

PETITION TO:

UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
Musa Akhmadjanov,
Citizen of Uzbekistan

v.

Government of Afghanistan

URGENT ACTION REQUESTED

And Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18,
20/16, 24/71

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Basis for Urgent Action Request

The Petitioner, Mr. Musa Akhmadjanov, is currently being held at the Afghanistan National Detention Facility (ANDF). Despite his acquittal by Afghan courts in June 2015, the government of Afghanistan continues to imprison Mr. Akhmadjanov while denying him the ability to challenge his continued arbitrary detention.

Urgent action is justified for two reasons. First, Mr. Akhmadjanov is imminently threatened by the possibility of being forcibly repatriated to Uzbekistan. The Uzbek government has a dismal human rights record and Uzbek officials have specifically threatened Mr. Akhmadjanov and his family. Mr. Akhmadjanov is likely to be tortured or even killed if transferred to Uzbek custody.

Second, Mr. Akhmadjanov's condition is rapidly deteriorating in the ANDF, where he has been gravely abused in Afghan custody. In October 2015, Afghan prison guards removed Mr. Akhmadjanov from his cell and severely beat him, causing numerous bodily injuries. Afghan officials denied him medical treatment for his injuries. In February 2016, Afghan authorities transferred Mr. Akhmadjanov to a cell block at the ANDF which houses the most violent and non-compliant convicted prisoners, including those awaiting execution of death sentences. He faces daily threats from other prisoners, and fears for his life. Prison authorities have made clear they will not protect him against such threats. Most recently, in April 2016, undersigned counsel learned that prison authorities are now denying Mr. Akhmadjanov adequate food, clothing and access to medical care.

Accordingly, Petitioner respectfully requests that the Working Group consider this Petition pursuant to its "Urgent Action" procedure and that the Working Group issue an opinion pursuant to Resolution 1997/50 of the Commission on Human Rights. Petitioner further requests coordinated effort between the Working Group on Arbitrary Detention and the Special Rapporteur on Torture, Juan Méndez, as the expertise of both are implicated in the case at hand.

Questionnaire To Be Completed by Persons Alleging Arbitrary Arrest or Detention

I. IDENTITY

1. Family name: **Akhmadjanov**
2. First name: **Laçin (also known as Musa)**
3. Sex: **Male**
4. Birth date or age (at the time of detention): **November 21, 1980**
5. Nationality/Nationalities: **Uzbekistan**
6. (a) Identity document (if any): **Birth Certificate**
(b) Issued by: **Uzbek SSR**
(c) On (date): **November 25, 1980**
(d) No.: [REDACTED]
7. Profession and/or activity (if believed to be relevant to the arrest/detention):
Merchant
8. Address of usual residence: [REDACTED]

II. ARREST

1. Date of arrest: **December 2009**
2. Place of arrest (as detailed as possible): **Nimruz, Afghanistan**
3. Forces who carried out the arrest or are believed to have carried it out: **Afghan security forces**
4. Did they show a warrant or other decision by a public authority? **Unknown**
5. Authority who issued the warrant or decision: **Unknown**
6. Relevant legislation applied (if known): **Unknown**

III. DETENTION

1. Date of detention: **December 2009**
2. Duration of detention (if not known, probable duration): **Six years**
3. Forces holding the detainee under custody: **Afghanistan, previously United States**
4. Places of detention (indicate any transfer and present place of detention): **Herat Border Station, Afghanistan (December 2009 – May 23, 2010), Bagram Theater Internment Facility (Bagram) (May 23, 2010 – December 2014), Afghan National Detention Facility (December 2014 – present)**
5. Authorities that ordered the detention: **Afghanistan, United States**
6. Reasons for the detention imputed by the authorities: **Association with anti-government groups**
7. Relevant legislation applied (if known): **Afghanistan: unknown. United States: 2001 Authorization for the Use of Military Force**

Introduction

As set forward in the Petition, the government of Afghanistan is arbitrarily detaining Musa Akhmadjanov. Such detention constitutes an impermissible deprivation of liberty under international law.

Mr. Akhmadjanov, an Uzbek national, is currently being held without charge at the Afghanistan National Detention Facility (ANDF) under the control of the Afghan government. Afghan officials first arrested him in December 2009 and transferred him in May 2010 to U.S. custody at the Bagram Theater Internment Facility (Bagram). The United States detained Mr. Akhmadjanov without charge, trial, access to legal counsel, or any meaningful opportunity to challenge his detention until late 2014, when he was returned to Afghan custody. Afghan primary and appellate courts acquitted him of all charges in February and June of 2015. Yet Mr. Akhmadjanov remains imprisoned with no means of challenging his continued detention. Alarming, Mr Akhmadjanov was recently transferred to a cell block at the ANDF which houses “death row” inmates.

Significant non-refoulement concerns complicate Mr. Akhmadjanov’s situation. There is widespread recognition that the Uzbek government regularly detains and tortures individuals deemed to be enemies of the state. Further, Uzbek officials have specifically threatened Mr. Akhmadjanov and his family in the past. Were he to be forcibly returned to Uzbekistan, Mr. Akhmadjanov’s risk of torture would be compounded by the stigma of having been seized (wrongfully) by U.S. officials. Thus, Mr. Akhmadjanov is virtually certain to suffer torture if he is repatriated to his home country against his will. Such forcible repatriation would violate Afghanistan’s non-refoulement obligations under international law.

Yet Afghanistan’s non-refoulement obligations cannot justify Mr. Akhmadjanov’s continued indefinite detention in Afghanistan. He should not be forced to choose between torture by Uzbek authorities on the one hand and arbitrary detention by Afghan authorities on the other. Rather, Afghan authorities must act to find Mr. Akhmadjanov a suitable and acceptable country for safe resettlement. The simplest solution is to reunite Mr. Akhmadjanov with his wife and daughter [REDACTED]. At a minimum, Afghan authorities must ensure his safety and humane treatment, and initiate a fair and prompt process for resettlement whereby Mr. Akhmadjanov has access to counsel, individualized review, and an opportunity for release pending resolution of his resettlement destination.

This Petition has taken on special urgency because Afghan authorities have severely abused Mr. Akhmadjanov. Mr. Akhmadjanov suffered a bloodied face, broken finger, and bruises throughout his body after a beating by Afghan prison guards in October 2015. In February 2016, he was transferred to a “death row” cell block of the prison, where his life is threatened daily by other violent prisoners. Currently, he is denied adequate food, clothing, and medical care. Such abuse by Afghan officials imminently threatens his health and safety, contravenes Afghan human rights obligations under international law, and forms an additional urgent basis for the petition.

In light of these events, Petitioner requests that this Working Group declare Mr. Akhmadjanov's current detention "arbitrary" and urge the Afghan government to release Mr. Akhmadjanov from the Afghan National Detention Facility (ANDF).

I. Statement of Facts

a. Mr. Akhmadjanov's Life and Family

Laçin Akhmadjanov grew up in Uzbekistan as a devout Muslim. After finishing his high school education, he continued studying religion and the Quran from an unofficial Mullah who was not recognized by the Uzbek government. Mr. Akhmadjanov, his friends, and his family were persecuted as a result of these religious studies, which were not approved by the authoritarian Uzbek government. Mr. Akhmadjanov's religious friends were arrested and tortured, his father was fired from his government job, and his mother was threatened by a government official. To save his family from further persecution, Mr. Akhmadjanov fled Uzbekistan at the age of 21.

Mr. Akhmadjanov initially traveled to Russia, where he worked in car wash shops and construction sites. He then traveled to Iran, believing it to be a safer and easier place to make a living. In Iran he ran a counter at a bazaar, where he bought clothes in wholesale and sold them in retail. While on a trip [REDACTED], he met his future wife, [REDACTED]. A few months later, Mr. Akhmadjanov and [REDACTED] married in [REDACTED] in December 2007. They then moved together to Iran. [REDACTED] gave birth to their daughter, [REDACTED], in January 2009.

Throughout Mr. Akhmadjanov's imprisonment, his wife has actively supported him by reaching out to the International Justice Network (IJN) for legal assistance, maintaining contact with the International Committee of the Red Cross (ICRC) [REDACTED] [REDACTED] contacting her husband whenever possible, and sending small gifts to make his detention bearable. She is living [REDACTED], where her father has built a new house for her small family. The family's greatest wish is for Mr. Akhmadjanov to be [REDACTED], where he can rejoin his wife and six year-old daughter and return to his life as a hardworking and loving husband and father.

b. Mr. Akhmadjanov's Incommunicado Detention at Bagram

In December 2009, Mr. Akhmadjanov's wife returned to [REDACTED] for three weeks for holiday. During that time, Iranian authorities deported Mr. Akhmadjanov to Herat border station in Afghanistan, where he remained for several months. At Herat, the commander of the border station demanded money from him, but Mr. Akhmadjanov asserted his innocence and refused to pay. Shortly thereafter, that commander transferred Mr. Akhmadjanov to the American authorities, who imprisoned him at Bagram.

Mr. Akhmadjanov was detained at Bagram under U.S. custody and control from May 23, 2010, to December 2014. During this time, Mr. Akhmadjanov was held

incommunicado, without charge, and with no meaningful opportunity to challenge his detention. The only review basis for his detention was the “Detainee Review Board,” (“DRB”), which assigned Personal Representatives (“PRs”) who were not legally trained and were not bound by attorney-client privilege or any duty of confidentiality or loyalty to the detainee.¹ Non-Afghan detainees like Mr. Akhmadjanov who have requested that their U.S.-based attorneys participate in the process have been denied.² As a result, Mr. Akhmadjanov was imprisoned without charge or trial based on allegations he was unable to confront.

Evidence suggests that Mr. Akhmadjanov was subjected to physical abuse while in American custody. On September 6, 2013, the ICRC arranged a video call between Mr. Akhmadjanov and his wife. During that call, she noticed that Mr. Akhmadjanov had bruises around his left eye, and Mr. Akhmadjanov indicated he had been beaten. Credible news sources and independent investigations have corroborated allegations of detainee abuse and torture at Bagram, even after President Obama’s directive to end the Bush administration’s policy of enhanced interrogation techniques.

In 2014, the United States Department of Defense decided to end its detention operations at Bagram and transfer all remaining prisoners not facing American charges. The United States repatriated or resettled most non-Afghan detainees. However, by December 2014, six non-Afghan detainees remained, including Mr. Akhmadjanov, who had consistently expressed credible fear that he would be tortured in Uzbekistan. U.S. officials assured him that he would not be repatriated. They then returned him to Afghan custody at the end of 2014.

c. Mr. Akhmadjanov’s Detention at the ANDF and Acquittal by Afghan Courts

The government of Afghanistan has imprisoned Mr. Akhmadjanov at the ANDF since December 6, 2014. Authorities from the Uzbek Foreign Ministry visited Mr. Akhmadjanov and tried to convince him to accompany them to Uzbekistan. When Mr. Akhmadjanov rejected their invitation, the Uzbek authorities told Mr. Akhmadjanov that they nonetheless expected to see him soon after he had been judged under Afghan law. Uzbek authorities have also actively tried to persuade the Afghan government to transfer Mr. Akhmadjanov to their custody.

¹ Daphne Eviatar, *New Obama Admin Procedures Import Troubling Aspects of Afghanistan Detention Review to Gitmo*, HUFFINGTON POST (Mar. 8, 2011), http://www.huffingtonpost.com/daphne-eviatar/new-obama-administration_b_833123.html (quoting a Human Rights First observer at DRB proceedings in 2011, “[T]he ‘personal representatives’ ... didn’t seem to be representing much of anything”).

² See *Maqaleh v. Gates*, 899 F. Supp. 2d 10 (D.D.C. 2012) (denying counsel’s request to appear at a detainee’s Detainee Review Board and denying the right to counsel in Detainee Review Board proceedings).

On February 11, 2015, the Primary Court of Parwan City acquitted Mr. Akhmadjanov of all charges under Afghan law.³ That court concluded that there was no evidence to indicate that Mr. Akhmadjanov was a member of anti-government groups, as charged.⁴ On June 14, 2015, the Public Safety Office of the Parwan City Appellate Court issued a final decision affirming Mr. Akhmadjanov's acquittal.⁵ The Appellate Court found that Mr. Akhmadjanov "has not committed any crimes against Afghan citizens or its interests," adding that Mr. Akhmadjanov's presence in Afghanistan may have been involuntary because he was unwillingly deported to Afghanistan from Iran.⁶ Therefore, the Appellate Court ruled that Mr. Akhmadjanov should be released from Afghan prison and extradited in accordance with international law to guarantee his safety and security.⁷

Despite being cleared for release, Mr. Akhmadjanov remains at ANDF, where his conditions of confinement are rapidly deteriorating. In April of 2015, Mr. Akhmadjanov reported that he had been subjected to five days of solitary confinement, and that the five months he had spent at ANDF were worse than the five years he had spent at Bagram. More recently, on October 22, 2015, IJN learned that ANDF guards had removed Mr. Akhmadjanov from his cell and beat him. The officers yelled at him and accused him of coming to Afghanistan to wage jihad. This beating caused Mr. Akhmadjanov to suffer a broken finger, bloodied mouth and nose, and bruises throughout his body. These reports indicate that Mr. Akhmadjanov is at significant risk of being subjected to torture or physical harm by Afghan officials at ANDF.

In January of 2016, Mr. Akhmadjanov began a hunger strike to protest his continued imprisonment and treatment at ANDF. The hunger strike lasted nearly two weeks, and caused Mr. Akhmadjanov to become very ill. During the hunger strike, Afghan authorities transferred Mr. Akhmadjanov and two other hunger-striking detainees to the "death row" cell block at the ANDF which houses the most violent and non-compliant convicted prisoners, including those with severe mental illness or awaiting execution. As a result, Mr. Akhmadjanov faces daily threats from other prisoners, and fears for his life. Prison authorities have made clear they will not protect him against such threats. Most recently, in April 2016, undersigned counsel learned that prison authorities continue to deny Mr. Akhmadjanov adequate food, clothing and access to medical care. Prison guards routinely cut food rations as a form of collective punishment when any prisoner in the cell block is uncooperative. In addition, Mr. Akhmadjanov has had only one set of clothes and shoes for the past seven months, with no access to laundry facilities. He has repeatedly requested, and been denied, access to medical care for physical injuries suffered while in custody. His health is rapidly deteriorating and he is in imminent danger of being injured or killed in prison.

³ See Decision by the Parwan Province Appellate Court, High Court of the Islamic Republic of Afghanistan ¶ 2 (June 14, 2015) (attached as Appendix A).

⁴ *Id.* at ¶ 2.

⁵ *Id.*

⁶ *Id.* at ¶ 3.

⁷ *Id.* at ¶ 4.

d. Uzbekistan's Human Rights Record and Non-Refoulement Concerns

Mr. Akhmadjanov cannot be repatriated to Uzbekistan because there are compelling reasons to believe that he will be tortured and possibly killed by Uzbek authorities.⁸ Uzbekistan's mistreatment of dissidents has been thoroughly documented, and numerous events indicate that Mr. Akhmadjanov has been targeted for such abuse.

i. Uzbekistan's Documented Pattern of Violating Detainees' Human Rights

Uzbekistan has a well-documented pattern and practice of human rights violations, particularly concerning the treatment of detained individuals deemed enemies of the state. The Uzbek government has imprisoned thousands of actual or perceived government opponents since the 1990s.⁹ Individuals charged with religion-related offenses are routinely victims of torture.¹⁰ In a 2014 Human Rights Watch survey of prisoners deemed "enemies of the state" by Uzbek officials, nearly all prisoners reported being subjected to torture or ill-treatment and the majority reported systemic denial of access to council and severe health problems.¹¹ Moreover, the international community has no oversight into prison conditions; in April 2013, the ICRC was forced to cease prison visits due to Uzbek government interference with standard operating procedures.¹² In 2012, the U.S. Department of State found that "torture and abuse were common" in Uzbekistan and included "severe beatings, denial of food, sexual abuse, simulated asphyxiations, tying and hanging by the hands, and electric shock."¹³

This Working Group has consistently recognized Uzbekistan's mistreatment of

⁸ See Human Rights Comm., Gen. Comm. No. 35, ¶ 57, U.N. Doc. CCPR/C/GC/35 (Dec. 16, 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/GC/35&Lang=en ("Returning an individual to a country where there are substantial grounds for believing that the individual faces a real risk of a severe violation of liberty or security of person . . . may amount to inhuman treatment prohibited by article 7 of the Covenant.").

⁹ "UNTIL THE VERY END": POLITICALLY MOTIVATED IMPRISONMENT IN UZBEKISTAN, HUMAN RIGHTS WATCH (Sept. 25, 2014), available at <https://www.hrw.org/report/2014/09/25/until-very-end/politically-motivated-imprisonment-uzbekistan>.

¹⁰ *Kazakhstan: Don't Extradite Uzbeks to Torture*, HUMAN RIGHTS WATCH (June 7, 2011), available at <https://www.hrw.org/news/2011/06/07/kazakhstan-dont-extradite-uzbeks-torture>.

¹¹ See *id.* at 2.

¹² See *id.* at 86.

¹³ U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., UZBEKISTAN 2012 HUMAN RIGHTS REPORT, at 3, 2, 11 (2012), available at <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dclid=186481#wrapper>.

political and religious dissenters.¹⁴ For example, in *Gaybullo Jalilov v. Uzbekistan*,¹⁵ the Working Group considered the case of Mr. Jalilov, a human rights activist who documented instances of Uzbek persecution of independent Muslims.¹⁶ In 2009, Uzbek officials forced Mr. Jalilov into a vehicle and held him incommunicado,¹⁷ forced him to sign a confession,¹⁸ and then sentenced him to nine years in prison.¹⁹ Based on these events, this Working Group concluded that Mr. Jalilov's detention was arbitrary,²⁰ and that he was "deprived of his liberty for being a practicing Muslim and for criticizing the Government's treatment of independent Muslims."²¹ Mr. Jalilov's experience in Uzbekistan is by no means unique.²²

ii. Specific Threats Issued Against Mr. Akhmadjanov and His Family

Mr. Akhmadjanov has previously been singled out and persecuted by Uzbek officials. As a young adult, Mr. Akhmadjanov was targeted by Uzbek officials as a religious dissident because he studied with an unofficial Mullah. Government officials arrested and tortured Mr. Akhmadjanov's friends who studied with the same Mullah. Officials also targeted Mr. Akhmadjanov's family: his father was fired from his government job, and his mother was warned by a government official, "Let your son listen to us, otherwise we will not leave you comfortable." In fact, this sustained persecution led Mr. Akhmadjanov to flee from Uzbekistan at the age of 21.

The actions of the Uzbek government – including prison visits to Mr. Akhmadjanov and efforts to encourage the Afghan government to repatriate him – indicate a continued interest in Mr. Akhmadjanov. Uzbek law enforcement authorities have visited Mr. Akhmadjanov throughout his detention and are actively trying to persuade the Afghan government to repatriate him. In 2013, Mr. Akhmadjanov's mother told Mr. Akhmadjanov's wife not to call her in Uzbekistan, out of fear of punishment from Uzbek officials who were constantly questioning her family about Mr. Akhmadjanov. That fear caused her to flee Uzbekistan and resettle in [REDACTED].

¹⁴ See, e.g., *Jalilov v. Uzbekistan*, Judgments U.N. Working Grp. on Arbitrary Det., No. 4/2013, at ¶¶ 69-70, U.N. Doc. A/HRC/WGAD/2013/4; *Saidov v. Uzbekistan*, Judgments U.N. Working Grp. on Arbitrary Det., No. 67/2012, U.N. Doc. A/HRC/WGAD/2012/67; *Farmonov & Karamatov v. Uzbekistan*, Judgments U.N. Working Grp. on Arbitrary Det., No. 65/2012, U.N. Doc. A/HRC/WGAD/2012/65.

¹⁵ *Jalilov v. Uzbekistan*, Judgments U.N. Working Group on Arbitrary Detention, No. 4/2013, U.N. Doc. A/HRC/WGAD/2013/4.

¹⁶ *Id.* at ¶¶ 3-4.

¹⁷ *Id.* at ¶¶ 5, 9-10.

¹⁸ *Id.* at ¶ 15.

¹⁹ *Id.* at ¶ 14.

²⁰ *Id.* at ¶ 81.

²¹ *Id.* at ¶ 74.

²² See, e.g., *id.* at ¶ 4; U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, H.R. AND LAB., *UZBEKISTAN 2014 HUMAN RIGHTS REPORT*, 4 (2014), available at <http://www.state.gov/documents/organization/236868.pdf>.

In sum, forcibly repatriating Mr. Akhmadjanov to Uzbekistan would violate Afghanistan's non-refoulement obligations.²³ Like Mr. Jalilov,²⁴ Mr. Akhmadjanov has been marked by the Uzbek government as a religious dissident. That status combines with Uzbekistan's well-documented pattern of persecution of dissidents to virtually guarantee that Mr. Akhmadjanov will suffer severe mistreatment if he is repatriated to Uzbekistan.

II. Legal Analysis

The detention of Mr. Akhmadjanov constitutes an arbitrary deprivation of his liberty under Category I and Category III as set forth by the United Nations Working Group on Arbitrary Detention.

a. Category I: No Basis for Detention

The continued detention of Mr. Akhmadjanov is arbitrary under Category I because the Afghan government cannot invoke any legal basis for justifying his deprivation of liberty. The Working Group finds a Category I deprivation of liberty "[w]hen 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 or her sentence . . .)."²⁵ Mr. Akhmadjanov's detention fits squarely within that definition because Afghan courts have acquitted him of all charges, international law prohibits prolonged and indefinite detention, and there is no legitimate purpose for his continued detention.

First, Mr. Akhmadjanov's detention is both arbitrary and unlawful because Afghan courts acquitted him of all charges.²⁶ Under international law, deprivations of

²³ Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment art. 3, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, UN Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (June 26, 1987) ("1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.").

²⁴ Jalilov v. Uzbekistan, Judgments U.N. Working Group on Arbitrary Detention, No. 4/2013, U.N. Doc. A/HRC/WGAD/2013/4..

²⁵ See U.N. Office of the High Comm'r for Human Rights, Fact Sheet No. 26: The Working Group on Arbitrary Detention IV(B)(A), *available at* <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

²⁶ Decision by the Parwan Province Appellate Court, High Court of the Islamic Republic of Afghanistan ¶4 (June 14, 2015) (Attached as Appendix A); *see* Human Rights Comm.,

liberty must be carried out in accordance with domestic law and procedures.²⁷ Yet Afghan courts at both the primary and appellate level have acquitted Mr. Akhmadjanov and ordered him to be released from Afghan custody.²⁸ The lack of domestic justification for Mr. Akhmadjanov's detention renders that detention unlawful.²⁹ Indeed, detention following acquittal is the very *definition* of Category I arbitrary detention.³⁰

Second, Mr. Akhmadjanov's detention is arbitrary because it is both indefinite and prolonged. It is indefinite because Mr. Akhmadjanov is not serving a criminal sentence, and Afghanistan has given no justification for his detention or indication when he will be released. Such indefiniteness in itself renders Mr. Akhmadjanov's detention arbitrary.³¹ His detention is prolonged because it is excessive in duration. Mr. Akhmadjanov has been detained in Afghanistan for over six years, including five years in U.S. custody with no charge or trial. As of April 2016, he has spent 15 months under Afghan control. Though confinement may be justifiable while a detainee is awaiting trial, Afghanistan became obligated to promptly release Mr. Akhmadjanov following his

supra note 8, ¶ 19 (“[C]ontinued confinement of detainees in defiance of a judicial order for their release is arbitrary as well as unlawful.”).

²⁷ Human Rights Comm., *supra* note 8, ¶ 23 (“[P]rocedures for carrying out legally authorized deprivation of liberty should also be established by law and States parties should ensure compliance with their legally prescribed procedures.”); International Covenant on Civil and Political Rights art. 9.1, *adopted* Dec. 16, 1966, S. EXEC. DOC. E, 95-2, 999 U.N.T.S. 171, 179 [hereinafter ICCPR] (“No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”); Universal Declaration of Human Rights art. 9, G.A. Res. 217A, at 71, 73, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) (“No one shall be subjected to arbitrary arrest, detention or exile”).

²⁸ Decision by the Parwan Province Appellate Court, High Court of the Islamic Republic of Afghanistan ¶ 4 (June 14, 2015) (Attached as Appendix A)

²⁹ Human Rights Comm., *supra* note 8, ¶ 44 (stating that “detention that violates domestic law” is “unlawful” under international law).

³⁰ See U.N. Office of the High Comm’r for Human Rights, *supra* note 25, IV(B)(A) (defining a Category I violation as “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)”).

³¹ See, e.g., Opinions Adopted by the Working Group on Arbitrary Detention, U.N. Doc. E/CN.4/2006/7/Add.1, 12 (2005) (finding a detainee’s detention arbitrary under Category I and stating that detention for an unspecified period of time violates principles of the UDHR); see also Human Rights Comm., Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, ¶ 23, U.N. Doc. A/HRC/13/42 (2010) (noting that potentially or actually indefinite is enough to render detention arbitrary).

acquittal.³² Afghanistan's failure to do so constitutes prolonged detention under these circumstances and renders his detention arbitrary.³³

Finally, Mr. Akhmadjanov's detention is arbitrary under Category I because his detention serves no legitimate purpose. He is not awaiting trial or any other government proceeding, nor is he serving a criminal sentence. To the extent Afghanistan might claim authority to administratively detain Mr. Akhmadjanov pursuant to its security powers, that claim is at odds with both humanitarian and human rights law.³⁴ Under international human rights law, states engaging in administrative detention have the burden of proving "the most exceptional circumstances" wherein a "present, direct and imperative threat" cannot be addressed through alternative measures.³⁵ Clearly, Mr. Akhmadjanov does not present such "exceptional circumstances" because he has already been tried and acquitted in the Afghan criminal system.³⁶ Furthermore, during the six years he has been detained

³² See Human Rights Comm., *supra* note 8, ¶ 41 ("When a judicial order of release . . . becomes operative (*exécutoire*), it must be complied with immediately, and continued detention would be arbitrary in violation of article 9, paragraph 1").

³³ See Human Rights Council, Rep. of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, ¶ 12, U.N. Doc. A/HRC/6/17/Add.3 (2007) (noting that the prolonged period of detention of many detainees at Guantánamo has put the U.S. government in a position of having to release detainees without charge).

³⁴ International Humanitarian Law (IHL) is inapplicable to this case because there is no evidence that Mr. Akhmadjanov has participated in hostilities. Nevertheless, even if IHL were applicable, Mr. Akhmadjanov would still be entitled to human rights protections. See *Al-Shimrani v. United States of America*, Judgments U.N. Working Group on Arbitrary Detention, No. 2/2009, ¶ 27, U.N. Doc. A/HRC/13/30/Add.1 ("[T]he application of international humanitarian law to an international or non-international armed conflict does not exclude application of human rights law. The two bodies of law are complimentary and not mutually exclusive."). Furthermore, even under IHL standards, administrative detention is unjustifiable in this instance because there is no security-related purpose for Mr. Akhmadjanov's detention. See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 42, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 ("The internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary"); *id.* at art. 78 (stating that detention of foreign nationals in occupied territory is only allowed if "necessary, for imperative reasons of security").

³⁵ Human Rights Comm., *supra* note 8, ¶ 15. Even in instances where administrative detention is justifiable, detention must be limited in duration and subject to "[p]rompt and regular review by a court." *Id.* Furthermore, the detainee must be informed of the basis for his detention and allowed "access to independent legal advice." *Id.* None of these procedural protections have been met with regards to Mr. Akhmadjanov's detention. See *infra Part b.*

³⁶ Decision by the Parwan Province Appellate Court, High Court of the Islamic Republic of Afghanistan ¶ 4 (June 14, 2015) (Attached as Appendix A).

in Afghanistan, U.S. and Afghan authorities have had ample opportunity to produce evidence that Mr. Akhmadjanov poses a security danger. That the Appellate Court found no evidence of wrongdoing demonstrates that he poses no “imperative threat.”³⁷ Thus, these circumstances do not warrant administrative detention.

Nor can Afghanistan’s non-refoulement obligations form a basis for Mr. Akhmadjanov’s continued detention in Afghanistan.³⁸ The Human Rights Committee has held that “the inability of a State to carry out the expulsion of an individual because of statelessness or other obstacles does not justify indefinite detention.”³⁹ The human rights situation in Uzbekistan – and threats against Mr. Akhmadjanov personally – present “obstacles” towards Mr. Akhmadjanov’s repatriation, but they cannot justify his continued detention in Afghanistan. Nor can Mr. Akhmadjanov’s foreign status justify the harsh treatment he has endured under Afghan custody.⁴⁰ In fact, to the extent that Afghanistan’s treatment towards Mr. Akhmadjanov depends on Mr. Akhmadjanov’s nationality, that treatment is unlawful discrimination and is itself a basis for declaring Mr. Akhmadjanov’s detention arbitrary under Category V.⁴¹

In sum, Mr. Akhmadjanov’s detention is arbitrary under international law because it is indefinite, prolonged, and lacking in justifiable purpose. Therefore, Mr. Akhmadjanov’s detention is without legal basis and constitutes Category I arbitrary detention.

b. Category III: Procedural Deficiencies

Mr. Akhmadjanov’s detention is also arbitrary because he lacks access to a “fair trial” to challenge his detention.⁴² Various procedural deficiencies surround Mr.

³⁷ *Id.*; see Human Rights Comm., *supra* note 8, ¶ 15.

³⁸ See Human Rights Comm., *supra* note 8, ¶ 18.

³⁹ Human Rights Comm., *supra* note 7, ¶ 18.

⁴⁰ See Human Rights Comm., Gen. Comm. No. 15, ¶ 7, U.N. Doc. HRI/GEN/1/Rev.1 (1986), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6625&Lang=en (“Aliens . . . must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); see also ICCPR art. 26 (“[T]he law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as . . . national or social origin.”).

⁴¹ See U.N. Office of the High Comm’r for Human Rights, <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx> (defining a Category V violation as “[w]hen the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin”); see also *Obaidullah v. United States of America*, Judgments U.N. Working Group on Arbitrary Detention, No. 10/2003, ¶ 42-43, U.N. Doc. A/HRC/WGAD/2013/10 (holding that “acts of discrimination” rendered the prisoner’s detention arbitrary under Category V).

⁴² See U.N. Office of the High Comm’r for Human Rights, *supra* note 25, IV(B)(C) (defining a Category III violation as when “the total or partial non-observance of the

Akhmadjanov's detention: the government of Afghanistan has denied him judicial review of his continued detention, it has denied him access to counsel to challenge his continued detention, and it has failed to inform him of the basis for his continued detention following his acquittal. These three deficiencies demonstrate significant "non-observance of the international norms relating to the right to a fair trial" and therefore constitute a Category III violation of Mr. Akhmadjanov's rights, rendering his detention arbitrary.⁴³

First, the Afghan government has denied Mr. Akhmadjanov the right to prompt judicial review of his detention.⁴⁴ "[T]he decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention."⁴⁵ The Working Group has stated that "[a] 72-hour time limit is . . . within the bounds of what can be considered 'prompt'" with respect to an opportunity to be heard by a judicial or other authority,⁴⁶ while the Human Rights Committee (HRC) found that "any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances."⁴⁷ No court has reviewed Mr. Akhmadjanov's continued detention following his final acquittal from the Afghan appellate court on June 1, 2015.⁴⁸ An eleven-month delay in obtaining judicial review is unjustifiable under any circumstances, but it is especially egregious in light of Mr. Akhmadjanov's acquittal.⁴⁹ Clearly, Mr. Akhmadjanov's inability to obtain judicial review prevents him from challenging his detention in a "fair trial."⁵⁰

Second, the Afghan government has denied Mr. Akhmadjanov access to counsel

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.").

⁴³ *See id.*

⁴⁴ *See* Human Rights Comm., *supra* note 8, ¶ 32 ("[A]ny person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power.").

⁴⁵ *Id.* at ¶ 12; *see also* ICCPR Art 9.4 ("Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.").

⁴⁶ *See* Mitxelena v. Spain, Judgments U.N. Working Group on Arbitrary Detention, No. 26/1999, ¶ 9, U.N. Doc. E/CN.4/2001/14/Add.1. Even when an individual is detained on charges related to terrorism, "14 days is still far in excess of what can be considered consistent with the term 'promptly.'" *Amaradas v. Sri Lanka*, Judgments U.N. Working Group on Arbitrary Detention, No. 24/2001, ¶ 12, U.N. Doc. E/CN.4/2003/8/Add.1.

⁴⁷ Human Rights Comm., *supra* note 8, ¶ 33.

⁴⁸ Decision by the Parwan Province Appellate Court, High Court of the Islamic Republic of Afghanistan (June 14, 2015) (Attached as Appendix A).

⁴⁹ *See id.*

⁵⁰ *See* U.N. Office of the High Comm'r for Human Rights, *supra* note 25, IV(B)(C).

to address his continued detention and to advocate for his resettlement. International law guarantees to all detainees the right to access to counsel.⁵¹ The U.S. government denied Mr. Akhmadjanov all access to counsel from 2010 to 2014. The Afghan government provided counsel for the limited purpose of criminal defense; however, since his acquittal of all criminal charges, he has been denied representation for the purpose of challenging his continued detention and repatriation. To date, he has had no privileged and confidential communications with his counsel at IJN, despite IJN's request for access to Mr. Akhmadjanov to the government of Afghanistan – which went unanswered.⁵² This denial of access to counsel constitutes an additional Category V violation of Mr. Akhmadjanov's rights.

Third, the Afghan government has failed to provide Mr. Akhmadjanov with justification for his continued detention following his acquittal. Under Article 9.2 of the ICCPR, states are obligated to provide detainees with reasons for their detention at the time of their arrest, so that they may challenge their detention and seek legal counsel.⁵³ The purpose of this requirement is to enable detained persons “to seek release if they believe that the reasons given are invalid or unfounded.”⁵⁴ The government of Afghanistan has not informed Mr. Akhmadjanov of the reasons for his continued detention following acquittal. Mr. Akhmadjanov cannot meaningfully challenge his detention without knowing Afghanistan's reason for detaining him.

Individually or combined, these three procedural deficiencies constitute significant “non-observance of the international norms relating to [Mr. Akhmadjanov's] right to a fair trial.”⁵⁵ Afghanistan has denied him judicial review, access to counsel, and even an explanation for his post-acquittal detention. These circumstances render Mr. Akhmadjanov's detention arbitrary according to the WGAD's Category III.

III. Exhaustion of Domestic Remedies

Mr. Akhmadjanov does not have any effective legal or administrative remedies available.

⁵¹ See Human Rights Comm., *supra* note 8, ¶¶ 23, 46, 58; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. Res. 43/173, Principle 17.1, U.N. Doc. A/RES/43/173 (Dec. 9, 1988) [hereinafter Body of Principles] (“A detained person shall be entitled to have the assistance of legal counsel.”).

⁵² Letter from Tina Foster, Exec. Dir., International Justice Network, to M. Eshak Aloko, Att'y Gen. (Dec. 28, 2014) (attached as Appendix B).

⁵³ ICCPR art. 9.2; *see also* Body of Principles, Principle 10 (“[A]nyone 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.”).

⁵⁴ Human Rights Comm., *supra* note 8, ¶ 25.

⁵⁵ See U.N. Office of the High Comm'r for Human Rights, *supra* note 25, IV(B)(C).

Without access to counsel, Mr. Akhmadjanov is unable to challenge his continued detention in Afghan court. The Afghan government has ignored IJN's December 2014 request for access to Mr. Akhmadjanov for privileged and confidential communications about his case.⁵⁶

Moreover, no domestic steps are available to challenge the basis of Mr. Akhmadjanov's detention following his acquittal in June 2015. Mr. Akhmadjanov has nothing to challenge because Afghanistan has not informed him that any such basis *exists*.

In sum, the grave procedural deficiencies surrounding Mr. Akhmadjanov's detention preclude him from pursuing domestic remedies. Mr. Akhmadjanov has no means of enforcing the Parwan Appellate Court's decision, which acquitted him of all charges and ordered his release.

IV. Relief Sought

In light of the above, we ask the Working Group to find that Mr. Akhmadjanov's prolonged and indefinite detention is arbitrary under Categories I and III, and to recommend both access to counsel and immediate release from Afghan custody. In order to protect Mr. Akhmadjanov from non-refoulement violations, we recommend that the Working Group work closely with Special Rapporteur on Torture, Juan Mendez, to oversee Mr. Akhmadjanov's resettlement to a safe third country, [REDACTED]. We also ask the Working Group to recommend that the U.S government provide rehabilitative and compensatory relief to Mr. Akhmadjanov for his wrongful, arbitrary detention and mistreatment at the hands of the United States.

Date: May 5, 2016

⁵⁶ Letter from Tina Foster, Exec. Dir., International Justice Network, to M. Eshak Aloko, Att'y Gen. (Dec. 28, 2014) (attached as Appendix B).

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