner’s First Trial Lacked a Legitimate Legal Basis

In the present case, because the government’s 2020 prosecution of Petitioner was initiated as an attempt to silence his advocacy and lacked any basis for many of the crimes alleged, his detention is arbitrary under Category I. The prosecution and conviction of the petitioner relied upon confessions extracted under torture, manipulated testimony, and allegations for which Petitioner was previously exonerated. The confessions introduced at trial and extracted under torture were subsequently denied by

¹⁰⁵ Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, *Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism*, U.N. Doc. A/HRC/13/42, p. 2 (May 20, 2010), <https://undocs.org/A/HRC/13/42>. The Special Rapporteur’s report has been recognized by the Working Group as identifying the extent of human rights violations associated with incommunicado detention. See UN Working Group on Arbitrary Detention, Report of the Working Group, UN Doc. A/HRC/22/44, fn. 27 (Dec. 24, 2012).

¹⁰⁶ UNHRC, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, para. 38 (hereinafter “HRC, General Comment No. 35”). Turkmenistan acceded to the International Covenant on Civil and Political Rights (“ICCPR”). *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”); UN Human Rights, Office of the High Commissioner, Ratification Status for Turkmenistan, available at https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=180&Lang=EN. See also UN Status of Treaties, International Covenant on Civil and Political Rights (confirming that Turkmenistan has acceded, and has no reservations to the ICCPR), available at https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND#EndDec.

¹⁰⁷ United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018).

¹⁰⁸ *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter “UDHR”).

¹⁰⁹ *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, prin. 19, U.N. Doc. A/43/49 (hereinafter “Body of Principles”).

¹¹⁰ United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018). See also Committee Against Torture, *supra* note **Error! Bookmark not defined.**, at para. 9.

¹¹¹ Human Rights Committee, United Nations Working Group on Arbitrary Detention, para. 64, Opinion No. 4/2018 (Turkmenistan) U.N. Doc. A/HRC/WGAD/2018/4 (23 May 2018).

¹¹² Confidential Source A.B.’s Responses Pt. 1, at 3.

Petitioner. Furthermore, the Petitioner was targeted, both in his 2019 prosecution and in his 2020 prosecution, only after he complained formally and online about corruption in the Tajikistan government. As explained *infra*, Section IV.2.b, he was prosecuted as a pretext for silencing his public criticism of corruption.

The initial basis for the government's investigation and prosecution of Petitioner related to his allegations of corruption and criticism of government officials. The statements that served as the basis for the government's claim of knowingly false denunciation were factually true statements. The only evidence suggesting his claims were false was testimony from the persons Petitioner accused of corruption. By contrast, that Petitioner's denunciations were factually true is supported not simply by his own testimony, but also by the materials he compiled that were published by PAYOM.TV.¹¹³ Furthermore, even supposing some of Petitioner's claims had been false, there was no evidence that Petitioner knew them to be false. Thus, Petitioner's conviction for knowingly false denunciation was wholly unsupported by the evidence.

Furthermore, the first charge of illegal provision of a land plot and the charge of large-scale primarily relied upon a confession extracted under torture. A confession under the basis of torture cannot be considered legitimate evidence to constitute a legal basis for Petitioner's detention.

Concerning the malicious evasion of child support charges, the indictment of petitioner and the conclusions of the trial court do not accurately represent the testimony of Petitioner's mother and ex-wife, which served as the basis of the government's case against Petitioner. Because the ex-wife, who is from Uzbekistan, speaks Tajik only poorly, employees of the prosecutor's office prepared and had her sign a statement asserting that Petitioner neglected to pay child support.¹¹⁴ The ex-wife has never claimed that child support payments were not adequately made and has never sought enforcement of the child support order. Furthermore, the indictment's summary of the mother's testimony inaccurately states that she said no one paid child support from January 2020 until September 2020, whereas she actually testified only that she did not have *receipts* showing timely payments during that period.¹¹⁵

With respect to the embezzlement allegations, the government had conducted three prior audits of Petitioner during the course of his career and covering the incidents alleged, all of which found that the Petitioner did not engage in any wrongdoing in the course of his work as a bailiff.¹¹⁶ However, The fact that a fourth audit—requested by the State when it was trying to cobble together a case to silence Petitioner—contradicted the prior three by finding embezzlement.¹¹⁷ The fourth audit committee made no attempt to contact any of the prior three committees or to reconcile its incongruous finding with those of the prior committees.

Regarding the second charge of unauthorized occupation of and construction upon a land plot and the charge of sale of forged documents, the government presented no evidence that Petitioner acted with criminal intent, and even assuming Petitioner overlooked some procedural requirements, any mistake was in good faith. The three experts testifying about whether Petitioner's land filings could not themselves agree on whether a deviation took place or the extent of any such deviation. The allegation that Petitioner is criminally responsible for the sale ignores the fact that there is no evidence he forged any documents, and although the title he purchased contained some inaccuracy, his good faith reliance on that title and resale of the land does not constitute sale of forged documents in any meaningful sense.¹¹⁸

Because the prosecution relied upon a flawed evidentiary basis and because Petitioner was targeted for prosecution in order to silence his dissent, prosecutions cannot constitute a legitimate legal basis for the purposes of Category I.

¹¹³ See *supra* note 20 and accompanying text.

¹¹⁵ Compare First Indictment, at 15, with Notes From Video Interview with Confidential Source A.B. (Dec. 14, 2021), at 2-3.

¹¹⁶ See *supra*, note 60-61 and accompanying text.

¹¹⁷ Confidential Source A.B.'s Responses Pt. 1, at 10-11.

¹¹⁸ See *supra*, note 50 and accompanying text.

3. Petitioner's Second Trial Lacked a Legitimate Legal Basis

Regarding Petitioner's trial for extremism, the State did not produce evidence sufficient to demonstrate a violation of that prohibition. Most significantly, Petitioner's confession of extremism is inadmissible and unreliable as a product of torture.¹¹⁹ Furthermore, while there is evidence that Petitioner sent materials to RFE/RL, that was no crime because RFE/RL has never been identified as extremist by any Tajik court order. Although those materials (including the "Fraudsters of Balkhi" video) did end up posted on PAYOM.TV, Petitioner never intended those materials to appear on PAYOM.TV or any other platform affiliated with identified extremists, and even PAYOM.TV had not even been identified as extremist at the time Petitioner sent materials to RFE/RL.¹²⁰ Although Petitioner did send materials to Sharipov Shavkat,¹²¹ whom a court order had already identified as extremist, Petitioner intended those materials only to reveal corruption by particular officials. The sharing of information with news outlets, such as RFE/RL and other activists fall well within the scope of protected freedom of expression, and thus cannot serve as evidence to establish a basis for Petitioner's detention. The suggestion that by revealing corruption Petitioner intended to overthrow the constitutional order of Tajikistan is baseless.

Because Petitioner never participated or assisted in the activities of groups identified as extremist, and because he was targeted for prosecution in order to silence his dissent, his detention for violating Article 307(3) is arbitrary.¹²²

b. Arbitrary Deprivation of Liberty under Category II

A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under international law, including freedom of expression.¹²³

1. The Government Detained Petitioner on the Basis of His Exercise of His Right to Freedom of Expression

The ICCPR provides that "[e]veryone shall have the right of freedom of expression; this right shall include freedom to . . . impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print[.]"¹²⁴ Freedom of expression is also guaranteed in the Tajik Constitution under Article 30.¹²⁵ The right to freedom of expression under the ICCPR "includes the expression and receipt of communications of every form of idea and opinion capable of transmission to others It includes . . . political discourse, commentary on one's own and on public affairs, . . . discussion of human rights, [and] journalism."¹²⁶ Recently, the Working Group has announced its special concern about arbitrary detention of human rights defenders for exercising their right to freedom of expression.¹²⁷

¹¹⁹ See *supra* note 47 and accompanying text.

¹²⁰ Extremism Verdict at 3-8; Confidential Source A.B.'s Responses Pt. 2, at 8-9.

¹²¹ Extremism Verdict, 4.

¹²² Extremism Verdict, 3.

¹²³ See *Methods of Work*, *supra* note 102, at ¶ 8(b).

¹²⁴ ICCPR at art. 19(2); see also *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810 (hereinafter "UDHR"), at art. 19 (1948).

¹²⁵ Tajikistan Const. at art. 30, <http://www.wipo.int/edocs/lexdocs/laws/en/tj/tj001en.pdf> (unofficial translation) ("Everyone shall be guaranteed the freedom of speech, publishing and the right to use means of information. Propaganda and agitation, kindling the social, race, national, religious and language enmity and hostility shall be prohibited. State censorship and prosecution for criticism shall be prohibited. Law shall specify the list of information constituting a state secret.").

¹²⁶ UN Human Rights Committee, General Comment No. 34, Art. 19 (Freedom of Opinion and Expression). ¶ 11 (July 29, 2011) [hereinafter General Comment No. 34]; see also *id.* at ¶ 12 (right covers internet expression).

¹²⁷ *Report of the Working Group on Arbitrary Detention*, A/HRC/48/55, ¶¶ 46-50 (Aug. 6, 2021), <https://undocs.org/en/A/HRC/48/55>.

With respect to laws criminalizing defamation, the Human Rights Committee has suggested that States parties consider decriminalization.¹²⁸ Where States continue to criminalize defamation, the truth of the matter and the public interest of the subject matter should always be a defense.¹²⁹

In the present case, all the charges brought against Petitioner to justify his present detention appear to be retaliation for Petitioner's prior public comments on corruption and misappropriation by government officials, and so are designed to chill his exercise of expression more generally. Furthermore, Petitioner was explicitly arrested and detained for (among other charges) denunciation and extremism in the form of publicizing true information about the corruption of particular public authorities. Given that Petitioner—who was working with CHR as a human rights activist to reveal government corruption, and therefore functioning as a journalist at the time—was discussing issues at the intersection of human rights, politics, and public affairs, his speech was protected. Notably, that he is detained in part as retaliation for his speech as a defender of human rights makes this matter all the more significant.

2. None of the Legitimate Basis for Restricting Freedom of Expression Apply in This Case

Freedom of expression may only be restricted when provided by law and necessary for the respect of the rights or reputations of others, protection of national security or public order, health or morals.¹³⁰ The UNHCR has held these restrictions must “meet a strict test of justification.”¹³¹ Specifically with respect to laws criminalizing defamation, the Human Rights Committee has found that imprisonment is never a proportional and appropriate punishment.¹³²

The government's detention of petitioner (1) fails to meet the provided-for-by-law condition, (2) lacks a legitimate justification, and (3) is neither necessary nor proportionate any purported justification. Regarding the extremism charge, Article 307(3) is overbroad and vague, and accordingly does not satisfy the provided-for-by-law condition of Article 19(3) of the ICCPR. Specifically, the extremism statute prohibits, in relevant part, “[p]articipation in the activities of” certain groups identified as extremist by an appropriate court decision, or “assistance in their activities using the . . . internet or in any other way[.]”¹³³ This prohibition is arbitrary to the extent its use of the terms “participation,” “assistance,” and “activities” is vague in the context of the political activities of opposition groups. Individuals have a right to know what conduct violates the law, and unintelligibly vague statutes are unenforceable.¹³⁴ Accordingly, Petitioner's detention for violating this vague statute is arbitrary.

More generally, regarding both the extremism and denunciation charges, Petitioner's statements and materials publicizing corruption cannot improperly threaten the rights or reputations of others, because they were accurate; nor can they improperly threaten the protection of national security or public order simply because they expose corruption.

Therefore, no exceptions apply to the government's restrictions on Petitioner's right to freedom of expression, and the Government's detention and continued prosecution of Petitioner are arbitrary insofar as they follow from his exercise of free speech.

¹²⁸ *Id.* at ¶ 47.

¹²⁹ *Id.*

¹³⁰ ICCPR at art. 19(3).

¹³¹ Communication No. 628/1995, *Park v. Republic of Korea*, U.N. Doc. CCPR/C/64/D/628/1995, ¶ 10.3 (1998), <https://undocs.org/CCPR/C/64/D/628/1995>.

¹³² General Comment No. 34 at ¶ 47

¹³³ Tajik Crim. Code at art 307(3)(2).

¹³⁴ See ICCPR at arts. 9(1), 15(1); UDHR at art. 11(2) (1948); Martin Scheinin, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 46, Comm'n on Human Rights, 62d Sess., U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement> (“[Laws must be framed] in such a way that[] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.”).

c. Arbitrary Deprivation of Liberty under Category III

According to Category III, 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 ICCPR and the UDHR is of such gravity as to give the deprivation of liberty an arbitrary character.”¹³⁵ The minimum international standards of due process articulated in the UDHR are elucidated in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (the “Body of Principles”),¹³⁶ and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).¹³⁷

i. Tajikistan Violated Petitioner’s Right Not to Be Subjected to Arbitrary Arrest

Article 9 of the ICCPR guarantees that “[n]o one shall be subjected to arbitrary arrest[.]”¹³⁸ The same right is codified in the UDHR.¹³⁹ The Working Group has held that an arrest without prior issuance of an arrest warrant is arbitrary within the meaning of Category III.¹⁴⁰ In Tajikistan, there is no requirement for a warrant prior to an arrest.¹⁴¹ Petitioner was not shown an arrest warrant until several hours after he was summoned to the prosecutor’s office and arrested.¹⁴² Accordingly, Petitioner’s arrest was arbitrary under international law, and his detention on the basis thereof falls within the scope of Category III.

ii. Tajikistan Violated Petitioner’s 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”¹⁴³ 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. . . .”¹⁴⁴ Furthermore, Principles 38 and 39 of the Body of Principles affirm that, except in special cases, a criminal detainee is entitled to release pending trial.¹⁴⁵

Shamsiddinov remained in detention for two months while waiting to be tried in 2020, but the government did not provide any justification for that detention. Petitioner did not pose a flight risk, as his family lived in the area. Moreover, there was no evidence that Petitioner was at risk of destroying. Lastly, there was no evidence that Petitioner posed a risk to public safety, as he was not accused of a violent crime and there was no reason to believe that he would commit such an offense prior to his trial. Accordingly, that portion of his detention was arbitrary under Category III.

¹³⁵ See *Methods of Work*, *supra* note 102, ¶ 8(c).

¹³⁶ Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, principles 2, 36(2), 76th plen. mtg., U.N. Doc. A/RES/43/173 [hereinafter “Body of Principles”].

¹³⁷ 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 61) [hereinafter “Mandela Rules”], <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>.

¹³⁸ ICCPR at art. 9.

¹³⁹ UDHR at art. 9.

¹⁴⁰ *Marcelo Eduardo Crovato Sarabia v. Bolivarian Republic of Venezuela*, Working Grp. on Arbitrary Detention, Commc’n No. 87/2017, ¶¶ 42-45 (Jan. 23, 2018), <https://undocs.org/A/HRC/WGAD/2017/87> (finding arrest without prior warrant arbitrary under Category 3); see also *Xiyue Wang v. Islamic Republic of Iran*, Working Grp. on Arbitrary Detention, Commc’n No. 52/2018, ¶ 69 (Sept. 21, 2018), <https://undocs.org/A/HRC/WGAD/2018/52> (finding arrest without prior warrant arbitrary under Category 1).

¹⁴¹ See *U.S. Dept. of State, Tajikistan: 2020 Country Reports on Human Rights Practices*, STATE (Mar. 30, 2021), <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/tajikistan/>.

¹⁴² See Confidential Source A.B.’s Responses Pt. 1, at 1.

¹⁴³ ICCPR at art. 9(3).

¹⁴⁴ Human Rights Committee, General Comment No. 35, U.N. Doc. CCPR/C/GC/35, December 16, 2014, ¶ 38.

¹⁴⁵ Body of Principles, *supra* note 136, prin. 38, 39.

iii. Violation of the Rights to Meet with One's Lawyer

Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right “to communicate with counsel of his own choosing.”¹⁴⁶ Moreover, Paragraph 1 of the Basic Principles on the Role of Lawyers confirms that the right to assistance of an attorney covers all stages of criminal proceedings and that access to an attorney should be granted in no case later than 48 hours after arrest.¹⁴⁷

Petitioner did not trust the lawyer appointed for him by the State in connection with his 2020 charges, so he retained his former colleague Nusratullo Mirzoev. Although Petitioner was permitted to meet with Mirzoev on one occasion—26 days after his arrest, and, even then, only in the presence of government investigators—he was not permitted to meet with Mirzoev thereafter or to have Mirzoev assist him at trial or in the preparation of appellate materials.¹⁴⁸ Accordingly, the State denied Petitioner's due process right to the help of his lawyer.

iv. Violation of the Prohibition of Coerced Testimony

Article 14(3)(g) of the ICCPR specifically prohibits the infliction of physical or mental pain or suffering by a public official with the intention to coerce a confession.¹⁴⁹ Furthermore, Principle 21(2) the Body of Principles guarantees that “no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment.”¹⁵⁰ The Human Rights Committee has emphasized that the right to a fair trial requires that “no statements or confessions or, in principle, other evidence obtained in violation of [the prohibition on torture] may be invoked as evidence in any proceedings covered by article 14”¹⁵¹ In addition to forms of physical injury, solitary confinement may constitute torture under certain circumstances.¹⁵² Although Tajikistan has enacted domestic law adopting the Convention Against Torture's standards, “[e]xperts agree[] that in most cases there is impunity for rampant torture in Tajikistan.”¹⁵³

In the present case, Petitioner was compelled by means of torture to falsely confess to the charges for which he is detained.¹⁵⁴ Specifically, he was beat with a truncheon and put in solitary confinement for as many as three days.¹⁵⁵ Videos of Petitioner's confessions were admitted into evidence after having been edited so as to omit the torture.¹⁵⁶ Those videos should not have been admitted because they are the unreliable products of torture, as well as because they were inadmissible as having been edited so as to omit

¹⁴⁶ ICCPR at art. 14(3)(b).

¹⁴⁷ United Nations Human Rights Office of the High Comm'r, *Basic Principles on the Role of Lawyers*, ¶¶ 1,7, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (last visited Mar. 1, 2022).

¹⁴⁸ See *supra* notes 37-41 and accompanying text.

¹⁴⁹ ICCPR at art. 14(3)(g).

¹⁵⁰ Body of Principles, *supra* note 136, at prin. 21(2). Also, “it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess” *Id.* at prin. 21(1).

¹⁵¹ General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial), ¶ 6, Human Rights Comm., 21st Sess., U.N. Doc CCPR/C/GC/32 (Aug. 23, 2007), <https://undocs.org/CCPR/C/GC/32>.

¹⁵² *Prolonged Solitary Confinement Amounts to Psychological Torture*, OHCHR (Feb. 28, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25633> (quoting Nils Melzer, Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment); *accord* General Comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), ¶ 6, Human Rights Comm., 44th Sess., U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (Mar. 10 1992), http://ccprcentre.org/page/view/general_comments/27786; Report of Committee against Torture, ¶ 156, U.N. GAOR, 53d Sess., Supp. No. 44, U.N. Doc. A/53/44 (Sept. 16, 1998), <https://undocs.org/en/A/53/44>.

¹⁵³ See *Tajikistan: 2020 Country Reports on Human Rights Practices*, *supra* note 141.

¹⁵⁴ See *supra* notes 37-44 and accompanying text.

¹⁵⁵ Confidential Source A.B.'s Responses Pt. 1, at 12; see also *supra* notes 37-44 and accompanying text; Confidential Source A.B.'s Responses to Email Interrogatories, at 1.

¹⁵⁶ See *supra* note 48 and accompanying text.

the torture, contrary to Art. 172 of the Criminal Procedure Code of Tajikistan.¹⁵⁷ Thus, the admission of this evidence violated Petitioner’s right to a fair trial.

v. Violation of the Right to Presumption of Innocence and to a Fair Trial

Article 14(1) of the ICCPR guarantees a fair trial before an independent and impartial tribunal, and further demands that “all persons shall be equal before the courts and tribunals,” which means that the prosecution and the defense must have the same procedural rights.¹⁵⁸

The trial courts’ extreme bias against Petitioner, detailed throughout the preceding analyses, evidences that his guilt was a foregone conclusion. In addition to effectively denying Petitioner the right to counsel in connection with the 2020 charges and admitting inadmissible evidence into both trials (such as Petitioner’s tortured confessions), the courts in each trial denied Petitioner the right to present evidence in his defense, other than by cross examining witnesses and testifying on his own behalf. Furthermore, and more fundamentally, Tajik law¹⁵⁹ should have prevented the Khatlon Prosecutor and investigators from engaging in his prosecution altogether, given that some of the prosecutors and investigators were also the alleged victims of Petitioner’s supposed crime of denunciation. Accordingly, Petitioner was denied the presumption of innocence and a fair trial.

vi. Violation of the Right to Meaningful Appellate Review

Article 14(5) of the ICCPR guarantees that everyone convicted of a crime shall have the right to have the conviction and sentence reviewed by a higher tribunal according to law.¹⁶⁰ To pass muster, appellate review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal.¹⁶¹ However, the appellate bodies’ analyses of the issues raised by Petitioner were limited only to conclusory statements that Petitioner’s arguments are necessarily groundless because they contravene the Government’s allegations, which the appellate bodies merely accept at face value. This is not meaningful appellate review.

d. Arbitrary Deprivation of Liberty Under Category V

According to Category V of the Working Group’s Revised Methods of Work, a deprivation of liberty is arbitrary “[w]hen the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on . . . political or other opinion . . .”¹⁶² This occurs when the underlying discrimination “aims towards or can result in ignoring the equality of human beings.”¹⁶³

As set forth under Category II, *infra*, Petitioner was targeted, arrested, and detained as retaliation for his expression of his opinions regarding corruption in Tajikistan. Petitioner was explicitly told that if he stopped speaking out about corruption he would not be prosecuted for extremism.¹⁶⁴ His refusal to be silenced then and at earlier stages is the reason he has been persecuted. Furthermore, the charges for denunciation and extremism straightforwardly target Petitioner on the basis of his political opinion. As a result, the Government’s detention of Petitioner constitutes an arbitrary deprivation of liberty under Category V.

¹⁵⁷ Crim. Proc. Code of the Republic of Tajikistan at art. 172.

¹⁵⁸ ICCPR at art. 14(1); General Comment No. 32, *supra* note 151, at ¶ 13; *see also* ICCPR at art. 14(2); *accord* UDHR at art. 11(1); Body of Principles, *supra* note 136, at prin. 36; Mandela Rules, *supra* note 137, Rule 111(2).

¹⁵⁹ Crim. Proc. Code of the Republic of Tajikistan at arts. 61, 65, 66.

¹⁶⁰ ICCPR at art. 14(5).

¹⁶¹ General Comment No. 32, *supra* note 151, ¶ 34.

¹⁶² *See* Methods of Work, *supra* note 102, ¶ 8(e).

¹⁶³ *Id.*

¹⁶⁴ *See supra* notes 76-79 and accompanying text.

VI. Indicate internal steps, including domestic remedies, taken especially with the legal and administrative authorities, particularly for the purpose of establishing the detention and, as appropriate, their results or the reasons why such steps or remedies were ineffective or why they were not taken.

Petitioner has exhausted his rights of appeal within the Tajik court system with respect to all convictions other than the October 2021 extremism conviction. Regarding his extremism conviction, he has filed an appeal with the Court of Cassation.

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