



## Submission to the United Nations Human Rights Committee

### List of Issues– Tajikistan

#### 124<sup>th</sup> session (October-November 2018)

Freedom Now welcomes the opportunity to contribute to the *List of Issues* of the Republic of Tajikistan (“Tajikistan”) in preparation for its third periodic review.

#### A. Lack of Freedom of Expression

The Tajik Constitution recognizes citizens’ freedom of expression and prohibits state censorship.<sup>1</sup> Domestic legislation, including the 1996 Law on Television and Broadcasting, the 2008 Law on Access to Information, and the 2013 Law on Periodical Print and Other Mass Media, prohibit state interference, censorship, and persecution for criticism. However, Tajikistan’s Criminal Code criminalizes insulting the President and state officials.<sup>2</sup> In November 2016, President Rahmon signed a law that made insulting or defaming the president a crime punishable by up to five years in prison. National legislation concerning terrorism and extremism has further curtailed the exercise of freedom of expression in Tajikistan.<sup>3</sup>

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 used its power against independent media outlets critical of the government by withholding or revoking licenses to silence dissent.<sup>4</sup> Four state-owned television and radio stations are the only media outlets broadcasting nationwide, effectively dominating the broadcast media.<sup>5</sup>

This government control over the media has effectively silenced political opposition. For example, during the 2015 parliamentary elections, authorities barred journalists from polling stations.<sup>6</sup> Opposition politicians had limited or no access to state-run television.<sup>7</sup> The

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<sup>1</sup> *Constitution of the Republic of Tajikistan*, Article 30, available at <http://www.wipo.int/edocs/lexdocs/laws/en/tj/tj001en.pdf>.

<sup>2</sup> *Criminal Code of the Republic of Tajikistan*, Articles 137 and 330, available at <http://www.legislationline.org/download/action/download/id/1707/file/207b8150765af2c85ad6f5bb8a44.htm/preview> (unofficial) (hereinafter, Tajik Criminal Code)

<sup>3</sup> *Report 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, 34th Sess., June 6-June 23, U.N. Doc. A/HRC/35/22/Add.2 (June 9, 2017), ¶ 16 available at <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session35/Pages/ListReports.aspx>, (hereinafter *2017 Special Rapporteur Report*).

<sup>4</sup> *Id.*, ¶ 25

<sup>5</sup> *Although Tajikistan’s Parliamentary Elections Provided Some Political Alternatives, Campaign Space was Restricted and a Fair Count Could Not be Guaranteed, International Observers Say*, Organization for Security and Cooperation in Europe (March 2, 2015), available at <http://www.osce.org/odihr/elections/tajikistan/143311>.

<sup>6</sup> *Tajikistan: Freedom of the Press 2016*, Freedom House, available at <https://freedomhouse.org/report/freedom-press/2016/tajikistan>.

<sup>7</sup> The parliamentary election laws grant each nationwide list 40 minutes and each single-mandate candidate 20 minutes of free airtime on state-owned television or radio. However, single-mandate candidates could not use regional or local state media to air their campaign broadcasts. The Commission for Elections and Referenda (CCER) decreed that all the free airtime for nationwide lists would be shown on *TV Shabakai 1* in slots well in advance of election day (the slots were allocated between January 28, 2015 and February 6, 2015). See *Tajikistan, Parliamentary Elections, 1 March 2015: Final Report*, Organization for Security and Cooperation in Europe (May 15, 2015), pg. 13.

government gave opposition parties minimal broadcast time to express their political views,<sup>8</sup> while the president's party had numerous opportunities to broadcast its message.<sup>9</sup> Following the Supreme Court's proclamation of the Islamic Renaissance Party of Tajikistan ("IRPT") as a terrorist organization in September 2015 (detailed in section D below), distribution of any newspapers, videos, audio recordings, literature and leaflets connected to the IRPT was prohibited. The party's website has been blocked since that time.<sup>10</sup> As can be seen from the example of the IRPT, political speech is particularly sensitive and those, like the IRPT members, who espouse political ideas in opposition to the government are frequently targeted for harassment and arrest.

The government has firm control over social media. During 2015, the government restricted access to websites such as Facebook and YouTube, and restricted text messaging.<sup>11</sup> A 2014 amendment to the Tajik law on "emergency situations" gave the government the power to limit use of recording equipment and mobile and internet networks. That amendment also permitted the government to censor independent media during emergencies.<sup>12</sup> Legislation adopted in November 2015 increased restrictions by allowing the State Committee for National Security to block access to internet and cell phone services during anti-terrorism operations, extending throughout the entire country if necessary.<sup>13</sup> In November 2016, Presidential Decree 765 was issued, which created a "Single Communications Switching Centre" that allows the government complete control over all domestic communications, without legal safeguards.<sup>14</sup> The Switching Center requires that all internet and mobile communications be run through a single, state-owned telecom provider.<sup>15</sup>

Journalists are commonly subjected to pressure such as insults and humiliation on social media, and those who speak out are harassed and threatened by state agents. In December 2017, authorities arrested Khayrullo Mirsaidov, a well-known independent journalist and head of a local comedy troupe in Tajikistan's northern Sughd region. The regional Prosecutor General's office arrested him after he voluntarily appeared at the Prosecutor General's office for questioning. The charges were brought after Mr. Mirsaidov appealed to Tajikistan's president to crack down on corruption by local authorities. On July 11, 2018, Mr. Mirsaidov was sentenced to 12 years in prison for embezzlement, forging documents, and providing false testimony.<sup>16</sup>

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<sup>8</sup> The IRPT used only 18 minutes and requested to use the remainder to broadcast one-minute clips; an approach originally approved by the CCER. The State Committee on Television and Radio prevented the broadcasting of the IRPT's clips on the grounds that they had not been produced by a licensed audio-visual production company and that their content did not comply with the rules on conducting a campaign. Consequently, the IRPT was unable to campaign using its preferred method and instead had to use its remaining time in a single 20-minute slot on February 24. Outside the free airtime, the state broadcast media did not cover parties' political platforms or activities and no media organized debates among contestants. *Id.* at pgs. 17-18.

<sup>9</sup> There was a clear lack of balance in the very limited amount of political coverage in broadcast media. Less than 10 percent of current affairs programming covered political issues. The three state-owned television stations allocated 48, 19, and 30 percent of their news and current affairs programming to President Rahmon, the Government, and the CCER, respectively. *Id.* at pg. 18.

<sup>10</sup> *2017 Special Rapporteur Report*, ¶ 41.

<sup>11</sup> *Spotlight: Fundamental Rights in Central Asia*, International Partnership for Human Rights (Dec. 2015), pg. 3, available at <http://iphronline.org/wp-content/uploads/2015/12/Tajikistan-fundamental-rights-overview-December-2015.pdf>.

<sup>12</sup> *Tajikistan: Freedom of the Press 2016*, *supra* note 6.

<sup>13</sup> *Spotlight: Fundamental Rights in Central Asia*, *supra* note 11, pg. 4.

<sup>14</sup> *RSF Reinforces Alliance with Partner in Tajikistan*, Reporters Without Borders (Nov. 28, 2016), available at <https://rsf.org/en/news/rsf-reinforces-alliance-partner-tajikistan>.

<sup>15</sup> *Id.*

<sup>16</sup> *Tajikistan Issues 12-Year Sentence to Whistleblower Journalist*, The Diplomat (July 11, 2018), available at <https://thediplomat.com/2018/07/tajikistan-issues-12-year-sentence-to-whistleblower-journalist/>.

## **Recommended Questions to Tajikistan**

1. *Please provide information on the number of independent media outlets operating in Tajikistan, as well as any rejected or withdrawn production licenses for independent media outlets during the Reporting Period.*
2. *Please provide information on instances when the government has limited the use of recording equipment and mobile and internet networks as proscribed by the 2014 amendment to the law on “emergency situations.”*
3. *Please provide information on any criminal or defamation cases pending or previously adjudicated during the Reporting Period against journalists, bloggers, or other media workers.*
4. *Please provide information on any criminal cases pending or previously adjudicated during the Reporting Period which involve speech-related convictions, such as convictions for insulting the president and state officials.*
5. *Please describe what steps have been taken to guarantee and protect freedom of expression, particularly as recommended in paragraph 22 of concluding observations on the second periodic report of Tajikistan adopted by the Human Rights Committee (the “Committee”) at its 108<sup>th</sup> session (8-26 July 2013) (the “Concluding Observations”).*<sup>17</sup>

### **B. Lack of Freedom of Association and Participation in Public Affairs**

The government has severely curtailed the exercise of freedoms of association and participation in public affairs, particularly following the parliamentary election of 2015. The People’s Democratic Party (“PDP”)-controlled government dominates the political process. As discussed in section A above, it uses state-owned media to limit political coverage. The party also implements various other restrictions on voting or political participation—up to and including harassing or imprisoning opposition party members.

For example, the IRPT, Tajikistan’s best-known opposition party, endured a long campaign of government harassment, culminating in the Supreme Court banning the group as a terrorist organization in September 2015 (as detailed below in section D) and arresting, convicting, and sentencing the entirety of its leadership in the country to lengthy sentences for their alleged involvement in a failed coup; the trial which resulted in these mass convictions was closed to the public and replete with due process violations. After Group 24, another peaceful political group, called for democratic reform, it was declared “extremist” and persons accused of association with the group became subject to investigation, and detention.<sup>18</sup> Safarali Hasanov, a member of Group 24, was sentenced in May 2016 to five years in prison on charges of “organization of activity of an extremist group” for participating in a meeting calling on Tajik labor migrants to demonstrate against the government.<sup>19</sup> The government also arrested and convicted Zayd Saidov, the former Minister of Industry, on spurious charges just months after he created the New Tajikistan Party, a political party in opposition to the PDP; Mr. Saidov is now serving a 29-year

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<sup>17</sup> *Concluding observations on the second periodic report of Tajikistan adopted by the Committee at its 108<sup>th</sup> session (8-26 July 2013)*, UN Human Rights Committee (August 22, 2013), U.N. Doc. CCPR/C/TJK/CO/2, ¶ 22.

<sup>18</sup> *2017 Special Rapporteur Report*, ¶ 48.

<sup>19</sup> *One More Member of Group 24 Jailed in Tajikistan*, Asia-Plus (May 5, 2016), available at <https://news.tj/en/news/one-more-member-group-24-jailed-tajikistan>.

prison sentence. On July 16, 2018, the Committee issued an opinion finding that Mr. Saidov had been arbitrarily detained.<sup>20</sup>

The result of this repression is a limited number of independent political parties, and almost no opposition. In 2015, there were eight registered political parties, but only three were independent of the government.<sup>21</sup> The ban on the IRPT in September 2015 left only two.<sup>22</sup> Although the 1997 peace agreement which ended the civil war guaranteed 30 percent of senior government posts to opposition parties, this guarantee has never been honored.<sup>23</sup>

The government has also targeted non-governmental organizations (“NGOs”) that focus on human rights. In 2015, state agencies initiated investigations into certain key NGOs, demanding that they turn over financial documents and fining them for undefined tax regulations.<sup>24</sup> For example, the Bureau on Human Rights and Rule of Law was fined approximately \$6,000 for violating undefined tax regulations after receiving an official request to release all financial documents between 2010 and 2015 to Tajik authorities.<sup>25</sup>

As discussed more in section C below, the government also targets defense attorneys for their association with their politically-disfavored clients.

The government has also used violence to suppress the rights political association; for instance in late 2016, government security services were reportedly detaining and interrogating peaceful protesters and breaking up groups of protesters with threats of violence.<sup>26</sup>

### **Recommended Questions to Tajikistan**

1. *Please provide information on the number of groups claiming to be political opposition associations which have been banned by the government or the courts within the Reporting Period, including the IRPT and Group 24, as well as the evidence used to justify such ban.*
2. *Please provide data on the number of independent political opposition groups currently operating in Tajikistan and how their independence is guaranteed.*
3. *Please provide information on any reports of harassment or intimidation by government actors against members of opposition political groups, such as the IRPT, the New Tajikistan Party, Group 24, and the Social Democrat Party; any investigations into such reports of harassment; and the results of such investigations.*
4. *Please provide information on any reports of harassment or intimidation by government actors against civil society leaders and NGOs, such as the Bureau on Human Rights and*

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<sup>20</sup> Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning Communication No. 2680/2015, UN Human Rights Committee, U.N. Doc., CCPR/C/122/2680/2015 (July 16, 2018) (hereinafter *Views concerning Communication No. 2680/2015*).

<sup>21</sup> *Tajikistan 2015 Human Rights Report*, U.S. Department of State, available at <https://www.state.gov/documents/organization/253189.pdf>, pg. 15 (hereinafter *Tajikistan 2015 Human Rights Report*).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at pg. 12.

<sup>24</sup> *Tajikistan 2015 Human Rights Report*, pg. 12.

<sup>25</sup> *Id.*

<sup>26</sup> See, e.g., *Tajikistan: Abuse of Dissidents’ Families*, Human Rights Watch (Dec. 20, 2016), available at <https://www.hrw.org/news/2016/12/20/tajikistan-abuse-dissidents-families>.

*Rule of Law; any investigations into such reports of harassment; and the results of such investigations.*

5. *Please provide information on any financial investigations into opposition political parties or NGOs during the Reporting Period and the impetus behind opening such investigations.*
6. *Please provide information on any criminal cases pending or previously adjudicated during the Reporting Period against members of opposition political groups or civil society leaders, such as the IRPT, the New Tajikistan Party, Group 24, and the Social Democrat Party.*
7. *Please describe what steps have been taken to guarantee and protect freedom of association and participation in public affairs, foster a culture of political plurality and end harassment of opposition political parties particularly as recommended in paragraphs 23 and 24 of the Concluding Observations.*

### **C. Interference with Lawyers' Independence**

Various human rights groups such as Amnesty International, the Paris Bar, 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 of Tajikistan to stop interfering with the independence of lawyers to practice their profession.<sup>27</sup> Lawyers and human rights defenders have faced significant persecution for their involvement in politically-sensitive cases. This interference comes in the form of punitive and arbitrary arrests, imprisonment (often long-term), intimidation, and death threats of numerous attorneys (and their families),<sup>28</sup> typically in retaliation for representing political opponents or expressing a willingness to take on political cases.<sup>29</sup> Many lawyers who have defended members of the political opposition have either been charged with national security-related offenses or have had to flee the country for fear of reprisal, and those who have been arrested and prosecuted have faced closed, unfair trials resulting in harsh prison sentences.<sup>30</sup> There has been at least one reported case where an attorney (Buzurgmehr Yorov) was charged with fraud relating to his alleged failure to provide satisfactory legal services; in 2017 (and in addition to prior convictions on allegedly unrelated matters), Mr. Yorov was convicted under Article 247 of the Criminal Code and sentenced to 12 years in prison.

These unprecedented risks make lawyers increasingly wary of taking on political cases or cases that involve complaints against agents of the state.<sup>31</sup> For example, in addition to the arrest and conviction of Mr. Yorov after he took on the representation of detained IRPT members, Mr. Yorov's own lawyer, Nuriddin Makhamov, was also arrested and eventually tried and convicted

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<sup>27</sup> *Tajikistan: Human Rights Lawyer Detained*, Human Rights Watch (Oct. 7, 2015), available at <https://www.hrw.org/news/2015/10/07/tajikistan-human-rights-lawyer-detained>.

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

<sup>29</sup> *Tajikistan: Long Prison Terms for Rights Lawyers*, Human Rights Watch (Oct. 6, 2016), available at <https://www.hrw.org/news/2016/10/06/tajikistan-long-prison-terms-rights-lawyers>.

<sup>30</sup> *In the Line of Duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, Amnesty International (May 23, 2017), available at <https://www.amnesty.org/en/documents/eur60/6266/2017/en/>, pg. 4.

<sup>31</sup> *Id.*; *Rights Watchdog Condemns Tajikistan's Crackdown on Lawyers*, Radio Free Europe/Radio Liberty (May 24, 2017), available at <https://www.rferl.org/a/tajikistan-amnesty-lawyers-crackdown-Mr.-Yorov-mahkamov-kudratov/28505124.html>.

(to 23 years in prison) alongside Mr. Yorov.<sup>32</sup> Mr. Yorov's brother Jamshed, also an attorney, was forced to flee the country. Fayzinisso Vohidova, a lawyer known for human rights work, reported receiving death threats against her and her family for representing politically-sensitive clients;<sup>33</sup> agents of the state allegedly harassed Ms. Vohidova through surveillance, threats, and intimidation.<sup>34</sup> Shuhrat Kudratov, the lawyer who attempted to defend Mr. Saidov from the spurious charges against him, was also arrested, tried and convicted to a lengthy sentence. Other human rights lawyers who have been subjected to harassment, arrest, and/or lengthy detention include Fakhridin Zokirov, Dilbar Dodojonova – and Firuz and Daler Tabarov, sons of Iskhok Tabarov, another prominent defense lawyer.

Furthermore, the government has taken steps to curtail the independence of the bar.<sup>35</sup> In November 2015, a new law passed which required 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.<sup>36</sup> In an attempt by the government to identify lawyers who are willing to take on politically-sensitive cases, the bar exam includes questions on a broad range of subjects unrelated to law, such as history, culture, and politics.<sup>37</sup> Tajik lawyers are concerned that the test, administered by the government, is being used to exclude those who take on cases against the government's interest.<sup>38</sup> In the wake of these amendments, the number of licensed lawyers in the country has fallen from more than 1,200 in 2015 to just 600 in 2017.<sup>39</sup> As a result of these restrictions, there is approximately only one lawyer per 13,000 people in Tajikistan.<sup>40</sup>

### **Recommended Questions to Tajikistan**

1. *Please provide information on any reports of government harassment against attorneys or their family members on account of such attorney's legal representations, including the two Yorov brothers, Mr. Mahkamov, Ms. Vohidova, Mr. Kudratov, Mr. Zokirov, Ms. Dodojonova, and Firuz and Daler Tabarov; any investigations into such reports; and the results of such investigations.*
2. *Please provide data on the number of actively licensed and practicing attorneys in Tajikistan, including the estimate of those practicing as defense attorneys in criminal cases.*
3. *Please provide information on the availability of non-government defense attorneys to defendants.*
4. *Please provide data on the number of attorneys who have lost their licenses as a result of the bar examination taken every five years.*

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<sup>32</sup> *Tajikistan: Long Prison Terms for Rights Lawyers*, *supra* note 29.

<sup>33</sup> *Tajikistan: Free Human Rights Lawyers*, Human Rights Watch (May 4, 2016), available at <https://www.hrw.org/news/2016/05/04/tajikistan-free-human-rights-lawyers>.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

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

<sup>38</sup> *Id.*

<sup>39</sup> *Tajikistani Lawyers Harassed, Intimidated, and Imprisoned*, Amnesty International (May 24, 2017), available at <https://www.amnesty.org/en/latest/news/2017/05/tajikistani-lawyers-harassed-intimidated-and-imprisoned/>.

<sup>40</sup> *In the Line of duty: Harassment, Prosecution and Imprisonment of Lawyers in Tajikistan*, *supra* note 30, pg. 11.

5. *Please provide information on any attorney who has been imprisoned as a result of a civil or criminal claim stemming from his representations, including Mr. Yorov.*
6. *Please describe what steps have been taken to guarantee and protect the independence of lawyers, particularly as recommended in paragraph 18 of the Concluding Observations.*

#### **D. Politically-Motivated Imprisonment and Misuse of Counter-Terrorism Laws**

In the Concluding Observations, the Committee expressed its concern about “reports of politically motivated harassment of opposition political leaders with a view to deterring their participation in future elections. In this regard, it is particularly concerned at reports of arbitrary detention of Zayd Saidov, the head of a new political party called New Tajikistan, and the secrecy surrounding his case before the court.”<sup>41</sup> Unfortunately, and despite a recently issued opinion by the Committee confirming the illegality of Mr. Saidov’s detention in violation of Tajikistan’s obligations under the International Covenant on Civil and Political Rights (“ICCPR”),<sup>42</sup> Tajikistan has not addressed these concerns as Mr. Saidov remains imprisoned. Furthermore, since 2015 the government has undertaken a systematic campaign to discredit and dismantle the political opposition, which has included the imprisonment of numerous leaders of opposition political parties.

For example, on September 16, 2015, the leaders of the IPRT still in Tajikistan, including deputy chairman Mahmatali Hayit, were arrested after being accused of participating in the failed coup. On September 29, 2015, the Supreme Court issued a ruling banning the IRPT and labeling it a terrorist organization, despite the lack of evidence linking it to any terrorist activities. Because the charges against the IRPT leaders involved national security concerns all hearings were closed to the public and took place in the State Committee for National Security pre-trial detention facility in Dushanbe rather than in a courtroom. Despite the lack of evidence, on June 2, 2016, the Supreme Court sentenced the IRPT leaders to lengthy sentences; Mr. Hayit was given life in prison. In May 2018, the UN Working Group on Arbitrary Detention issued an opinion in which it determined that the detention of Mr. Hayit violated articles 9, 14, 19, 21, and 25 of the ICCPR and called for his immediate release.<sup>43</sup>

In a disturbing development (mentioned in section C above), Mr. Hayit’s initial lawyer was arrested before the proceedings could begin. The lawyer - Buzurgmehr Yorov – was arrested the same day the Supreme Court banned the IRPT. The arrest appears to have been prompted by an interview Mr. Yorov gave in which he announced Mr. Hayit and another IRPT leader had been tortured in pre-trial detention and called for a coalition of lawyers to join him in representing the detained IRPT members. Mr. Yorov was eventually sentenced to 23 years in prison, however his sentence was increased to 28 years after being found guilty in an additional two trials for other trumped-up crimes. Mr. Yorov’s partner - Nuriddin Makhkamov, who had attempted to defend Mr. Yorov after his arrest – was himself arrested, tried jointly with Mr. Yorov on extremism charges, and sentenced to 21 years in prison.

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<sup>41</sup> *Concluding observations on the second periodic report of Tajikistan adopted by the Committee at its 108<sup>th</sup> session (8-26 July 2013)*, *supra* note 17, ¶ 24.

<sup>42</sup> *Views concerning Communication No. 2680/2015*, *supra* note 20.

<sup>43</sup> *Opinion No. 2/2018 concerning Haritos Mahmatali Rahmonovich*, UN Working Group on Arbitrary Detention (May 17, 2018), U.N. Doc. No. A/HRC/WGAD/2018/2.

Most recently and as discussed in section A above, the government convicted Mr. Mirsaidov, a journalist and a comedian, to 12 years in prison after he attempted to expose government corruption.

Many of these politically-motivated detentions are undergirded by the government's common misuse of its national security counter-terrorism laws to imprison its critics; for instance, the IRPT leaders, Mr. Yorov, and Mr. Mahkamov were all convicted on extremism charges. Counter-terrorism laws have also been used to ban peaceful political opposition groups, such as the IRPT, Group 24 and Youth for the Revival of Tajikistan and to ban distribution of such group's newspapers, videos, audio recordings, literature, and leaflets.<sup>44</sup> As detailed in section H below, the government also uses pretext of a terrorism charge to violate the fair trial rights of individuals being so tried, for instance, by holding closed trials, ostensibly to protect national security secrets.

### **Recommended Questions to Tajikistan**

1. *Please describe what steps have been taken to comply with Opinion 2/2018 of the UN Working Group on Arbitrary Detention regarding Mr. Hayit and the views of the Committee concerning Communication No. 2680/2015 regarding Mr. Saidov.*
2. *Please describe what steps have been taken to end the imprisonment and/or harassment of individuals linked to opposition politicians, including their family members and lawyers, especially as relates to the detention of Mr. Saidov, Mr. Hayit and other IRPT leaders, Mr. Yorov, Mr. Makhkamov, and Mr. Mirsaidov.*
3. *Please provide data on how many individuals during the Reporting Period have complained before domestic or international mechanisms of arbitrary detention; any domestic investigations undertaken into such complaints; and the results of such investigations.*
4. *Please provide information on any guarantees included in the Tajik Constitution, Penal Code, and any other laws which protect an individual from arbitrary detention.*
5. *Please describe what steps have been taken to revise counter-terrorism laws in order to comply with international standards.*
6. *Please describe what steps have been taken to end the practice of arbitrary detention of government critics, particularly as recommended in paragraph 24 of the Concluding Observations.*

### **E. Harassment of Dissidents Abroad and Forced Removal**

Tajikistan's campaign against freedom of expression and association has extended beyond the country's borders. The government has sought the extradition of critics living abroad, using the Interpol system to issue red notices against members of opposition groups. On February 16, 2018, with the assistance of Turkish officials, Tajik officials took custody of IRPT member and businessman Namunjon Sharipov in Istanbul. He had been held by Turkish authorities in an Istanbul detention facility for 11 days before he was forcibly removed to Tajikistan where he still awaits trial.

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<sup>44</sup> *Tajikistan's Terror Group List Just Got Bigger*, The Diplomat (Sept. 30, 2015), available at <http://thediplomat.com/2015/09/tajikistans-terror-group-list-just-got-bigger/>.



In instances where extradition has not been successful, the government has resorted to kidnapping. Youth activist Maksud Ibragimov was detained in Russia in October 2014 on an extradition request, but later released. In January 2015, he was abducted outside a police station and forced on a plane to Dushanbe, where he was sentenced to 17 years on charges of extremism.

Even short of extradition or kidnapping, Tajikistan has continued to harass dissidents and their relatives beyond its borders. For example, Jamshed and Khosiyat Yorov, siblings of imprisoned human rights attorney Buzurgmehr Yorov, reported continuing harassment after they fled to Poland. Special Services told Jamshed's wife that they had operatives in Poland and that they knew the exact address of Jamshed at the refugee camp. In March 2017, Jamshed noticed a member of the Police Unit for Combating Organized Crime, who he recognized from a prior raid on his office in Dushanbe, watching him in the refugee camp. When Jamshed asked about the presence of these members the Police Unit for Combating Organized Crime in the camp, he was told that these were refugees from Uzbekistan. In response, Jamshed made a report to Poland's Office of Refugees, explaining that he believed there to be Tajik and Russian agents in the refugee camp who posed a danger to him.

### **Recommended Questions to Tajikistan**

1. *Please provide information on how many Tajik citizens were extradited to Tajikistan during the Reporting Period and the crimes with which such persons were charged.*
2. *Please provide information on any reports of torture or ill-treatment against individuals arrested abroad and returned to Tajikistan; any investigations undertaken into such complaints; and the results of such investigations.*
3. *Please provide information on any reports of extraterritorial harassment by members of Tajikistan's police or security services; any investigations undertaken into such complaints; and the results of such investigations*
4. *Please describe what steps have been taken with respect to the recommendations set forth in paragraph 13 of the Concluding Observations.*

### **F. Poor Conditions of Detention, Extended Pre-Trial Detention, and Lack of Medical Care for Detained Persons**

Although, it has been very difficult for international observers to gain access to prisons and detention facilities to fully review the state of Tajikistan's prison conditions, reports confirm that prison conditions in Tajikistan are poor to the point of being life threatening for prisoners. As of 2015, the Tajik government operated ten prisons and twelve pretrial detention facilities. Detainees and inmates have described extreme overcrowding and unsanitary conditions.

For prisoners who are sentenced to life imprisonment, the prison regime and physical conditions are especially harsh. These prisoners are often confined in virtual isolation in their cells for up to 23 hours a day in small, cramped, unventilated cells, often in extreme temperatures, and they 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.

Mr. Hayit, for instance, is allegedly subject to frequent abuse while being held at Prison No. 1 in Dushanbe; in addition to the torture which he has suffered (discussed in more detail in section G below), he has been held in long-term solitary confinement, in extreme temperatures without proper clothing, and denied regular access to his family and lawyers. When his wife is able to visit him—once every six months—he is unable to speak with her privately.

Mr. Saidov is another example of a prisoner being kept in abusive conditions. His bed has been placed immediately inside the front door to this cell by the prison, in a space not previously used for prisoners. This door opens to the outside and as a result Mr. Saidov is constantly exposed to the elements and unable to sleep comfortably. In his advanced age and poor condition, the cold causes Mr. Saidov near constant foot pain, reducing his already limited mobility. The continual sweeping cold drafts also regularly sicken him, likely the cause of the constant cough he has developed. Mr. Saidov has also been placed under a “strict” regime which requires him to report his attendance by standing outside his cell—no matter how extreme the weather—and checking in with prison officials every two hours from 6am to 10pm. Prison officials often delay checking in with Mr. Saidov during these times, and so Mr. Saidov is left standing in the elements for extended periods of time. In addition, Mr. Saidov is regularly sent to solitary confinement.

Overcrowding in prisons is common, a problem which has been exacerbated by the Tajik government’s practice of holding detainees in extended pre-trial detention. For example, Mr. Yorov was held in pre-trial detention for about eight months, where he was regularly beaten and held in solitary confinement. Mr. Hayit was held in pre-trial detention for more than four months before he was sentenced to life in prison. Mr. Saidov was held in pre-trial detention for seven months, and was only allowed to meet his attorney confidentially once before his trial.<sup>45</sup> Mr. Mirsaidov was also held in pre-trial detention for seven months.<sup>46</sup>

UN agencies have reported that infection rates of tuberculosis and HIV in Tajikistan’s prisons are significant problems, and that the quality of medical treatment is poor. For instance, Mr. Hayit who suffers from liver and kidney problems, has been denied regular access to the necessary medication and nutritious food. The treatment of Mr. Saidov, described above, has exacerbated his existing ailments and created additional medical conditions. Without proper food, treatment and rest Mr. Saidov is now suffering from excruciating stomach pains. A lesion in his stomach, which had previously healed, opened again when Mr. Saidov was in solitary confinement and his stomach began to bleed. Because Mr. Saidov suffers from so much foot pain, his mobility has been decreased—a factor which makes his standing in line for lengthy periods while awaiting his bi-hourly check-ins even more painful and taxing. The prison has not allowed Mr. Saidov to see a specialist, nor has it made any accommodation for Mr. Saidov’s disability.<sup>47</sup>

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<sup>45</sup> *Tajikistan: Long Sentence a Blow to Free Expression*, Human Rights Watch (Feb. 7, 2014), available at <https://www.hrw.org/news/2014/02/07/tajikistan-long-sentence-blow-free-expression>.

<sup>46</sup> *Khayrullo Mirsaidov Detained*, Frontline Defenders (July 13, 2018), available at <https://www.frontlinedefenders.org/en/case/khayrullo-mirsaidov-detained>.

<sup>47</sup> He only has one hand.

## **Recommended Questions to Tajikistan**

1. *Please provide data on the number of prisoners within each of Tajikistan's prisons along with the capacity of such prison.*
2. *Please provide information on the state of sanitation, hygiene, temperature conditions, provision of nutritional food and clean water, and visitation rights for each of Tajikistan's prisons and any steps that Tajikistan is taking to ensure that prison conditions meet international standards.*
3. *Please provide information on the average amount of time a detainee spends in pre-trial detention, the current number of detainees being held in pre-trial detention, and the crimes with which detainees being held in pre-trial detention have been charged.*
4. *Please provide information on any guarantees included in the Tajik Constitution, Penal Code, and any other laws which entitle a detainee to release pending trial.*
5. *Please provide information on any steps taken to ensure that detainees' right to release pending trial is respected, including an explanation as to why Mr. Yorov, Mr. Saidov, Mr. Mirsaidov and Mr. Hayit were held in extended pre-trial detention.*
6. *Please provide information on the use of solitary confinement in Tajik prisons, including any regulations that specify when a prisoner may be sent to solitary confinement and how long such solitary confinement may last; information on the types of infractions in practice for which prisoners are sent to solitary confinement, the average duration of solitary confinement, and how many prisoners are held in solitary confinement at any given moment; and whether any reports of prison guard abuse of solitary confinement have been investigated.*
7. *Please provide data regarding the incidence and spread of communicable diseases within Tajikistan's prisons and any steps that Tajikistan is taken to safeguard the health of inmates from communicable disease.*
8. *Please provide information about the health care and treatment available to detainees, including an explanation as to why Mr. Saidov and Mr. Hayit were unable to access timely care and whether an investigation until the denial of care to these detainees has been instigated.*
9. *Please describe what steps have been taken to improve conditions of detention, particularly with respect to the recommendations set forth in paragraphs 9, 16, and 17 of the Concluding Observations.*

### **G. Torture of Detained Persons**

Torture and other forms of cruel, inhuman or degrading treatment are widespread in police stations, prisons, and other places of detention throughout the country. Although torture is officially prohibited, law enforcement officers often torture individuals in order to extract self-incriminating evidence, confessions, and money. Political prisoners in Tajikistan are frequently targeted for torture and other significant mistreatment and abuse. Individuals perceived to be threats to national security, including members of religious movements and Islamist groups or parties, are at particular risk of arbitrary arrests, *incommunicado* detention, torture and other ill-treatment.

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. Mr. Tashripov's body showed visible signs of torture and his neck had been broken.

Mr. Hayit has also been tortured while in prison; allegedly, the prison "Welcome Committee" severely beat him when he arrived post-conviction and the abuse became even more severe during 2016. Although the fact that Mr. Hayit has been held in solitary confinement makes confirmation difficult, there have been reports that Mr. Hayit had his arms and legs broken in August 2016 after he asked to see his attorney and his family and attempted to write a complaint.

Mr. Yorov also allegedly suffered broken bones in September 2017 as the result of beatings endured while in prison. He has been forced to stand naked and beatings were accompanied by humiliation and insults.

As discussed in section F above, the denial of medical care, prolonged periods spent in solitary confinement, or the subjection of a detainee to particularly harsh prison conditions may also constitute cruel and inhumane treatment.

### **Recommended Questions to Tajikistan**

- 1. Please provide data on any deaths or hospitalizations among detainees which has occurred within each of Tajikistan's prison, including how often the cause of such death or hospitalization was investigated; and the results of such investigations.*
- 2. Please provide data on how many individuals during the Reporting Period have reported mistreatment, abuse or torture during their interrogation; how often such reports of mistreatment, abuse and torture were investigated; and the results of such investigations, including any investigations taken into reports of abuses against IRPT members, Mr. Yorov, and Mr. Saidov.*
- 3. Please provide information on the investigations undertaken into complaints of torture and the prosecution and convictions of persons who have committed acts of torture during the Reporting Period, including those officers who tortured or abused IRPT members, Mr. Yorov, and Mr. Saidov.*
- 4. Please provide data on how often, during the Reporting Period, a judge or judicial officer has allowed into evidence any information where such judge or judicial officer had received a complaint of mistreatment, abuse or torture in connection with the interrogation that produced such information.*
- 5. Please provide information on any guarantees included in the Tajik Constitution, Penal Code, and any other laws which protect a detainee from torture during interrogation and prevent a court from using any confession or information gleaned therein as evidence.*
- 6. Please describe what steps have been taken with respect to the recommendations set forth in paragraph 14 of the Concluding Observations.*

## H. Non-Independence of the Judiciary and Due Process Violations

The Tajik judiciary suffers from improper political influence, lack of resources, and an inability to protect the due process rights of citizens. President Emomali Rahmon and his administration exert undue influence over the judiciary. The president possesses the power to appoint and dismiss judges, with few constitutional checks and fewer political checks to stop him. He also holds the power to appoint and dismiss prosecutors; as a result, government officials are rarely prosecuted for human rights abuses.<sup>48</sup> 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.<sup>49</sup> Although trials are supposed to be public, the government has conducted politically motivated court cases behind closed doors on the pretext that national security was implicated.<sup>50</sup>

The Tajik judiciary also lacks the resources it needs to function effectively as an independent branch of government. This begins at the bottom, in the country's legal education system: Law schools lack funding, textbooks, or any mechanism by which they can offer its students a practical education. Instead, the schools provide mainly a theoretical introduction to the study and practice of law.<sup>51</sup> The judiciary is not considered a prestigious career path. Judges are paid very little—and defense counsel even less—leaving them vulnerable to corruption and bribery.<sup>52</sup> Moreover, the Tajik judiciary lacks the resources to calendar, manage, or adjudicate cases effectively.<sup>53</sup>

As a result, citizens are denied the due process protections enumerated by the Constitution. Arbitrary arrests are commonplace.<sup>54</sup> There is no requirement of warrants for arrest, which allows police or security officials license to arrest or detain citizens with little to no immediate oversight. Although the government typically provides a rationale for arrests, reports of falsified charges abound. In addition, detainees are often not afforded the right to promptly challenge their detention before a judicial office.<sup>55</sup> For instance, the UN Working Group on Arbitrary Detention found that the government had violated Mr. Hayit's *habeas corpus* rights when it held him *incommunicado* for three days.<sup>56</sup>

Such arbitrary arrests are too often accompanied by violations of such detainee's right to privacy, as warrantless searches are conducted to obtain incriminating evidence. For instance, after Mr. Yorov's arrest his home, his law office and his father's home were all searched and certain objects and documents seized—including documents covered by client-attorney privilege—all without a search warrant.

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<sup>48</sup> *Tajikistan 2014 Human Rights Report*, U.S. Department of State, available at <https://www.state.gov/documents/organization/236864.pdf>, pg. 7.

<sup>49</sup> *Id.*, pg. 8

<sup>50</sup> *Id.*

<sup>51</sup> *Judicial Reform Index for Tajikistan*, American Bar Association (Dec. 2008), available at [http://www.americanbar.org/content/dam/aba/directories/roli/tajikistan/tajikistan\\_jri\\_12\\_2008\\_en.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/tajikistan/tajikistan_jri_12_2008_en.authcheckdam.pdf).

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

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Opinion No. 2/2018 concerning Haritos Mahmadali Rahmonovich*, UN Working Group on Arbitrary Detention (May 17, 2018), U.N. Doc. No. A/HRC/WGAD/2018/2, ¶ 52.

Defendants are frequently denied the right to an attorney during pretrial and investigatory periods, particularly in politically sensitive cases. Mr. Hayit, for instance, was denied access to counsel for 10 days after his arrest and even after he was finally granted access the government monitored all communications between Mr. Hayit and his attorneys. Mr. Yorov was also not given immediate and consistent access to his lawyers and the government mounted a campaign of harassment and intimidation against his attorneys which ultimately resulted in the resignation of his first attorney, the arrest of his second attorney, the fleeing of the country by his third attorney, and the inability of his family to secure the services of any further counsel.

Although defense lawyers have the right to review evidence, confront and question witnesses, and to present their own evidence, in practice courts give prosecutorial testimony far greater consideration. Defense counsel may be denied access to the prosecution's evidence, as occurred in the trial of the IRPT leaders, and may not be permitted to fully present a defense of their client, as occurred in the case of Mr. Yorov's first trial, where the judge denied the defense time to present their case. Convictions in politically-motivated cases are often based on flimsy or tainted evidence. Mr. Yorov, for instance, was allegedly convicted of extremism based on solely on his law firm partner's possession of literature critical the government (and an expert opinion that classified such literature as extremist). Judges frequently defer to the executive branch, finding nearly all defendants guilty; a Freedom House report noted that the rate of acquittal is almost zero.<sup>57</sup> This finding highlights the fact that defendants in political-prosecutions are not afforded a presumption of innocence; there have been several instances of high ranking government officials of state-owned media publicly concluding that a defendant is guilty prior to the end (or even start) of the trial, as occurred in both the case of the IRPT leaders and Mr. Yorov.

These issues are often exacerbated on alleged terrorism or national security cases. Tribunals overseeing such cases may be improperly constituted; for instance, with a military judge overseeing a civilian trial. Moreover, cases and verdicts that purport to deal with national security issues are usually held in secret. 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."<sup>58</sup> The UN Working Group on Protecting Human Rights While Countering Terrorism has confirmed that "[a]ny restrictions on the public nature of a trial, including for the protection of national security, must be both necessary and proportionate."<sup>59</sup> 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 those portions of the hearing in which it is necessary.<sup>60</sup>

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<sup>57</sup> *Freedom in the World 2016*, Freedom House, available at <https://freedomhouse.org/report/freedom-world/2016/tajikistan>; see also *Tajikistan 2015 Human Rights Report*. (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.)

<sup>58</sup> *General Comment No. 32: Article 14: Right to Equality before the Courts and Tribunals and to a Fair Trial*, UN Human Rights Committee, 90th Session, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007), available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f32&Lang=en), ¶ 29.

<sup>59</sup> *Basic Human Rights Reference Guide: Right to a Fair Trial and Due Process in the Context of Countering Terrorism*, United Nations Working Group on Protecting Human Rights While Countering Terrorism (Oct. 2014), available at <http://www.ohchr.org/EN/newyork/Documents/FairTrial.pdf>.

<sup>60</sup> *Id.*, at § 3.2.

In stark contrast to these principles, the government has attempted to hold virtually most trials where there is an alleged national-security concern behind closed doors. For instance, the IRPT leaders were tried in a closed door trial before a specially constituted court (presided over by the Chief Military Judge) that began on February 9, 2016. The government justified such secrecy based on its own bare assertion that the proceedings needed to be “classified”; it made no effort to explain how it was “necessary and proportionate” to exclude the public nor to set up other mechanisms for observation which might guarantee the fairness of the proceedings. The public was also excluded from the entirety of the trial, not just from those hearings where information allegedly sensitive to national security was presented.

Perhaps unsurprisingly, courts overseeing the appeals of such flawed processes do not conduct a meaningful review of the case or the allegations of due process violations; but rather simply restate and adopt the reasoning of the below courts. In the case of Mr. Saidov, for instance, the same court which adjudicated his trial also served as the court of appeals following his second conviction.

### **Recommended Questions to Tajikistan**

1. *Please describe what steps have been taken to guarantee and protect the independence of the judiciary and ensure that civilians are not tried by military courts, particularly as recommended in paragraphs 18 and 19 of the Concluding Observations.*
2. *Please provide information on any laws and regulation that ensure that an arrest and search must be properly authorized; the mechanisms in place by which an individual may report improper arrests or searches; and any steps Tajikistan is taking to ensure that its law complies with international human rights standards in this field.*
3. *Please provide data on how many police searches of the belongings, homes or offices of suspects took place with a valid search warrant; how often such reports of improper search warrants were investigated; and the results of such investigations, including for the search of Mr. Yorov’s home and office.*
4. *Please provide data on how often, during the Reporting Period, a judge or judicial officer allowed into evidence any information where such judge or judicial officer had received a complaint of an improper search in connection with the investigation that produced such evidence.*
5. *Please provide information on any guarantees included in the Constitution, Penal Code and any other laws which protect an individual from arbitrary arrest and detention and provide for a detainee’s right to promptly challenge the legality of his detention before a judge.*
6. *Please provide data on the average amount of time between a detainee’s arrest and his release or his arraignment.*
7. *Please provide information on the rates of acquittal for criminal defendants who have publicly criticized the government, who belong to a political opposition group, or who, as lawyers, have defended members of political opposition group.*
8. *Please provide information about any public statements made by government or court officials proclaiming an individual’s guilt or criminality before the conclusion of a trial, as well as any actions taken to reprimand such speaker for prejudicing the court.*

9. *Please provide data on the average amount of time after arrest that a detainee must wait before obtaining confidential access to his or her attorney by law; on any instances in which a detainee was held without access to his or her attorney for more than 48 hours; and on how often a suspect or detainee is interrogated without his or her attorney present.*
10. *Please provide information on any reports that a detainee has been partially or fully denied access to legal counsel, investigation into such reports, and the results of such investigations.*
11. *Please describe what steps have been taken to make public all court documents from national security-related trials, including the judgments related to the trial of Mr. Hayit and his colleagues as well as the trial of Mr. Yorov and Mr. Makhkamov.*
12. *Please explain why cases not involving national security charges have been held secretly and on why cases that do involve national-security information have closed to the public even those parts of the trial that do not touch on national security issues.*