

PETITION TO:

UNITED NATIONS WORKING GROUP ON ARBITRARY DETENTION

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**HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

Buzurgmehr Yorov

Citizen of the Republic of Tajikistan

(“Applicant”)

v.

Government of the Republic of Tajikistan

(“State”)

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

Submitted By:

Freedom Now, Lawyers for Lawyers, Hogan Lovells US LLP, and DLA Piper UK LLP

October 22, 2018

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

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PART 1

QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION

I. IDENTITY

1. **Family name:** Yorov (Ёров)
2. **First name:** Buzurgmehr (Бузургmehr)
3. **Sex:** Male
4. **Birth date:** [REDACTED]
5. **Nationality:** Tajik
6. (a) **Identity document (if any):** Passport
(b) **Issued by:** Republic of Tajikistan
(c) **On (date):** [REDACTED]
(d) **No.:** [REDACTED]
7. **Profession:** Lawyer
8. **Address of usual residence:** [REDACTED]. However, Mr. Yorov is currently imprisoned and serving a 28-year sentence. He has been detained in various locations since his arrest but, since December 15, 2017, he has been imprisoned at the maximum security penal colony No. 1 of Dushanbe.

II. ARREST

1. **Date of arrest:** September 28, 2015
2. **Place of arrest (as detailed as possible):** Dushanbe, Tajikistan, in the building of the Police Unit for Combating Organized Crime with the Ministry of Internal Affairs of the Republic of Tajikistan. Details of Mr. Yorov's arrest are described in more detail at Part 3.II of this application.
3. **Forces who carried out the arrest or are believed to have carried it out:** Officials from Tajikistan's Police Unit for Combating Organized Crime.
4. **Did they show a warrant or other decision by a public authority?** No.

5. **Authority who issued the warrant or decision:** Unknown or not applicable.
6. **Relevant legislation applied (if known):** Mr. Yorov was detained on charges of Article 340 (forgery) and 247 (fraud) of the Tajikistan Criminal Code (the “Criminal Code”) and has been convicted in three different trials under the following articles of the Criminal Code: Article 137 (publicly insulting the President in the media or on the internet); Article 189 (arousing national, racial, local, or religious hostility); Article 247 (fraud); Articles 307 and 307.1 (extremism); Article 330 (insulting a government official); Article 340 (forgery); and Article 355 (contempt of court).

III. DETENTION

1. **Date of detention:** September 28, 2015 to present day.
2. **Duration of detention (if not known, probable duration):** Mr. Yorov has been held in detention since September 28, 2015. As of August 18, 2017, Mr. Yorov has been sentenced to 28 years’ imprisonment (in maximum security facilities) by the Tajik judiciary.
3. **Forces holding the detainee under custody:** Government of Tajikistan (the “Government”)
4. **Places of detention (indicate any transfer and present place of detention):** After his arrest, Mr. Yorov was kept in a temporary detention facility in Dushanbe called IVS, located at the Department of Internal Affairs of Firdavsi District of Dushanbe, Tajikistan. Approximately 8 or 9 days later he was moved to the Dushanbe detention facility, where he was detained until September 2017. At the Dushanbe detention facility, Mr. Yorov was held four times in the Security Housing Unit for periods of 3 to 15 days each. Since December 15, 2017, he has been imprisoned at maximum security penal colony No. 1 of Dushanbe.
5. **Authorities that ordered the detention:** The pre-trial detention was ordered by the court of Ismoili Somoni District of Dushanbe on October 1, 2015; the August 18, 2017 sentence (after the last of three trials) was issued by the court of the Firdavsi District of Dushanbe/ Tajik Criminal Court.
6. **Reasons for the detention imputed by the authorities:** The Government authorities convicted Mr. Yorov to serve time in prison in three separate trials. In the first trial, the Government authorities alleged that Mr. Yorov defrauded his legal clients; forged documents related to an automobile certification; aroused national, racial, local or religious hostility; and participated in extremism through his connection with extremist articles found on a colleague’s computer. In the second trial, the Government authorities alleged that Mr. Yorov insulted the prosecutor by reading aloud an 11th century poem during the first trial and that he was in contempt of court. In the third trial, the

Government authorities prosecuted Mr. Yorov for fraud (again) and for publicly insulting the President of Tajikistan.

7. **Relevant legislation applied (if known):** Mr. Yorov has been convicted under the following articles of the Criminal Code:

- In the first trial: Article 247 (fraud); Article 340 (forgery); Article 189 (arousing national, racial, local, or religious hostility); and Articles 307 and 307.1 (extremism).
- In the second trial: Article 330 (insulting a government official) and Article 355 (contempt of court).
- In the third trial: Article 137 (publicly insulting the President in the media or on the internet) and Article 247 (fraud).

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

PART 2

BACKGROUND

I. POLITICAL BACKGROUND OF THE REPUBLIC OF TAJIKISTAN

1. The Republic of Tajikistan (“Tajikistan” or the “State”) became an independent nation in 1991 after the breakup of the Soviet Union.² Almost immediately afterwards, the country plunged into a bloody civil war, lasting from 1992 to 1997. The insurgents and the Government signed a United Nations-brokered peace agreement in 1997, which resulted in a political compromise that recognized the insurgent-led United Tajik Opposition (the “UTO”) as a legitimate political party.³ Since the war’s end, tensions have persisted between the ruling government and opposition groups. Although the Constitution of Tajikistan (the “Constitution”) provides for a multi-party system, one man has ruled the country since before the war began: President Emomali Rahmon, the current leader of the People’s Democratic Party (the “PDP”).⁴

2. International observers have widely criticized President Rahmon’s initial election and three subsequent re-elections as neither “*free nor fair*.”⁵ In 1999, President Rahmon was re-

² United Nations Information Service, *Tajikistan: Rising from the Ashes of Civil War* http://www.unis.unvienna.org/documents/unis/ten_stories/05tajikistan.pdf (last visited Oct. 1, 2018).

³ Colin P. Clarke & Christopher Paul, *From Stalemate to Settlement* 42 (2014).

⁴ Freedom House, *Tajikistan: Freedom in the World 2018*, <https://freedomhouse.org/report/freedom-world/2018/tajikistan> (last visited Sept. 28, 2018). See Dagikhudo Dagiev, *Regime Transition in Central Asia: Stateness, Nationalism and Political Change in Tajikistan and Uzbekistan*, app. A (2014).

⁵ Joshua Norman, *The World’s Enduring Dictators: Emomali Rahmon, Tajikistan*, CBS News (June 19, 2011), <https://www.cbsnews.com/news/the-worlds-enduring-dictators-emomali-rahmon-tajikistan/> (2006 re-election); see also, e.g., *Tajikistan Profile – Timeline*, BBC News (July 31, 2018), <https://www.bbc.com/news/world-asia->

elected in the first post-civil war election—but only after the “*government [] excluded opposition presidential candidates from the ballot, sought to restrict the activities of political parties, and imposed additional curbs on the media.*”⁶ In 2006, President Rahmon was re-elected to a third term—but this election likewise “*failed to meet international standards.*”⁷ In the most recent presidential election in 2013, President Rahmon won a fourth term—but international observers concluded that voters “*lacked a real choice*” and that, once again, the election failed to meet international standards of fairness.⁸

3. Tajikistan’s parliamentary elections in the era of the Rahmon presidency have been equally problematic. Corruption predominates; indeed, elections have been marred by “[n]umerous cases of proxy voting and ballot-box stuffing” and “various [other] problems that harmed the credibility of the elections.”⁹ The Organization for Security and Co-operation in Europe (“OSCE”) concluded that the most recent parliamentary elections, held in March 2015, took place in a “*restricted political space*” and “*failed to provide a level playing field for candidates.*”¹⁰ Specifically, the campaigns were plagued by biased reporting on part of the dominant state-owned media, voting irregularities, and political pressure on—and even arrests of—opposition politicians, candidates, and election officials.¹¹ In this context, it was not surprising that the PDP was awarded 51 of the 63 seats in the 2015 elections.¹² All 12 remaining seats were divided among other pro-government parties.¹³

4. President Rahmon has also manipulated the Constitution to consolidate his grip on power. For example, in December 2015, the PDP-dominated Tajik parliament declared President Rahmon to be the “*Leader of the Nation,*” and granted him and his family lifelong immunity from prosecution.¹⁴ In 2016, the Constitution was amended to eliminate term limits, effectively allowing President Rahmon to rule the country until his death.¹⁵ Although the

[Footnote continued]

16201087; Human Rights Watch, *Presidential Elections in Tajikistan a Farce* (Oct. 27, 1999), <https://www.hrw.org/news/1999/10/27/presidential-elections-tajikistan-farce> (describing the first post-civil war reelection in 1999 as a “demonstrat[ion] . . . [of] blatant bad faith in creating conditions for a fair and open vote”).

⁶ *Tajikistan Profile – Timeline*, *supra* note 5; *Presidential Elections in Tajikistan a Farce*, *supra* note 5.

⁷ Heritage Found., *Tajikistan: 2011 Index of Economic Freedom* 393, <http://rai-see.org/wp-content/uploads/2016/01/Economic-Freedom-Index-2011.pdf> (last visited Sept. 28, 2018); *see Tajikistan: Freedom in the World 2018*, *supra* note 4.

⁸ *Tajikistan: Freedom in the World 2018*, *supra* note 4.

⁹ European Forum for Democracy & Solidarity, *Tajikistan 2* (Jun. 11, 2018), <https://www.europeanforum.net/uploads/countries/pdf/tajikistan.pdf>.

¹⁰ Press Release, Org. for Sec. & Co-operation in Eur., *Although Tajikistan’s Parliamentary Elections Provided Some Political Alternatives, Campaign Space was Restricted and a Fair Count Could Not be Guaranteed, International Observers Say* (Mar. 2, 2015), <http://www.osce.org/odihr/elections/tajikistan/143311>.

¹¹ Org. for Sec. & Co-operation in Eur., *Republic of Tajikistan, Parliamentary Elections, 1 March 2015: Final Report* 13-15 (May 15, 2015) [hereinafter “2015 OSCE Final Report”].

¹² *Id.* at 30.

¹³ *Id.* at 30.

¹⁴ Hashmat Moslih, *Tajikistan Poised to Slide Back Towards War*, Al Jazeera (Jan. 13, 2016), <http://www.aljazeera.com/news/2016/01/tajikistan-poised-slide-war-160113160347274.html> (their property is likewise immunized from seizure in legal proceedings).

¹⁵ *Tajikistan Votes to Allow President to Rule Indefinitely*, The Guardian (May 23, 2016), <https://www.theguardian.com/world/2016/may/23/tajikistan-votes-to-allow-president-emomali-rahmon-to-rule-indefinitely>.

amendment was ostensibly approved by a voter referendum, international observers pointed out that the referendum was held only after the Government banned leading political opposition groups and had “systematically eliminated [] rivals and critics . . . to keep [] hold on power.”¹⁶ Similarly, the Constitution was amended to lower the age requirement to serve as president, which would allow President Rahmon’s eldest son, who is now 30 years old, to succeed his father.¹⁷ In 2017, President Rahmon appointed his eldest son mayor of Tajikistan’s capital, Dushanbe.¹⁸

II. INTERFERENCE WITH POLITICAL PARTICIPATION AND PERSECUTION OF THE ISLAMIC RENAISSANCE PARTY

5. Tajikistan’s Parliament has little autonomy. This is largely due to the lack of free and fair elections. Since at least 1999, the Government has taken comprehensive steps to deny the people of Tajikistan any meaningful opportunity to participate in politics and government.¹⁹

6. Freedom House rates Tajikistan as “Not Free” based, in part, on the consistent dominance of the ruling PDP in elections and the Government’s persecution of opposition parties and opposition candidates.²⁰ In 2013, Freedom House’s evaluation of Tajikistan’s civil liberties led to a lowering of the country’s score from 5 to 6—with 7 being the worst possible score. That same study noted that Tajikistan’s overall freedom rating declined from 5.5 to 6, while its political rights rating remained continuously steady at 6.²¹ In 2017, Tajikistan’s freedom rating declined even further to 6.5, its political rights rating plunged to a rock-bottom 7, and its civil liberties rating remained at 6, where these ratings remain to this day.²²

7. The PDP-controlled Government dominates the political process in two major ways. First, it uses state-owned media to limit political coverage.²³ Second, it imposes an extremely high threshold of nominations (signatures) required to run for office.²⁴ The party also implements various other restrictions on voting and political participation, including harassment and imprisonment of opposition party members.²⁵ The result is a limited number of independent political parties and an extremely curtailed political opposition.

8. The Islamic Renaissance Party of Tajikistan (the “IRPT”) is likely the best-known opposition political party in Tajikistan. Prior to its dissolution by the Government in 2015, it

¹⁶ Reid Standish, *How Tajikistan’s President Extended his Term—for Life*, Foreign Policy Magazine (May 25, 2016), <http://foreignpolicy.com/2016/05/25/how-tajikistans-president-extended-his-term-for-life-rahmon-isis-migrant-imf/>.

¹⁷ *Tajikistan Votes to Allow President to Rule Indefinitely*, *supra* note 15.

¹⁸ RadioFreeEurope/RadioLiberty, *Tajik Official Defends Appointment of President’s Son As Mayor* (Feb. 6, 2017), <https://www.rferl.org/a/tajikistan-dushanbe-mayor-president-son-rahmon/28284911.html>.

¹⁹ *See generally Tajikistan: Freedom in the World 2018*, *supra* note 4.

²⁰ *Id.*

²¹ Freedom House, *Tajikistan: Freedom in the World 2013*, <https://freedomhouse.org/report/freedom-world/2013/tajikistan> (last visited Sept. 24, 2018).

²² *Id.*; *Tajikistan: Freedom in the World 2018*, *supra* note 4.

²³ *See Tajikistan: Freedom in the World 2018*, *supra* note 4.

²⁴ *Id.*

²⁵ *Id.*

was also the country's largest opposition party.²⁶ Founded in 1990, the IRPT began as one of the combatants in the Tajik civil war²⁷ and formed the backbone of the UTO.²⁸ After the war ended, the IRPT reoriented itself to become a leading moderate Islamic voice in the region.²⁹ Although historically the IRPT held only a small number of seats (usually two) in the Tajik Parliament, this modest representation reflected the lack of free and fair elections in Tajikistan, rather than an absence of popular support for the IRPT.³⁰ For example, in 2005, the IRPT officially won only 8.9% of votes in parliamentary elections (a proportion approximately equivalent to two seats).³¹ However, “domestic observers maintained that the IRPT would have received perhaps up to 30 per cent of votes in free and fair elections.”³² It is suggested that prior to its involuntary dissolution by the Government in September 2015, the IRPT was the most viable opposition party in the country.³³

9. Perhaps in reaction to the IRPT's popularity, in 2015, the Government increased pressure on, and harassment of, the party.³⁴ In March 2015, the IRPT lost all of its seats for the first time since 1999 in an election fraught with fraud and government-sponsored oppression.³⁵ Before the election, Tajikistan's state-owned media mounted a smear campaign against the party, attempting to falsely link the IRPT and its members to extremism and moral degeneracy.³⁶ Freedom House reported that IRPT members were beaten, harassed, and imprisoned before, during, and after the election.³⁷ In addition, “[r]eports of election fraud were issued [] by [] local and international organizations” in association with the election—suggesting that the IRPT only lost its seats because of fraud committed by the Government.³⁸

²⁶ 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/mx8rhxb3iz4lf1igvevx3qvkdpjpwkk2> (Kabiri fled to Germany after the IRPT was dissolved); Freedom House, *Tajikistan: Freedom in the World 2015*, <https://freedomhouse.org/report/freedom-world/2015/tajikistan> (last visited Oct. 12, 2018).

²⁷ See ABC-CLIO, *War and Religion: An Encyclopedia of Faith and Conflict* 779 (Jeffrey M. Shaw & Timothy J. Demy eds., 2017).

²⁸ Human Rights Watch, *Tajikistan: Reverse Political Party Closure* (Sept. 14, 2015), <https://www.hrw.org/news/2015/09/14/tajikistan-reverse-political-party-closure>.

²⁹ Steve Swerdlow, *Tajikistan's Fight Against Political Islam*, *Foreign Affairs* (Mar. 14, 2016), <https://www.foreignaffairs.com/articles/tajikistan/2016-03-14/tajikistans-fight-against-political-islam>; see also Ihsan Yilmaz, *An Islamist Party, Constraints, Opportunities and Transformation to Post-Islamism: The Tajik Case*, 5 *Uluslararası Hukuk ve Politika* 133, 141-45 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1777195.

³⁰ European Forum for Democracy & Solidarity, *Tajik Parliamentary Elections Results: Opposition Parties Fail to Meet 5% Threshold* (Mar. 3, 2015), https://www.europeanforum.net/headlines/tajik_parliamentary_elections_results_opposition_parties_fail_to_meet_5_threshold; Martha Brill Olcott, *Tajikistan's Difficult Development Path* 44 (2012).

³¹ *Islamic Education in the Soviet Union and Its Successor States* 336 (Michael Kemper et al. eds., 2010).

³² *Id.*

³³ *Tajikistan: Reverse Political Party Closure*, *supra* note 28.

³⁴ *See id.*

³⁵ *Tajikistan: Freedom in the World 2018*, *supra* note 4; The Jamestown Found., *Marginalization of Tajikistan's Political Opposition Could Threaten Security*, 12 *Eurasia Daily Monitor* (Mar. 24, 2015), <https://jamestown.org/program/marginalization-of-tajikistans-political-opposition-could-threaten-security/>.

³⁶ *Tajikistan: Reverse Political Party Closure*, *supra* note 28.

³⁷ *Freedom in the World 2018*, *supra* note 4.

³⁸ Oleg Salimov, *Tajikistan's Elections Expel Opposition from Parliament*, *The Cent. Asia-Caucasus* (Mar. 18, 2015), <https://www.cacianalyst.org/publications/field-reports/item/13159-tajikistan%E2%80%99s-elections-expel-opposition-from-parliament.html>.

10. This was only the beginning; after the parliamentary election, the Government increased its repression of the IRPT. In July 2015, pressure from the Government resulted in mass resignations from the IRPT.³⁹ On August 24, 2015, the Prosecutor General’s Office closed IRPT headquarters, explaining only that the building was sealed as it had been illegally purchased.⁴⁰ On August 28, 2015, authorities notified the IRPT that it had 10 days to cease all activities because it no longer had sufficient registered field offices required to continue operations as a legitimate party.⁴¹ Before the end of August 2015, Tajikistan’s Ministry of Justice ordered the closure of IRPT, on the ground that it lacked a sufficient number of members to qualify for official registration; the Ministry gave the party a mere 10 days to shut down its activities.⁴²

11. Tensions escalated following clashes between Government forces and armed groups at police sites in Dushanbe, the capital city, and Vahdat on September 4, 2015.⁴³ The Government accused the IRPT of having ties to the clash, which resulted in 39 deaths, including 14 law enforcement officers and 25 militants.⁴⁴ The September 4 incident served as the Government’s justification for detaining and ultimately arresting at least 13 members of the IRPT leadership and for instigating a series of targeted raids beginning on September 16, 2015.⁴⁵

12. International observers have concluded that the Government failed to produce any credible evidence that the IRPT—which had been a peaceful opposition political party, not a violent extremist organization—was actually involved in the September 4 incident.⁴⁶ It was later revealed that the September 4 clash involved government forces and militants loyal to Deputy Defense Minister General Abduhalim Nazarzoda.⁴⁷ Importantly, General Nazarzoda was not an IRPT member, nor was he affiliated with the party in any way at the time of the September 4,

³⁹ See Edward Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores* 4, Freedom House (2016), https://freedomhouse.org/sites/default/files/NIT2016_Tajikistan.pdf.

⁴⁰ Catherine Putz, *Tajik Authorities Close Opposition Political Office*, *The Diplomat* (Aug. 25, 2015).

⁴¹ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report* 16, <https://www.state.gov/documents/organization/253189.pdf> (last visited Sept. 14, 2018).

⁴² 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*, Human Rights Council, 35th Sess., June 6-June 23, U.N. Doc. A/HRC/35/22/Add.2 (June 9, 2017), at ¶ 40, <https://www.ohchr.org/en/issues/freedomofopinion/pages/annual.aspx> [hereinafter “2017 Special Rapporteur Report”].

⁴³ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 16; Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 39, at 7.

⁴⁴ 2017 Special Rapporteur Report, *supra* note 42, at ¶ 41; Lemon, *supra* note 39, at 7; *UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party*, UN News Centre (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>.

⁴⁵ 2017 Special Rapporteur Report, *supra* note 42, at ¶ 42.

⁴⁶ Steve Swerdlow, *supra* note 29 (noting that no “credible evidence” supported the Government’s ban of the IRPT); *see also* U.S. Comm’n on Int’l Religious Freedom, *Tajikistan* 1, 4 (2017), <http://www.uscirf.gov/sites/default/files/Tajikistan.2017.pdf>; U.S. Org. for Sec. & Co-operation in Eur., *On Political Opposition in Tajikistan: Statement to the PC* (Oct. 8, 2015), <https://osce.usmission.gov/political-opposition-tajikistan/>; Catherine Putz, *Tajikistan’s Terror Group List Just Got Bigger*, *The Diplomat* (Sept. 30, 2015), <http://thediplomat.com/2015/09/tajikistans-terror-group-list-just-got-bigger/>.

⁴⁷ Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, *The Cent. Asia-Caucasus* (Sept. 23, 2015), <https://www.cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>.

2015 clashes.⁴⁸ The Government nevertheless used the incident as part of its narrative to justify banning the IRPT.⁴⁹ Without presenting any credible evidence to support its assertions,⁵⁰ the Government alleged that the September 4, 2015 clash involved not only the IRPT, but also ISIS, and denounced the incident, and the deaths of law enforcement officers, as acts of Islamic terrorism.⁵¹ The state-owned media repeatedly blamed the IRPT for the incident, and President Rahmon branded the IRPT, “*terrorists with evil consciences,*” for their alleged role in the September 4 incident.⁵²

13. On September 29, 2015,⁵³ the Tajikistan Supreme Court declared the IRPT a terrorist organization engaged in extremist activities, “*as it had done nearly a year earlier to the exiled opposition parties Group 24 and Youth for the Revival of Tajikistan.*”⁵⁴ The Supreme Court concluded that the IRPT had violated Article 4 of the Tajikistan Law on Political Parties because the party and its membership had engaged in “*terrorist and extremist activities, violent overthrow of the constitutional regime, establishment of armed groups, or propaganda of hatred on the basis of race, ethnicity, nationality, or religion.*”⁵⁵ The Supreme Court’s decision authorized the Government to close IRPT offices and arrest dozens of additional IRPT members.⁵⁶ Sources indicate that “[t]he Supreme Court assessed the criminality of the party as a whole in making its decision”; “*allegedly relied only on the information provided by the Prosecutor General*”; and declined to give any material consideration to exculpatory evidence.⁵⁷ Using the Law on Combatting Terrorism, the Supreme Court banned all future activities by the

⁴⁸ Nazarzoda was a field commander for the IRPT at the start of the civil war in 1992. However, Nazarzoda officially relinquished his membership in the IRPT in connection with joining the armed forces in 1997. See Bruce Pannier, *Are Economics Again at The Root of Tajikistan’s Current Armed Conflict?* Radio Free Eur. (Sept. 7, 2015), <https://www.rferl.org/a/tajikistan-armed-conflict-nazarzoda/27231431.html>; see also Catherine Putz, *Tajikistan’s Recent Violence: What We Know (and Don’t Know)*, The Diplomat (Sept. 8, 2015), <http://thediplomat.com/2015/09/tajikistans-recent-violence-what-we-know-and-dont-know/>.

⁴⁹ See EurasiaNet.org, *U.S. Voices Concern at Obliteration of Tajikistan’s Opposition* (Sept. 30, 2015), <http://www.eurasianet.org/node/75326>.

⁵⁰ See Steve Swerdlow, *supra* note 29.

⁵¹ Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 39, at 4; Catherine Putz, *Tajikistan Arrest 14 for Allegedly Hoisting an ISIS Flag*, The Diplomat (Sept. 1, 2015), <https://thediplomat.com/2015/09/tajikistan-arrests-14-for-allegedly-hoisting-an-isis-flag>; Putz, *Tajikistan’s Recent Violence: What We Know (and Don’t Know)*, *supra* note 48.

⁵² Casey Michel, *Tajikistan’s Campaign Against the IRPT Continues*, The Diplomat (Dec. 15, 2015), <http://thediplomat.com/2015/12/tajikistans-campaign-against-the-irpt-continues/>.

⁵³ 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/>.

⁵⁴ 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>.

⁵⁵ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 53; see also Law of the Rep. of Tajikistan on Political Parties art. 4 (Nov. 13, 1998), <http://www.icnl.org/research/library/files/Tajikistan/POLITICALPARTIES.pdf>.

⁵⁶ Freedom House, *Tajikistan: Freedom in the World 2016*, <https://freedomhouse.org/report/freedom-world/2016/tajikistan> (last visited Sept. 28, 2018). 28, 2018); see also *Tajikistan: Severe Crackdown on Political Opposition*, *supra* note 54.

⁵⁷ *The Case of the Islamic Renaissance Party of Tajikistan*, *supra* note 53.

party, including distribution of newspapers, videos, audio recordings, literature, and leaflets connected to the IRPT.⁵⁸

III. INTERFERENCE WITH FREEDOM OF EXPRESSION AND FREEDOM OF ASSOCIATION

14. The Government has also severely curtailed the exercise of freedoms of expression and association, particularly following the parliamentary election of 2015. The Government has introduced restrictions impeding the development of independent media in Tajikistan, despite constitutional protections and legislation intended to promote free press. Article 30 of the Constitution recognizes citizens' freedom of expression and prohibits state censorship and prosecution for criticism;⁵⁹ however, the Criminal Code reflects a different reality.⁶⁰ For example, the Criminal Code criminalizes insulting the President and state officials.⁶¹ National legislation concerning terrorism and extremism has further restricted the exercise of freedom of expression in Tajikistan.⁶² Moreover, the Licensing Committee, a subgroup within the State Committee on Television and Radio that issues production licenses to state-owned and independent media companies, has increasingly wielded its power against independent media outlets critical of the Government by withholding or revoking licenses to silence dissent.⁶³ As a result, state-run media outlets control the Tajik media environment.

15. In recent years, President Rahmon's Government has used its control over the media to silence political opposition.⁶⁴ Following the Supreme Court's proclamation of the IRPT as a terrorist organization in September 2015, the distribution of any newspapers, videos, audio recordings, literature and leaflets connected to the IRPT was prohibited and the party's website was (and remains) blocked.⁶⁵ The Government's efforts have also reached social media outlets. During 2015, the Government restricted access to websites such as Facebook and YouTube, and to text messaging.⁶⁶ A 2014 amendment to the Tajik law on "emergency situations" also granted the Government the power to limit the use of recording equipment, as well as mobile and internet networks.⁶⁷ That amendment also permitted the Government to

⁵⁸ Putz, *Tajikistan's Terror Group List Just Got Bigger*, *supra* note 46. The Government has a history of using similar tactics to oppress opposition parties. For example, the Government sentenced Zayd Saidov to 26 years in prison after he formed an opposition party in 2013. And it banned a small opposition party, Group 24, in October 2014. Casey Michel, *Trouble in Tajikistan*, Al Jazeera (Nov. 5, 2015),

<http://www.aljazeera.com/indepth/features/2015/11/trouble-tajikistan-151104085616528.html>.

⁵⁹ Tajikistan Const. art. 30, <http://www.wipo.int/edocs/lexdocs/laws/en/tj/tj001en.pdf>.

⁶⁰ See Tajikistan Crim. Code, arts. 135, 136, 137 & 330.

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

⁶¹ *Id.* arts. 137 & 330.

⁶² 2017 Special Rapporteur Report, *supra* note 42, at ¶ 16.

⁶³ Lemon, *Tajikistan: Nations in Transit Ratings and Averaged Scores*, *supra* note 39, at 7; 2017 Special Rapporteur Report, *supra* note 42, at ¶ 25.

⁶⁴ Freedom House, *Tajikistan: Freedom of the Press 2016*, <https://freedomhouse.org/report/freedom-press/2016/tajikistan> (last visited Sept. 27, 2018).

⁶⁵ 2017 Special Rapporteur Report, *supra* note 42, at ¶ 41.

⁶⁶ Int'l P'ship for Human Rights, et al., *Spotlight: Fundamental Rights in Central Asia 3-4* (Dec. 2015),

<http://iphronline.org/wp-content/uploads/2015/12/Tajikistan-fundamental-rights-overview-December-2015.pdf>.

⁶⁷ Freedom of the Press 2016, *supra* note 64.

ensor independent media during emergencies.⁶⁸ Furthermore, legislation adopted in November 2015 doubled down on these restrictions by allowing the State Committee for National Security (the successor to the Soviet-era KGB)⁶⁹ to block access to internet and cell phone services during anti-terrorism operations—throughout the entire country if necessary.⁷⁰

16. In addition to restrictive laws and regulations, the Government has used violence and intimidation to suppress the rights of free speech and political association. In late 2016, Human Rights Watch reported that Government security services were detaining and interrogating the family members of peaceful protesters and intimidating protesters with threats of violence.⁷¹ Human Rights Watch further determined that the Government was threatening, detaining, and injuring family members of political dissidents and journalists in order to silence protest and reporting.⁷²

IV. INTERFERENCE WITH LAWYERS' INDEPENDENCE

17. Various human rights and legal groups—such as Amnesty International, the Paris Bar, the Association for Human Rights in Central Asia, Human Rights Watch, the International Partnership for Human Rights, and the Norwegian Helsinki Committee—have all called on the Government to cease its interference with the independence of lawyers to practice their profession.⁷³ In Tajikistan, lawyers and human rights defenders have faced significant persecution for their involvement in politically sensitive cases. In particular, they have been subjected to punitive and arbitrary arrests, imprisonment (often long-term), intimidation, and death threats of numerous attorneys (and their families),⁷⁴ typically “*in retaliation for representing political opponents or their willingness to take on politically sensitive cases.*”⁷⁵ Many lawyers who have defended members of the political opposition have either been charged with offenses related to national security or have been forced to flee the country due to fears of reprisal.⁷⁶ Those who have been arrested and prosecuted have faced closed, unfair trials resulting in harsh prison sentences.⁷⁷ These “*unprecedented risks*” imposed by the Government

⁶⁸ *Id.*

⁶⁹ Suzanne Levi-Sanchez, *The Afghan-Central Asia Borderland: The State and Local Leaders* 107 (2017).

⁷⁰ *Spotlight: Fundamental Rights in Central Asia*, *supra* note 66, at 3-4.

⁷¹ Human Rights Watch, *Tajikistan: Abuse of Dissidents' Families* (Dec. 20, 2016), <https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>; Human Rights Watch, *Tajikistan: Violent Retaliation Against Activists* (Sept. 28, 2016), <https://www.hrw.org/news/2016/09/28/tajikistan-violent-retaliation-against-activists>.

⁷² *Id.*

⁷³ Human Rights Watch, *Tajikistan: Human Rights Lawyer Detained* (Oct. 7, 2015), <https://www.hrw.org/news/2015/10/07/tajikistan-human-rights-lawyer-detained>.

⁷⁴ *See id.*; EurasiaNet.org, *Time to Get Tough on Tajikistan's Human Rights Crisis* (May 16, 2016), <http://www.eurasianet.org/node/78786>; Frontline Defenders, *#Tajikistan*, <https://www.frontlinedefenders.org/en/location/tajikistan> (last visited September 28, 2018).

⁷⁵ Human Rights Watch, *Tajikistan: Long Prison Terms for Rights Lawyers*, (Oct. 6, 2016), <https://www.hrw.org/news/2016/10/06/tajikistan-long-prison-terms-rights-lawyers>.

⁷⁶ Amnesty Int'l, *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan* 4, 12 – 13 (2017), available at <https://www.amnesty.org/en/documents/eur60/6266/2017/en/>.

⁷⁷ *Id.* at 4, 12.

have made lawyers increasingly wary of taking on political cases or cases that involve complaints against agents of the state.⁷⁸

18. One example of an attorney affected by this crackdown is Nuriddin Makhkamov, who was tried alongside Mr. Yorov on politically motivated charges of “*arousing national, racial, local or religious hostility*” (Article 189 of the Criminal Code), fraud (Article 247 of the Criminal Code), and extremism (Articles 307 and 307.1 of the Criminal Code).⁷⁹ Mr. Makhkamov was sentenced to 21 years in prison.⁸⁰ Another example is that of Fayzinisso Vohidova, a lawyer known for her human rights work, who reported receiving death threats against her and her family following the representation of politically sensitive clients.⁸¹ Agents of the state reportedly harassed Ms. Vohidova through surveillance, threats, and intimidation.⁸²

19. Tajik lawyers are repeatedly denied access to clients in detention and denied access to evidential materials collected by the Government authorities against their clients.⁸³

20. The Government has also “*taken steps to extend its control over the legal profession, significantly curtailing its independence.*”⁸⁴ Specifically, in November 2015, “*authorities approved a new law requiring all lawyers to renew their legal licenses with the Justice Ministry, instead of the independent bar association or licensing body, and to retake the bar examination every five years.*”⁸⁵ In an attempt by the Government authorities to identify lawyers who are willing to take on politically sensitive cases, “*the exam includes questions on a broad range of subjects unrelated to law, such as history, culture, and politics.*”⁸⁶ Tajik lawyers are concerned that the test administered by the Government is being used to exclude those who take on politically sensitive cases.⁸⁷ In the wake of such new requirements, the number of licensed lawyers in the country has fallen precipitously in a mere two years, from more than 1,200 in 2015 to just 600 in 2017.⁸⁸ As such, Tajikistan now has just one lawyer per 14,500 people.⁸⁹ This is an incredibly low ratio in comparison to other countries (such as the United States, where there is approximately one lawyer per 300 citizens, or the United Kingdom, where

⁷⁸ *Id.*; Radio Free Europe, *Rights Watchdog Condemns Tajikistan’s Crackdown on Lawyers* (May 24, 2017), <https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-yorov-mahkamov-kudratov/28505124.html>.

⁷⁹ *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 76, at 14; Human Rights Watch, *Tajikistan: Travel Ban on Rights Lawyer* (May 16, 2017), <https://www.hrw.org/news/2017/05/16/tajikistan-travel-ban-rights-lawyer>.

⁸⁰ Human Rights Watch, *Tajikistan: Travel Ban on Rights Lawyer*, *supra* note 79.

⁸¹ Human Rights Watch, *Tajikistan: Free Human Rights Lawyers* (May 4, 2016), <https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>.

⁸² *Id.*

⁸³ Amnesty Int’l, *Amnesty International Report 2015/2016 – Tajikistan* (Feb. 24, 2016), <http://www.refworld.org/docid/56d05b0ec.html>; U.S. Dep’t of State, *Tajikistan 2016 Human Rights Report 5–7*, <https://www.state.gov/documents/organization/265762.pdf> (last visited September 28, 2018).

⁸⁴ Human Rights Watch, *Tajikistan: Country Summary* (Jan. 2017), https://www.hrw.org/sites/default/files/tajikistan_1.pdf, at 4-5.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 76, at 4, 5, 11; Amnesty Int’l, *Tajikistani Lawyers Harassed, Intimidated, and Imprisoned* (May 24, 2017), <https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>.

⁸⁹ *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 76, at 11.

there is one lawyer per 400 citizens), and underscores the Government’s targeted efforts to restrain this profession.⁹⁰

V. LACK OF JUDICIAL INDEPENDENCE

21. Tajikistan’s justice system remains highly politicized and lacks transparency. In theory, the Constitution establishes a tripartite government, with each branch separate and equal under the law; in practice, however, the executive branch—headed by President Rahmon and dominated by the PDP—controls the judicial branch.⁹¹ Indeed, the President possesses the power to appoint and dismiss judges and prosecutors with few constitutional checks, and even fewer political checks, to ensure that this power is not abused.⁹² Moreover, judicial proceedings in Tajikistan are riddled with corruption. Reports of bribery are common—an unsurprising effect of the low wages afforded to judges and prosecutors.⁹³ Further, although trials must be held in public, the Government has conducted politically motivated secret proceedings, justified under the pretext of national security.⁹⁴ Finally, law enforcement authorities frequently use aggressive interrogation tactics, as well as torture, to extract confessions from detained individuals.⁹⁵

22. Citizens are also routinely denied due process protections enumerated by the Constitution. Arbitrary arrests are commonplace.⁹⁶ There is no requirement that warrants be issued for arrests. This allows police and security officials to arrest or detain citizens with little to no immediate oversight.⁹⁷ Although the Government typically provides a rationale for arrests, reports of falsified charges abound.⁹⁸ Defendants are frequently denied the right to an attorney during pre-trial and investigatory periods, particularly in politically sensitive cases.⁹⁹ While “*in principle, all testimony receives equal consideration,*” in practice the courts “[give]

⁹⁰ Clements Worldwide, *The Most Litigious Countries in the World* (2016), <https://www.clements.com/sites/default/files/resources/The-Most-Litigious-Countries-in-the-World.pdf>.

⁹¹ Freedom House, *Tajikistan: Nations in Transit 2013*, <https://freedomhouse.org/report/nations-transit/2013/tajikistan> (last visited Sept. 28, 2018).

⁹² *Id.*; U.S. Dep’t of State, *Tajikistan 2014 Human Rights Report*, <https://www.state.gov/documents/organization/236864.pdf> (last visited Sept. 28, 2018).

⁹³ *Id.*

⁹⁴ *Id.* The trials of Zayd Saidov and Mahmatali Hayit exemplify this problem. Journalists and international organizations were denied access to both trials—even though the Court had granted Saidov’s request for an open trial. Hayit’s trial was closed to the public under the guise of national security concerns, although sources report that the trial and the verdict focused heavily on his involvement in the IRPT—at the time, a legal political party. *See id.*; Human Rights Watch, *Tajikistan: Verdicts of Opposition Activists Travesty of Justice* (June 7, 2016), <https://www.hrw.org/news/2016/06/07/tajikistan-verdicts-opposition-activists-travesty-justice>.

⁹⁵ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014* (29 January 2015); Amnesty International, *Annual Report: Tajikistan 2013* (May 23, 2013); <http://www.refworld.org/docid/519f516718.html>; Amnesty International, *Tajikistan: Torture is 'routine', show 'Routine', Shows New Amnesty Report* (Jul. 12, 2012); <https://www.amnesty.org.uk/press-releases/tajikistan-torture-routine-shows-new-amnesty-report>; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017* (2017).), <https://www.amnesty.org/download/Documents/POL1048002017ENGLISH.PDF>.

⁹⁶ *Id.*

⁹⁷ Human Rights Watch, *Human Rights Watch World Report 2015 - Events of 2014*, *supra* note 95.

⁹⁸ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 5; Amnesty Int’l, *Annual Report: Tajikistan 2016/2017*, *supra* note 95, at 355 – 56.

⁹⁹ Amnesty Int’l, *Annual Report: Tajikistan 2013*, *supra* note 95.

prosecutorial testimony far greater weight than defense testimony.”¹⁰⁰ Judges give the executive branch almost complete deference, finding nearly all defendants guilty.¹⁰¹ A Freedom House report from 2016 noted that the rate of acquittal is almost zero.¹⁰²

VI. PRISON CONDITIONS

23. Prison conditions in Tajikistan are reportedly so poor that they are “*life threatening.*”¹⁰³ Prisoners are subjected to “*extreme overcrowding and unsanitary conditions*” and “*disease and hunger [are] serious problems.*”¹⁰⁴ Indeed, “*lack of food and adequate medical treatment [have] resulted in a significant number of deaths of prisoners while in custody.*”¹⁰⁵ UN agencies have also reported that infection rates of tuberculosis¹⁰⁶ and HIV¹⁰⁷ in Tajikistan’s prisons are major problems, underscoring that the quality of medical treatment is poor.¹⁰⁸

24. For prisoners who are sentenced to life imprisonment, the prison regime and physical conditions are “*especially harsh . . . compared with those in the general prison population.*”¹⁰⁹ Prisoners serving a life sentence are “*confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures,*” and are “*subject to inadequate nutrition and sanitation arrangements; denial of contact with lawyers and only rare contact with family members; excessive use of handcuffing or other types of shackles or restraints; physical or verbal abuse; lack of appropriate health care (physical and mental); and denial of access to books, newspapers, exercise, education, employment and/or any other type of prison activities.*”¹¹⁰

¹⁰⁰ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 6.

¹⁰¹ Freedom House, *Tajikistan: Freedom in the World 2016*, *supra* note 56.

¹⁰² 4; *see also* U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 6 describing that during the first six months of the year, there were four acquittals in 5,981 cases, of which two were full acquittals, and the remaining two were partial acquittals with convictions on lesser charges.

¹⁰³ U.S. Dep’t of State, *Tajikistan: Country Reports on Human Rights Practices* (Feb. 23, 2001), <https://www.state.gov/j/drl/rls/hrrpt/2000/eur/840.htm>.

¹⁰⁴ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 2.

¹⁰⁵ Robert Winslow, *Tajikistan, Crime and Society: A Comparative Criminology Tour of the World* (2013).

¹⁰⁶ *See* World Health Org., *HIV Programme in Review in Tajikistan 21* (Sept. 2014),

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

¹⁰⁷ *See id.* at 8 (estimating that, in 2013, the HIV prevalence among prisoners was 8.4% and that about 1/3 of all prisoners had a history of injection drug use prior to conviction).

¹⁰⁸ *See* U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41, at 2–3 (describing the findings of UN agencies); *see also* Daniel E. Winetsky et al., *Prevalence, Risk Factors and Social Context of Active Pulmonary Tuberculosis among Prison Inmates in Tajikistan*, 9 PLOS One 1–9 (Jan. 2014), <http://journals.plos.org/plosone/article/file?id=10.1371/journal.pone.0086046&type=printable>.

¹⁰⁹ U.N. Secretariat, *Rep. of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment*, ¶ 78, Human Rights Council, 22d Sess., U.N. Doc. A/HRC/22/53/Add.1 (Jan. 28, 2013), at, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A-HRC-22-53-Add1_en.pdf [hereinafter “2013 Special Rapporteur Report”].

¹¹⁰ *Id.* (also noting that recent changes in law introduced “unnecessary and inexplicably harsh” restrictions for family contacts and parcel delivery).

25. Torture is also widespread in police stations, prisons, and other places of detention throughout the country.¹¹¹ Although torture is officially prohibited, law enforcement officers frequently torture individuals in order to extract self-incriminating evidence, confessions, and money.¹¹² Political prisoners in Tajikistan are often targeted for significant mistreatment and abuse.¹¹³ For example, in August 2016, representatives of Tajikistan’s civil society reported that two political prisoners linked to the IRPT, Kurbon Mannonov and Nozimdzhon Tashripov, were killed in prison. Tashripov’s body showed visible signs of torture and his neck had been broken. Other IRPT members have been denied medical treatment, even when seriously ill, and “*authorities have consistently prevented relatives and human rights lawyers from visiting them.*”¹¹⁴

PART 3

ARBITRARY DETENTION OF BUZURGMEHR YOROV

I. PAST REPRESENTATION AND POLITICAL ADVOCACY

26. Buzurgmehr Yorov is a Tajik human rights lawyer and member of the opposition Social Democratic Party.¹¹⁵ He has sought to protect the freedom of expression, association, and political participation of others through his work as a criminal defense and human rights lawyer and his involvement with politically sensitive cases. Mr. Yorov continued these efforts in spite of great personal risk to his own freedom and safety and that of his family and co-workers. Mr. Yorov has been a vocal opponent of the Government, and has publicly condemned the Government and law enforcement bodies for their human rights abuses on countless occasions. In particular, Mr. Yorov has denounced the Tajik authorities for the unlawful use of military force against citizens and the significant corruption and vertical concentration of power within the Tajik political structure.¹¹⁶ For example, he made several statements regarding the proceedings against Hoji Akbar Turajonzoda, the former leader of the UTO; published articles and spoken in defense of Muhiddin Kabiri, the leader of the IRPT; and has spoken in defense of

¹¹¹ Matilda Bogner, United Nations, *Human Rights in Rights Opposing Environments* 41-42 (July 31, 2014), https://hr.un.org/sites/hr.un.org/files/Human%20Rights%20in%20Rights%20Opposing%20Environments_0.pdf.

¹¹² 2013 Special Rapporteur Report, *supra* note 109, at ¶¶ 9, 31. *See also id.* at ¶ 71 (noting reports of “consistent, broad patterns of the application of various methods of torture and ill-treatment during arrest and investigation, as well as denial of access to legal counsel”); United Nations, *Torture: “Tajikistan Still Needs to Bridge the Gap between Policies and Reality” – UN Rights Expert* (Feb. 12, 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14245&LangID=E#sthash.7Nj1VSzL.dpuf>.

¹¹³ *See* Amnesty Int’l, *Annual Report: Tajikistan 2016/2017*, <https://www.amnesty.org/en/countries/europe-and-central-asia/tajikistan/report-tajikistan/> (last visited Sept. 27, 2018); Edward James Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, Amnesty Int’l (Aug. 22, 2016), <https://blogs.exeter.ac.uk/excas/2016/08/22/statement-by-the-representatives-of-tajikistans-civil-society-about-status-of-political-prisoners/>.

¹¹⁴ Lemon, *Statement by the Representatives of Tajikistan’s Civil Society about the Status of Political Prisoners*, *supra* note 113.

¹¹⁵ Human Rights Watch, *Tajikistan: Free Human Rights Lawyers*, *supra* note 81.

¹¹⁶ Communication AB, on file with author.

Nuriddin Mahkamov, a businessman and fellow partner at Sipar, regarding Mr. Mahkamov's lawsuit against a brother-in-law of President Rahmon.

27. From 1993 to 1997, Mr. Yorov worked as an investigator in the Department of Internal Affairs for the Oktyabrsky District of the City of Dushanbe. After he earned his law degree from the Lenin Tajik State University in 1997, he began his career as a legal counsel in November 1998. From November 1998 until late 2007, he worked as a legal counsel for the legal aid bureau of the Shohmansur District of Dushanbe.¹¹⁷ Then, in September 2007, he founded an independent Dushanbe law firm called the Sipar law firm and served as its chairman until February 2015.¹¹⁸ During this time, he was involved in a number of high-profile legal cases, representing individuals prosecuted by the Government on politically motivated charges.¹¹⁹ Mr. Yorov thus earned a reputation as one of the most fearless human rights lawyers in Tajikistan.

28. As such, the Government targeted Mr. Yorov and Sipar almost immediately after Sipar's formation. One case, which sought to dissolve the Sipar law firm, was initiated by Rahmon Yusuf, the former chief military prosecutor of Tajikistan and current Attorney General of Tajikistan.¹²⁰ Although that case was dismissed, Mr. Yusuf continued to bring fabricated fraud cases (under Article 247 of the Criminal Code) against Mr. Yorov.¹²¹

29. By the same token, many political leaders and opposition figures in Tajikistan sought help from Mr. Yorov at Sipar, and Mr. Yorov provided them with dedicated representation and advocacy. For example, from 2004 to 2006, Mr. Yorov defended the former leader of the National Guard of Tajikistan, General Gafor Rahmonovich Mirzoev, who was accused of an attempted coup against the President, terrorism, organizing an armed rebellion, sabotage, murder, incitement of ethnic hatred, possession of arms, power abuse, and illicit trafficking.¹²² Mr. Mirzoev received a life sentence.

30. Mr. Yorov also represented a number of IRPT members, and Sipar filed complaints on behalf of IRPT candidates against the Government for election law violations.¹²³ Following the Government's purge of the IRPT, many attorneys refused to defend IRPT members for fear of government retaliation.¹²⁴ Mr. Yorov, however, announced that Sipar would continue to defend accused IRPT members, on a *pro bono* basis where necessary.¹²⁵

31. In 2011, Mr. Yorov represented Hoji Akbar Turajonzoda, a prominent religious figure, senator, and leader of the former UTO (a party affiliated with the IRPT), and his brothers, Mahmud and Nuriddintwo, who are prominent human rights lawyers. One of Mr. Turajonzoda's brothers sued Saidmukkarram Abdukodirzod, the head of the Council of Ulema (a nominally

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ Communication BC, on file with author.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

independent, but state-approved, Islamic organization) for defamation and forgery.¹²⁶ In retaliation, the authorities initiated proceedings against Mr. Turajonzoda's brothers and prohibited service in a Muhammadiyah mosque owned by the brothers.

32. In 2012 and 2013, Mr. Yorov defended Muhiddin Kabiri, chairman of the IRPT and senator, who had been sued by the mayor of Dushanbe, Mahmadsaid Ubaidullaev, for statements regarding tree-cutting in the capital.¹²⁷ The court ruled that Mr. Kabiri should officially apologize to the capital authorities via mass media.¹²⁸

33. In 2012 and 2013, Mr. Yorov represented the shareholders of Movarounnahr Building Company after the director of the company was arrested and the authorities refused to allow the company to resume operations.¹²⁹ The shareholders resolved to hold a rally, but the authorities refused to permit it.¹³⁰

34. In 2013, Mr. Yorov represented the IRPT before the court of I. Somoni District against Government television channels, seeking to prevent government officials in charge of the channels from using television shows to discredit the IRPT's reputation.¹³¹ The lawsuit was dismissed by the court.

35. In 2013, Mr. Yorov defended Makhsum Ibragimov, Umejon Salihov and Dodjon Atovulloev, members of the opposition Group 24.¹³² Mr. Salihov was accused of attempted coup d'état, undermining of the constitutional system, building up a criminal gang, insulting the President, and involving people in criminal organizations. Mr. Salihov, along with Umarali Kuvatov and Mr. Atovulloev, were also charged with publishing extremist materials online and encouraging young people to join criminal gangs.¹³³

36. From 2013 to 2014, Mr. Yorov defended Burhon Abdulloev, the director of Inom market, who brought a suit against a brother-in-law of the President Rahmon. Mr. Abdulloev opposed the hostile takeover of his market by the President's brother-in-law. After civil proceedings on Mr. Abdulloev's lawsuit commenced, a criminal case related to a framed attempted arson attack on his own market was initiated.¹³⁴

37. In 2014, Mr. Yorov represented Fakhriddin Zokirov, a lawyer who had been arrested for forgery in connection with a bank loan.¹³⁵ It was widely believed that this charge

¹²⁶ Asia-Plus, *Turajonzoda Files Defamation Lawsuit Against Tajik Grand Mufti* (Dec. 21, 2011),

<http://news.tj/en/news/tajikistan/society/20111221/turajonzoda-files-defamation-lawsuit-against-tajik-grand-mufti>.

¹²⁷ Asia-Plus, *The Ministry of Internal Affairs of Tajikistan Announced the Detention of Lawyer Buzurgmehr Yorov* (Sept. 29, 2015), <http://news.tj/ru/news/mvd-tadzhikistana-zayavilo-o-zaderzhanii-advokata-buzurgmekhra-erova> (in Russian).

¹²⁸ Communication with AB, on file with author.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Communication BC, on file with author.

¹³³ Communication AB, on file with author.

¹³⁴ *Id.*

¹³⁵ Catherine Putz, *Want to Get Arrested in Tajikistan? Be a Lawyer*, *The Diplomat* (Mar. 15, 2016),

<http://thediplomat.com/2016/03/want-to-get-arrested-in-tajikistan-be-a-lawyer>.

was a pretext to arrest Mr. Zokirov for representing Zayd Saidov, a businessman and founder of a new political opposition party.¹³⁶ Mr. Saidov was charged and ultimately convicted of fraud, polygamy, rape, forgery, abuse of office, embezzlement, and tax evasion.¹³⁷ He was sentenced to a total of 29 years in prison.¹³⁸

38. Mr. Yorov also represented Umarali Khisainov (also known as Saidumur Khusaini), the deputy leader of the IRPT.¹³⁹ On September 28, 2015, Mr. Yorov stated in an interview that Mr. Khisainov was being held by police in pre-trial detention.¹⁴⁰ In this interview, Mr. Yorov noted that the Police Unit for Combating Organized Crime (the “UBOP”), a division of the Ministry of Interior, had beaten Mr. Khisainov and covered his head with a bag during detention.¹⁴¹

39. In addition to criminal defense, Mr. Yorov took on the civil cases of many citizens and entrepreneurs who suffered from raids and seizures of their businesses by members of President Rahmon’s relatives.¹⁴² For example, Mr. Yorov represented Nuriddin Mahkamov in a case filed against Orient Bank, which is controlled by President Rahmon’s brother-in-law, Hasan Saidulloev.¹⁴³ Mr. Yorov published several articles relating to this case.¹⁴⁴ Following the release of these articles, President Rahmon’s brother-in-law wrote to both the regional courts and the Attorney General to request that criminal charges be brought against Mr. Yorov and Mr. Mahkamov for publicly insulting the President. At that time, no further action was taken.

40. Soon thereafter, Mr. Yorov represented Burhon Abdulloev, an entrepreneur, in a lawsuit filed against him by another brother-in-law of the President.¹⁴⁵ Mr. Yorov also defended the Movarounnahr construction firm in a lawsuit filed by the Government. In protest against the allegations, Mr. Yorov organized a demonstration against the Tajik authorities, but the case was settled prior to the demonstration taking place.¹⁴⁶

41. Mr. Yorov has worked closely with the Social Democratic Party of Tajikistan (the “SDPT”) on a spectrum of legal matters.¹⁴⁷ The SDPT is a legal political party and its activities are permitted by the State.¹⁴⁸ Mr. Yorov became a member of the party in September 2009 and became a member of the SDPT Political Council in 2011.¹⁴⁹ In 2010 and 2015, Mr. Yorov attempted to run as a SDPT candidate in elections for positions within the legislative bodies of

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Human Rights Watch, *supra* note 75.

¹⁴⁰ Marius Fossum, *Tajikistan’s Magnitsky: The Case for a Global Magnitsky Act*, *The Diplomat* (Dec. 2, 2016), <https://thediplomat.com/2016/12/tajikistans-magnitsky-the-case-for-a-global-magnitsky-act>.

¹⁴¹ Amnesty Int’l, *Urgent Action: Opposition Members’ Lawyer at Risk of Torture* (Oct. 1, 2015), <https://www.amnestyusa.org/files/uaa20915.pdf>.

¹⁴² Communication BC, on file with author.

¹⁴³ *Id.*

¹⁴⁴ Communication AB, on file with author.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

the Rudaki region and the city of Dushanbe.¹⁵⁰ However, the Government prevented Mr. Yorov from registering as a candidate.¹⁵¹ In 2015, Mr. Yorov sued the Central Election Committee of Tajikistan (the “CEC”), which gave a number of excuses for why it refused to register him as a candidate for election to the legislative body. One such excuse was that Mr. Yorov allegedly did not speak the Tajik language, although Tajik is Mr. Yorov’s native language.¹⁵² Notably, in one of the hearings, the CEC representative for the Rudaki region directly told Mr. Yorov that the parliament was not open to people like him, that this decision came from above, and that no lawsuit could change that.¹⁵³

42. Mr. Yorov is married, and has four children.¹⁵⁴ [REDACTED].¹⁵⁵ Both Jamshed and Khosiyat have been targeted following Mr. Yorov’s detention, as discussed in Paragraphs 113 to 118.

II. MR. YOROV’S ARBITRARY ARREST AND DETENTION

1. Background

43. As discussed in Paragraphs 11 and 12, the Government accused the IRPT of organizing a violent encounter on September 4, 2015, which resulted in the deaths of 14 law enforcement officers and 25 militants.¹⁵⁶ Although the Government produced no evidence that the IRPT had any knowledge of or involvement in this incident, the Government nonetheless used the attempted coup to justify the detention and arrest of at least 13 members of the IRPT leadership and began a series of targeted raids beginning September 16, 2015. As the Government was increasing its pressure on IRPT, Mr. Yorov took on the representation of Mr. Hayit and Mr. Khisainov, two IRPT officials at the highest levels of leadership.

44. On September 26, 2015, Mr. Yorov met with Mr. Khisainov and several other members of IRPT leadership who were being held at a detention facility after being arrested in the Government’s September 16th raids.¹⁵⁷ Mr. Khisainov told Mr. Yorov that he and others, including Mr. Hayit, were beaten, insulted, and tortured by the Government authorities.¹⁵⁸ After this meeting, Mr. Yorov announced that he would file a claim of illicit conduct against the security officers on behalf of Mr. Khisainov, alleging that the Government authorities had

¹⁵⁰ Communication BC, on file with author.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ TOJ News, *Buzurgmehr Yorov*, <http://tojnews.org/tj/personality/buzurgmekhr-yorov> (last visited July 18, 2017) (in Russian).

¹⁵⁵ Communication CD, on file with author.

¹⁵⁶ UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party, UN News Centre (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>; Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, The Cent. Asia-Caucasus (Sept. 23, 2015), <https://www.cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>, <https://www.cacianalyst.org/publications/analytical-articles/item/13279-violence-in-tajikistan-emerges-from-within-the-state.html>; 2017 Special Rapporteur Report, *supra* note 47, at ¶ 41.

¹⁵⁷ Attorney Sayidumar Khusaini, the chief vice *Chief Vice Chairman of PIVT*, says: “My Client was Beaten at the UBOP,” Ozodagon (Sept. 28, 2015).

¹⁵⁸ Communication DE, on file with author.

illegally detained and beaten him.¹⁵⁹ Mr. Yorov invited other lawyers in a coalition to join him in representing the detained IRPT members.¹⁶⁰ Two days later, government officials asked Mr. Yorov to withdraw from representing Mr. Khisainov.¹⁶¹ He refused and was arrested shortly thereafter.

45. After losing Mr. Yorov as his attorney due to Mr. Yorov's arrest, Mr. Hayit was convicted to life in prison; other IRPT members were also sentenced to lengthy prison terms. Notably, the United Nations Working Group on Arbitrary Detention (the "Working Group") has issued an opinion confirming that Mr. Hayit's continuing detention is arbitrary, in violation of his rights under international law.¹⁶²

2. Arrest

46. At approximately 10:00 A.M. on September 28, 2015, two officials from the UBOP arrived at the offices of Sipar law firm dressed in civilian clothes.¹⁶³ Mr. Yorov was not present at the office at that time and these officials left, only to return approximately an hour later when Mr. Yorov was in the office.¹⁶⁴ They asked Mr. Yorov to visit the head of UBOP, allegedly for a simple conversation.¹⁶⁵ The police had no arrest warrant, but they claimed that they had an oral order from the director of UBOP.¹⁶⁶ Mr. Yorov responded that he could not leave the office because he had scheduled appointments with multiple out-of-town clients, adding that—because the Government authorities had not issued an official summons—he would visit the UBOP building after his client appointments.¹⁶⁷

47. Around 1:40 P.M., Mr. Yorov finished his work with clients and then drove his car to the UBOP building.¹⁶⁸ He entered the building at 2:00 P.M.¹⁶⁹ He was then arrested at the UBOP building.¹⁷⁰

3. Warrantless Searches

48. Without search warrants or any kind of judicial authorization, UBOP officials seized all of Mr. Yorov's agreements with family members of the detained IRPT members

¹⁵⁹ Communication AB, on file with author.

¹⁶⁰ *UN Human Rights Office Voices Concern After Tajikistan Bans Islamic Political Party*, UN News Centre (Oct. 2, 2015), <http://www.un.org/apps/news/story.asp?NewsID=52122#.WQx47WnyuUk>; Edward Lemon, *Violence in Tajikistan Emerges from Within the State*, *supra* note 156; 2017 Special Rapporteur Report, *supra* note 47, at ¶ 41.

¹⁶¹ *PIVT Activists' Attorney, B. Yorov Says: Despite the Pressure from the Government, I Will Not Stop Defending My Clients' Rights*, Ozodagon. (Sept. 28, 2015).

¹⁶² *Opinions Adopted by the Working Group on Arbitrary Detention: Opinion No. 2/2018 concerning Haritos Mahmadali Rahmonovich Hayit (Tajikistan)*, ¶ 79, U.N. Doc. No. A/HRC/WGAD/2018 (May 10, 2018), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf.

¹⁶³ Communication BC, on file with author.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Communication AB, on file with author.

(protected by attorney-client privilege) from the law firm's archives.¹⁷¹ Later that day, the same UBOP officials returned to the law firm's offices and seized all of Mr. Yorov's agreements with all clients relating to the provision of any legal assistance within the preceding two years.¹⁷² During this second seizure on September 28, 2015, the Government authorities again failed to present a search warrant or any kind of judicial authorization.¹⁷³ Only a month later, at the end of October 2015, did the Government authorities provide an official letter to the law firm's accountant in an apparent attempt to retroactively authorize the searches at the law firm.¹⁷⁴ Following these seizures, all of Mr. Yorov's current and former clients received phone calls from law enforcement officials threatening to induce the clients to fabricate complaints against Mr. Yorov for fraud (under Article 247 of the Criminal Code).¹⁷⁵

49. UBOP officials also searched Mr. Yorov's home.¹⁷⁶ The Government authorities confiscated books, CDs, a DVD, color and black and white printers, and documents concerning the defense of human rights.¹⁷⁷ For example, the Government authorities seized the book *Tajiks* by Bobohon Gafurov, Ph.D., a historical treatise on the founding and development of the Tajik nation published during the Soviet era.¹⁷⁸ According to the Government authorities, the book was seized to test it for extremist and terrorist content.¹⁷⁹ One day later, on September 29, 2015, Mr. Yorov's laptop was taken from his brother Jamshed.¹⁸⁰ This laptop contained all of Mr. Yorov's client case files and documents concerning his defense of human rights which were legally privileged and protected.¹⁸¹ Mr. Yorov's mobile phone was also seized.¹⁸² Authorities also searched the home of Mr. Yorov's father.¹⁸³ Each of these searches was performed without a search warrant, and the Government authorities continues to ignore requests from Mr. Yorov's family for a copy of the search record.¹⁸⁴

50. Under Tajik law, searches are to be carried out based on a warrant issued by the investigating officer conducting the criminal investigation.¹⁸⁵ However, the searches of Mr. Yorov's office and the seizure of documents relating to his legal work took place before the criminal investigation was initiated.¹⁸⁶ Moreover, the searches conducted at Mr. Yorov's office and home, and the searches conducted at the homes of Mr. Yorov's relatives, were carried out in

¹⁷¹ *Id.*

¹⁷² Communication BC, on file with author.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ Communication AB, on file with author.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

breach of Article 192 of the Tajik Criminal Procedure Code as these were not sanctioned by a judicial authority, and some of the searches were carried out in the absence of a witness.¹⁸⁷

4. Charges and Pre-Trial Publicity

51. Initially, on September 28, 2015, Mr. Yorov was accused of being complicit in the coup of Deputy Defense Minister General Abduhalim Nazarzoda. On September 29, 2015, however, the Government authorities officially informed Mr. Yorov that he had been arrested under suspicion of fraud and forgery (Articles 247 and 340 of the Criminal Code, respectively).¹⁸⁸ At the time, the Ministry of the Interior website published an article stating that an “attorney-fraudster” and a “swindler” had been detained.¹⁸⁹ This article encouraged the public to call the police if they had suffered at the hands of Mr. Yorov.¹⁹⁰ In addition, in October 2015, a criminal-themed television show depicted Mr. Yorov as an “attorney-fraudster” with stock images of money, bags, and people.¹⁹¹

52. The Government filed official charges against Mr. Yorov sometime between October 8 and October 10, 2015.¹⁹² All past accusations were renewed and became the basis for the fraud charges in Mr. Yorov’s 2016 trial, even though some of the facts were more than 15 years old and some of them had been previously adjudicated.¹⁹³ The fraud charges stemmed from statements made by Mr. Yorov’s clients under pressure from law enforcement officials. The forgery charges also alleged that Mr. Yorov had falsified the proof of his automobile inspection in 2011.¹⁹⁴

5. Pre-Trial Detention

53. Mr. Yorov’s friends and family, including his brother Jamshed, waited for him outside of the UBOP building until midnight on the day he was arrested. During that time, Mr. Yorov called them on the phone twice. He told them that he expected to be released soon, and even asked them to drive to his summer house to pick up his mother because he had made plans with her for later that night. When the family brought Mr. Yorov’s mother to the UBOP building, they realized Mr. Yorov had not yet been released. Around midnight, he was led outside in handcuffs, placed into a car, and transported to SIZO, a temporary detention facility.

54. The day after the arrest, Mr. Yorov’s family members went to SIZO to bring him a change of clothes and some food.¹⁹⁵ When the family received the clothes that Mr. Yorov had been wearing during his arrest, they saw that his shirt was covered in blood.¹⁹⁶ A confidential

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Communication BC, on file with author.

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Communication BC, on file with author.

¹⁹³ *Id.*

¹⁹⁴ Communication AB, on file with author.

¹⁹⁵ Communication BC, on file with author.

¹⁹⁶ *Id.*

source who witnessed Mr. Yorov's arrival to SIZO confirmed to the family that Mr. Yorov had sustained injuries before his arrival.¹⁹⁷

55. Mr. Yorov was initially held at a temporary detention facility for approximately nine days following his arrest and then was moved to a permanent detention facility. In both places, Mr. Yorov was subject to incredibly poor living conditions and allegedly suffered regular beatings from the detention officers. He was also kept in solitary confinement on multiple occasions in both places, ranging anywhere from three to 15 days each time.

6. *Interrogations*

56. During those ten hours that Mr. Yorov spent in the UBOP building on September 28, he was first questioned about his alleged complicity in the armed uprising and attempted coup by General Nazarzoda on September 4, 2015.¹⁹⁸ Mr. Yorov's attorney Mekhrubon Rahmonov was present for only one and a half hours during the interrogation, after which he left and withdrew from representation (as discussed below in Paragraph 62). Law enforcement officials then accused Mr. Yorov of fraud and further alleged that he had ripped the epaulettes off the uniform of an UBOP official who was questioning him.¹⁹⁹ A representative from the prosecutor's office was summoned to the UBOP building to investigate Mr. Yorov's alleged assault of a police officer.²⁰⁰ Mr. Yorov denied all accusations.²⁰¹ To prove his innocence, Mr. Yorov requested to see the building's surveillance footage, but his request was denied without further explanation.²⁰²

57. During the subsequent investigation and trials, case documents never mentioned Mr. Yorov tearing off the epaulettes.²⁰³ The results of the investigation into Mr. Yorov's alleged assault of a police officer were never released.²⁰⁴ Mr. Yorov himself has mentioned this topic many times during the investigation and trials, citing this as an example of a fabricated excuse for his detention.²⁰⁵

58. At first, the Government authorities transported Mr. Yorov from SIZO to the Ministry of Interior investigator's office in handcuffs for each interrogation.²⁰⁶ The investigator and the officials from the State National Defence Committee (the "GKNB")²⁰⁷ asked Mr. Yorov several times—in exchange for freedom—to stop defending political opposition figures.²⁰⁸ To exert pressure on Mr. Yorov, government officials arranged for Mr. Yorov's wife, children, sister, and father to meet with him to persuade him to cease defending the opposition and, in

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² Communication EF, on file with author.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ This government body is the successor to the KGB.

²⁰⁸ Communication BC, on file with author.

general, to end his professional activities as an attorney.²⁰⁹ One such meeting took place on October 1, 2015, at the courthouse right before a pre-trial hearing.²¹⁰ GKNB officials were present and directly told Mr. Yorov's family that he should refuse to defend IRPT members.²¹¹ Several other such meetings occurred in investigators' offices at the Department of Internal Affairs building. But Mr. Yorov remained steadfast in his refusal to comply.²¹²

7. Pre-Trial Hearings

59. As Mr. Yorov's detention could only be prolonged with a court's order, the investigative unit of Ministry of Interior filed a petition asking the court for a "*preventive measure*" of detaining Mr. Yorov for two months.²¹³ Mr. Yorov was first brought before a judge at the Somoni District Court in Dushanbe to adjudicate the legality of his detention on October 1, 2015, three days after his arrest.²¹⁴ The October 1 hearing was closed to the public.²¹⁵ Although one of Mr. Yorov's attorneys, Bobohon Yakubov, was permitted to attend the hearing, the other, Nuriddin Mahkamov, was not.²¹⁶ The security guards at the courthouse said that Mr. Yorov was only permitted one attorney and ignored Mr. Mahkamov's pleas to enter.²¹⁷ At this hearing, the investigator did not present any evidence to establish the grounds for the Government's petition for a detention.²¹⁸ There was no witness testimony or any other facts to support the finding that Mr. Yorov was a flight risk or that he was likely to falsify any evidence, influence any witnesses, or destroy any documents that were relevant to his criminal case.²¹⁹ Despite this lack of evidence, the court granted the investigator's petition by merely repeating the reasons given by the investigator.²²⁰

60. Mr. Yorov's brother, Jamshed, attempted to organize a petition from the bar association of Tajikistan, asking the court to replace Mr. Yorov's detention with house arrest. The petition stated that the bar association, a public organization, was willing to guarantee that Mr. Yorov would attend his trial. Most attorneys, however, declined to sign the petition, allegedly for fear of government retaliation.

8. Lack of Access to an Attorney

61. Mr. Yorov was not given access to legal counsel immediately following his arrest.²²¹ Mr. Yorov's family hired legal counsel for Mr. Yorov the following day, and Mekhrubon Rahmonov entered his appearance to represent Mr. Yorov.²²²

²⁰⁹ *Id.*

²¹⁰ Communication EF, on file with author.

²¹¹ *Id.*

²¹² Communication BC, on file with author.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ Communication EF, on file with author.

²¹⁸ Communication BC, on file with author.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ Communication AB, on file with author.

62. However, Mr. Rahmonov withdrew from representing Mr. Yorov later that day.²²³ As discussed above, Mr. Rahmonov quit after sitting through only one and a half hours of Mr. Yorov's interrogation, allegedly because he thought that representing Mr. Yorov was putting his career in danger.²²⁴

63. Mr. Yorov's family then hired attorneys Nuriddin Mahkamov, Mr. Yorov's fellow law partner at Sipar, and Bobohon Yakubov.²²⁵ These attorneys did not have access to Mr. Yorov for 44 days, except that Mr. Yakubov was permitted to attend Mr. Yorov's pre-trial detention hearing on October 1, 2015.²²⁶ Before Mr. Mahkamov was able to meet with his client, however, he too was arrested and subsequently tried alongside Mr. Yorov.²²⁷ Mr. Mahkamov had no legal counsel or representation during the investigation against him; at trial he shared counsel with Mr. Yorov.²²⁸

64. Mr. Yakubov began representing Mr. Yorov on September 30, 2015, although for weeks the Government authorities did not allow the two to meet privately.²²⁹ On November 9, 2015, Mr. Yorov published a letter announcing a hunger strike to protest the violation of his right to legal representation.²³⁰ Only then, a week later, did the Government authorities permit Mr. Yorov to speak privately with Mr. Yakubov.²³¹ There was therefore no opportunity for Mr. Yorov and his attorney to discuss their strategy for his defense until several weeks following his arrest, and the opportunity was only provided because Mr. Yorov went on a hunger strike.²³²

65. During the Ministry of Interior investigation, the Government authorities permitted Mr. Yakubov to meet with Mr. Yorov approximately once or twice a week.²³³ These meetings usually took place in the Ministry of Interior building and occasionally in SIZO.²³⁴ The meetings in SIZO were confidential and took place outside the presence of the investigative units and SIZO officials.²³⁵ [REDACTED].²³⁶ [REDACTED].²³⁷ Once the investigation was over on March 2, 2016, Mr. Yakubov ceased his representation of Mr. Yorov, allegedly because the Government had threatened him with arrest.²³⁸

[Footnote continued]

²²² *Id.*

²²³ Communication BC, on file with author.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Communication EF, on file with author.

²²⁹ *Id.*

²³⁰ *Id.*

²³¹ *Id.*

²³² Communication AB, on file with author.

²³³ Communication BC, on file with author.

²³⁴ *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ Communication EF, on file with author.

66. After Mr. Mahkamov was arrested and [REDACTED], Mr. Yorov's family hired Muazamakhon Kadyrova, an international human rights lawyer, to represent Mr. Yorov during his trial. She represented Mr. Yorov from March 5, 2016 until December 2016.²³⁹ During this time, the Government repeatedly threatened, stalked, and spied on Ms. Kadyrova.²⁴⁰ As a result of these threats, Ms. Kadyrova decided it was no longer safe for her to stay in the country.²⁴¹ She ceased her representation of Mr. Yorov, fled Tajikistan, and applied for asylum in Europe.²⁴²

67. Because of the arrest of Mr. Mahkamov and the forced exile of Ms. Kadyrova, no other practicing attorney in Tajikistan would represent Mr. Yorov.²⁴³ As a result, during parts of Mr. Yorov's first trial and during the appeal of the third verdict, he had no legal representation at all.²⁴⁴ When Mr. Yorov was given legal counsel, it was inadequate. In the second trial, Mr. Yorov was nominally represented by an intern, [REDACTED], who was appointed by the Government authorities and had no work experience.²⁴⁵ [REDACTED] routinely failed to attend court hearings.²⁴⁶ During the second trial, Mr. Yorov may have also been presented with a state-appointed lawyer for just one day, who had little experience in defense work.²⁴⁷ Mr. Yorov's attorney's motion to the court for time to become familiar with the files was denied, and Mr. Yorov's attorney was not allowed to present arguments in his defense.²⁴⁸

68. Because Mr. Yorov lacked effective representation, his wife, Zarina Nabieva, was forced to act as Mr. Yorov's defense in parts of the second trial and the entire third trial, as permitted by the laws of Tajikistan.²⁴⁹ Ms. Nabieva served as Mr. Yorov's attorney from June to November 2017.²⁵⁰ Notably, Ms. Nabieva does not have any legal education or experience.²⁵¹ Despite the fact that Ms. Nabieva officially was Mr. Yorov's legal representative in the third trial, the court did not notify her of the sentencing hearing date, and the final sentencing took place in her absence.²⁵²

III. MR. YOROV'S ARBITRARY PROSECUTION AND CONVICTION

1. Trial 1

²³⁹ Communication EF, on file with author.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*; Radio Free Europe, *Lawyer For Jailed Tajik Human Rights Attorney Flees to Germany* (Mar. 30, 2017), <http://www.rferl.org/a/lawyer-jailed-tajikistan-human-rights-attorney-flees-germany/28399757.html>; Catherine Putz, *Jailed Tajik Lawyer's Lawyer Flees, Fearing Her Client's Fate*, *The Diplomat* (Mar. 31, 2017), <http://thediplomat.com/2017/03/jailed-tajik-lawyers-lawyer-flees-fearing-her-clients-fate/>.

²⁴³ *Id.*

²⁴⁴ Communication EF, on file with author.

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ Communication AB, on file with author.

²⁴⁸ *Id.*

²⁴⁹ Communication BC, on file with author.

²⁵⁰ Communication EF, on file with author.

²⁵¹ Communication BC, on file with author.

²⁵² *Id.*

69. In October 2015, the authorities initially charged Mr. Yorov with fraud and forgery (under Articles 247 and 340 of the Criminal Code, respectively).²⁵³

70. In December 2015, Mr. Yorov's attorney Nuriddin Mahkamov was arrested. After Mr. Mahkamov's arrest, prosecutors charged Mr. Yorov with "*arousing national, racial, local or religious hostility*" (Article 189 of the Criminal Code) and extremism (Articles 307 and 307.1 of the Criminal Code), based on allegedly extremist articles found in the home and on the computer of Mr. Mahkamov.²⁵⁴ The Government authorities alleged that certain Facebook posts from Mr. Mahkamov's account were made by Mr. Yorov.²⁵⁵ Mr. Yorov and Mr. Mahkamov were charged as co-conspirators in the same trial.²⁵⁶

71. After Mr. Yorov began to publish materials documenting inconsistencies in the Government's charges, Mr. Yorov's and Mr. Mahkamov's cases were classified as secret on April 5, 2016. The closed trial began on May 5, 2016. More than 20 witnesses testified at the first trial.²⁵⁷ Though none of the charges were related, Mr. Yorov was jointly and simultaneously tried for fraud; forgery; arousing national, racial, local or religious hostility; and extremism; Mr. Mahkamov was tried as a co-conspirator for arousing national, racial, local or religious hostility, and extremism.

72. With relation to the fraud charge, 18 witnesses testified against Mr. Yorov, claiming that he agreed to represent them, received payments of legal fees, and then allegedly missed their court dates and provided absolutely no legal services.²⁵⁸ The statements of these witnesses, all of whom said that Mr. Yorov cheated them out of their money, were the Government's only evidence in connection with the Article 247 (fraud) charge.²⁵⁹ It was striking that the statements of all 18 witnesses were almost identical, which created some inconsistencies.²⁶⁰ For example, all of Mr. Yorov's clients who testified in his trial stated that they had received unfavorable court decisions because of Mr. Yorov's inaction.²⁶¹ However, Mr. Yorov's only representation of three of these clients was in cases that were still in progress at that time; as such, no court decisions, favorable or unfavorable, had been issued in any of their cases at the time of their testimony.²⁶² Some witnesses even stated in court that they had been forced, deceived, or persuaded into writing their complaints against Mr. Yorov and that, in reality, they had no problems with their attorney.²⁶³

73. The forgery charge stemmed from an incident in 2011 where Mr. Yorov had been a victim in a forgery case concerning an automobile inspection certificate.²⁶⁴ Mr. Yorov's

²⁵³ Human Rights Watch, *supra* note 75.

²⁵⁴ *Id.*

²⁵⁵ Communication EF, on file with author.

²⁵⁶ *Id.*

²⁵⁷ Communication BC, on file with author.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

former student arranged a state inspection on Mr. Yorov's car.²⁶⁵ The technical inspection confirmation document was later found to be inauthentic.²⁶⁶ After discovering that the inspection certificate was not an original and had been forged, Mr. Yorov reported the incident and was treated as a victim of a forgery crime.²⁶⁷ Notably, at the time, a criminal gang focused on forgery was operating in Tajikistan and many in the country were involved in such investigations as victims. At the time of his arrest in 2015, Mr. Yorov was still considered to be a victim, and not a suspect, in that forgery case.²⁶⁸

74. At trial, the Government authorities offered a different account, yet presented no evidence to support its new forgery charges. The Government authorities alleged that Mr. Yorov met with a man named Khakimov Mairuf and knowingly purchased a counterfeit vehicle inspection certificate from him.²⁶⁹ No witnesses were questioned about Mr. Yorov's involvement in that crime until after his arrest.²⁷⁰ Moreover, Mr. Mairuf's in-court testimony contradicted the prosecutor's theory. He directly stated, "*I do not know Yorov, and I did not sell anything to him.*"²⁷¹ No evidence linking Mr. Yorov to the knowing purchase of counterfeit documents was offered, and the fake document confirming the car's technical inspection was not presented or examined in court.²⁷²

75. The Government's only piece of evidence in connection with the charges of "arousing hostility" and "extremism" was a January 28, 2016 expert opinion stating that articles Mr. Yorov had allegedly published online under Mr. Mahkamov's name were extremist in nature and, as such, tended to trigger the nationalist, racist, local, and religious conflict.²⁷³ These articles were never presented at trial, and Mr. Yorov was never given the opportunity to review them.²⁷⁴

76. Although Mr. Yorov acknowledges that some of the articles may have been critical of the President, he firmly disputed that any of them illegally called for a change in the constitutional order.²⁷⁵ There are no direct calls for violence in any of the articles. In fact, in one

²⁶⁵ *Id.*

²⁶⁶ Communication AB, on file with author.

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ Communication EF, on file with author.

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² Communication AB, on file with author.

²⁷³ The list of articles cited in the expert opinion is as follows: (1) *He Who Was a Nobody Has Captured Everything, or Why the President of Tajikistan Merits a Vote on the Loss of Confidence*, Fergana News (April 21, 2012); (2) *Appeal of the Students of Tajikistan to the President of the Republic of Tajikistan*, IRSHOD (June 26, 2011); (3) *Address of the ENOUGH Movement to the People of Tajikistan* (August 18, 2011); (4) *Seven Years of Struggle With the Bank, Tajik Entrepreneur Versus the President's Brother-In-Law*, Fergana/Ozodi (November 21, 2011) (conversation between the journalist of the Tajik radio station "Freedom," Abdukayum Kayumzod, and Nuriddin Mahkamov); (5) *Emomali Rahmon – Resign!*, TjkNEWS.com (June 1, 2012); (6) *Khorogh the Basis for the Impeachment of Emomali Rahmon* (August 19, 2011); (7) *To CJSC: To the Supreme Economic Court of the Republic of Tajikistan*; (8) *Tajikistan on the Eve of Revolution. See Expert Opinion on Extremist Nature of Documents Found in N. Mahkamov's Residence*, (January 28, 2016), on file with authors.

²⁷⁴ *Tajikistan: Attorneys Yorov and Makhkamov are Accused of Making Extremist Statements in the Media, Including Those That Were Never Made*, Fergana News (July 6, 2016).

²⁷⁵ *Id.*

of the articles, the unidentified author argued citizens should openly discuss whether the current President should resign.²⁷⁶ The unidentified author did not advocate for any violence against the Government.²⁷⁷

77. Moreover, even the expert opinion presented at trial did not link Mr. Yorov to the articles in question.²⁷⁸ The expert opinion identified Mr. Mahkamov as the author of two of the eight articles.²⁷⁹ The experts did not identify the author of the other six articles.²⁸⁰ Mr. Yorov stated at trial that he was unaware that some of these articles even existed.²⁸¹ This was in breach of Tajik criminal procedure, which requires that all evidence and proof should be examined during the trial.²⁸² In addition, no witness testimony, not even by the Government's experts, was presented to link any action by Mr. Yorov to the "arousing hostility" or "extremism" charges. As a result, Mr. Yorov's counsel was not given the opportunity to challenge any secret evidence that may have been presented against his client.²⁸³

78. Throughout the trial, Mr. Yorov's defense team had no opportunity to present a real defense. Prior to trial, the government investigator, [REDACTED], removed 85 pages of testimony from Mr. Yorov's supporting witnesses and an expert opinion issued in the Sogdiysky Region confirming that the material in Mr. Mahkamov's possession was not extremist from the case file.²⁸⁴ The evidence against him was not disclosed to Mr. Yorov or his attorneys ahead of the trial.²⁸⁵ Mr. Yorov was not able to review the allegedly extremist article and leaflets until after he was sentenced.²⁸⁶

79. At trial, Mr. Yorov and his attorneys were permitted to cross-examine the government witnesses and call some defense witnesses. However, the defense team's motions calling for additional witnesses were denied by the court without explanation.²⁸⁷ Mr. Yorov and his attorneys were not permitted to present evidence in connection with the Article 247 (fraud) charges.²⁸⁸ The court dismissed initial evidence and denied Mr. Yorov's motion requesting documents that showed he fulfilled his contractual obligations to the clients alleging fraud.²⁸⁹ The defense team also was not permitted to introduce the expert opinion issued in the Sogdiysky

²⁷⁶ *Emomali Rahmon – Resign!*, TjkNEWS.com (June 1, 2012).

²⁷⁷ *See id.*

²⁷⁸ *See Expert Opinion on Extremist Nature of Documents Found in N. Mahkamov's Residence*, (January 28, 2016), on file with authors.

²⁷⁹ *Id.* The two articles allegedly authored by Mr. Mahkamov were *He Who Was a Nobody Has Captured Everything, or Why the President of Tajikistan Merits a Vote on the Loss of Confidence* and *Seven Years of Struggle With the Bank, Tajik Entrepreneur Versus the President's Brother-In-Law*.

²⁸⁰ *Id.*

²⁸¹ *Tajikistan: Attorneys Yorov and Makhkamov are Accused of Making Extremist Statements in the Media, Including Those That Were Never Made*, Fergana News, *supra* note 274.

²⁸² Article 272 of Tajikistan Criminal Procedure Code, *Direct and Oral Nature of Court Proceedings*.

²⁸³ Communication AB, on file with author.

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ Communication BC, on file with author.

²⁸⁸ *Id.*

²⁸⁹ *Id.*

Region that contradicted the expert opinion from January 28, 2016, which formed the sole basis for the Articles 189 (“arousing hostility”) and 307 (“extremism”) charges.²⁹⁰

80. The judge simply did not give the defense any time to present its case.²⁹¹ The defense team filed a motion requesting time to present a defense, but this motion was denied.²⁹² The judge explained his denial by assuring the defense it would have time to present its case later in the proceedings.²⁹³ However, the defense was never permitted to the time to fully present its case.²⁹⁴

81. Because the proceedings were closed to the public, it was difficult for the media to contemporaneously report these irregularities. Journalists, representatives of human rights organizations, and Mr. Yorov’s friends and family were not allowed in the courtroom.²⁹⁵

82. After the investigation ended and the trial began, Mr. Yorov’s ability to see his family was greatly reduced.²⁹⁶ In the five months during the first trial, Mr. Yorov’s family was allowed to visit him in SIZO only twice.²⁹⁷

83. Mr. Yorov was always brought to the courtroom in handcuffs.²⁹⁸ He was led into the metal cage, and then the handcuffs were taken off.²⁹⁹ In the courtroom, he wore civilian clothes.³⁰⁰ At the first trial hearing, Mr. Yorov’s family brought him his attorney mantle, so that he could wear it just like he normally did when he presented his cases in court.³⁰¹ There was an objection to the mantle, but Mr. Yorov told the prosecutor and the judge that he was entitled to wear it because he was still an attorney, and nobody had stripped him of that status.³⁰² Most of the time, Mr. Yorov was allowed to wear his attorney mantle in court.³⁰³ But occasionally, on the way to the courthouse, the guards tried to take it from him by force under the orders of the head of the convoy office of SIZO.³⁰⁴ At one of the hearings, Mr. Yorov appeared in court wearing only his undershirt.³⁰⁵ The judge waited to begin the hearing until Mr. Yorov’s attorney mantle was returned to him and he was dressed appropriately for the proceedings.³⁰⁶

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ Communication EF, on file with author.

²⁹⁶ Communication BC, on file with author.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

³⁰¹ *Id.*

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

84. At certain times during the trial, the judge, [REDACTED], allegedly appeared to be sleeping during the hearings.³⁰⁷

85. On September 28, 2016, the prosecutor, [REDACTED], interrupted Mr. Yorov while he was addressing the jury.³⁰⁸ The prosecutor suggested that Mr. Yorov should talk less and reminded him of the fact that his brother, Jamshed Yorov, had also been arrested a month earlier (as discussed in Paragraph 115 below).³⁰⁹ An argument ensued.³¹⁰ During this argument, Mr. Yorov read aloud a portion of an 11th century poem by a Persian poet Omar Khayyam (“*In this world of donkeys and boors, everyone who does not resemble a donkey is labeled an infidel.*”) and quoted a verse from the Holy Quran.³¹¹ The trial judge and the prosecutor felt offended by the poem because, in their understanding, Mr. Yorov was comparing the prosecutor to a donkey.³¹²

86. Later that day, an investigator from the office of the Attorney General was summoned to investigate the alleged insult. This investigator, [REDACTED], interviewed the judge who presided over Mr. Yorov’s case, the prosecutor, [REDACTED], and the jury members, [REDACTED] and [REDACTED]. Each was treated as a victim in the investigation. According to the investigator’s report from September 28, 2016, Mr. Yorov caused them emotional damages during the trial by reciting the poem. The victims made written statements, which were included in the investigator’s report.

87. None of the alleged victims—the judge, the prosecutor, or the jury members—recused him or herself from the rest of the trial. On October 6, 2016, the Court of Dushanbe found Mr. Yorov guilty on all the charges under Articles 189, 247, 307, 307.1, and 340 of the Criminal Code.³¹³ The prosecutor requested a 25-year prison sentence for Mr. Yorov and a 23-year sentence for Mr. Mahkamov, who had been convicted of extremism. On October 6, the court sentenced them to 23 and 21 years imprisonment, respectively.³¹⁴

88. Mr. Yorov appealed his sentence, but the Appeals Court allowed the sentence to stand. His appeal was denied on April 11, 2017.³¹⁵

2. Trial 2

89. On September 28, 2016, the judge and the prosecutor from Mr. Yorov’s first trial wrote a statement to the prosecutor’s office which led to new criminal investigation. Authorities

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ Farangis Najibullah, *Reading of 11th-Century Poem Could Earn More Time for Imprisoned Tajik Lawyer*, Radio Free Europe (Dec. 14, 2016), <https://www.rferl.org/a/tajikistan-lawyer-rights-poem-Mr.-Yorov/28176119.html>.

³¹² Communication BC, on file with author.

³¹³ *Id.*

³¹⁴ Catherine Putz, *No Surprises in Tajikistan: Rights Lawyers Given Long Prison Sentences*, The Diplomat (Oct. 7, 2017), <http://thediplomat.com/2016/10/no-surprises-in-tajikistan-rights-lawyers-given-long-prison-sentences/>.

³¹⁵ Lawyers for Lawyers, *Court Rejects Appeal of Lawyer Buzurgmehr Yorov* (Apr. 11, 2017), <https://lawyersforlawyers.org/en/tajikistan-court-rejects-appeal-of-lawyer-buzurgmehr-yorov/>.

then charged Mr. Yorov with contempt of court (Article 355 of the Criminal Code) and insulting a government official (Article 330 of the Criminal Code) on the basis of the poem he had read earlier in court that day.

90. This second criminal case was under the jurisdiction of the Firdavsi District Court, but the trial hearings physically took place in the SIZO building in Dushanbe.³¹⁶ This trial was closed to the public.³¹⁷

91. The Government's only piece of evidence in connection with the Article 330 and 355 charges was the September 28, 2016 report by Sirochiddin Ibrohimzoda, an investigator from the office of Attorney General of Tajikistan. In lieu of oral testimony, the victims' written statements, which were included in the investigator's report, were used as evidence against Mr. Yorov. Members of the jury from the first trial, court employees, and the courtroom secretary from Mr. Yorov's first trial attended the trial but were not called as witnesses.³¹⁸

92. In the second trial, Mr. Yorov was not afforded the opportunity to fully present his case. The defense wanted to call independent experts on linguistics who could express an opinion on the significance of the poem that Mr. Yorov had recited during his previous trial.³¹⁹ However, the court denied all motions for additional and independent expert opinions.³²⁰ There were no witnesses presented.³²¹

93. On March 16, 2017, Mr. Yorov was sentenced to another two years in prison and one year of community service for the Article 330 and 355 charges, extending his sentence to a total of 25 years in prison.³²²

3. Trial 3

94. On March 28, 2017, Mr. Yorov was charged with fraud (Article 247 of the Criminal Code) and with publicly insulting the President in the media or on the internet, punishable with up to five years in prison (Article 137 of the Criminal Code).³²³ Similarly to the second trial, the third trial took place in the SIZO building without public access.³²⁴

95. In the third trial, the Government accused Mr. Yorov of defrauding [REDACTED], [REDACTED], [REDACTED], and [REDACTED].³²⁵ The allegations related

³¹⁶ Communication BC, on file with author.

³¹⁷ *Id.*

³¹⁸ Communication EF, on file with author.

³¹⁹ Communication BC, on file with author.

³²⁰ *Id.*

³²¹ *Id.*

³²² Radio Free Europe, *Jailed Tajik Human Rights Lawyer's Sentence Extended to 25 Years* (Mar. 16, 2017), <https://www.rferl.org/a/jailed-tajik-rights-lawyer-sentence-extended-to-25-years/28373043.html>; Radio Free Europe, *Tajik Human Rights Lawyer's Prison Term Extended* (Jan. 6, 2017), <http://www.rferl.org/a/tajik-rights-lawyer-Mr.-Yorov-prison-extended/28217161.html>.

³²³ *Tajikistan: Travel Ban on Rights Lawyer*, *supra* note 79.

³²⁴ Communication EF, on file with author.

³²⁵ Sentencing Decision from Firdavsi District Court, dated August 18, 2017, on file with author.

to the alleged defrauding of [REDACTED],³²⁶ [REDACTED]³²⁷ and [REDACTED]³²⁸ all followed the same script as in the first trial: Mr. Yorov was accused of having taken monies from these women to provide certain legal services and then failing to act in their interest. To counter these allegations Mr. Yorov asked the investigating authority to request from the courts the legal filings that he had made on behalf of each client in order to evidence that he had acted on their behalf, but the investigator never took this step.

96. With respect to [REDACTED]'s case, Mr. Yorov was accused of fraudulently obtaining about \$1,375 from [REDACTED] through a junior attorney [REDACTED].³²⁹ The Government alleged Mr. Yorov promised [REDACTED] that he would assist with a lawsuit, but failed to act in [REDACTED]'s interest and only returned \$500 of the money that he had received from [REDACTED].³³⁰

97. Mr. Yorov argued that [REDACTED] had entered into a legal agreement with [REDACTED], not Mr. Yorov. [REDACTED] mentioned in his pre-trial interrogation [REDACTED] was the person with whom he had had financial dealings, but this information was allegedly altered by the investigator in the case file to read that Mr. Yorov was the person who had taken money from [REDACTED].³³¹ The investigators allegedly took no steps to confirm this information.

98. No witnesses testified during the trial.³³² Instead, witness testimony from the preliminary investigation was presented to the court. The evidence presented by the Government consisted of witnesses' statements which were identical to other witnesses' statements that had presented in Mr. Yorov's first trial on charges under Article 247 (fraud) of the Criminal Code.³³³

99. The charge of publicly insulting the President in the media or on the internet under Article 137 of the Criminal Code related to Mr. Yorov's alleged publication of an article on the website Paem.net on March 8, 2016 that stated that the status of an attorney is higher than that of the President.³³⁴ The Government relied on expert opinions to conclude that this article constituted a public insult of the President of Tajikistan.³³⁵ (T. Sharipov, one of the experts who authored the opinion, reportedly had his son employed by the office investigating Mr. Yorov's case.) Mr. Yorov's request to cross-examine the experts was denied.

³²⁶ In [REDACTED]'s case, Mr. Yorov was accused of taking about \$4800 to appeal a prior court decision. Among other legal actions, Mr. Yorov claimed he filed a submission on [REDACTED]'s behalf in the Dushanbe city court. *Id.*, at 4.

³²⁷ In [REDACTED]'s case, Mr. Yorov was accused of taking about \$3000 to assist with her brother's case. At the time of the judicial investigation, [REDACTED] stated she had received a refund and had no complaints against Mr. Yorov. *Id.*, at 5.

³²⁸ In [REDACTED]'s case, Mr. Yorov was accused of taking about \$630 to assist her with a land dispute. Mr. Yorov claimed that he filed several papers both with the court and with the prosecutor's office on [REDACTED]'s behalf. *Id.*, at 5.

³²⁹ *Id.*, at 5.

³³⁰ *Id.*, at 5.

³³¹ *Id.*, at 5.

³³² Communication EF, on file with author.

³³³ Communication BC, on file with author.

³³⁴ *Id.*

³³⁵ Sentencing Decision, *supra* note 325, at 7.

100. On August 18, 2017, the Firdavsi District Court found Mr. Yorov guilty on both charges and sentenced him to 12 years of confinement in a maximum security prison.³³⁶ Pursuant to Article 67 of the Criminal Code, because of the related nature of the crimes across the three trials, the combined sentence for Mr. Yorov was set to 28 years.³³⁷

IV. MR. YOROV'S IMPRISONMENT

1. Prison Conditions

101. As of summer 2018, Mr. Yorov was being held at the maximum security penal colony No.1 of Dushanbe.

102. Reliable information about Mr. Yorov's current detention conditions is difficult to obtain; however, information about the conditions in SIZO, the pre-trial detention center where Mr. Yorov was held for some months, reveals an extraordinarily harsh environment. Each SIZO cell has the capacity to hold 14 or 16 prisoners, but typically holds up to 25 prisoners.³³⁸ Bed sheets are dirty and infested with bed bugs.³³⁹ Because of overcrowding, prisoners sleep on the concrete floor.³⁴⁰ Conditions in the prison cells are unsanitary and the entire building is infested with cockroaches and rodents.³⁴¹

103. The sick prisoners are held together with the healthy.³⁴² There is little access to medical care.³⁴³ When Mr. Yorov asked for headache medication, he was given the medication which has expired a year earlier.³⁴⁴ Mr. Yorov suffers from lung problems but has allegedly not received medical attention for this.

104. In the summer, SIZO is extremely hot and humid.³⁴⁵ There is no access to fresh air.³⁴⁶ The windows are covered with metal shutters, which hardly allows for any air circulation, and the sky is not visible.³⁴⁷ The door of each cell has a small window, but the guards usually keep the windows closed, opening them for 10 to 15 minute periods only when the prisoners bribe them to do so.³⁴⁸

105. Tap water is tainted with rust from the pipes.³⁴⁹ The water tap is located next to the toilet in each cell.³⁵⁰ There are no bathroom stalls, so the view of the toilet is wide open to

³³⁶ *Id.*, at 8.

³³⁷ Communication BC, on file with author.

³³⁸ *Id.*

³³⁹ *Id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

all the prisoners in the cell.³⁵¹ A shower is provided only once a week.³⁵² On those occasions, the whole population of a cell is led into a single shower room, where they receive only 30 minutes to shower in crowded conditions.³⁵³

106. The food in SIZO is almost inedible. Prisoners often go hungry instead of trying to eat it.³⁵⁴ Prisoners subsist on the food that they receive in packages from their relatives.³⁵⁵ However, prior to being delivered to the prisoners, those packages are often opened by the SIZO officials who take the first pick of the items that they want to keep for themselves.³⁵⁶

107. For 15 minutes per day, the prisoners are led for a walk to a fenced area that looks like a cell, but does not have a roof.³⁵⁷ Because of the dirt and overcrowding, the only possible physical exercise is walking and doing squats.³⁵⁸ There is no exercise equipment in SIZO.³⁵⁹

108. The prisoners are woken up at 6:00 am and ordered to sleep at 10:00 pm.³⁶⁰ Between 6:00 am and 10:00 pm, the prisoners are not allowed to lie down or to fall sleep.³⁶¹ If those rules are violated by any prisoner, the entire cell population may be punished.³⁶² The punishment may vary from beatings of the entire cell population to orders to stand still for several hours in a row (sometimes even completely naked).³⁶³ In cases of insubordination, prisoners are threatened with torture by means of the so-called “*LG machine*” (a device that passes electric current through the body).³⁶⁴

109. Prisoners in Tajik prisons generally have minimal contact with the outside world. Under Tajik law, prisoners should be permitted two visits a month and each should last for up to three hours.³⁶⁵ However, Mr. Yorov’s wife can only visit him once every three to four months. Mr. Yorov and his family are not allowed any privacy as all of the visits have been supervised by detention officers.³⁶⁶

2. *Solitary Confinement and Beatings*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.*

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ *Id.*

³⁶⁴ *Id.*

³⁶⁵ Communication AB, on file with author.

³⁶⁶ *Id.*

110. In September 2016, Mr. Yorov confirmed that he had been beaten after his initial arrest in September 2015, and these beatings have continued throughout his detention.³⁶⁷ Beatings are accompanied by insults, humiliation, and threats.³⁶⁸ After the OSCE's Human Dimension Implementation Meeting held September 11-22, 2017, Mr. Yorov's beatings worsened; guards beat Mr. Yorov with their legs, arms, and batons as he was tied to a chair.³⁶⁹ As a result, several of his bones were broken and allegedly leading to trouble walking.³⁷⁰ His injuries were severe enough to send him to the detention center hospital.³⁷¹ He has also been forced to stand naked for hours.³⁷²

111. At least until October 2017, Mr. Yorov was regularly placed in solitary confinement, likely to conceal his torture from the outside world.³⁷³ Mr. Yorov was in solitary confinement from September 28, 2017 to October 9, 2017, at which point he was moved to a general population cell.³⁷⁴ Mr. Yorov is believed to have been placed in solitary confinement approximately 8 or 10 times and spent 3 to 15 days at a time at a Security Housing Unit.³⁷⁵ The exact dates when Mr. Yorov was placed in an isolation cell are unclear, but it can be suspected that punishment was more frequent during those periods when Mr. Yorov's family was not allowed to visit him for prolonged periods of time.

112. The Government authorities provided occasional explanations for solitary confinement. On one occasion, the Government authorities alleged that Mr. Yorov brought a plastic soda bottle to SIZO from the court hearing.³⁷⁶ A second time, the stated reason was that the guards found 10 somoni on him (an equivalent of slightly more than one dollar).³⁷⁷ A third time, the Government authorities accused Mr. Yorov of failing to fulfill the guards' demands.³⁷⁸ A fourth time, Mr. Yorov allegedly had an argument with a guard who was beating his cellmate. A fifth time, something prohibited was allegedly found in his bed.³⁷⁹ In approximately August or September 2016, Mr. Yorov organized two protests among the prisoners in his cell, demanding better prison conditions.³⁸⁰ Each of those protests allegedly led to Mr. Yorov's placement into the isolation cell.³⁸¹

3. Continued Harassment

³⁶⁷ Urgent Action Appeal filed with the UN Special Rapporteur on Torture, dated October 12, 2017, on file with author.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ Communication BC, on file with author.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

³⁸⁰ Communication BC, on file with author.

³⁸¹ *Id.*

113. After Mr. Yorov's arrest, his brother, Jamshed Yorov and his sister, Khosiyat Yorov, gave an interview to Asia-plus newspaper criticizing the *Safina* government television channel for their biased attitude towards Mr. Yorov.³⁸² Following these comments, Jamshed and Khosiyat were asked to attend the GKNB, where they were warned about the possible implications of their continued defense of Mr. Yorov and public condemnation of the Tajik authorities' actions.³⁸³ GKNB officers and investigators, [REDACTED] and [REDACTED], repeatedly threatened Jamshed and Khosiyat each time that they publicly defended Mr. Yorov.³⁸⁴ Mr. Yorov's siblings report being followed by Tajik officials and having had their telephone conversations bugged.³⁸⁵

114. After a number of publications about Mr. Yorov's case in the Nigoh newspaper, the Government banned this newspaper and initiated a case against its director, Saimudin Dustov.³⁸⁶

115. Jamshed Yorov was arrested in August 2016 and released a month later through amnesty.³⁸⁷ Along with his sister Khosiyat, he left Tajikistan in December 2016 to seek asylum in the European Union in early 2017.³⁸⁸ On January 27, 2017, Tajikistan Special Services visited his wife and father to warn them that Jamshed would get himself in trouble if he continued advocating for his brother, Mr. Hayit, or others from the IRPT.³⁸⁹ Special Services told Jamshed's wife that they had operatives in Poland, and indicated that they knew the exact location of Jamshed at the refugee camp.³⁹⁰ Jamshed was repeatedly threatened with criminal proceedings if he continued to approach human rights organizations or give interviews relating to Mr. Yorov's case.³⁹¹

116. On March 17, 2017, while Jamshed was with Khosiyat in a refugee camp visiting Muhiddin Kabiri (also known as Kabirov), the former chairman of the IRPT and Mr. Yorov's former client, Jamshed noticed a member of the UBOP, [REDACTED], and several others watching him.³⁹² When Jamshed asked about the presence of [REDACTED] and his companions, he was told that these were refugees from Uzbekistan.³⁹³ Jamshed, however, recognized [REDACTED] as a man who had raided his office in Dushanbe in October of 2015.³⁹⁴ On March 10 and March 23, 2017, Jamshed made reports to Poland's Office of

³⁸² Communication AB, on file with author.

³⁸³ *Id.*

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.*

³⁸⁷ Najibullah, *supra* note 311.

³⁸⁸ Communication CD, on file with author.

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ Communication AB, on file with author.

³⁹² Communication CD, on file with author.

³⁹³ *Id.*

³⁹⁴ *Id.*

Refugees, explaining that he believed there to be Tajik and Russian agents in the refugee camp who posed a danger to him.³⁹⁵

117. Criminal charges were filed against Jamshed and Khosiyat in Tajikistan in March and in June 2017, after they made speeches in Mr. Yorov's defense in Bonn and in Dortmund, Germany.³⁹⁶ Jamshed submitted inquiries about these charges to the Ministry of Interior, the prosecutor's office, and the GKNB through their websites.³⁹⁷ He has not received any official response.³⁹⁸

118. Meanwhile, Jamshed's wife and children remain in Tajikistan, where the authorities have confiscated their passports and forbidden them from leaving the country.³⁹⁹ Authorities threaten that, if Jamshed's wife leaves the country, they will file charges against other members of her family.⁴⁰⁰ Additionally, when the authorities became aware of Jamshed's continued advocacy on behalf of his brother, members of the National Security Committee of Tajikistan came to his house in Tajikistan to threaten his wife and eldest daughter.⁴⁰¹ Several posts were published online where officials threatened to rape his wife and daughter.⁴⁰² Jamshed's father-in-law and his wife's brothers also face harassment.⁴⁰³ [REDACTED].⁴⁰⁴ Through Jamshed's family, these officers continue to threaten Jamshed about the consequences of his continued advocacy, such as reprisals for him and his sister Khosiyat.⁴⁰⁵ After Jamshed addressed these threats online, harassment of his family increased.⁴⁰⁶ The authorities have officially responded to these allegations by claiming that the families were not harassed, and no one has filed any harassment complaints with the enforcement authorities.

PART 4

LEGAL ANALYSIS

119. The Working Group regards deprivation of liberty as arbitrary under the following situations:⁴⁰⁷

- Category I - When it is clearly impossible to invoke any legal basis justifying the

³⁹⁵ *Id.*

³⁹⁶ Communication BC, on file with author.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ Communication CD, on file with author.

⁴⁰⁰ EurasiaNet.org, *Tajikistan: Authorities File Charges Against Jailed Lawyer's Relatives* (May 31, 2017), <https://eurasianet.org/tajikistan-authorities-file-charges-against-jailed-lawyers-relatives>.

⁴⁰¹ Communication CD, on file with author.

⁴⁰² Communication AB, on file with author.

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ The Working Group also will consider deprivation of liberty arbitrary under one categories not relevant to Mr. Yorov's case: A Category IV classification (related to administrative custody for asylum seekers, immigrants or refugees). See Revised Methods of Work, *infra* note 189.

deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him);

- Category II - When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights;
- Category III - When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the states concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.
- Category V - When the deprivation of liberty constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status, that aims towards or can result in ignoring the equality of human beings

120. For the reasons set forth below, the continued detention of Mr. Yorov constitutes an arbitrary deprivation of his liberty under Category I, Category II, Category III, and Category V as outlined by the Working Group. In addition to being bound to respect the Universal Declaration of Human Rights (the “UHDR”), Tajikistan is a party to the International Covenant on Civil and Political Rights (the “ICCPR”) and is obligated to abide by its provisions.⁴⁰⁸

121. Article 10 of the Constitution states, “*International legal documents recognized by Tajikistan shall be a component part of the legal system of the republic. In case the republican laws do not stipulate to the recognized international legal documents, the rules of the international documents shall apply.*”⁴⁰⁹ By continuing to detain Mr. Yorov, Tajikistan is in violation of its obligations under the ICCPR, the UDHR, and other international obligations as stipulated below.

I. CATEGORY I: DEPRIVATION OF LIBERTY WITHOUT LEGAL JUSTIFICATION

When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him).

122. The detention of Mr. Yorov resulting from his politically motivated arrest and his conviction for alleged violations of various provisions of the Criminal Code of Tajikistan is arbitrary under Category I. A detention is arbitrary under Category I when there is no legal basis

⁴⁰⁸ International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171, <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> [hereinafter “ICCPR”].

⁴⁰⁹ President of the Rep. of Tajikistan, *Constitution (Basic Law) of the Republic of Tajikistan* art. 10 [hereinafter “Constitution of Tajikistan”], <http://www.president.tj/en/taxonomy/term/5/28>.

or justification for it.⁴¹⁰ The Working Group has found detentions arbitrary under Category I when at least one of the following violations is present: (A) the government has arrested an individual without a warrant and without promptly charging such person, (B) vague laws are used to prosecute individuals, (C) an individual is held in detention based on the retroactive application of law; and/or (D) an individual is convicted without substantive evidence to justify such a conviction.⁴¹¹

123. Because three out of the four above-listed Category I violations are present in Mr. Yorov's case, Mr. Yorov's detention is without legal basis and therefore arbitrary under Category I. Specifically, the Tajikistan authorities arrested Mr. Yorov without a warrant, without initially informing him of why he was being arrested, without charging him for 10 to 12 days following his arrest, and without presenting him before a judicial authority for a *habeas corpus* hearing for three days; the Tajikistan authorities also prosecuted Mr. Yorov under the overly vague Criminal Code provisions and convicted Mr. Yorov of at least one criminal offense retroactively; and Mr. Yorov's conviction was not supported by adequate material evidence to justify a conviction.

1. Mr. Yorov was Arrested Without a Warrant, Without Being Promptly Informed of the Charges Against Him and Without Prompt Access to Judicial Review of his Arrest

124. Article 9(2) of the ICCPR states that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”⁴¹² Article 9(3) of the ICCPR calls for “anyone arrested or detained on a criminal charge [to] be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release;”⁴¹³ this obligation for a habeas corpus hearing “without delay” is reiterated in Article 9(4) of the ICCPR.⁴¹⁴ The United Nations Human Rights Committee (the “Human Rights Committee”) has interpreted the term “promptly” to mean within about 48 hours, except in exceptional circumstances,⁴¹⁵ and noted that this right shall be observed “even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”⁴¹⁶

⁴¹⁰ *Report of the Working Group on Arbitrary Detention*, 16th session, A/HRC/16/47, Annex 8(a)-(c) (Jan. 19, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/102/76/PDF/G1110276.pdf?OpenElement> [hereinafter “Revised Methods of Work”]. In particular, a Category I deprivation of liberty occurs “[w]hen it is impossible for the government to invoke any legal basis under domestic law for detaining the individual...” *Id.* at ¶ 8(b).

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

⁴¹² ICCPR, *supra* note 408.

⁴¹³ *Id.*, art. 9(3).

⁴¹⁴ *Id.*, art. 9(4).

⁴¹⁵ *General Comment No. 35: Article 9 (Liberty and Security of Person)*, ¶ 33, Human Rights. Comm., U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2004), <http://www.refworld.org/docid/553e0f984.html>.

⁴¹⁶ *Id.*, at ¶ 32.

125. In contravention of these obligations, Mr. Yorov was initially arrested without a written warrant and held for three days before being brought before a judge to adjudicate the legality of his detention. It was not until October 1, 2015, after three days of interrogation by government officials, including physical punishment methods aimed at extorting a confession, that Mr. Yorov was finally brought before the Ismoili Somoni District Court of Dushanbe for a determination as to whether there was a legal basis for his arrest and continued detention.

126. Moreover, Mr. Yorov was not informed until a day after his arrest why he had been arrested (allegedly, on suspicion of fraud and forgery). In fact, the unofficial reasons for Mr. Yorov's arrest changed significantly in nature during his initial detention period; at first, he appears to have been investigated for an alleged assault of a police officer. Even after Mr. Yorov's arraignment on October 1, 2015, no official charges were filed against him for nearly a week, until sometime between October 8 to 10, 2015.⁴¹⁷

127. Tajik law allows the police to hold "*suspicious objects*" for ten days (known as the conviction period) based on an alleged violation of any Criminal Code article, provided that a court reviews the evidence immediately after that time to determine if the detention is lawful. This allowance of an extended period of time where a detainee can be held without appearing before a judge to adjudicate the legality of his detention, and the specific experience of Mr. Yorov - being arrested without a warrant, without being promptly informed of why he was being arrested and without charges promptly filed against him and being held for three days without access to judicial review of his detention - is at odds with the requirements of Article 9 of the ICCPR for a lawful detention.

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

128. Article 15(1) of the ICCPR⁴¹⁸ and Article 11(2) of the UDHR⁴¹⁹ both guarantee individuals the right to know what the law is and what conduct violates the law. In its General Comment No. 35, the Human Rights Committee states that "[a]ny substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application."⁴²⁰ Moreover, the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while

⁴¹⁷ Communication BC, on file with author.

⁴¹⁸ ICCPR, *supra* note 408, 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.").

⁴¹⁹ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, art. 11(2), U.N. GAOR, 3d Sess., U.N. Doc. A/RES/217 (III) (Dec. 10, 1948), <http://www.un-documents.net/a3r217a.htm>, ("No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.").

⁴²⁰ General Comment No. 35, *supra* note 415, ¶ 22; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Mauritius*, ¶ 12, Human Rights Comm., 83rd Sess., U.N. Doc. CCPR/CO/83/MUS (Apr. 27, 2005), <http://www.refworld.org/docid/42d16bf94.html>; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Russian Federation*, ¶ 24, Human Rights Comm., 97th Sess., U.N. Doc. CCPR/C/RUS/CO/6 (Nov. 24, 2009), <http://www.refworld.org/docid/4b2603442.html>.

Countering Terrorism has explained that the standard for legal certainty requires framing laws “*in such a way that[...] the law is adequately accessible so that the individual has a proper indication of how the law limits his or her conduct; and [that] the law [be] formulated with sufficient precision so that the individual can regulate his or her conduct.*”⁴²¹

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

130. In addition to being convicted under Article 247 (fraud), Article 340 (forgery) and Article 355 (contempt of court), Mr. Yorov was convicted under Article 137 (publicly insulting the President in the media or on the internet), Article 189 (arousing national, racial, local, or religious hostility), Articles 307 and 307.1 (extremism), and Article 330 (insulting a government official) of the Criminal Code. It is put forward that a number of these provisions lack the necessary precision.

131. For example, Article 189 nebulously criminalizes:

*[t]he actions, which lead to arousing national, racial, local or religious hostility, or dissension, humiliating national dignity, as well as propaganda of the exclusiveness of citizens by a sign of their relation to religion, national, racial, or local origin, if these actions were committed in public or using means of mass media [...].*⁴²²

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

133. However, Article 189 of the Criminal Code lacks any plain meaning and gives individuals no fair notice of what conduct is prohibited. The phrases “*arousing national, racial, local or religious hostility,*” “*humiliating national dignity,*” and “*propaganda*” have no discernible scope or limitation. Rather, these provisions seem deliberately open to (mis)interpretation and thus enable the Government’s ability to crack down on activities – such as protesting, alternative discourse, or campaigning for a dissenting party – that constitute the

⁴²¹ Martin Scheinin, *Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 42, Comm. on Human Rights, 62nd Sess., U.N. Doc. E/CN.4/2006/98 (Dec. 28, 2005), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement>; *62nd Rep. of the United Nations High Commissioner for Human Rights on the Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 48, Human Rights Council, 28th Sess., U.N. Doc. A/HRC/28/28 (Dec. 19, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx>.

⁴²² Tajikistan Criminal Code, *supra* note 60, art. 189.

exercise of an individual's right to freedom of expression, association or political participation.⁴²³ Without limiting provisions or clarifying language, Article 189 targets a staggeringly broad range of "actions" and could be applied virtually to any expression of political opposition against the Government. Instead of protecting the citizens or the Tajik state – which is the universal purpose of criminal law provisions – this provision is rather used to assist the Government in suppressing dissenting opinions. This provision functions as a mere pretext to justify arbitrary detention.

134. Likewise, the vague crimes of publicly insulting the President; extremism; and insulting a government official do not give individuals the ability to reasonably foresee what actions might be considered criminal; this is particularly true when considering how these crimes were applied to Mr. Yorov. For instance, it is not reasonably foreseeable (and, in fact, patently absurd) that the possession of allegedly extremist documents by Mr. Yorov's law partner would constitute an extremist crime attributable to Mr. Yorov.

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

The third sentence of paragraph 1 of article 9 provides that no one shall be deprived of liberty except on such grounds and in accordance with such procedure as are established by law. Any substantive grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid overly broad or arbitrary interpretation or application.⁴²⁴ Deprivation of liberty without such legal authorization is unlawful.⁴²⁵

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

frequent attempts by Governments to use normal legislation or to have recourse to emergency or special laws and procedures to combat terrorism and thereby permit, or at least increase, the risk of arbitrary detention. Such laws, both per se or in their application, by using an extremely vague and broad definition of

⁴²³ ICCPR, *supra* note 408, art. 9(1); UDHR, *supra* note 419, arts. 19, 20.

⁴²⁴ *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Philippines*, ¶ 14, Human Rights Comm., 79th Sess., U.N. Doc. CCPR/CO/79/PHL (Dec. 1, 2003), <http://www.refworld.org/docid/3fdc69224.html>; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Mauritius*, *supra* note 420, ¶ 12; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Russian Federation*, *supra* note 420, ¶ 24; *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Honduras*, ¶ 13, Human Rights Comm., 88th Sess., CCPR/C/HND/CO/1 (Dec. 13, 2006), <http://www.refworld.org/docid/45f6c1ac2.html>.

⁴²⁵ *McLawrence v. Jamaica*, Comm'n No. 702/1996, ¶ 5.5, 60th Sess., Human Rights Comm., U.N. Doc. CCPR/C/60/D/702/1996 (Sept. 29, 1997), <http://hrlibrary.umn.edu/undocs/702-1996.html> ("[T]he principle of legality is violated if an individual is arrested or detained on grounds which are not clearly established in domestic legislation")."

*terrorism, bring within their fold the innocent and the suspect alike, and thereby increase the risk of arbitrary detention, disproportionately reducing the level of guarantees enjoyed by ordinary persons in normal circumstances.*⁴²⁶

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

3. Mr. Yorov was Convicted of an Offence with Retroactive Effect

138. Article 15(1) of the ICCPR⁴²⁷ and Article 11(2) of the UDHR⁴²⁸ both guarantee individuals the right to know what the law is and what conduct violates the law. These articles further protect citizens from prosecution for any criminal offense "*which did not constitute a[n] [...] offense, under national or international law, at the time when it was committed.*"

139. On March 28, 2017, Mr. Yorov was charged with publicly insulting the President in the media or on the internet, punishable with up to five years in prison (Article 137 of the Criminal Code).⁴²⁹ Article 137 was included in Tajikistan's Criminal Code in a series of amendments signed into law by President Rahmon on October 13, 2016 under Government Order No. 247.⁴³⁰

140. The act in question, which led to a three-year increase in Mr. Yorov's total sentence,⁴³¹ was the publication of an article on the website Paem.net on March 8, 2016⁴³² that contained a statement that the status of an attorney is higher than that of the President. Notwithstanding any claim falling under Category II in relation to such a conviction, Article 137 of the Criminal Code was not in force at the time of publication. The conviction was retroactive in effect and amounts to a violation of Article 15(1) of the ICCPR and Article 11(2) of the UDHR.

⁴²⁶ *Saleh bin Awad bin Saleh Al-Hweiti*, Working Grp. On Arbitrary Detention, Comm'n No. 18/2011, ¶20, 61st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2011/18 (Feb. 17, 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/112/46/PDF/G1211246.pdf?OpenElement>.

⁴²⁷ ICCPR, *supra* note 408, 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.").

⁴²⁸ UDHR, *supra* note 419, 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.").

⁴²⁹ *Tajikistan: Travel Ban on Rights Lawyer*, *supra* note 79.

⁴³⁰ *Tajikistan: Human Rights Lawyer, Buzurgmehr Yorov, Sentenced to a Further Three Years' Imprisonment*, Article 19 (Aug. 24, 2017), <https://www.article19.org/resources/tajikistan-human-rights-lawyer-buzurgmehr-yorov-sentenced-to-a-further-three-years-imprisonment/>.

⁴³¹ *Id.*

⁴³² Communication BC, on file with author.

4. The Government of Tajikistan Did Not Support Mr. Yorov's Conviction with Substantive Evidence

141. Mr. Yorov's illegitimate arrest and prosecution exemplify the Government's use of its Criminal Code to bring politically-motivated prosecutions. Tajikistan failed to present facts justifying his arrest, detention, and conviction as being necessary for reasons of national security or his alleged participation in criminal activity. Rather, the paucity of evidence shows that the Government used an ill-defined Criminal Code to manufacture charges against Mr. Yorov.

142. As stated above in Paragraph II.4, upon his arrest on September 28, 2015, Mr. Yorov was accused of being complicit in the coup of Deputy Defense Minister General Abduhalim Nazarzoda. However, by the following day (September 29, 2015), the Government authorities officially informed Mr. Yorov that he had been arrested under suspicion of fraud and forgery (Articles 247 and 340 of the Criminal Code, respectively).⁴³³ It is put forward that this dramatic change in the alleged reason for Mr. Yorov's arrest shows that the Government authorities did not arrest Mr. Yorov on the basis of a reasonable suspicion that he had committed a crime.

143. The evidence presented in the criminal trials which followed also lacked authenticity and did not meet a sufficient standard of precision to justify a criminal conviction. For example, the First Trial, relating to fraud charges, relied on facts which were more than 15 years old and, in violation of the principle *ne bis in idem*, involved claims which had been previously adjudicated.⁴³⁴ The evidence supporting the fraud charges was impermissibly tainted, largely consisting of statements of Mr. Yorov's clients who were unduly pressured to testify by law enforcement officials. A number of such witnesses stated in court while giving this evidence that they were coerced into making incriminatory statements. Many of the 18 statements submitted by witnesses were inconsistent and unreliable.

144. The hostility and extremism charges under Articles 189 and 307 relied on only one expert witness statement which merely cited to articles found in Mr. Mahkamov's possession discussing non-violent opposition to the Government. Not only were these articles not tied to Mr. Yorov through either authorship or possession but, far from demonstrating a violent intent to commit terrorist or hostile acts, these articles merely divulge peaceful opposition to government interests. Additionally, the alleged content found at Mr. Yorov's home was never presented as evidence and not provided to Mr. Yorov for inspection. Moreover, despite repeated requests, Mr. Yorov's defence counsel was prevented from introducing evidence and witnesses in support of Mr. Yorov's case.

145. Thus, given that all evidence presented against Mr. Yorov was stale, coerced, not tied to his authorship or possession, or exculpatory, it is clear that Mr. Yorov's conviction was not based on sufficient evidence. The resulting conviction and exorbitant 28-year prison sentence therefore, lack a proper legal basis.

⁴³³ *Id.*

⁴³⁴ *Id.*

II. CATEGORY II: DETENTION DUE TO THE EXERCISE OF A FUNDAMENTAL RIGHT

146. A detention is arbitrary under Category II when it results from the exercise of fundamental rights protected by international law.⁴³⁵ In Mr. Yorov’s case, his arrest, detention and conviction resulted from his exercise of his rights to free expression, association and participation in public affairs.

1. A. The Tajikistan Government Detained Mr. Yorov Because He Exercised His Rights to Freedom of Expression, Association and Participation in Public Affairs.

147. Freedom of opinion and expression are protected by Article 19 of the ICCPR and Article 19 of the UDHR. Article 19(2) of the ICCPR provides that “[e]veryone shall have the right of freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”⁴³⁶ The Human Rights Committee has recognised that Article 19 of the ICCPR includes commentary on public affairs, discussion of human rights, and the right to express dissenting political opinions and is broad enough to “[include] the right of individuals to criticise or openly and publicly evaluate their Governments without fear of interference or punishment.”⁴³⁷ Domestically, Article 30 of the Constitution expressly protects the right to freedom of expression, stating “[e]ach person is guaranteed the freedoms of speech and the press, as well as the right to use information media. Governmental censorship and prosecution for criticism are forbidden.”⁴³⁸ The right to express dissenting political opinions is also specifically guaranteed by Article 30 of the Constitution, which provides that “[s]tate censorship and prosecution for criticism shall be prohibited.”

148. Article 22(1) of the ICCPR provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”⁴³⁹ This right is also protected by Article 20(1) of the UDHR.⁴⁴⁰ The Human Rights Council has specifically called for states to fully respect and protect the rights of all individuals to associate freely, especially for persons espousing minority or dissenting views. Article 28 of the Constitution likewise guarantees “the right of association. Each citizen has the

⁴³⁵ According to the Working Group’s Revised Methods of Work, a detention is arbitrary under Category II “when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights.” *Opinions adopted by the Working Group on Arbitrary Detention No. 60/2013 (United Arab Emirates)*, ¶ 2, Human Rights Council, Nov. 13–Nov. 22, 2013, 68th Sess., U.N. Doc. A/HRC/35/22/Add. 2 (Apr. 2, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/131/83/PDF/G1413183.pdf?OpenElement>.

⁴³⁶ ICCPR, *supra* note 408, art. 19(2).

⁴³⁷ See, e.g., *Rafael Marques de Morais v. Angola*, Commc’n No. 1128/2002, ¶ 6.7, 83rd Sess., Human Rights Comm., U.N. Doc. CCPR/C/83/D/1128/2002 (Apr. 18, 2005), <http://undocs.org/CCPR/C/83/D/1128/2002>.

⁴³⁸ Constitution of Tajikistan, *supra* note 409, art. 30.

⁴³⁹ ICCPR, *supra* note 408, art. 22(1).

⁴⁴⁰ UDHR, *supra* note 419, art. 20(1).

right to participate in the formation of political parties, trade unions, and other social associations, as well as voluntarily to join them and resign from them.”⁴⁴¹

149. Article 25(a) of the ICCPR protects a citizen’s right “*to take part in the conduct of public affairs, directly or through freely chosen representatives . . .*”⁴⁴² Similarly, Article 27 of the Constitution states that “[*e*]ach citizen has the right, directly or through representatives, to participate in political life and in the governing of the state,” and further states that each citizen has a right to vote and be elected.⁴⁴³

150. In General Comment No. 25, the Committee has confirmed that the right to take part in the conduct of public affairs goes beyond the mere protection of the electoral process, and protects citizens’ ability to “*take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves.*”⁴⁴⁴ Thus, a state interferes with this right when it unreasonably restrains and censors members of opposition parties from communicating political ideas or detains opposition party members based on such association.⁴⁴⁵ In such context, the Committee clarified that:

*[Article 25] requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through political parties and other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, to publish political material, to campaign for election and to advertise political ideas.*⁴⁴⁶

151. Specifically, membership in political parties “*play[s] a significant role in the conduct of public affairs and the election process.*”⁴⁴⁷

152. The Guidelines on Political Party Regulation, identified as a relevant regional standard on association rights for Tajikistan,⁴⁴⁸ confirm the fundamental importance of free association in the context of political parties: “*Political parties are collective platforms for the expression of individuals’ fundamental rights to association and expression and have been recognized by the European Court of Human Rights as integral players in the democratic*

⁴⁴¹ Constitution of Tajikistan, *supra* note 409, art. 28.

⁴⁴² ICCPR, *supra* note 408, art. 25(a).

⁴⁴³ Constitution of Tajikistan, *supra* note 409, art. 27.

⁴⁴⁴ *General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25)*, ¶ 8, Human Rights Comm., U.N. Doc. CCPR/C/21/Rev.1/Add.7, ¶ 8, (Aug. 27, 1996) [hereinafter “General Comment No. 25”], <http://www.refworld.org/docid/453883fc22.html>.

⁴⁴⁵ *See e.g., Tran Thi Thuy and Ors. v. Vietnam*, Working Grp. on Arbitrary Detention, Commc’n No. 46/2011, ¶ 21, U.N. Doc. A/HRC/WGAD/2011/46 (Sept 2., 2011), <http://hrlibrary.umn.edu/wgad/46-2011.html2011> (finding that Vietnam had arbitrarily detained members of an opposition party based on its violation of their rights to free association and to participate in public affairs).

⁴⁴⁶ General Comment No. 25, *supra* note 444, ¶ 25.

⁴⁴⁷ *Id.*, ¶ 26.

⁴⁴⁸ *See* United Nations Office of the High Comm’r of Human Rights, *International Standards*, <http://www.ohchr.org/EN/Issues/AssemblyAssociation/Pages/InternationalStandards.aspx>.

process. Further, they are the most widely utilized means for political participation and the exercise of related rights.”⁴⁴⁹ Because of the importance of political parties in a democratic society, “[t]he right of individuals to associate and form political parties should, to the greatest extent possible, be free from interference.”⁴⁵⁰ Moreover, “groups of individuals choosing to associate themselves as a political party must also be awarded the full protection of related rights.”⁴⁵¹

153. The United Nations Basic Principles on the Role of Lawyers has reemphasized that lawyers are entitled, like all other individuals, “to freedom of expression, (...), association and assembly.”⁴⁵² The Basic Principles on the Role of Lawyers also specify that lawyers have the right to take part in public discussions of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. As pointed out by the former UN Special Rapporteur on the Independence of Judges and Lawyers, freedom of expression and association have “specific importance in the case of persons involved in the administration of justice,” because they “constitute essential requirements for the proper and independent functioning of the legal profession, since lawyers use written and oral communication as a fundamental professional tool.”⁴⁵³ These principles state that governments must ensure that lawyers “shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”⁴⁵⁴ Furthermore, “[l]awyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”⁴⁵⁵ However, the former UN Special Rapporteur on the Independence of Judges and Lawyers stated that “[A]ttacks on lawyers are frequently the direct consequence of the identification of lawyers with their clients or their clients’ interests, and open the door to undue interference with lawyer’s professional functions and/or violations of his/her human rights.”⁴⁵⁶ The Special Rapporteur also noted that “[A]rbitrary deprivation of liberty is the most commonly reported type of attack on lawyers received by the Special Rapporteur. Deprivation of liberty aims to prevent lawyers from fulfilling their professional functions or, more commonly, is used as a reprisal for the discharge of their professional duties.”⁴⁵⁷

154. Along with these express protections set forth in international and domestic law, the imprisonment of human rights defenders for speech-related reasons is subject to heightened scrutiny. The concept of a human rights defender is codified under the UN Declaration on the

⁴⁴⁹ OSCE Office for Democratic Institutions and Human Rights, *Guidelines of Political Party Regulation*, ¶ 10 (2011), <http://www.osce.org/odihr/77812?download=true>.

⁴⁵⁰ *Id.*, ¶ 14.

⁴⁵¹ *Id.*, ¶ 11.

⁴⁵² United Nations Office of the High Comm’r of Human Rights, *Basic Principles on the Role of Lawyers*, ¶¶ 18, 23 (Sept 7, 1990), [hereinafter “*Basic Principles on the Role of Lawyers*”], <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>.

⁴⁵³ Mónica Pinto, *Rep. of the Special Rapporteur on the Independence of Judges and Lawyers*, ¶ 55, United Nations General Assembly, 71st Sess., U.N. Doc. A/71/348 (Aug. 22, 2016), <https://undocs.org/A/71/348>.

⁴⁵⁴ *Basic Principles on the Role of Lawyers*, *supra* note 452, ¶ 16.

⁴⁵⁵ *Id.*, ¶ 18.

⁴⁵⁶ See Mónica Pinto, *supra* note 453, ¶ 42.

⁴⁵⁷ *Id.*, ¶¶ 68, 69.

Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, unanimously adopted by the UN General Assembly on December 9, 1998 (“Declaration on Human Rights Defenders”).⁴⁵⁸ Lawyers constitute a professional group whose work is often closely related to the promotion and protection of human rights. The UN Basic Principles on the Role of Lawyers, under “*duties and responsibilities*,” provides that lawyers “*in protecting the rights of their clients and in promoting the cause of justice*,” “*shall seek to uphold human rights and fundamental freedoms recognized by national and international law*” (Principle 14). As detailed in Paragraph 248 below, lawyers are considered human rights defenders where they discharge their profession in a way that protects the rule of law and human rights. The Declaration on Human Rights Defenders affirms the importance of human rights defenders at the local, regional, national, and international levels. The UN General Assembly and Human Rights Council (formerly the Commission on Human Rights) have since regularly emphasized the rights of human rights defenders to conduct their work.⁴⁵⁹ Moreover, the Working Group has recognized the necessity to “*subject interventions against individuals who may qualify as human rights defenders to particularly intense review*.”⁴⁶⁰ This heightened standard of review by international bodies is especially appropriate where there is a pattern of harassment by national authorities targeting such individuals as is the case in Tajikistan.⁴⁶¹

155. Here, the arrest, detention and conviction of Mr. Yorov resulted from his exercise of his rights to free expression, association and participation in public affairs both as an individual/human rights defender as well as a professional human rights lawyer for a number of reasons.

156. First, several of the crimes of which Mr. Yorov was convicted were facially violative of an individual’s right to free expression by imposing criminal sanctions on protected speech. For instance, Mr. Yorov was convicted of publicly insulting the President in the media or on the internet under Article 137 of the Criminal Code; of arousing national, racial, local or religious hostility under Article 189 of the Criminal Code; and of insulting a government official

⁴⁵⁸ Human rights defenders are individuals who promote and protect all human rights through peaceful means without discrimination. Human rights defenders can join groups of people with or without structure, or organizations such as associations or foundations. *See generally, Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, G.A. Res. 53/144, U.N. Doc. A/RES/53/144, (Mar. 8, 1998).

⁴⁵⁹ Most recently, these bodies unanimously passed resolutions in support of the rights related to the work of human rights defenders and on the protection of human rights defenders in general and women human rights defenders in particular. *See* Human Rights Council Res. 22/6, U.N. Doc. A/HRC/22/L.13 (Mar. 15, 2013), <https://documents-dds-ny.un.org/doc/RESOLUTION/LTD/G13/120/26/PDF/G1312026.pdf?OpenElement>; *see* G.A. Res. 68/181, U.N. Doc. A/RES/68/181 (Dec. 18, 2013), <https://undocs.org/en/A/RES/68/181>.

⁴⁶⁰ *Nega v. Ethiopia*, Working Grp. on Arbitrary Detention, Commc’n No. 62/2012, ¶ 39, Human Rights Council, 65th Sess., U.N. Doc. A/HRC/WGAD/2012/62 (Nov. 21, 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/162/88/PDF/G1316288.pdf?OpenElement>); *see also, Sotoudeh v. Islamic Republic of Iran*, Working Grp. on Arbitrary Detention, Commc’n No. 21/2011, ¶29, Human Rights Council, 16th Sess., U.N. Doc. A/HRC/WGAD/2011/21 (Jan. 27, 2011), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/112/60/PDF/G1211260.pdf?OpenElement>).

⁴⁶¹ *Bialiatski v. Belarus*, Working Grp. on Arbitrary Detention, Commc’n No. 39/2012, ¶ 45, Human Rights Council, 64th Sess., U.N. Doc. A/HRC/WGAD/2012/3943, (Nov. 23, 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/183/14/PDF/G1218314.pdf?OpenElement>).

under Article 330 of the Criminal Code. In the few contexts where international law allows criminal restrictions on speech acts, evidencing the speaker's intent to cause violence in a context where such violence is likely to occur are critical elements.⁴⁶² Here, however, none of these criminal provisions required that such speech act be made with intent to incite violence, or spoken in a context with risk of causing violence (nor, in fact, were Mr. Yorov's allegedly offensive statements made with any violent intent or in any violent context). In addition, the Human Rights Committee has specifically affirmed that an individual's right to criticize any public official, including the president, is protected speech: "*the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.*"⁴⁶³ Thus, merely by detaining Mr. Yorov as a result of his arrest and conviction on such impermissible charges, the Government has violated his freedom of expression.

157. Secondly, the Government's primary motivation in detaining Mr. Yorov was to punish and silence him as a result of his critical expression and action both as an individual as well as an human rights lawyer. As detailed in Part 3.I above, Mr. Yorov has a long history of vocal dissent, condemning the Government time and time again for its corruption, cronyism and repression of political opposition groups. Many of Mr. Yorov's legal representations were on behalf of individuals who threatened Government interests and, although an attorney should not be identified with his clients' position or cause,⁴⁶⁴ it is likely that the Government perceived Mr. Yorov's choice of clients as an expression of dissent.⁴⁶⁵ Most immediately, in the weeks before Mr. Yorov's arrest, he took on the representation of the IRPT leaders and publicly communicated with the press about these politicized cases.

158. Thirdly, as detailed in Part 3.I above, prior to his arrest, Mr. Yorov was the founding member of the Sipar law firm, an organization that has consistently taken on representations averse to the Government's interest and which has been attacked repeatedly by the Government because of this work. Mr. Yorov also worked closely with the opposition party SDPT, which has been vocal in its opposition to President Rahmon, even attempting to run as a SDPT candidate in 2010 and 2015 (at which time he was prohibited from registering as a candidate by the Government). As discussed in Parts 2.II to 2.IV above, the Government has an extensive history of imprisoning individuals because of their association or work with disfavored political groups, including Mr. Yorov's IRPT clients. The Government also frequently targets lawyers associated with political opposition groups through their legal representations of

⁴⁶² See e.g., Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism*, ¶ 19, U.N. General Assembly, 61st Sess., U.N. Doc. A/61/267 (Aug. 16, 2006), <https://undocs.org/A/61/267>; Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism: Ten Areas of Best Practices in Countering Terrorism*, ¶ 31, Human Rights Council, 16th Sess., U.N. Doc. A/HRC/16/51 (Dec. 22, 2010), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/178/98/PDF/G1017898.pdf?OpenElement>).

⁴⁶³ Human Rights Committee, *General Comment No. 34: Article 19 Freedoms of Opinion and Expression*, U.N. Doc. No. CCPR/C/GC/34, ¶ 38, (Sept. 12, 2011) [hereinafter "General Comment No. 34"].

⁴⁶⁴ *Basic Principles on the Role of Lawyers*, *supra* note 452, ¶ 18.

⁴⁶⁵ The Human Rights Committee has confirmed that perceived opinions are also protected under Article 19 of the ICCPR. See General Comment No. 34, *supra* note 463, ¶ 9.34.

members of such groups, such as Fakhridin Zokirov, Shuhrat Kudratov, Nuriddin Makhkamov, Dilbar Dodojonova and Muazzama Qodirova.

159. It is clear that one of the primary motives for arresting Mr. Yorov was to persecute him for his legal representation of opposition leaders and other government critics and to prevent him and discourage other attorneys from continuing to do so. Other motives behind Mr. Yorov's detention likely include his vocal opposition to government interests and his political association and candidacy with the SDPT. This pernicious intent is demonstrated through:

- the Government's decade-long campaign of intimidation and harassment of Mr. Yorov, as discussed in Part 3.I above;
- its similar harassment and imprisonment of other attorneys who represented political dissidents (including the arrest of other attorneys who represented IRPT leaders);
- its detention of other members of opposition political groups, as discussed in Parts 2.II to 2.IV above;
- the suspicious timing of Mr. Yorov's arrest, which occurred two days after he announced that he would file a claim against the security officials who abused one of his IRPT clients;
- the mutating nature of the charges against Mr. Yorov, evidencing the Government's attempt to find something even minimally plausible on which to try Mr. Yorov, as discussed in Parts 3.II.4 and 3.II.5 above;
- the requests made to Mr. Yorov during his interrogation; and
- pressure on his family (namely, that Mr. Yorov might be granted his freedom if he promised to stop defending political opposition figures), as discussed in Parts 3.II.6 and 3.IV.3 above.

160. The Government's animosity towards Mr. Yorov can also be generally noted through the fact that it subjected him to multiple trials on trumped-up charges; it was not enough that Mr. Yorov was initially sentenced 23 years, rather the Government authorities kept piling on charges and trials, extending his sentence by an additional five years.

161. Given the heightened scrutiny that should be applied to the imprisonment of a human rights defender, especially in the context of widespread persecution against human rights lawyers and members of opposition parties and the specific past harassment and animosity faced by Mr. Yorov, it is apparent that Mr. Yorov's conviction for forgery, fraud, extremism and a host of speech-related crimes was a mere pretext for the Government to punish him for his prior critical expression, association and work with and legal representation of politically sensitive cases and opposition groups and to prevent him from further speech, association or representation inimical to Government interests. Thus, by arresting, prosecuting, and wrongfully detaining Mr. Yorov, the Government violated Article 19(2), 22(1) and 25(a) of the ICCPR and Articles 19 and 20(1) of the UDHR.

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

162. Articles 19⁴⁶⁶ and 22⁴⁶⁷ of the ICCPR provide limited exceptions for national security, public safety, and public order. Article 22 additionally provides for exceptions for the protection of the rights and freedoms of others.

163. Although governments frequently invoke such limiting principles – especially in the context of arbitrary detention – the latitude afforded is quite narrow. The Human Rights Committee has confirmed that restrictions “*may not put in jeopardy the right itself*”⁴⁶⁸ and has set forth a “*strict test of justification*”;⁴⁶⁹ any permissible restrictions on individuals’ freedom of expression or association must be: (1) provided by law, (2) for the protection of national security, public order, or public health and morals, and (3) necessary to achieve one of these enumerated purposes.⁴⁷⁰ The Government must present and specify the “*precise nature of the threat*” which it believes is posed by an individual’s exercise of the right to freedom of expression or association⁴⁷¹ and must also demonstrate the proportionality of the limitation by establishing a “*direct and immediate connection between the expression and the threat.*”⁴⁷²

164. The Human Rights Committee specifically noted that:

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

⁴⁶⁶ 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 408, art. 19(3).

⁴⁶⁷ Article 22(2) of the ICCPR provides that: “No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.”

⁴⁶⁸ See General Comment No. 34, *supra* note 463, ¶ 21.

⁴⁶⁹ *Park v. Rep. of Korea*, Commc’n No. 628/1995, ¶ 10.3, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/628/1995 (Nov. 3, 1998),

https://digitallibrary.un.org/record/269863/files/CCPR_C_64_D_628_1995-EN.pdf. The Working Group has also applied this test to freedom of association.

⁴⁷⁰ *Shin v. Rep. of Korea*, Commc’n No. 926/2000, ¶ 7.2, 80th Sess., Human Rights Comm., U.N. Doc. CCPR/C/80/D/926/2000 (Mar. 16, 2004), <http://hrlibrary.umn.edu/undocs/html/926-2000.html>.

⁴⁷¹ *Park v. Republic of Korea*, *supra* note 469, ¶ 10.3.

⁴⁷² General Comment No. 34, *supra* note 463, ¶ 35. See also *Sohn v. Rep. of Korea*, Commc’n No. 518/1992, ¶ 10.4, Human Rights Comm., U.N. Doc. CCPR/C/54/518/1992 (July 19, 1995), <http://hrlibrary.umn.edu/undocs/html/vws518.htm>.

*analysis of information on the human rights situation and who publish human rights-related reports, including (...) lawyers.*⁴⁷³

165. The Human Rights Committee has additionally stated it is insufficient for a Government to invoke the “*general situation*” regarding national security as a reason for restricting the rights to free speech or association.⁴⁷⁴ The Government must instead be able to show an “*individualized justification*” for why the restrictions on the rights were necessary.⁴⁷⁵ General allegations claiming that an individual’s expression or association threatened national security—without evidence of a specific threat and a proportional response—will not meet this high threshold.⁴⁷⁶ Where a State fails to demonstrate these essential elements a violation of the relevant article will be deemed to have taken place.⁴⁷⁷

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

167. First, although the restriction on Mr. Yorov’s rights were “*provided by law*” in that he was convicted under already existing criminal statutes, as discussed above in Paragraphs 128 through 137, the criminal provisions for “extremism” and “arousing hostility” are so vague that Mr. Yorov could not have reasonably foreseen that his actions would result in criminal liability. Indeed, the “extremism” charge required Mr. Yorov to take no action at all, but rather criminalized his mere association with Mr. Mahkamov who happened to possess literature that the Government viewed as objectionable. Without the ability to foresee criminal action, it would be nonsensical for the Government to argue that Mr. Yorov’s alleged crimes were “provided by law.”

168. Second, although the convictions for “extremism” or “arousing hostility” are *prima facie* related to protecting national security and public safety, it is put forward the Government used these crimes as a pretext to silence Mr. Yorov and punish him for his past critical expression, legal representations, and association and work with opposition parties, as described in Part 3.III.1. The Government’s aim was not legitimately to accomplish one of the purposes set forth in Articles 19(3) and 22(2) of the ICCPR, but rather claims of threats to national or public security were used as a veil to obscure the Government’s true motivation. Mr.

⁴⁷³ General Comment No. 34, *supra* note 466, ¶ 23.

⁴⁷⁴ *Park v. Rep. of Korea*, *supra* note 471, ¶ 10.3.

⁴⁷⁵ *Shin v. Rep. of Korea*, *supra* note 470, ¶ 7.2.

⁴⁷⁶ In *Kim v. Republic of Korea*, the Committee rejected the argument that punishing the distribution of materials that coincided with the policy statements of the Democratic Peoples’ Republic of Korea, was “necessary” for the protection of national security. The Human Rights Committee noted that “North Korean policies were well known within the territory of the State party and it is not clear how the (undefined) ‘benefit’ that might arise for the DPRK from the publication of views similar to their own created a risk to national security, nor is it clear what was the nature and extent of any such risk.” *Kim v. Republic of Korea*, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998),

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also *Sohn v. Republic of Korea*, *supra* note 472, ¶ 10.4.

⁴⁷⁷ *Shin v. Rep. of Korea*, *supra* note 470, ¶ 7.2.

Yorov’s criticism of the Government is precisely the kind of expression—criticizing government authorities and advocating for “*multi-party democracy, democratic tenets and human rights*”—that the Human Rights Committee has recognized cannot be legitimately punished under the narrow national security exception.⁴⁷⁸

169. Thirdly, even if the Government could properly invoke the national security rationale, the limitation on Mr. Yorov’s freedom of expression in this case was not “*necessary*” to achieve that purpose. The Human Rights Committee has consistently observed that “*the requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction imposed on the freedom of expression must be proportional to the value which the restriction serves to protect.*”⁴⁷⁹ This requires a government to establish a direct and immediate connection between the expression and the threat. Here, however, the Government authorities have failed to indicate with any precision how Mr. Yorov’s criticism of the Government, or his professional legal representation of Government critics, or association or work with opposition parties threatened the country’s national or public security. Mr. Yorov’s detention and 28-year sentence is completely disproportionate to any conceivable threat posed by his personal expression, legal work or association. As such, limiting his expression and association rights in this way cannot be considered “*necessary*” for a national security purpose.

170. Because Mr. Yorov’s legal representations, criticism of the Government, and association with opposition parties are protected rights under Articles 19(2), 22(1) and 25(a), and because the Government’s limitation on these does not fall within the narrow exceptions contained in Articles 19(3) and 22(2), his continued detention is arbitrary pursuant to Category II.

III. CATEGORY III: DETENTION DUE TO A FAILURE OF DUE PROCESS PROTECTIONS

171. According to the Methods of Work of the Working Group (“Methods of Work”), a deprivation of liberty is arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.”⁴⁸⁰ The minimum international standards of due process applicable in this case are established by the ICCPR, the UDHR, Body of Principles for the Protection of All Persons under

⁴⁷⁸ General Comment No. 34, *supra* note 463, ¶ 23.

⁴⁷⁹ *Kim v. Republic of Korea*, Commc’n No. 574/1994, ¶ 12.4, 64th Sess., Human Rights Comm., U.N. Doc. CCPR/C/64/D/574/1994, (Nov. 20, 1998),

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F64%2FD%2F574%2F1994&Lang=en. See also *Sohn v. Republic of Korea*, *supra* note 472, at ¶ 10.4.

⁴⁸⁰ *Methods of work of the Working Group on Arbitrary Detention*, Human Rights Council, 36th Sess., U.N. Doc. A/HRC/36/38, Sec. III (July 13, 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/190/80/PDF/G1719080.pdf?OpenElement>.

Any Form of Detention or Imprisonment (“Body of Principles”) and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the “Mandela Rules”).⁴⁸¹

172. As detailed below, the Tajik government’s violations of the fundamental international norms and minimal standards for due process in its arrest, detention, trial and conviction of Mr. Yorov were so grave as to render his deprivation of liberty arbitrary. The Government failed to comply with the internationally-recognized procedural requirements enumerated in the ICCPR, the UDHR, the Body of Principles and the Mandela Rules. Moreover, it even failed to satisfy certain procedural protections guaranteed under Tajik law.⁴⁸²

173. Mr. Yorov’s arrest, detention, trial and conviction were deliberately orchestrated as a punishment for his representation of prominent political opponents and criticism of the Government. The closed door proceedings against him were intended to shield the court from scrutiny regarding the arbitrary and illegal nature of the proceedings and to ensure a conviction and maximum sentence.

1. Violation of Freedom from Arbitrary Arrest

174. Article 9(1) of the ICCPR provides for the right to liberty and freedom from arbitrary arrest and guarantees that “[n]o one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”⁴⁸³ Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles reiterate this right.⁴⁸⁴

175. As argued in Part 4.I. above, the Government manufactured charges against Mr. Yorov in an attempt to silence and punish him for his professional work as a human rights lawyer and for his association and work with opposition parties. Because Mr. Yorov’s arrest was not based on a genuine or reasonable suspicion that he had committed a crime, but was rather a pretext to detain him for his exercise of his fundamental rights, such arrest was in violation of Article 9(1) under the ICCPR, Article 9 of the UDHR and Principles 2 and 36(2) of the Body of Principles.

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

176. Article 17 of the ICCPR ensures the right to privacy and states that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation. Everyone has the right to

⁴⁸¹ In making a Category III determination, the Working Group will look to the norms “established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned.” *Id.*, ¶ 8(c). However, the Revised Methods of Work also explain that where appropriate, the Working Group will refer to standards established under the Body of Principles. *Id.*, ¶ 7(a).

⁴⁸² Tajikistan Crim. Code Exec. Code,

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

⁴⁸³ ICCPR, *supra* note 408, art. 9(1).

⁴⁸⁴ UDHR, *supra* note 419, art. 9; *Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment*, G.A. Res. 47/173, principles 2, 36(2), 76th plen. mtg., U.N. Doc. A/RES/43/173 [hereinafter “Body of Principles”].

the protection of the law against such interference or attacks.”⁴⁸⁵ This right is reiterated by Article 12 of the UDHR. The Constitution also recognizes a right to privacy in the home and prohibits searches and seizures without a warrant. Specifically, Article 22 of the Constitution states that “[t]he home shall be inviolable. It shall be prohibited to enter the home of a person by force and deprive a person of a home except in cases stipulated by law.”⁴⁸⁶ Article 192 of the Tajik Code of Criminal Procedure further states that police may not enter and search a private home without the approval of a judge.”⁴⁸⁷

177. Here, the Government violated domestic criminal procedure protections as well as international norms when it searched Mr. Yorov’s home and seized his personal belongings and case files. The searches of Mr. Yorov’s home and law office and of his father’s home were conducted without a warrant and, in some cases, without a witness present. The documents and belongings that the Government authorities seized, including Mr. Yorov’s mobile phone, laptop, and documents pertaining to his legal representation, were all seized without a search warrant. The Government authorities did not present any sort of warrant or judicial authorization until one month after it conducted the search – at the end of October 2015 – in an attempt to retroactively authorize the searches and seizures.

178. The fact that many of the items seized were likely to be communications between attorney and client makes such seizure even more egregious; in doing so the Government authorities were infringing upon not just Mr. Yorov’s right to privacy but also the general principle of attorney-client privilege, as recognized in several international instruments; paragraph 22 of the Basic Principles on the Role of Lawyers, for instance, requires governments to “recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.”⁴⁸⁸ In its unwarranted searches and seizures, the Government violated not only Mr. Yorov’s right to privacy in his capacity as an individual citizen but also the right to privacy of his clients in their communications with their attorney. Both such rights are protected, however the fact that the Government made no distinction at all between Mr. Yorov’s individual privacy and professional confidentiality displays the Government’s disdain for the privacy rights of its citizens in general—and Mr. Yorov in particular.

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

⁴⁸⁵ICCPR, *supra* note 408, art. 17. *See also* UDHR, *supra* note 419, art. 12 *See also* Art. (“No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.”).

⁴⁸⁶ Constitution of Tajikistan, *supra* note 409, art. 22.

⁴⁸⁷ U.S. Dep’t of State, *Tajikistan 2015 Human Rights Report*, *supra* note 41.; Am. Bar Ass’n Rule of Law Inst., *Implementation of Criminal Procedure Legislation of the Republic of Tajikistan and Recommendations for its Improvement* 89 (2012), https://www.americanbar.org/content/dam/aba/directories/roli/tajikistan/tajikistan_implementation_of_criminal_procedure_legislation_2012.authcheckdam.pdf.

⁴⁸⁸ *See e.g.*, , *Basic Principles on the Role of Lawyers*, *supra* note 452, ¶ 22; *see also Rep. on the Independence of judges and lawyers*, ¶¶ 44-48, 59-69, 110, U.N. General Assembly, 64th Sess., U.N. Doc. A/64/181 (July 28, 2009), <https://undocs.org/A/64/181>; International Bar Association, *International Principles on Conduct for the Legal Profession*, § 4.1 (May 28, 2011), <https://www.ibanet.org/Document/Default.aspx?DocumentUid=1730FC33-6D70-4469-9B9D-8A12C319468C>.

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

180. Article 9(2) of the ICCPR requires that a detainee “be informed, at the time of arrest, of the reasons for his arrest and [] be promptly informed of any charges against him.” This right is reiterated in Principle 10 of the Body of Principles.⁴⁸⁹ The purpose for this requirement is to enable a detainee to request a prompt decision on the lawfulness of his detention if the reasons given are invalid or unfounded.⁴⁹⁰ Moreover, the Government authorities must provide “not only the general legal basis of the arrest, but also enough factual specifics to indicate the substance of the complaint, such as the wrongful act and the identity of an alleged victim.”⁴⁹¹

181. Regarding the requirement that the detainee be “promptly informed” of any charges against him or her, the Human Rights Committee has not confirmed precisely what time frame would be considered “prompt.” However, the Human Rights Committee has indicated that where a detainee is arrested on pre-existing charges, “the authorities may explain the legal basis of the detention some hours later.”⁴⁹² Moreover, in the context of a detainee’s *habeas corpus* rights, the Human Rights Committee has interpreted “prompt” to mean about 48 hours.

182. Initially upon his arrest, Mr. Yorov was accused of being complicit in the coup of Deputy Defense Minister General Abduhalim Nazarzoda. The next day, Mr. Yorov was told he had been arrested under suspicion of fraud and forgery (Articles 247 and 340 of the Criminal Code). However, the government did not file official charges against Mr. Yorov until sometime between October 8 and October 10, 2015, more than 10 days after his arrest. The Government authorities’ failure to promptly inform Mr. Yorov of the charges against him are at odds with the requirements of Article 9(2) of the ICCPR and Principle 10 of the Body of Principles. The fact that the Government authorities’ justification for detaining Mr. Yorov repeatedly changed throughout Mr. Yorov’s detention, is further evidence of its arbitrary nature.

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

183. Articles 9(3) and (4) of the ICCPR protect an individual’s right to challenge the legality of his continued detention. This right is reiterated by Principles 4, 11, 32 and 37 of the Body of Principles.⁴⁹³ Article 9(3) of the ICCPR requires that a detainee “be brought promptly before a judge or other officer authorized by law to exercise judicial power”⁴⁹⁴ and “applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity.”⁴⁹⁵ Article 9(4) of the ICCPR extends this principle of *habeas*

⁴⁸⁹ Body of Principles, *supra* note 484, principle 10 (“Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.”).

⁴⁹⁰ General Comment No. 35, *supra* note 415, ¶ 25; *Campbell v. Jamaica*, Comm’n No. 248/1987, ¶ 6.3, (Mar. 30, 1992), <http://opil.ouplaw.com/view/10.1093/law:ihrl/2371unhrc92.case.1/law-ihrl-2371unhrc92>.

⁴⁹¹ General Comment No. 35, *supra* note 415, ¶ 25.

⁴⁹² *Id.* ¶ 30.

⁴⁹³ Body of Principles, *supra* note 484, principles 4, 11, 32, 37.

⁴⁹⁴ ICCPR, *supra* note 408, art. 17(1); UDHR, *supra* note 419, art 12.

⁴⁹⁵ General Comment No. 35, *supra* note 415, ¶32.

corpus to non-criminal detainees as well.⁴⁹⁶ The Human Rights Committee has interpreted the term “promptly” to be within about 48 hours, except in exceptional circumstances.⁴⁹⁷ Most recently, in its Opinion No. 2/2018 concerning Haritos Mahmatali Rahmonovich Hayit, the Working Group confirmed that Tajikistan’s holding of an individual for three days before allowing him to appear before a judge was a violation of his rights resulting in an arbitrary detention.⁴⁹⁸

184. Here, as mentioned in Paragraphs 46 and 59 above, Mr. Yorov was arrested on September 28, 2015 but was not brought before a judge until October 1, 2015. Tajikistan did not argue or provide any explanation of what exception circumstances might have delayed this *habeas corpus* hearing. Tajikistan thus violated Mr. Yorov’s rights under Articles 9(3) and 9(4) of the ICCPR and Principles 4, 11, 32 and 37 of the Body of Principles by refusing to let him challenge his detention for three days.

5. Violation of the Right to Release Pending Trial

185. Article 9(3) of the ICCPR also enshrines the right to an individual’s release pending trial by confirming that “[i]t shall not be the general rule that persons awaiting trial shall be detained in custody”⁴⁹⁹ The Human Rights Committee has found that “[d]etention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. . . . Pretrial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances.”⁵⁰⁰ 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.⁵⁰¹

186. Mr. Yorov was arrested on September 28, 2015 and presented before a judge on October 1, 2015. At this arraignment, the judge refused to release Mr. Yorov on bail after the prosecutor argued that Mr. Yorov would flee or destroy evidence.

187. In contravention of the Human Rights Committee’s determination that pre-trial detention must be based on an individualized determination that it is reasonable and necessary, the Government never presented evidence that continuing detention would be both reasonable and necessary in this case. To the contrary, the Government presented no evidence to support its argument that Mr. Yorov was a flight risk or that he was likely to destroy evidence. By making a determination to deny Mr. Yorov’s release pending trial based not upon evidence that he might abscond or destroy evidence, but rather upon the prosecution’s unsupported suggestion that he might do so, the court impermissibly defaulted to treating pre-trial detention as a general rule. In fact, this denial of bail falls squarely within a pattern by which Government critics are commonly

⁴⁹⁶ *Id.* ¶ 39.

⁴⁹⁷ *Id.* ¶ 33.

⁴⁹⁸ *Hayit v. Tajikistan*, Working Grp. on Arbitrary Detention, Commc’n No. 2/2018, ¶ 57, 81st Sess., Human Rights Council, U.N. Doc. A/HRC/WGAD/2018/2 (May 10, 2018), https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session81/A_HRC_WGAD_2018_2.pdf.

⁴⁹⁹ ICCPR, *supra* note 408, art. 9(3).

⁵⁰⁰ General Comment No. 35, *supra* note 415, ¶ 38.

⁵⁰¹ Body of Principles, *supra* note 484, principles 38, 39.

held for lengthy periods of pre-trial detention because it is the Government's main purpose to have these detainees silenced behind bars, a release would defeat this object.⁵⁰² Thus, in contradiction to the requirement that pre-trial detention be the exception rather than the rule and that such pre-trial detention be based on an individualized determination that it is both reasonable and necessary to deny release given a defendant's circumstances, the judge impermissibly defaulted to continuing the pre-trial detention of Mr. Yorov in violation of Article 9(3) of the ICCPR and Principles 38 and 39 of the Body of Principles.

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

188. Article 14(3)(b) of the ICCPR guarantees a criminal defendant the right "to communicate with counsel of his own choosing."⁵⁰³ The Human Rights Committee has clarified that such guarantee "requires that the accused is granted prompt access to counsel"⁵⁰⁴ and that "[s]tate parties should permit and facilitate access to counsel for detainees in criminal cases from the outset of their detention."⁵⁰⁵ Additionally, Article 14(3)(d) of the ICCPR provides that everyone has the right "to defend himself in person or through legal assistance of his own choosing"⁵⁰⁶ Mandela Rule 41(3) and 61 and Principles 11(1), 17(1), 18(1) and (3) of the Body of Principles further provide for the right of a detainee to be assisted by and communicate with his or her legal counsel without delay and that such right "may not be suspended or restricted save in exceptional circumstances"⁵⁰⁷ Principles 15 and 19 of the Body of Principles also call for "a detained or imprisoned person" to have the right to "communicate with the outside world," and in particular his counsel.⁵⁰⁸ Moreover, Paragraph 1 of the Basic Principles on the Role of Lawyers confirms that the right to assistance of an attorney covers all stages of criminal proceedings and that access to an attorney should be granted in no case later than 48 hours after the individual's arrest.⁵⁰⁹ Article 19 of the Constitution also guarantees that "[f]rom the moment of detainment, a person has the right to employ the services of a lawyer."⁵¹⁰

189. The right to communicate with counsel includes the requirement that "Counsel should be able to meet their clients in private and to communicate with the accused in conditions

⁵⁰² Mahmatali Hayit, Zayd Saidov and Shukhrat Kudratov are all examples of government critics who were held for months in pre-trial detention. See e.g., Hayit v. Tajikistan, *supra* note 498; Human Rights Watch, *Tajikistan: Long Sentence a Blow to Free Expression* (February 7, 2014), <https://www.hrw.org/news/2014/02/07/tajikistan-long-sentence-blow-free-expression>; Human Rights Watch, *Tajikistan: Human Rights Lawyer Imprisoned* (January 14, 2015), <https://www.hrw.org/news/2015/01/14/tajikistan-human-rights-lawyer-imprisoned>.

⁵⁰³ ICCPR, *supra* note 408, art. 14(3)(b).

⁵⁰⁴ *General Comment No. 32: Article 14: Right to Equality before the Courts and Tribunals and to a Fair Trial*, ¶ 34 Human Rights Comm., 90th Sess., U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) [hereinafter "General Comment No. 32"], http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en.

⁵⁰⁵ General Comment No. 35, *supra* note 415, ¶ 35.

⁵⁰⁶ ICCPR, *supra* note 408, art. 14(3)(d).

⁵⁰⁷ Body of Principles, *supra* note 484, principle 11(1), 17(1) 18(1) and (3); *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)*, G.A. Res. 70/175, at 21, U.N. Doc. A/RES/70/175 (Rules 41(3) and 61) [hereinafter "Mandela Rules"], <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>.

⁵⁰⁸ Body of Principles, *supra* note 484, principles 15 and 19.

⁵⁰⁹ *Basic Principles on the Role of Lawyers*, *supra* note 452, ¶¶ 1, 7.

⁵¹⁰ Constitution of Tajikistan, *supra* note 409, art. 19.

that fully respect the confidentiality of their communications.”⁵¹¹ Moreover, Principle 18(4) of the Body of Principles confirms that client-attorney interviews may not be held within the hearing of a law enforcement official.⁵¹²

190. As detailed in Paragraphs 61 to 68 above, Mr. Yorov was not given access to legal counsel immediately following his arrest. The day after his arrest, Mekhrubon Rahmonov entered an appearance to represent Mr. Yorov, but withdrew his appearance later that day, allegedly after he realized that such representation might imperil his career. Mr. Yorov’s family then hired Nuriddin Mahkamov and Bobohon Yakubov to represent Mr. Yorov, but these attorneys were not able to meet with Mr. Yorov in private for 44 days.⁵¹³ Before Mr. Mahkamov could meet with Mr. Yorov, he himself was arrested. Only after Mr. Yorov announced a hunger strike in connection with the violation of his right to legal representation did the Government authorities allow Mr. Yorov to meet with Mr. Yakubov in private.⁵¹⁴ This failure to allow Mr. Yorov to meet his lawyer in private from the outset of his detention left Mr. Yorov vulnerable to mistreatment and beatings from governmental authorities as they attempted to coerce him to confess to various crimes.

191. After the first trial, Mr. Yakubov ended his representation of Mr. Yorov, allegedly because the Government threatened him with arrest. The next attorney brought on to represent Mr. Yorov, Muazamakhon Kadyrova, fled the country after being harassed by the Government. The family was unable to hire additional independent counsel. Thus, during his second and third trials, Mr. Yorov was first represented by an inexperienced intern and later by his wife who does not have a legal education or training.

192. By preventing Mr. Yorov from communicating with his attorneys from the onset of his detention and by creating a climate of intimidation such that Mr. Yorov could not find competent attorneys to represent him at trial, the Government violated Mr. Yorov’s rights under Article 14(3)(b) and (d) of the ICCPR, Mandela Rules 41(3) and 61, Principles 11(1), 15, 17(1), 18(1), (3) and (4), and 19 of the Body of Principles and Paragraph 1 of the Basic Principles on the Role of Lawyers in an impermissible attempt to undermine his legal defense.

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

193. Under Article 14(3)(b) of the ICCPR, an individual enjoys the right “*to have adequate time and facilities for the preparation of his defence.*” This right is reiterated specifically by Principle 18(2) of the Body of Principles and, more generally, by Principle 11(1) of the Body of Principles which provide for a right to defense. The Human Rights Committee has confirmed that “[t]his provision is an important element of the guarantee of a fair trial and

⁵¹¹ General Comment No. 32, *supra* note 504, ¶ 34.

⁵¹² Body of Principles, *supra* note 484, principle 18(4).

⁵¹³ Communication EF, on file with author.

⁵¹⁴ *Id.*

*an application of the principle of equality of arms . . . what counts as ‘adequate time’ depends on the circumstances of each case.’*⁵¹⁵

194. As discussed throughout this Category III analysis, the Government repeatedly infringed upon Mr. Yorov’s rights to prepare a defense. As detailed in Paragraphs 61 to 68 above, not only did the Government authorities not allow Mr. Yorov to meet with his attorney for 44 days after his arrest, his access to qualified, competent legal representation deteriorated as the proceedings progressed.

195. Compounding these deficiencies in legal representation was the Government authorities’ denial, during Mr. Yorov’s second trial, of [REDACTED]’s motion for an extension of time to familiarize himself with the case files. [REDACTED] was not present at several court hearings and Mr. Yorov was not represented by counsel at all.⁵¹⁶

196. Moreover, prior to his first trial Mr. Yorov was not given access to the prosecution’s evidence against him and was not permitted to introduce exculpatory evidence to rebut the prosecution’s contentions.

197. In thus preventing Mr. Yorov from accessing competent legal representation, limiting the time needed by the defense to prepare, and preventing the defense from accessing the prosecution’s materials or introducing evidence, the Government violated Mr. Yorov’s rights under Article 14(3)(b) of the ICCPR and Principles 11(1) and 18(2) of the Body of Principles.

8. Violation of the Right to a Public Hearing

198. Article 14(1) of the ICCPR and Article 10 of the UDHR entitle persons facing criminal charges the right to a fair and public hearing before a competent, independent, and impartial tribunal established by law.⁵¹⁷

199. The right to a public hearing is a necessary protection to ensure the fairness and impartiality of a tribunal’s decision-making. As the Human Rights Committee has emphasized, public hearings “ensure[] the transparency of proceedings and thus provide an important safeguard for the interest of individuals and of society at large.”⁵¹⁸ The right to a public hearing must include a hearing open to the general public, including media, without limiting entrance to a select group of people.⁵¹⁹

200. Although Article 14(1) of the ICCPR does allow for the public to be excused from a trial for reasons of national security, it still requires that “any judgement rendered in a criminal case or in a suit at law shall be made public.”⁵²⁰ This judgment must include “the essential findings, evidence and legal reasoning.”⁵²¹ Moreover, the UN Working Group on Protecting

⁵¹⁵ General Comment No. 32, *supra* note 504, ¶ 32.

⁵¹⁶ Communication EF, on file with author.

⁵¹⁷ ICCPR, *supra* note 408; UDHR, *supra* note 419.

⁵¹⁸ General Comment No. 32, *supra* note 504, ¶ 28.

⁵¹⁹ *Id.* ¶ 29.

⁵²⁰ ICCPR, *supra* note 408, art. 14(1).

⁵²¹ General Comment No. 32, *supra* note 504, ¶ 29.

Human Rights While Countering Terrorism has confirmed that “[a]ny restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate.”⁵²² Any such exclusion of the public for reasons of national security “should nevertheless be accompanied by adequate mechanisms for observation or review to guarantee the fairness of the hearing” and the exclusion of the public should be limited only to those portions of the hearing in which it is necessary.⁵²³

Trial 1

201. The Government classified Mr. Yorov’s first trial, which began on May 5, 2016, as secret. Mr. Yorov’s family was initially allowed to attend the trial, though as the trial went on, the Government authorities started denying admission on the pretense that the courtroom was full. Although Mr. Yorov and Mr. Mahkamov were being tried on one national security-related charge of extremism, the Government authorities made no effort to ensure public access to the parts of the trial that did not touch on alleged national security concerns. Moreover, considering that the extremism charge was merely based Mr. Mahkamov’s possession of articles criticizing the Government, it is hard to imagine what legitimate national security secrets might have been at risk of public exposure. Rather, the classification of the trial as “secret” for reasons of national security was a mere pretext to prevent scrutiny of the proceedings.

Trial 2

202. Mr. Yorov’s second trial for contempt of court and insulting a government official, which stemmed from the poem he had read in court during his first trial, was also closed to the public. There were no national security concerns at issue. Attendance was commonly limited to the judge, the prosecutor, the attorney and Mr. Yorov. Mr. Yorov’s wife and mother were rarely permitted to attend.

Trial 3

203. On March 28, 2017, Mr. Yorov was charged with additional counts of fraud and with publicly insulting the President in the media or on the internet. Again, this trial was closed to the public. Mr. Yorov’s wife was permitted to attend most of the hearings only because she attended as Mr. Yorov’s attorney. However, she was not notified of the date of sentencing and the sentencing hearing was made without her present.

204. In thus closing all three of Mr. Yorov’s trials partially or fully to the public, the government violated his rights under Article 14(1) of the ICCPR and Article 10 of the UDHR.

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

⁵²² United Nations Working Group on Protecting Human Rights While Countering Terrorism, *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, § 3 (Oct. 2014), <http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>.

⁵²³ *Id.* § 3.2.

205. Article 14(1) of the ICCPR and Article 10 of the UDHR guarantee a fair trial before an independent and impartial tribunal. Article 14(1) establishes an objective standard, which is treated as an “*absolute requirement[] not capable of limitation.*”⁵²⁴ “*The requirement of independence refers, in particular, to . . . the actual independence of the judiciary from political interference by the executive branch and the legislature.*”⁵²⁵ Moreover, the fairness standard must be measured by an objective “*reasonableness standard;*” that is, the court must appear to a reasonable observer to be impartial.⁵²⁶ If, for example, a court fails to prevent or remedy serious procedural mistakes or to provide a duly-reasoned judgment, this would indicate to a reasonable observer that the proceedings are not “*fair.*”

206. Article 14(1) of the ICCPR also demands that “*all persons shall be equal before the courts and tribunals*” which means that the prosecution and the defense must enjoy equality of arms.⁵²⁷ Effectively, equality of arms requires that both parties have the same procedural rights and, specifically, that “*each side be given the opportunity to contest all the arguments and evidence adduced by the other party.*”⁵²⁸

207. In line with international standards, Tajik law also demands that its courts be competent, impartial and independent. Article 19 of the Constitution requires that “[*e*]very person [*be*] guaranteed judicial protection. Every person has the right to demand review of her or his case by a competent and non-partisan court.”⁵²⁹ The requirement for an independent judiciary is echoed by chapter 8, article 87 of the Constitution, which guarantees that judges be “*independent and subordinate only to the Constitution and the law.*”⁵³⁰

208. The court that adjudicated claims against Mr. Yorov was not independent and biased, and provided an unfair proceeding which did not afford Mr. Yorov equality of arms.

209. First, the court system in Tajikistan is not independent. In practice “[*t*]he president has nearly complete control over the national-level judiciary through the Ministry of Justice.”⁵³¹ As discussed in Paragraph 21 above, President Rahmon exerts extreme influence over the judiciary, which additionally lacks the resources needed to function independently. A court system where the rate of acquittal is almost zero cannot be considered to function independently from the executive’s wishes.

210. The information available about Mr. Yorov’s three trials strongly suggests the courts were biased and did not afford the defense and the prosecution equal procedural rights.

⁵²⁴ Alex Conte & Richard Burchill, *Defining Civil and Political Rights* 165 (2d ed. 2009).

⁵²⁵ *Id.*

⁵²⁶ *Id.* General Comment No. 32, *supra* note 504, ¶ 21.

⁵²⁷ ICCPR, *supra* note 408, art 14(1).

⁵²⁸ General Comment No. 32, *supra* note 504, ¶ 13.

⁵²⁹ Constitution of Tajikistan, *supra* note 409, art. 19.

⁵³⁰ *Id.* art. 87.

⁵³¹ Martha Brill Olcott, *supra* note 30, at 31; *see also* David Kaye, *Preliminary Observations by the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression* (Mar. 9, 2015), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=17193&LangID=E9>, 2015), (noting that the law does not even provide a clear definition of “extremism” or “terrorism” or explain what evidence is sufficient to prove such crimes).

Trial 1

211. Regarding the extremism charge, as detailed in Paragraph 78 above, before the first trial, the investigator removed from the case file 85 pages of testimony from Mr. Yorov's supporting witnesses and the defense's expert opinion which contradicted the prosecution's expert opinion regarding the extremist nature of the material found in Mr. Mahkamov's home. The actual articles on which the prosecution's expert opinion was based were never presented at trial and Mr. Yorov was unable to either review them or to challenge the prosecution's expert opinion testifying to the articles' extremist nature. The evidence against Mr. Yorov was not disclosed to him prior to the trial nor was it presented at trial so, to the extent that Mr. Yorov was convicted on the basis of any undisclosed evidence that might have been otherwise presented to the court, Mr. Yorov was not given a chance to challenge any such secret evidence.

212. In connection to the fraud charges, as detailed in Paragraphs 79 and 80 above, during the trial, the court denied the defense's request to call additional witnesses without an explanation. Mr. Yorov's attorneys were not permitted to present certain evidence; for instance, the court denied a defense motion requesting to present documents that showed that Mr. Yorov fulfilled his obligations to his clients. The judge also denied a defense motion requesting additional time to present its defense.

213. After Mr. Yorov read aloud a poem deemed insulting in the court, the presiding judge, prosecutor and two jury members were treated as victims and gave evidence against Mr. Yorov in the subsequent investigation and trial for contempt of court and insulting a government official. Nonetheless, none of the judge, prosecutor or jury members were recused from their participation in the first trial.

Trial 2

214. As detailed in Paragraphs 67 and 89 to 93 above, during his second trial, the judge denied Mr. Yorov's state-appointed legal representative time to become familiar with the files. None of the alleged victims were present to testify and instead provided written testimony which ensured that Mr. Yorov was unable to cross-examine their testimony in person. Again, Mr. Yorov was not able to present any evidence or call any witnesses. The court denied all motions for additional and independent expert opinions regarding the meaning of the poem.

Trial 3

215. As detailed in Paragraph 68 above, in the third trial Mr. Yorov did not have any attorney representing him. With respect to the fraud charges which were founded on the allegation that Mr. Yorov took clients' monies but never performed the promised legal work, he was unable to introduce legal filings and other evidence that would have evidenced the legal work which he had performed on behalf of his accusers. Other evidence that would have demonstrated that Mr. Yorov was not the person actual beholden to such accuser for legal work was allegedly altered in the case file. None of the witnesses against Mr. Yorov for either the fraud or the public insult charge testified in court so he was unable to cross-examine them.

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

10. Violation of the Presumption of Innocence

217. Article 14(2) of the ICCPR guarantees that “*everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.*”⁵³² Article 11(1) of the UDHR similarly dictates that the right to a presumption of innocence extends “*until proved guilty according to law in a public trial at which [the defendant] has had all the guarantees necessary for his [or her] defense.*”⁵³³ Principle 36 of the Body of Principles similarly guarantees a presumption of innocence until proven guilty in a public trial, as does Mandela Rule 111(2). The Human Rights Committee has specifically confirmed that the presumption of innocence creates a “*duty for all public authorities to refrain from prejudging the outcome of the trial, e.g. by abstaining from making public statements affirming the guilt of the accused*” and that “[d]efendants should normally not be shackled or kept in cages during trials or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”⁵³⁴

218. The Government did not afford Mr. Yorov a presumption of innocence. First, after he was arrested, the Ministry of the Interior published an article on its website calling him an “*attorney-fraudster*” and “*swindler*” and encouraging the public to contact the police regarding Mr. Yorov. In addition, in October 2015, prior to his conviction, a criminal-themed television show depicted Mr. Yorov as an “*attorney-fraudster.*”

219. Second, during his first trial, Mr. Yorov was always brought into the courtroom in a manner suggesting his guilt. He was brought in wearing handcuffs and was placed into a metal cage.

220. Third, Mr. Yorov's second and third trials took place not in a courtroom, but in the SIZO temporary detention center in Dushanbe, suggesting that his guilt was a foregone conclusion.

221. Fourth, the fact that Mr. Yorov was convicted on the basis of scanty, conflicting or discredited evidence suggests that the Government defaulted to presuming his guilt rather than his innocence.

222. Finally, as detailed throughout this Category III analysis, the treatment of Mr. Yorov by the Government authorities during his trials (e.g., failure to allow him to question witnesses and failure to allow him to present evidence exonerating himself) indicates that the Government merely wanted the court to rubberstamp the guilty verdict that the Government had already conveyed. This is a direct interference with the sphere of judicial power, hence a

⁵³² ICCPR, *supra* note 408.

⁵³³ UDHR, *supra* note 419.

⁵³⁴ General Comment No. 32, *supra* note 504, ¶ 30.

violation of the principle of the separation of powers which ensures the independence of judiciary and the fairness of trial.

223. By thus publicizing Mr. Yorov as guilty, presenting him to the court in a manner which suggested his guilt, holding his trial within a detention center, criminally convicting Mr. Yorov on the basis of poor quality evidence and refusing to afford Mr. Yorov his fair trial rights, Tajikistan violated Mr. Yorov's right to a presumption of innocence in violation of Article 14(2) of the ICCPR, Article 11(1) of the UDHR, Principle 36 of the Body of Principles and Mandela Rule 111(2).

11. Violation of the Right to Examine Witnesses

224. Article 14(3)(e) of the ICCPR provides that “[i]n the determination of criminal charges against [a defendant] everyone shall be entitled ... (e) [t]o examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.”⁵³⁵ The Human Rights Committee has confirmed that this guarantee is a crucial application of the principle of equality of arms and important for ensuring an effective defense.⁵³⁶ Tajik criminal procedure requires that all evidence and proof should be examined during the trial.⁵³⁷

Trial 1

225. In connection with the charges of “*arousing hostility*” and “*extremism*,” the only piece of evidence the prosecution presented was an expert opinion stating that the articles found in the home and on the computer of Mr. Mahkamov were extremist in nature and they tended to trigger nationalist, racist, local and religious conflict. None of the articles or leaflets seized from Mr. Mahkamov's home was presented in court and Mr. Yorov was unable to view the evidence against him before the trial. Moreover, prior to the trial, the government investigator removed 85 pages of testimony from the case file that included Mr. Yorov's supporting witnesses and an expert opinion debunking the testimony of the Government's expert witness. Therefore, Mr. Yorov did not have an opportunity to challenge this evidence against him. This was not only a violation of Mr. Yorov's rights under the ICCPR, but also a breach of the Tajik Criminal Procedure Code, which requires that all evidence and proof be examined during the trial.⁵³⁸

226. In addition, at trial, the defense team's motions calling for additional witnesses were denied by the court without explanation.⁵³⁹ Mr. Yorov and his attorneys were not permitted to fully present their evidence; for instance, the court denied Mr. Yorov's motion requesting documents that showed he fulfilled his contractual obligations to the clients claiming he committed fraud.⁵⁴⁰ The motions were denied without an explanation.

⁵³⁵ ICCPR, *supra* note 408, art. 14(3)(e).

⁵³⁶ General Comment No. 32, *supra* note 504, ¶ 39.

⁵³⁷ Criminal Procedure Code, *supra* note 282.

⁵³⁸ *Id.*

⁵³⁹ Communication BC, on file with author.

⁵⁴⁰ *Id.*

227. Finally, the judge denied the defense team’s motion for additional time to present a defense—with assurances from the judge that the defense would have time to present its case later in the proceedings.⁵⁴¹ However, the defense was never permitted to introduce evidence.⁵⁴²

Trial 2

228. In Mr. Yorov’s second trial for insulting members of the government and contempt of court, none of the alleged victims testified in person. Instead, the Government authorities presented written statements from the victims. Therefore, Mr. Yorov’s team was not given an opportunity to cross-examine the victims in person. Mr. Yorov was not afforded an opportunity to call any defense witnesses—for example independent linguistics experts who could express an opinion on the significance of the poem—or to introduce any evidence in court.

Trial 3

229. During Mr. Yorov’s third trial, he was not represented by an attorney. He was also unable to cross-examine any of the witnesses against him in person. Moreover, he was unable to introduce exonerating evidence to demonstrate that he had not simply taken money without provided legal services but had acted on his accusers’ behalf.

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

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

231. Article 7 of the ICCPR guarantees that: “*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”⁵⁴³ Article 10(1) of the ICCPR further provides that: “*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*”⁵⁴⁴ This right is reiterated by the Articles 1, 2 and 16(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention Against Torture”), to which Tajikistan is party;⁵⁴⁵ Article 5 of the UDHR, Principles 1 and 6 of the Body of Principles, and Mandela Rule 1.⁵⁴⁶

I. Torture and Other Abuse or Mistreatment

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ ICCPR, *supra* note 408, art. 7.

⁵⁴⁴ *Id.* art. 10(1).

⁵⁴⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 83, [hereinafter “Convention Against Torture”], <https://treaties.un.org/doc/Publication/UNTS/Volume%201465/v1465.pdf>.

⁵⁴⁶ UDHR, *supra* note 419, art. 5; Convention Against Torture; Body of Principles, *supra* note 484, principles 1, 6; *Mandela Rules*, *supra* note 507, Rule 1.

232. 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.⁵⁴⁷ International law's particular concern with torture as an interrogatory tool is further reflected in the definition of torture in Convention Against Torture, which defines the term as "*any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession . . .*,"⁵⁴⁸ as well as in Principle 21(2) of the Body of Principles which guarantees that "no detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgment."⁵⁴⁹ Principle 21 of the Body of Principles also prohibits Tajikistan from taking "*undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person,*"⁵⁵⁰ and from violence, threats, or methods of interrogation that impair a detained person's judgment or decision-making capacity while the person is being interrogated.⁵⁵¹

233. In addition, Tajikistan has adopted domestic legislation "that brings the definition of torture in line with the Convention against Torture and a [Tajikistan] Supreme Court decree that guarantees the availability of safeguards to prevent torture from the time of arrest. Prohibitions against torture have also been adopted into Chapter 2, Article 18 of the Constitution, which states: "*The inviolability of the individual is guaranteed by the government. No one may be subjected to torture or cruel and inhuman treatment.*"⁵⁵²

234. Although Tajikistan has ratified these prohibitions against torture, in practice torture and other cruel and inhuman abuse of prisoners—and impunity for the perpetrators—remains widespread.⁵⁵³

235. As discussed in Paragraphs 101 to 112 above, Mr. Yorov has been subjected to torture and abuse since the beginning of this detention, including beatings, forced prolonged nudity, insults, and threats. Beatings allegedly worsened after the OSCE's Human Dimension Implementation Meeting, held September 11-22, 2017, leaving Mr. Yorov with injuries were severe enough to send him to the detention center hospital.

II. Solitary Confinement and Prison Conditions

236. Mr. Yorov has been permitted only minimal communication with the outside world ever since his arrest and has been allowed only five short visits by his wife and mother in

⁵⁴⁷ ICCPR, *supra* note 408, art. 14(3)(g).

⁵⁴⁸ Convention Against Torture, *supra* note 545, art. 1(1).

⁵⁴⁹ Body of Principles, *supra* note 484, principle 21(2). Also, "it shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess..." *Id.* principle 21(1).

⁵⁵⁰ *Id.* (this language was contained in a note to the original Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment).

⁵⁵¹ *Id.*

⁵⁵² Constitution of Tajikistan, *supra* note 409, art. 18.

⁵⁵³ U.S. Dep't of State, *Tajikistan: 2009 Country Reports on Human Rights Practices* (Mar. 11, 2010), <https://www.state.gov/j/drl/rls/hrrpt/2009/sca/136094.htm>.

the SIZO temporary detention facility since his arrest in September 2015 to June 2018. These visits fall short of the requirements under Tajik law.

237. The Committee against Torture has concluded that the use of solitary confinement in prisons should be abolished or strictly and specifically regulated⁵⁵⁴ and General Comment No. 20 to the ICCPR confirms that prolonged solitary confinement can amount to acts prohibited by Article 7 of the ICCPR.⁵⁵⁵ The UN Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment (the “Special Rapporteur on Torture”) dedicated an entire report to the use of solitary confinement, concluding that “*where the physical conditions and the prison regime of solitary confinement cause severe mental and physical pain or suffering, when used as a punishment, . . . it can amount to cruel, inhuman or degrading treatment or punishment and even torture.*”⁵⁵⁶ Moreover, Mandela Rules 43(1)(b) and 45 prohibit the use of “*prolonged solitary confinement*” and specify respectively that “*solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority.*”⁵⁵⁷

238. As discussed in Paragraphs 110 to 112 above, Mr. Yorov has been kept in solitary confinement on multiple occasions in the SIZO temporary detention facility, as well as during his subsequent imprisonment, for anywhere between three and 15 days each time for no apparent legitimate reason. At least until October 2017, Mr. Yorov was regularly placed in solitary confinement, perhaps in an effort to conceal his torture from the outside world. Mr. Yorov was in solitary confinement from September 28, 2017 to October 9, 2017, at which point he was moved to a general population cell. Though the exact dates when Mr. Yorov was placed in an isolation cell are unclear, Mr. Yorov is believed to have been placed in solitary confinement approximately 8 or 10 times, spending between 3 to 15 days in isolation at a time at a Security Housing Unit.

239. The Human Rights Committee, the UN Human Rights Council, the UN High Commissioner for Human Rights, and the Special Rapporteur on Torture have determined that poor prison conditions can also amount to cruel and inhumane punishment.⁵⁵⁸ Given the

⁵⁵⁴ *Report of Committee against Torture*, ¶ 156SuppSupp. No. 44, U.N. Doc. A/53/44, (Sept. 16, 1998), <http://www.freedom-now.org/wp-content/uploads/2015/10/CAT-Report-Supp.-No.-44-A5344.pdf>.

⁵⁵⁵ *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) (March 10, 1992), <http://www.refworld.org/docid/453883fb0.html>.

⁵⁵⁶ U.N. Secretary General, *Interim Report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment of punishment*, UN Doc. No. A/66/268, Summary, (Aug. 5, 2011), <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>. See also, *supra* note 554, ¶¶ 28-39 for other statements international and regional human rights bodies condemning the use of prolonged solitary confinement.

⁵⁵⁷ *Mandela Rules*, *supra* note 507 (Rules 43(1)(b) and 45).

⁵⁵⁸ *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: Argentina*, ¶ 11, Human Rights Comm., 70th Sess., U.N. Doc. CCPR/CO/70/ARG (Nov. 15, 2000), http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fCO%2f70%2fARG&Lang=en; *Human Rights in the Administration of Justice, Including Juvenile Justice*, Human Rights Council, 24th Sess., U.N. Doc. A/HRC/24/L.28, (Sept. 23, 2013), <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G13/172/77/PDF/G1317277.pdf?OpenElement>; *Human Right Implications of Overincarceration and Overcrowding*, Human Rights Council, 30th Sess., U.N. Doc. A/HRC/30/19 (Aug. 10, 2015), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/>

minimal communication which Mr. Yorov is permitted with the outside world, it has been difficult to confirm the precise conditions in which he is being held. However, considering the general state of prison conditions for political prisoners in Tajikistan, as outlined in Paragraphs 23 to 25 and 101 to 112 above, it is likely that conditions in which Mr. Yorov is being held amount to cruel and inhuman treatment.

240. The government-inflicted beatings, abuse, prolonged solitary confinement and likely substandard prison conditions on Mr. Yorov constitute a violations of Articles 7, 10(1) and 14(3)(g) of the ICCPR, Article 5 of the UDHR, Articles 1, 2 and 16(1) of the Convention Against Torture, Principles 1 and 6 of the Body of Principles and Mandela Rules 1, 43(1)(b) and 45.

13. Violation of the Right to Appeal

241. Article 14(5) of the ICCPR guarantees that everyone convicted of a crime shall have the right to have his conviction and sentence reviewed by a higher tribunal according to law. The right to appeal guaranteed by Article 14(5) of the ICCPR also “*imposes on the State party a duty to review substantively, both on the basis of sufficiency of the evidence and of the law, the conviction and sentence, such that the procedure allows for due consideration of the nature of the case.*”⁵⁵⁹ To pass muster, a review must consider not just the formal or legal aspects of the conviction, but also the facts of the case, including the allegations against the convicted person and the evidence submitted at trial, as referred to in the appeal.⁵⁶⁰

242. Mr. Yorov appealed his sentence from his first trial, but there is no indication that the appellate review by the Appeals Court included any meaningful engagement with the allegations or the facts of Mr. Yorov’s case. A copy of the appellate decision from the first trial could not be obtained because it was never made public. In thus upholding the lower court’s verdict without engaging in a meaningful and searching review, Tajikistan has violated Mr. Yorov’s right to review under Article 14(5) of the ICCPR.

14. Violation of the Right to Free from Imprisonment due to a Failure to Fulfil a Contractual Obligation

243. Article 11 of the ICCPR confirms that “[n]o one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.” In Mr. Yorov’s case, several of the charges against him in the first and third trial related to his alleged failure to provide legal services to clients who had paid him for such work. Although these charges were prosecuted as a type of fraud, Mr. Yorov was actually being tried for his alleged inability to provide his clients with the contractual services that he had been paid for. These should have been tried as a civil suit, not a criminal case. To the extent that Mr. Yorov has been imprisoned in part because of his

[Footnote continued]

Session30/Pages/ListReports.aspx; Theo van Boven, *Report of the Special Rapporteur on Civil and Political Rights including the Questions of Torture and Detentions*, Human Rights Comm’n, U.N. Doc. E/CN.4/2004/56 (Dec. 23, 2003), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G03/173/27/PDF/G0317327.pdf?OpenElement>.

⁵⁵⁹ ICCPR, *supra* note 408.

⁵⁶⁰ *Id.*

alleged failure to provide these services or refund these monies he has effectively been imprisoned due to his failure to fulfil a contractual obligation, in violation of Article 11 of the ICCPR.

IV. CATEGORY V: DETENTION DUE TO DISCRIMINATION

244. The Working Group regards a deprivation of liberty to be arbitrary under Category V when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on a prohibited ground.⁵⁶¹ This principle of non-discrimination is deeply enshrined in international law. Article 7 of the UDHR and Article 26 of the ICCPR guarantee equal protection under the law without discrimination. Article 2(1) of the ICCPR requires state parties “to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind.”⁵⁶² This guarantee is further reiterated in Principle 5(1) of the Body of Principles.⁵⁶³

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

246. The Working Group has consistently found impermissible discrimination when it is apparent that persons have been deprived of their liberty specifically on the basis of their own or perceived distinguishing characteristics or because of their real or suspected membership of a distinct group.⁵⁶⁴ As the Working Group has recently clarified in the Basic Principles on the Role of Lawyers and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before Court, discrimination in the context of the deprivation of liberty may occur on a “variety of grounds that aim at or may result in undermining the equality of human beings.”⁵⁶⁵ The Working Group has confirmed that the deprivation of liberty on discriminatory grounds may also occur in relation to a broad range of groups, including but not limited to: women and children; persons with disabilities, including psychosocial and intellectual disabilities; human rights defenders and activists.⁵⁶⁶

247. Although the status of lawyers is not an explicitly enumerated ground within the non-discrimination clauses of the ICCPR, lawyers have been treated by international instruments as a distinct class in need of particular protections. The role and importance of lawyers in upholding fundamental human rights of individuals has been reasserted through various international instruments, including the UN Basic Principles on the Role of Lawyers⁵⁶⁷ and the

⁵⁶¹ *Methods of work of the Working Group on Arbitrary Detention*, *supra* note 480.

⁵⁶² ICCPR, *supra* note 408.

⁵⁶³ Body of Principles, *supra* note 484, principle 5(1).

⁵⁶⁴ *Report of the Working Group on Arbitrary Detention*, U.N.Doc. A/HRC/36/37, ¶ 46-9 (July 19, 2017), <http://undocs.org/A/HRC/36/37>.

⁵⁶⁵ *Id.*, ¶ 46.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Basic Principles on the Role of Lawyers*, *supra* note 452.

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (the “Declaration on Human Rights Defenders”).⁵⁶⁸ For example, the UN Basic Principles on the Role of Lawyers recognises that where the security of lawyers is threatened in the process of discharging their functions, they should be adequately safeguarded by the authorities⁵⁶⁹ and mandates that lawyers should not be identified with their clients’ causes as a result of discharging their functions.⁵⁷⁰ Equally, these instruments place duties on lawyers to uphold human rights and fundamental freedoms in the course of undertaking their professional function.

248. Where lawyers seek to act in the course of their profession in such a manner that protects the rule of law and upholds universally recognised human rights, the UN Office of the High Commissioner for Human Rights as well as the UN Special Rapporteur on the Independence of Judges and Lawyers have confirmed that they should be considered human rights defenders.⁵⁷¹ In a constitutional state, lawyers act as independent instruments for the administration of justice;⁵⁷² it is their task to strike a balance between the judicial power of the state and the individual person in order to safeguard fair trial rights and the rule of law. In order to fulfil this role, lawyers must enjoy the state’s protection when exercising their profession.

249. Where the state intervenes with the freedom of the legal profession, restricts attorneys’ rights in an unlawful way, denies protection to attorneys, or even prosecutes lawyers handling politically-sensitive matters, the whole judicial system suffers with the crippling of the guardians of individual rights vis-à-vis the state’s power. It is perhaps with these considerations in mind that the Declaration on Human Rights Defenders guarantees the right to offer and provide professionally-qualified legal assistance in defence of human rights and the right to the lawful exercise of the occupation of profession of human rights defender.⁵⁷³

250. As discussed in Paragraph 20 above, the Government has unleashed a relentless attack and crackdown on the legal profession. This crackdown comes against the backdrop of Tajikistan “*increasingly turning its back on human rights and the rule of law.*”⁵⁷⁴ A number of lawyers, including Mr. Yorov, have been sentenced to imprisonment in excess of 20 years,⁵⁷⁵ some have been intimidated, threatened and attacked⁵⁷⁶, and others have been forced to seek

⁵⁶⁸ G.A. Res. 70/161, Human rights defenders in the context of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Feb. 10, 2016).

⁵⁶⁹ *Basic Principles on the Role of Lawyers*, *supra* note 452, ¶ 17.

⁵⁷⁰ *Id.*, ¶ 18.

⁵⁷¹ U.N. Office of the High Commissioner for Human Rights, *Who is a Defender*, B(1), <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Defender.aspx>; See Mónica Pinto, *supra* note 453, ¶¶ 34-38.

⁵⁷² See e.g., The Federal Lawyers’ Act of Germany (BRAO), Chapter 1 § 1, https://www.brak.de/w/files/02_fuer_anwaelte/brao_engl_090615.pdf.

⁵⁷³ G.A. Res. 70/161, *supra* note 568, ¶ 1, 9-10.

⁵⁷⁴ Amnesty Int’l, *supra* note 76, at 4.

⁵⁷⁵ An example is Nuriddin Makhkamov. See Human Rights Watch, *supra* note 75.

⁵⁷⁶ One such lawyer is Fayzinisso Vohidova. See Human Rights Watch, *supra* note 81.

asylum in fear of their life.⁵⁷⁷ Attorneys' families have also been threatened and harassed by association.⁵⁷⁸

251. Moreover, amendments adopted in November 2015 to the law regulating licencing requirements for lawyers (the “*Law on Advokatura*”) brought the legal profession under control of the Ministry of Justice.⁵⁷⁹ The number of licensed lawyers has fallen from more than 1200 in 2015, to just 600 in 2017.⁵⁸⁰

252. The attack on this particular professional group of the Tajik society is not limited to lawyers who undertake politically-sensitive cases (notwithstanding the fact that attorneys should not be associated with the acts or status of their clients in carrying out their profession). The independence of the entire legal profession has been limited, with fear of reprisals from the Government felt by attorneys across a variety of practices. Lawyers have become wary of taking on cases against security services and other agents of the state.⁵⁸¹ As the judiciary is politicised and controlled by the State,⁵⁸² it is not hard to imagine that in the near future even appeals may be viewed as an attack on the State by the legal profession.

253. Discrimination due to a perceived distinguishing characteristic or suspected membership is equally prohibited.⁵⁸³ In Tajikistan, the ongoing clampdown has also focused on the persecution of those associated or perceived to be associated with various banned opposition groups and political parties, such as the IRPT and Group 24.⁵⁸⁴ The Government's discrimination against Mr. Yorov is due not only to Mr. Yorov's status as a lawyer and human rights defender, but also due to his perceived political identity as a supporter of one of the opposition groups for which he has acted as defense counsel. In practice, the Tajik authorities do not appear to recognise the separation of client and lawyer. Attorneys who represent politically-sensitive clients are not only seen as opposing the state by attempting to uphold the rule of law and due process guarantees for unpopular clients, but are also painted with the same political brush as their clients.

254. To put it simply, “*to be a lawyer, and particularly a human rights lawyer, comes with unprecedented risks in present-day Tajikistan.*”⁵⁸⁵ Given the importance of lawyers as defenders of human rights and their current vulnerability in Tajikistan, discrimination against attorneys, whether due to the fact of their profession or to the impermissible conflation of their representation with their clients' political identities, lawyers should be protected by anti-

⁵⁷⁷ See e.g., Amnesty Int'l, *supra* note 88.

⁵⁷⁸ Swerdlow & Dam, *supra* note 74.

⁵⁷⁹ See Indep. Comm'n of Jurists, *Recommendations on the Independence of the Legal Profession in the Republic of Tajikistan*, at 4-5, (Feb. (23,2016),) <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-PublicationsReports-Thematic-reports-2016-ENG.pdf>.

⁵⁸⁰ Amnesty Int'l, *supra* note 88.

⁵⁸¹ Amnesty Int'l, *supra* note 76, at 4.

⁵⁸² Edward Lemon, *supra* note 39, at 8-9.

⁵⁸³ See e.g., *General Comment No. 20: Non-discrimination in economic, social and cultural rights* (art. 2, para 2, of the International Covenant on Economic, Social and Cultural Rights), ¶ 15-6, UN Comm. On Econ. Social and Cultural Rights, 42nd Sess., U.N. Doc. E/C.12/GC/20 (July 2, 2009), <https://undocs.org/E/C.12/GC/20>.

⁵⁸⁴ Amnesty Int'l, *supra* note 76, at 4.

⁵⁸⁵ *Id.*

discrimination guarantees under international law where a prima facie case for such discrimination has been made.

255. In considering whether the source of a communication has demonstrated a *prima facie* case of deprivation of liberty on discriminatory grounds, the Working Group will take into account a number of considerations, some of which are outlined below,⁵⁸⁶ and will look to whether the totality of the circumstances “*strongly suggest*” a discriminatory basis for the arrest.⁵⁸⁷

(a) The deprivation of liberty was part of a pattern of persecution against the detained person (e.g. a person was targeted on multiple occasions through previous detention, acts of violence or threats);

256. Since the formation of Mr. Yorov’s law firm Sipar in 2007, Mr. Yorov has been the target of multiple criminal actions and civil law suits. The first action sought to dissolve the law firm and was initiated by Rahmon Yusuf (chief military prosecutor and current Attorney General of Tajikistan).⁵⁸⁸ Several fraud cases under Article 247 of the Criminal Code of Tajikistan were also initiated on the basis of fabricated charges. It is clear that these actions were initiated in order to threaten and intimidate Mr. Yorov.

257. The evolving nature of charges against Mr. Yorov points towards a pattern of persecution. Initially, Mr. Yorov was accused of being complicit in the coup of Deputy Defense Minister General Abduhalim Nazarzoda. A day later, a government official informed Mr. Yorov that he had been arrested under suspicion of fraud and forgery. The basis for the arrest changed in its entirety, including the alleged grounds and evidence. Given the context, it is difficult to contemplate that Mr. Yorov’s arrest and continued detention were based on a genuine and reasonable suspicion that a crime had occurred. It is more likely that Mr. Yorov was targeted, as in the past, in retribution for attempting to uphold human rights by exercising his professional functions as a defence lawyer.

(b) Other persons with similarly distinguishing characteristics have also been persecuted (e.g. several members of a particular ethnic group are detained for no apparent reason, other than their ethnicity);

258. Tajik lawyers have been subjected to punitive arrest, criminal prosecution on national security-related or politically-motivated charges, and sentenced to long prison terms following unfair trials.⁵⁸⁹ Some lawyers have chosen to flee the country rather than face persecution. Meanwhile, security forces and local authorities have also targeted their families for harassment, threatening relatives with reprisals.⁵⁹⁰ Shukhrat Kudratov, Nuriddin Makhkamov,

⁵⁸⁶Report of the Working Group on Arbitrary Detention, *supra* note 564, ¶ 48.

⁵⁸⁷ *Nasheed v. Maldives*, Working Grp. on Arbitrary Detention, Commc’n No. 33/2015, ¶ 97 (Oct. 12, 2015), https://www.ohchr.org/Documents/Issues/Detention/Opinions2015AUV/Opinion%202015%2033_Maldives_Naheed_AUV.pdf.

⁵⁸⁸ Communication BC, on file with author.

⁵⁸⁹ Amnesty Int’l, *supra* note 76, at 12.

⁵⁹⁰ *Id.*

Muazzamakhon Kadirova, and Jamshed Yorov are just a selected number of lawyers who have faced similar persecution.

259. The intimidation techniques adopted by the Tajik regime are proving successful. As noted above, the number of registered lawyers in Tajikistan is rapidly declining. Increasingly, lawyers are too afraid to take on clients, a turn of affairs not only detrimental to their safety and human rights, but also to the freedoms of every other citizen of Tajikistan.

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

260. The Tajik authorities made it clear that the charges brought against Mr. Yorov were initiated as a result of the exercise of his profession. During the initial interrogation, officials of the GKNB sought to persuade Mr. Yorov to stop his activities as a defence lawyer in exchange for immediate release.⁵⁹¹ To exert further pressure on Mr. Yorov, government officials arranged for Mr. Yorov's wife, children, sister, and father to meet with him to persuade him to stop defending the opposition, and in general to stop his professional activities as an attorney.⁵⁹²

261. The constant abuse suffered by Mr. Yorov also suggests discriminatory animus against him. Since the start of his detention, as detailed in Paragraphs 55 and 101 to 112 above, Mr. Yorov has suffered continued beatings at the hands of government officials and detention center guards. Although this abuse was used in part during Mr. Yorov's interrogation, the fact that it has continued—allegedly intensifying in mid-2017—suggests that the beatings are not simply a tool by prison authorities to obtain a confession, but may be motivated by prejudicial hostility.

(d) The context suggests that the authorities have detained a person on discriminatory grounds or to prevent them from exercising their human rights (e.g. political leaders detained after expressing their political opinions or detained for offences that disqualify them from holding political office).

262. As discussed in detail in Paragraphs 146 to 170 above, Mr. Yorov was targeted due to his exercise of his rights to free speech, association, and participation in public affairs. Mr. Yorov has been a vocal opponent of the Government. He has publicly condemned the government and law enforcement bodies for their human rights abuses on countless occasions.⁵⁹³ Mr. Yorov did this by making public statements, publishing articles and taking on clients who were victims of the Tajik regime. Mr. Yorov has a reputation as one of the most fearless human rights lawyers in Tajikistan.⁵⁹⁴

⁵⁹¹ Communication BC, on file with author.

⁵⁹² *Id.*

⁵⁹³ Communication AB, on file with author.

⁵⁹⁴ *Id.*

263. Specifically, just before his arrest, Mr. Yorov made a public statement alleging that one of his most politically-sensitive clients, Umarali Khisainov, the deputy leader of the IRTP,⁵⁹⁵ had been tortured while in the hands of the UBOP.⁵⁹⁶ Mr. Yorov simultaneously announced that he would file a claim for illicit conduct against the officials involved on behalf of his client.⁵⁹⁷ The immediacy between Mr. Yorov's political representations and his threatened legal actions on behalf of his client and the punitive reaction of the Tajik authorities, evidences that the detention of Mr. Yorov was a direct result of his professional activities and exercise of his fundamental rights.

264. Mr. Yorov's detention was undoubtedly motivated by the Government's intention to quash what it viewed as his dissenting speech, association, and participation in public affairs. However, the context suggests that, intertwined with the Government's targeting of Mr. Yorov because he engaged in these fundamental rights, the Government's motivation to detain Mr. Yorov was his status as a human rights lawyer, a member of an increasingly vulnerable group in Tajikistan, and his perceived identity as a supporter of his clients' political causes.

265. It is put forward that although one's status as a lawyer is not an immutable characteristic, considering the crucial role that attorneys—like other human rights defenders--play in safeguarding rule of law within a society, status as a lawyer is a characteristic which is protected by the non-discrimination guarantees of international law. The Working Group is thus urged to recognise the broad nature of discrimination and, taking into account the particularly vulnerable situation faced by lawyers in Tajikistan, find that detaining a lawyer because of his profession is in violation the international norms and standards set forth by Article 7 of the UDHR, Articles 2(1) and 26 of the ICCPR, the UN Basic Principles on the Role of Lawyers and the Declaration on Human Rights Defenders and is arbitrary under Category V.

PART 5

CONCLUSION

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

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

⁵⁹⁵ Human Rights Watch, *supra* note 73.

⁵⁹⁶ *Urgent Action: Opposition Members' Lawyer at Risk of Torture*, *supra* note 141. Amnesty Int'l, *Urgent Action: Opposition Members' Lawyer at Risk of Torture*

⁵⁹⁷ Communication AB, on file with author.

I. DOMESTIC REMEDIES

Indicate Internal Steps, Including Domestic Remedies, Taken Especially with the Legal and Administrative Authorities, Particularly for the Purpose of Establishing the Detention and, as Appropriate, Their Results or the Reasons Why Such Steps or Remedies Were Ineffective or Why They Were Not Taken.

Mr. Yorov appealed his convictions from his first trial, but an Appeals Court upheld his conviction. There are no further appeals available to him for this conviction.

It is unknown whether Mr. Yorov has been able to appeal his second and third convictions.

II. CONTACT DETAILS

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

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