

PETITION TO
UNITED NATIONS
WORKING GROUP ON ARBITRARY DETENTION

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HUMAN RIGHTS COUNCIL
UNITED NATIONS GENERAL ASSEMBLY

In the Matter of
HUSEYN ABDULLAYEV

Citizen of the Republic of Azerbaijan

v.

Government of the Republic of Azerbaijan
and
Government of the Republic of Turkey

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, 15/18, 20/16, 24/7, and 33/30¹

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¹ Resolutions 1997/50, 2000/36, and 2003/31 were adopted by the U.N. Commission on Human Rights extending the mandate of the Working Group on Arbitrary Detention. The Human Rights Council, which “assume[d] . . . all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights” pursuant to U.N. General Assembly Resolution 60/251, G.A. Res. 60/251, ¶ 6 (Mar. 15, 2006), has further extended the mandate through Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

INTRODUCTION

As set forth below, the Government of Azerbaijan is arbitrarily depriving Huseyn Abdullayev of his liberty for political reasons, and the Government of Turkey shares responsibility for his unlawful detention. Abdullayev – a former Member of Parliament (MP) in the National Assembly of Azerbaijan – was arrested by Turkish anti-terrorism police without a valid warrant in the city center of Istanbul, Turkey. Although Abdullayev had been granted political asylum in Germany and possessed a valid visa for his trip to Turkey, Turkish officials then transferred Abdullayev to Azerbaijani officials who extraordinarily rendered him to Azerbaijan. He has since remained in detention in Baku since his unlawful return. Abdullayev faces a variety of charges relating to the alleged activities of his parents' company – a company with which he has no legal connection – and to his mother's illegal border crossing into Georgia. Although he is a civilian, he is being prosecuted before the Military Court of Baku.

Abdullayev's arrest, extraordinary rendition, and ongoing detention are politically motivated and directly connected to his criticism of President Aliyev and his government. The Government of Azerbaijan's persecution of Abdullayev began in 2007 when he fell out with Aliyev, after having supported the earlier rise to power of Aliyev's father. After criticizing the government during a speech in parliament, Abdullayev was assaulted by another MP, stripped of his parliamentary immunity, jailed for two months, and convicted of hooliganism with a two-year sentence on parole. International observers have reported a growing use of such convictions to target political opponents in Azerbaijan. Further, the European Court of Human Rights found in March 2019 that Abdullayev's 2007 conviction was marred by serious due process violations that violated his right to a fair trial. Although Abdullayev subsequently fled to Germany, the government's political persecution continued. In June 2013, the day after Abdullayev released a music video on YouTube with a song he had composed showing Baku police forces dispersing protestors and calling for protests against the government, the Ministry of Taxes opened an investigation into a company owned by Abdullayev's parents. Azerbaijani authorities have continued to target Abdullayev – while ignoring egregious activities of other elites – because of his political opposition to Aliyev and his government.

Because Azerbaijan's detention of Abdullayev is arbitrary under all five Categories of the Working Group's Methods of Work, it is hereby requested that the attached Petition be considered a formal request for an opinion of the Working Group pursuant to Resolution 1997/50 of the Commission on Human Rights, as reconfirmed by Resolutions 2000/36 and 2003/31, and Human Rights Council Resolutions 6/4, 15/18, 20/16, 24/7, and 33/30.

QUESTIONNAIRE FOR HUSEYN ABDULLAYEV²

I. IDENTITY

1. **Family name:** Abdullayev
2. **First name:** Huseyn
3. **Sex:** Male
4. **Birth date or age (at time of detention):** May 25, 1967, 50 years old when arrested
5. **Nationality/Nationalities:** Azerbaijani
6. (a) **Identity document (if any):** Azerbaijani Passport
(b) **Issued by:** Ministry of Internal Affairs of the Republic of Azerbaijan
(c) **On (date):** April 27, 2012
(d) **No.:** P4715743
7. **Profession and/or activity (if believed to be relevant to the arrest/detention):**
Abdullayev was a vocal opponent of the government of Azerbaijan prior to his arrest and extraordinary rendition. Abdullayev was an elected member of the National Assembly of Azerbaijan from November 2005 to May 2007, when he was stripped of his parliamentary mandate and put in jail. Prior to this political persecution, Abdullayev owned a successful business importing and exporting steel and scrap metal from Turkey to Iran and had significant real estate and financial assets in Azerbaijan.
8. **Address of usual residence:** Prior to his extraordinary rendition, Abdullayev lived at Feuerbachstrasse 42, 60325 Frankfurt, Germany.

II. ARREST

1. **Date of arrest:** April 21, 2018
2. **Place of arrest (as detailed as possible):** City Center of Istanbul, Turkey
3. **Forces who carried out the arrest or are believed to have carried it out:**
Turkish anti-terrorism police officers arrested Abdullayev in Istanbul; Azerbaijani officials with the Department on Combating Organized Crime under the Ministry of Internal Affairs returned Abdullayev to Baku.³
4. **Did they show a warrant or other decision by a public authority?** Turkish officials did not show Abdullayev or his mother a warrant or legal authorization for his arrest; the Azerbaijan Interior Ministry publicly announced that he was arrested through INTERPOL, though the Red Notice they showed to the media had been cancelled in November 2014.
5. **Authority who issued the warrant or decision:** No valid warrant existed at the time of his arrest in Turkey, though the Yasamal District court of Baku (Judge Safarov Huseyn Akif oghlu) had issued an order for Abdullayev's arrest on October 11, 2016. While this order may have authorized his detention in Azerbaijan, it could not be the legal basis for his arrest in Turkey.
6. **Reasons for the arrest imputed by the authorities:**
Azerbaijan's Interior Ministry claims that Abdullayev was arrested pursuant to an INTERPOL Red Notice, though no valid notice existed at the time of his arrest. The Red Notice they showed to the media was based on Abdullayev's June 2013 conviction *in absentia* for tax evasion, although INTERPOL cancelled the Red Notice on November 7, 2014 after he had been granted political asylum in Germany. Because of the restrictions placed on Abdullayev's access to counsel, it is not known at the time this petition is submitted what reasons Turkish authorities imputed for his arrest in Istanbul.

² Based on MODEL QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY ARREST OR DETENTION, U.N. WORKING GROUP ON ARBITRARY DETENTION, accessed on May 14, 2019, available at <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

³ Azerbaijan Trending Videos, *Hüseyn Abdullayev Türkiyədə tutularaq Bakıya belə gətirildi*, YOUTUBE, Apr. 23, 2018, available at <https://www.youtube.com/watch?v=lyd9wtvll1w>.

7. **Legal basis for the arrest including relevant legislation applied (if known):** There is no legal basis for Abdullayev’s arrest and extraordinary rendition. His arrest and return to Baku violate Turkish domestic law and international law, including the obligations of Turkey and Azerbaijan under the European Convention on Human Rights and the European Convention on Extradition.

III. DETENTION

1. **Date of detention:** April 21, 2018
2. **Duration of detention (if not known, probable duration):** Since April 21, 2018, and as of the date this petition was filed, Abdullayev has been detained for approximately one year and four months.
3. **Forces holding the detainee under custody:** Abdullayev was detained for one night in Istanbul by the Turkish police from the Anti-Terrorism Unit. After being unlawfully rendered to Azerbaijan, he has been held by the Penitentiary Service of Baku City.
4. **Places of detention (indicate any transfer and present place of detention):** Abdullayev was detained for one night at an unknown location in Istanbul before he was rendered to Baku. He is currently being held at a detention center in Baku called the “Kurdekhani” Investigative Institution (AZ-1104 Baku city, Zabrat settlement).
5. **Authorities that ordered the detention:** Abdullayev is being held under the order of the Investigation Department of the Office of the Prosecutor General of the Azerbaijan Republic. His pretrial detention was ordered by the Nasimi District Court of Baku City on April 25, 2018. His detention was prolonged on May 31, 2018, June 9, 2018, September 12, 2018, and February 25, 2019.
6. **Reasons for the detention imputed by the authorities:** Abdullayev’s arrest was first ordered by Yasamal District Court on June 26, 2013 after he was convicted *in absentia* of tax evasion. The authorities justified the detention order as a precautionary measure owing to his alleged concealment from the investigation. The Nasimi District Court has authorized the prolonged pretrial detention of Abdullayev without referring to any specific facts or circumstances justifying his detention.
7. **Legal basis for the detention including relevant legislation applied (if known):** Abdullayev is charged under Penal Code Articles 178.2.1, 178.2.2, and 178.2.4 (fraud); 182.2.1, 182.2.2, and 182.2.4 (repeated and premeditated extortion through the use of threats by an organized group to obtain significant property); 192.2.2 and 192.2.3 (illegal entrepreneurial activities with high profits committed by an organized group); 193-1.3.1 and 193-1.3.2 (money laundering); 213.2.1 and 213.2.2 (tax evasion); 308.2 (abuse of power); 312-1.2 (illegal influence over the decision of an official); 313 (service forgery); and 318 (illegal border crossing). The Government of Azerbaijan asserts that Abdullayev is the head of Araz Inc. – although he has no legal role in the company – and has charged him with illegal entrepreneurship, tax evasion, and carrying out construction work without a license all related to the company’s operations. He is also charged with abuse of power and extortion for an incident involving the detention of his mother for an attempt to illegally cross the border from Azerbaijan into Georgia at the “Balakan” check point. Articles 154 and 155 of Azerbaijan’s Criminal Procedure Code allow for pretrial detention where there is “sufficient grounds” to conclude that an accused has, e.g., fled, obstructed the investigation, or committed additional crimes.

IV. CIRCUMSTANCES OF THE ARREST AND DETENTION OF HUSEYN ABDULLAYEV

A. *Statement of Facts*

1. Political Context in Azerbaijan

After breaking away from the Soviet Union in 1991, the Republic of Azerbaijan experienced intense political turmoil; both of the first two presidents of independent Azerbaijan, Ayaz Mutallibov and Abulfaz

Elchibey, were overthrown within a year of coming into power.⁴ Heydar Aliyev – the former Soviet Chairman of the Nakhchivan Autonomous Republic and leader of the New Azerbaijan Party (YAP) – became the third president of Azerbaijan after overthrowing Elchibey in 1993. He remained in power until shortly before his death in 2003.⁵

In October 2003, after Heydar Aliyev fell ill, then Prime Minister Ilham Aliyev succeeded his father as President in what was widely considered an undemocratic election.⁶ It was the first dynastic succession in Azerbaijan or any former Soviet republic.⁷ The Government ensured Aliyev would win by banning non-governmental organizations from monitoring the elections, obstructing opposition rallies, and limiting voter participation.⁸ After a decade of relative political stability, however, many in Azerbaijan objected to the increasingly oppressive methods of the government and protests erupted in the capital. Aliyev rushed to crack down on those protesting his succession, in a bid to consolidate his power after the election.⁹ The ensuing violence left at least two protestors dead.¹⁰

Aliyev's campaign of repression continues to today as he works to retain power.¹¹ In 2016, Aliyev pushed forward a controversial constitutional referendum which extended the presidential mandate from five to seven years and consolidated executive power – including by allowing Aliyev to appoint his wife as First Vice President of Azerbaijan.¹² While Azerbaijan's Constitution guarantees freedom of speech, it is routinely denied in practice. In recent years, foreign broadcasts have been increasingly banned from accessing national frequencies.¹³ All foreign television stations have been banned, as well.¹⁴ As a result, in 2015, Azerbaijan was the fifth most censored country in the world – ahead of Iran and China – and had the largest number of journalists imprisoned in Europe and Central Asia.¹⁵ According to Human Rights Watch, in 2018 “at least 43 human rights defenders, journalists, political and religious activists remained wrongfully imprisoned, while dozens more were detained or under criminal investigation, faced harassment and travel bans, or fled Azerbaijan.”¹⁶

Further, in July 2018, the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) found that “torture and other forms of physical ill-treatment by the police and other law enforcement agencies, corruption in the whole law enforcement system and impunity remain systemic and endemic.”¹⁷ CPT further reported insufficient and ineffective procedural safeguards,

⁴ *List of Presidents of Azerbaijan*, WORLD ATLAS, accessed May 29, 2019, available at <https://www.worldatlas.com/articles/presidents-of-azerbaijan-since-1991.html>.

⁵ *Id.*

⁶ *Azerbaijan*, EUR. FORUM FOR DEMOCRACY & SOLIDARITY, accessed on May 29, 2019, available at <https://www.europeanforum.net/countries/azerbaijan>.

⁷ Nick Paton Walsh, *Two Die in Violence After Azerbaijani Elections*, Oct. 16, 2003, available at <https://www.theguardian.com/world/2003/oct/17/nickpatonwalsh>.

⁸ AZERBAIJAN: PRESIDENTIAL ELECTIONS 2003, HUMAN RIGHTS WATCH, Oct. 13, 2003, at 2, available at <https://www.hrw.org/legacy/backgrounder/eca/azerbaijan/azerbaijan-elections2003.pdf>.

⁹ *Id.* and Walsh, *supra* note 7.

¹⁰ Walsh, *supra* note 7.

¹¹ *Azerbaijan*, *supra* note 6.

¹² *Id.* and *Aliyev Appoints Wife As First Vice President Of Azerbaijan*, RADIO FREE EUROPE / RADIO LIBERTY, Feb. 21, 2017, available at <https://www.rferl.org/a/azerbaijan-aliyev-names-wife-aliyeva-vice-president/28322210.html>.

¹³ *Azerbaijan*, in FREEDOM OF THE PRESS 2015, FREEDOM HOUSE, 2015, available at <https://freedomhouse.org/report/freedom-press/2015/azerbaijan>.

¹⁴ *Id.*

¹⁵ Nina Ognianova, *Baku 2015: Press Freedom, Azerbaijan, and the European Games*, COMMITTEE TO PROTECT JOURNALISTS, June 11, 2015, available at <https://cpj.org/blog/2015/06/baku-2015-press-freedom-azerbaijan-and-the-europea.php>.

¹⁶ *Azerbaijan*, in WORLD REPORT OF 2019: EVENTS OF 2018, HUMAN RIGHTS WATCH, 2019, available at <https://www.hrw.org/world-report/2019/country-chapters/azerbaijan>.

¹⁷ Press Release, *Azerbaijan: Torture, Impunity and Corruption Highlighted in New Anti-Torture Committee Publications*, COUNCIL OF EUR., July 18, 2018, available at <https://www.coe.int/en/web/cpt/-/azerbaijan-torture-impunity-and-corruption-highlighted-in-new-anti-torture-committee-publications>.

including issues for detainees with “access to a lawyer, notification of custody, access to a doctor, [and] information on rights.”¹⁸

2. Biography of Huseyn Abdullayev

Huseyn Abdullayev was born on May 25, 1967, in the city of Julfa, which is located in the Nakhchivan Autonomous Republic in Azerbaijan. He is the oldest son of Abbas Abdullayev and Zeyneb Abdullayeva. He has a younger brother, Azar Abdullayev, and a younger sister, Ilhama Abdullayeva. Abdullayev is not married and does not have children.

After completing his mandatory military service in the Soviet Army from 1984–85, Abdullayev went into business importing and exporting steel and scrap metals from Turkey to Iran. Beginning in 1987, he supported the rise to power of the third President of Azerbaijan, Heydar Aliyev, who was from the same region of Azerbaijan as Abdullayev. Throughout the Nagorno-Karabakh War, Abdullayev supported the Azerbaijani army in the autonomous Republic of Nakhchivan. Prior to his arrest in 2007 and subsequent persecution by the Government, Abdullayev accumulated significant real estate and financial assets.

3. Prior Persecution and Removal from the National Assembly

Abdullayev was elected to the National Assembly of Azerbaijan as a representative of the Nizami district of Baku in November 2005. During a parliamentary session on March 16, 2007, Abdullayev’s microphone was shut off after he began criticizing President Ilham Aliyev and his Cabinet of Ministers. While Abdullayev was arguing with the Speaker about resuming his speech, another MP, Fazail Agamali, began shouting insults at Abdullayev and threatening his family. Video recorded during the session shows the argument culminating with Agamali punching Abdullayev in the face before a scuffle broke out in the parliamentary chambers.¹⁹

Three days after the fight, Abdullayev was arrested by masked police officers in the street. Within hours, the National Assembly voted to lift Abdullayev’s parliamentary immunity, at the behest of the Prosecutor General. Charges were never brought against MP Agamali, who instigated the fight. Prior to his trial, Abdullayev was held in pretrial detention for two months. Abdullayev was charged with and ultimately convicted in May 2007 of affray and hooliganism charges relating to the fight, despite the video showing he was acting in self defense. He was sentenced to two years of parole (also known as conditional release). He appealed his conviction to the Baku Court of Appeal and later the Supreme Court, claiming serious due process violations in his trial – including the trial court’s refusal to admit exculpatory evidence from the video depicting the fight. Both courts upheld his conviction.

On February 4, 2008, Abdullayev submitted a complaint to the European Court of Human Rights regarding his conviction and detention. He alleged that the Government of Azerbaijan had denied him medical care and violated his right to a fair trial under Art. 6(1) of the European Convention on Human Rights. Specifically, he claimed “that the criminal proceedings against him had been unfair, that there had been numerous procedural shortcomings in the manner the forensic evidence had been obtained and examined, that the courts failed to examine the video evidence, refused to examine witnesses on the applicant’s behalf and arbitrarily applied domestic criminal law.”²⁰ On March 7, 2019 – nearly a year after his current detention started – the European Court of Human Rights found that Azerbaijan had violated Abdullayev’s due process rights in May 2007 with regards to his prior conviction and concluded that the procedural shortcomings were

¹⁸ *Id.*

¹⁹ FaktXəbərAz, *huseyn abdullayev vs fazail agamali.avi*, YOUTUBE, Oct. 28, 2011, available at <https://www.youtube.com/watch?v=kOFv7dEO6CI>.

²⁰ *Abdullayev v. Azerbaijan*, App. No. 6005/08, EUR. CT. H.R., Mar. 7, 2019, at ¶ 48, available at <http://hudoc.echr.coe.int/eng?i=001-191357>.

“sufficiently serious to render the trial as a whole unfair.”²¹ The Court consequently awarded Abdullayev €2,400 in non-pecuniary damages, though he has yet to receive any payment from the Government.²²

4. Activism Prior to Arrest

Abdullayev fled Azerbaijan in February 2013, eventually settling in Frankfurt, Germany. He continued to criticize the Government from abroad. On June 5, 2013, he released a song he had composed called *Susma* (Do Not Be Silent) on YouTube.²³ The video showed scenes of Baku police forces dispersing protestors and called for protests against the Government of Azerbaijan.

The next day, the Azerbaijani Ministry of Taxes opened a criminal investigation for tax evasion against Araz Inc., a real estate development company owned by his parents. Although Abdullayev had no legal role with the company, the court ordered Abdullayev’s detention as a precautionary measure because of his alleged hidden role with the company. Abdullayev’s younger brother, Azar, was also forced to resign as a customs official at the Baku airport due to pressure from the Government, and since 2013, Azar has been banned from leaving the country. Araz Inc. settled the meritless claim for 380,000 manats (approximately \$222,000) in back taxes in a civil proceeding without any admission of liability; nevertheless, Abdullayev was convicted *in absentia* of tax evasion on June 25, 2013. On the basis of this conviction, Azerbaijan secured an INTERPOL Red Notice against Abdullayev. In early July, Araz Inc. paid an additional 1.1 million manats (approximately \$645,000) in another civil proceeding and without any admission of liability, but the authorities have routinely refused to acknowledge receipt of these payments or end the judicial procedures against Abdullayev.

On July 8, 2013, Abdullayev filed a petition for political asylum in Germany. Because of the political pressure he was feeling from the Azerbaijan Government, Abdullayev’s mental and physical health deteriorated significantly during this time. Medical reports from the time state that Abdullayev was depressed and at risk of committing suicide. The German Government granted Abdullayev political asylum on November 26, 2013. Based on this, Abdullayev’s lawyer then requested that INTERPOL cancel the Red Notice as politically motivated. INTERPOL officially cancelled the Red Notice against Abdullayev on November 7, 2014 as a violation of its standards. German authorities later verified the cancellation and confirmed that, as of July 10, 2018, no new INTERPOL notice had been issued against Abdullayev.

Nevertheless, Azerbaijani officials continued periodically to investigate the accounting of Araz Inc. and renew the tax evasion accusations against Abdullayev. Shortly after Abdullayev was purportedly linked to offshore investments by the Panama Papers in May 2016, the Ministry of Taxes reopened its investigations of Araz Inc. Although many influential Azerbaijani figures were implicated – including the wife and daughters of President Aliyev – the leaks caused “barely a ripple” in Baku.²⁴ Nevertheless, on October 11, 2016 the District Court of Yasamal in Baku issued a new order for Abdullayev’s arrest based on charges of illegal entrepreneurship and tax evasion.²⁵ In November 2016, Abdullayev strongly criticized Azerbaijani authorities on social media.²⁶ Further, in late 2017, a government-affiliated journalist, Eynulla Fatullayev, wrote several

²¹ *Id.*, at ¶ 65.

²² *Id.*, at ¶ 73.

²³ See Ülfət Haqverdiyev, *Hüseyn Abdullayev SUSMA*, YOUTUBE, Dec. 21, 2015, available at <https://www.youtube.com/watch?v=sGeR0LhtXn8>.

²⁴ *Panama Papers: Azeri President’s Dealings Considered Business As Usual*, RADIO FREE EUROPE / RADIO LIBERTY, Apr. 7, 2016, available at <https://www.rferl.org/a/azerbaijan-baku/27660231.html>.

²⁵ Decision, Oct. 11, 2016, Case No. 4(004)–1006/2016 (Baku City Yasamal District Court) (Azer.) (original and English translation on file with author)

²⁶ In the post, Abdullayev called President Aliyev a “dictator,” and also criticized: Colonel Baylar Ayyubov, First Deputy Chief of the Special State Security Committee and Chief of the President’s Security Committee; Ali Hasanov, Assistant to the President for Social and Political Affairs and Head of the Department of Social and Political Affairs of the Presidential Administration; Colonel-General Kamaladdin Heydarov, Minister of Emergency Situations; Vilayat Eyvazov, First Deputy Minister of Internal Affairs and Lieutenant General of Police; Rovnag Abdullayev, President of the State Oil Company of the Republic Azerbaijan; and Ziya Mammadov, Minister of Transportation.

articles in Azerbaijani news outlets disparaging Abdullayev and detailing his criticism of the government and high-level government officials.²⁷

5. Arrest and Detention

In April 2018, Abdullayev travelled to Turkey with his mother, Zeynep, for vacation. He possessed a valid visa for the trip. Nevertheless, on Saturday April 21, 2018, Abdullayev was arrested in Istanbul by approximately fifteen Turkish police officers from the Anti-Terrorism Unit. He was detained overnight by the Anti-Terrorism Unit. Although Abdullayev informed Turkish officials that he was a political asylee in Germany, they transferred Abdullayev to Azerbaijani officials the very next day, a Sunday. At least two Azerbaijani officials with the Ministry of Internal Affairs then accompanied Abdullayev on a commercial flight back to Baku, where he has remained in detention until today.

Abdullayev was not arrested at a port of entry of Turkey, but in Istanbul's city center, several days into his trip. The Turkish officers did not show him any valid arrest warrant or legal justification for his arrest. It is unknown what reasons were imputed by the Turkish authorities for his arrest, especially as there was no active INTERPOL Red Notice in place at the time. During his detention in Turkey, Abdullayev was not allowed to speak to his German asylum lawyer, was not given access to a Turkish lawyer, and was not brought before any judicial or administrative court. Abdullayev's mother was initially given access to Abdullayev in custody, but she was unable to see him on the second day or facilitate his lawyer's access. Further, she was unable to contact the German Embassy in Turkey over the weekend before her son was extraordinarily rendered to Baku.

The day after the rendition, the Turkish presidency announced in a press statement that President Aliyev would pay an official state visit to Turkey on April 24, his first trip since his reelection earlier that month.²⁸

6. Court Proceedings and Criminal Charges

Abdullayev is currently charged under Penal Code Articles 178.2.1, 178.2.2, and 178.2.4 (fraud); 182.2.1, 182.2.2, and 182.2.4 (repeated and premeditated extortion through the use of threats by an organized group to obtain significant property); 192.2.2 and 192.2.3 (illegal entrepreneurial activities with high profits committed by an organized group); 193-1.3.1 and 193-1.3.2 (money laundering); 213.2.1 and 213.2.2 (tax evasion); 308.2 (abuse of power); 312-1.2 (illegal influence over the decision of an official); 313 (service forgery); and 318 (illegal border crossing). The charges against Abdullayev are the product of the repeated investigations by the Ministry of Taxes into his parents' company, Araz Inc, although he has no role in Araz Inc. and has been living in Germany since 2013. In essence, Abdullayev is accused of fabricating legal documents – including building permits – to support the company's allegedly unauthorized construction activities. He is accused of laundering the profits by transferring them through various banks in Europe to simulate stock exchange operations and of not having paid the appropriate taxes. Further, he is accused of abusing his position of power and influence to benefit himself and the company. Abdullayev's mother is charged with similar offenses. In addition, Abdullayev and his mother are accused of extorting Azerbaijani border guards who stopped his mother when she attempted to cross illegally from Azerbaijan into Georgia at the "Balakan" check point.

The charges in the indictment are supported by few facts or documentary evidence. For instance, the charges against Abdullayev and his mother under Article 313 (service forgery) – charges that usually relate to the intentional introduction of false data into official documents – are unsupported by any facts in the

²⁷ See "Hüseyn Abdullayevin İlk Etirafı" – Eynulla Fətullayevdən Sensasion Açıqlamalar, MODERATOR.AZ, Nov. 17, 2017, available at <https://www.moderator.az/news/199539.html> and "Hüseyn Abdullayevin Keçmişini"nin Tirajlanmasına Start Verilib, POLEMİK.AZ, Nov. 19, 2017, available at http://polemik.az/oxu/135158/huseyn_abdullayevin_kecmisinin_tirajlanmasına_start_verilib.

²⁸ Azerbaijani President Aliyev Set to Pay Official Visit to Ankara, HURRIYET DAILY NEWS, Apr. 24, 2018, available at <http://www.hurriyetdailynews.com/azerbaijani-president-aliyev-set-to-pay-official-visit-to-ankara-130777>.

indictment. Moreover, many of the charges relating to tax evasion and illegal entrepreneurship date to the period of 2000–2012, and the statute of limitations for these charges has expired. The only charges that superficially appear grounded in evidentiary support are those related to his mother’s border crossing. Of course, any prosecution emanating from an extraordinary rendition are illegal, on a *prima facie* basis.

After Turkish and Azerbaijani officials extraordinarily rendered Abdullayev to Azerbaijan, he was first brought before a court in Baku on April 25, 2018 – more than 48 hours after his arrest and extraordinary rendition from Turkey. Although Abdullayev could afford to appoint his own counsel – and legally should have been required to do so²⁹ – the government appointed a public defender to represent Abdullayev at this hearing. He was not allowed to appoint his own counsel until a week after his return to Azerbaijan. During this time, and in the sixteen months he has been in detention since he was extraordinarily rendered to Azerbaijan, Abdullayev has also not been able to see, talk on the phone with, or write to any members of his family. His only interaction with his family in this time has been brief moments at his trial. Abdullayev’s mother and sister attempted to visit him at the detention facility for his birthday in 2019, but were not permitted to see him. As a result of the lack of contact with his family and the inability to appoint counsel of his choosing, Abdullayev was essentially held *incommunicado* for the first week after his rendition to Azerbaijan. And his contact with the outside world has been severely restricted since. Additionally, Abdullayev has not been permitted access to his international counsel, Jared Genser, who unsuccessfully sought to visit him and prison and whose formal request to visit him was denied by the Azerbaijani Ministry of Justice.

The Nasimi District Court imposed pretrial detention on Abdullayev at the April 25, 2018 hearing, but did not refer to any specific facts or circumstances justifying his detention. The court extended his pretrial detention on May 31, 2018, July 9, 2018, September 12, 2018, and February 25, 2019. Abdullayev remains in detention at the “Kurdekhani” Investigative Institution in Baku under the authority of the Investigation Department of the Office of the Prosecutor General. Although Abdullayev’s mother has an official role in Araz Inc. as the owner, she was released to house arrest. The prosecutor’s office justified this action because of her age and health. Two of the four border guards with which Abdullayev is co-indicted were also granted bail, while the other two remain in detention with Abdullayev.

Abdullayev is co-indicted with his mother and four Azerbaijani border guards, who are implicated in the allegedly illegal border crossing. Because of the presence of the border guards on the indictment, Abdullayev is being tried before the Military Court of Baku under Article 68.2 of the Criminal Procedure Code.³⁰ The trial of Abdullayev and his co-defendants began on April 2, 2019. During the court proceedings, Abdullayev and the two border guards that were refused bail are held in a cage with metal bars. The cage is approximately 3 feet by 3 feet, barely large enough for a chair. If Abdullayev’s attorneys wish to speak to him, they must get permission from the judge to approach the cage, greatly limiting Abdullayev’s communication with counsel and his participation in the court proceedings.

B. Legal Analysis

For the reasons set forth below, Abdullayev’s detention constitutes an arbitrary deprivation of his liberty under all five Categories of the Working Group’s Methods of Work. Azerbaijan acceded to the International Covenant on Civil and Political Rights (ICCPR) on August 13, 1992, and Turkey ratified the

²⁹ Code of Criminal Procedure of the Azerbaijan Republic, July 14, 2000, at Art. 153.2.7 [hereinafter Azerbaijan Criminal Procedure Code], available at <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/64892/92594/F1457735324/AZE64892.pdf> (“[T]he officials of the prosecuting authority and those in charge of the temporary detention facility shall . . . if the financial position of the detainee does not enable him to retain a lawyer at his own expense, create an opportunity for him to meet the duty lawyer from one of the bar association offices in the vicinity of the temporary detention facility, at the state’s expense”) (emphasis added).

³⁰ *Id.*, at Art. 68.2 (“The military courts shall hear cases concerning war and military service which do not pose a major public threat and concern minor offences, and cases concerning such offences committed by military personnel (if the offence is committed with the participation of a person who is not military personnel, his case shall also be heard by the military court).”) (emphasis added).

ICCPR on September 23, 2003. The ICCPR confers on States Parties an obligation to respect and protect the enumerated rights of all persons under their control. In assessing whether a detention is arbitrary, the Working Group can also look to other sources, including the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles), the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), and the UN Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court (UN Basic Principles).³¹

Moreover, Azerbaijan's Constitution provides: "International treaties, to which the Republic of Azerbaijan is a party, are an inalienable substantive part of the legal system of the Republic of Azerbaijan."³² The Constitution further states: "The human rights and civil liberties enumerated in this Constitution shall be implemented in accordance with the international agreements to which the Republic of Azerbaijan is a party."³³ Turkey's Constitution similarly states that international treaties "have the force of law" and that human rights treaties "shall prevail" over conflicting domestic law.³⁴ The Turkish Constitution further provides that the rights of aliens can be restricted only in accordance with international law.³⁵

As the Azerbaijan and Turkish Governments have violated numerous procedural requirements under both international and domestic law, the ongoing detention of Huseyn Abdullayev is arbitrary under Categories I, II, III, IV, and V of the Working Group's Methods of Work.

1. Category I: No Legal Basis for Detention

A detention is arbitrary under Category I when "it is clearly impossible to invoke any legal basis justifying the deprivation of liberty."³⁶ There was no legal basis for Abdullayev's arrest on April 21, 2018 in Istanbul, Turkey or his subsequent return to Azerbaijan. As such, his continued detention and prosecution in Azerbaijan are *per se ultra vires*.

a. Abdullayev Was Arrested Without a Warrant

Article 9(2) of the ICCPR states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."³⁷ As the Working Group has explained, "the obligation encapsulated in article 9 (2) has two elements: information about the reasons for arrest must be provided immediately upon arrest . . . and there must be prompt information about the charges provided thereafter."³⁸ Further, the WGAD has found that not only must an arrest be legally justified, but the arresting officers must be acting within their authority and legal mandate when an individual is arrested.³⁹

³¹ METHODS OF WORK OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. HUMAN RIGHTS COUNCIL, U.N. Doc. A/HRC/36/38, July 13, 2017, at ¶ 7(e)–(f), (i) [hereinafter METHODS OF WORK].

³² AZƏRBAYCAN KONSTITUSİYASI, Nov. 12, 1995, Art. 148(II) [hereinafter AZERBAIJAN CONSTITUTION], available at https://www.constituteproject.org/constitution/Azerbaijan_2016.pdf?lang=en.

³³ *Id.*, Art. 12(II).

³⁴ TÜRKİYE CUMHURİYETİ ANAYASASI, Nov. 7, 1982, Art. 90 [hereinafter TURKISH CONSTITUTION].

³⁵ *Id.*, Art. 16 ("The fundamental rights and freedoms in respect to aliens may be restricted by law compatible with international law.").

³⁶ METHODS OF WORK, *supra* note 31, at ¶ 8(a).

³⁷ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, at Art. 9(2) [hereinafter ICCPR].

³⁸ *Mohamed Serria v. Egypt*, Opinion No. 30/2017, U.N. Doc. A/HRC/WGAD/2017/30, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 26, 2017, at ¶ 58.

³⁹ *Émile Bisimwa Muhirhi v. Democratic Republic of Congo*, Opinion No. 25/2015, U.N. Doc. A/HRC/WGAD/2015/25, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Sept. 3, 2015, at ¶ 27 (finding detention to be arbitrary under Category I where "the officers of the National Intelligence Agency abused their authority and exceeded their mandate by intervening in the case" and "there was no legal document authorizing the officers to proceed").

Article 19 of the Turkish Constitution⁴⁰ and Article 67 of the Azerbaijani Constitution⁴¹ enshrine similar requirements.

Abdullayev was arrested in Istanbul on April 21, 2018, by Turkish authorities acting without any legal justification or authorization whatsoever. The arresting officers did not present Abdullayev with a valid arrest warrant or explain the reason for his arrest. Because of the restrictions placed by Azerbaijani authorities on Abdullayev's access to counsel, it is unclear what reasons the Turkish authorities imputed for his arrest. However, it does not appear that they could have possibly had a valid reason – Abdullayev had a valid Turkish visa and he was arrested in the center of Istanbul, several days into his trip. Contrary to the statements of Azerbaijani officials after the fact, Abdullayev was not arrested on the basis of a valid INTERPOL Red Notice. INTERPOL cancelled the prior Red Notice in November 2014 after Abdullayev complained that it was politically motivated. German authorities later confirmed that there was no active INTERPOL Red Notice for Abdullayev at the time of his arrest. Further, Abdullayev and his legal counsel are unaware of any prior *ex parte* administrative extradition proceedings in Turkey, which could have even purported to authorize his arrest, although any such proceeding would have been in violation of his due process rights.⁴² Although a court in Baku had ordered his arrest in October 2016, this ruling could not justify his arrest in Turkey, unless there had been a formal request for his extradition in compliance with the laws of both countries and then a formal extradition proceeding in a Turkish court.

Therefore, Turkish authorities arrested Abdullayev without a legal mandate, as is required by Article 9 of the ICCPR and both Turkish and Azerbaijani law.

b. Abdullayev's Forcible Return to Azerbaijan Constitutes an Illegal Extraordinary Rendition

ICCPR Article 13 provides that “An alien lawfully in the territory of a State Party . . . may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall . . . be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority.” Article 9(4) similarly provides: “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.”⁴³ The Working Group has identified extraordinary rendition as a form of arbitrary detention under Category I, explaining that “both human rights law and the anti-terror conventions adopted under the auspices of the United Nations enshrine a clear preference for extradition as the legal framework for [the international transfer of detainees]. The practice of so-called ‘renditions’, on the contrary, because it is aimed at avoiding all procedural safeguards, is not compatible with international law.”⁴⁴ The Working Group has previously found a violation of ICCPR Article 9 and the detention to be arbitrary where three men were transferred to another country “outside the confines

⁴⁰ TURKISH CONSTITUTION, *supra* note 34, Art. 19 (“Individuals arrested or detained shall be promptly notified, in all cases in writing, or orally when the former is not possible, of the grounds for their arrest or detention and the charges against them . . .”).

⁴¹ AZERBAIJAN CONSTITUTION, *supra* note 32, Art. 67 (“Everyone who has been detained, arrested, accused of a crime on the part of competent State organs must be given immediate explanation of his or her rights and the reason for being arrested and brought to justice.”).

⁴² See Criminal Code of Turkey, Sept. 26, 2004, at Art. 18(7), *available at* <https://www.legislationline.org/documents/id/20076> [hereinafter Turkish Criminal Code] (where the high criminal court has authorized the extradition of an individual – pursuant to international legal norms – “a decision may be given for arrest of the accused or may apply to other protective measures . . . according to the Code of Criminal Procedure.”).

⁴³ ICCPR, *supra* note 37, at Art. 9(4); see also REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/30/37, July 6, 2015, at ¶ 47(a) (noting that “[t]he right to bring proceedings before a court to challenge the arbitrariness and lawfulness of detention” is applicable to “detention for extradition”) [hereinafter Basic Principles].

⁴⁴ REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/4/40, Jan. 9, 2007, at 2.

of any legal procedure, such as extradition, and [they were not allowed] access to counsel or to any judicial body to contest the transfers.”⁴⁵

Furthermore, Protocol No. 7 to the European Convention on Human Rights – to which both Turkey and Azerbaijan are States Parties⁴⁶ – requires procedural safeguards for an alien in expulsion proceedings. In particular, an alien has the right to submit reasons against their expulsion, the right to have their case reviewed, and the right to be represented before the competent authority.⁴⁷ Both countries are also states parties⁴⁸ to the European Convention on Extradition, which establishes that “the procedure with regard to extradition and provisional arrest shall be governed solely by the law of the requested Party.”⁴⁹ Turkey, as the party from which extradition was apparently requested, was bound by Article 18(4) of the Penal Code of Turkey, which provides that an extradition cannot be executed until the Serious Criminal Court has ruled that it may proceed; it also explicitly permits an individual to appeal the court’s decision.⁵⁰

Abdullayev’s arrest in Istanbul and forcible return to Azerbaijan constitutes an extraordinary rendition. As previously stated, Abdullayev and his counsel were not party to any extradition proceedings prior to his removal. He was neither given access to legal counsel while in Turkey nor brought before the Serious Criminal Court or any other court. Even if Abdullayev’s removal was sanctioned by a judicial or administrative authority in Turkey, the resulting extradition order is *ultra vires* because he was not given the opportunity to contest his removal or to appeal the extradition order before he was removed to Azerbaijan. These procedural safeguards are required under both international law and Turkish law and are meant to prevent his refoolment. As such, Abdullayev’s removal circumvented the ordinary procedure for removal – the conduct of extradition proceedings – and constitutes an unlawful extraordinary rendition.

Turkey’s unlawful actions in arresting, detaining, and assisting in the extraordinary rendition of Abdullayev render it liable for the subsequent human rights violations he experienced in Azerbaijan (which are detailed in the sections below). In a recent case involving these same countries, the Working Group found that Azerbaijan’s involvement in the extraordinary rendition of an individual to Turkey meant that Azerbaijan was responsible for the rights violations that occurred in Turkey after the rendition:

The Government of Azerbaijan has also violated its obligations . . . to ensure that aliens lawfully in its territory are expelled only in pursuance of a decision reached in accordance with law, and to allow them to submit reasons against the expulsion and to have the case reviewed by, and be represented before, a competent authority. Thus, the Working Group considers that the Government of Azerbaijan is responsible for its own actions in the arrest, detention and deportation of Mr. Ceyhan, *as well as the subsequent violations of his rights in Turkey*.⁵¹

⁴⁵ *Walid Muhammad Shahir Muhammad al-Qadasi v. Yemen*, Opinion No. 47/2005, U.N. Doc. A/HRC/4/40/Add.1, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Nov. 30, 2005, at ¶ 19.

⁴⁶ *Chart of Signatures and Ratifications of Treaty 117: Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms*, COUNCIL OF EUR., *accessed* Aug. 18, 2019, *available at* https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/117/signatures?p_auth=fQPAnPG1.

⁴⁷ Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, E.T.S. No. 117, *entered into force* Nov. 1, 1988, at Art. 1(1), *available at* https://www.echr.coe.int/Documents/Library_Collection_P7postP11_ETS117E_ENG.pdf. Protocol No. 7 allows for suspension of these procedural safeguards in the interest of public order or national security, *see id.*, at Art. 1(2); however, these grounds do not apply here.

⁴⁸ *Chart of Signatures and Ratifications of Treaty 024: European Convention on Extradition*, Council of Eur., *accessed* Aug. 18, 2019, *available at* https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/024/signatures?p_auth=fQPAnPG1.

⁴⁹ European Convention on Extradition, E.T.S. No. 24, *entered into force* Apr. 18, 1960, at Art. 22, *available at* <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680064587>.

⁵⁰ *Turkish Criminal Code*, *supra* note 42, at Art. 18(4) (“The Serious Criminal Court responsible for the region of the concerned person shall decide on the extradition request on the basis of this article as well as the provisions of the related international conventions that Turkey is a party to. This decision may be appealed.”)

⁵¹ *Mustafa Ceyhan v. Azerbaijan and Turkey*, Opinion No. 10/2019, U.N. Doc. A/HRC/WGAD/2019/10, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Apr. 25, 2019, at ¶ 77 (emphasis added).

In that same decision, the Working Group also noted that Azerbaijan has been involved in a number of “cases of extraordinary rendition based on bilateral extradition agreements.”⁵²

Therefore, because there was no legal basis for Abdullayev’s arrest in Turkey and subsequent extraordinary rendition to Azerbaijan, all subsequent legal action in Azerbaijan is *ultra vires* and his ongoing detention is arbitrary under Category I.

2. Category II: Detention Based on the Exercise of Fundamental Rights or Freedoms

A detention is arbitrary under Category II when it results from the exercise of fundamental rights or freedoms protected under the Universal Declaration and the ICCPR.⁵³ Abdullayev’s detention is arbitrary because it is a direct result of his exercise of his right to freedom of expression, which is protected under both domestic⁵⁴ and international law.⁵⁵

The Azerbaijani Government’s persecution of Abdullayev consistently tracks with his criticism of President Aliyev and his government. In the first instance, Abdullayev was previously arrested and convicted of hooliganism after he criticized Aliyev while a member of the National Assembly. Although the charges of hooliganism stemmed from a brawl in the National Assembly, video recorded during the session shows that Abdullayev was merely responding in defense to an assault by another MP. And while Abdullayev was convicted, the offending MP never faced charges for the brawl. Further, the UN Human Rights Committee recently expressed concern about Azerbaijan’s use of such “politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.” to target political opponents.⁵⁶

Abdullayev’s current detention is based on the investigations of the Azerbaijani Ministry of Taxes of Araz Inc., the company owned by his parents, which commenced the very next day after Abdullayev released his video *Susma* on YouTube in late May 2013. In the video, Abdullayev highlighted human rights abuses by Baku police against protesters and called for nationwide protests against the government. Because Abdullayev was living in Germany at the time, the audit likely was meant to pressure Abdullayev to stop his outspoken criticism of Aliyev and his government. This is demonstrated by the fact that, although Abdullayev has no legal connection to his parents’ company and the company has twice paid the amounts demanded by the government, the Azerbaijani Government continues to accuse Abdullayev of illegal entrepreneurship and tax evasion for activities associated with Araz Inc. Moreover, Azerbaijani authorities reopened their investigation of Araz Inc. in 2016 after Abdullayev was linked to offshore investments by the Panama Papers. The pretextual nature of this action and the subsequent detention order of the District Court of Yasamal in Baku in October 2016 is evident from the fact that the leaks otherwise caused “barely a ripple” in Baku.⁵⁷

While freedom of expression can be legitimately restricted in certain circumstances – including to protect public order or national security⁵⁸ – neither of these grounds can justify Abdullayev’s detention. As the UN Human Rights Committee has explained, public order and national security “may never be invoked as

⁵² *Id.*, at ¶ 76 (quoting *Concluding Observations on the Fourth Periodic Report of Azerbaijan*, U.N. COMM. AGAINST TORTURE, U.N. Doc. CAT/C/AZE/CO/4, Jan. 27, 2016, at ¶ 34).

⁵³ METHODS OF WORK, *supra* note 31, at ¶ 8(b) (stating that detention is arbitrary under Category II “[w]hen the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13–14 and 18–21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18–19, 21–22 and 25–27 of the International Covenant on Civil and Political Rights.”).

⁵⁴ AZERBAIJAN CONSTITUTION, *supra* note 32, Art. 47(I) (protecting freedom of speech).

⁵⁵ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, *adopted* 1948, at Art. 19 and ICCPR, *supra* note 37, at Art. 19(2).

⁵⁶ *Concluding Observations on the Fourth Periodic Report of Azerbaijan*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/AZE/CO/4, Nov. 16, 2016, at ¶ 36(a) [hereinafter *UNHRC Fourth Periodic Report on Azerbaijan*].

⁵⁷ *Panama Papers: Azeri President’s Dealings Considered Business As Usual*, *supra* note 24.

⁵⁸ ICCPR, *supra* note 37, at Art. 19(3)(b).

a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets and human rights.”⁵⁹ Further, the UN Human Rights Council has affirmed that the following forms of expression can *never* be restricted – discussion of government policies; political debate; reporting on human rights and government activities; political activities, including for peace or democracy; and the expression of opinion or dissent.⁶⁰ The Johannesburg Principles on National Security, Freedom of Expression and Access to Information⁶¹ – which have been endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression and have regularly been referenced by the UN Human Rights Council⁶² – state that advocating for the non-violent change of government policy, or even the government itself, cannot be considered a threat to national security, and nor can criticism of the government, its agencies, or public officials.⁶³

As shown above, Azerbaijan’s persecution of Abdullayev clearly tracks with his criticism of Aliyev. Because Abdullayev’s detention is a direct result of his exercise of his right to freedom of expression, his detention is arbitrary under Category II.

3. Category III: Detention Violates Due Process Rights

A detention is considered arbitrary under Category III “[w]hen the total or partial non-observance of the international norms relating to the right to a fair trial, established 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.”⁶⁴ The numerous violations of Abdullayev’s due process rights render his ongoing detention arbitrary under Category III.

a. Abdullayev Was Arrested Without A Valid Warrant

Article 9(2) of the ICCPR provides that “[a]nyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”⁶⁵ Article 19 of the Turkish Constitution⁶⁶ and Article 67 of the Azerbaijani Constitution⁶⁷ contain similar requirements. Under the Body of Principles, an arrest “shall only be carried out strictly in accordance with the provisions of the law” and “[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.”⁶⁸

⁵⁹ *General Comment No. 34 on Article 19: Freedoms of Opinion and Expression*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/GC/34, Sept. 12, 2011, at ¶ 23.

⁶⁰ Freedom of Opinion and Expression, Human Rights Council Res. 12/16, U.N. Doc. A/HRC/RES/12/16, *adopted* Oct. 2, 2009, at ¶ 5(p)(i).

⁶¹ *Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, in Abid Hussain, REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, U.N. Doc. E/CN.4/1996/39, Mar. 22, 1996, *available at* http://ap.ohchr.org/documents/alldocs.aspx?doc_id=700 [hereinafter *Johannesburg Principles*].

⁶² REPORT ON THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION IN SOUTH SUDAN, U.N. MISSION IN S. SUDAN & OHCHR, Feb. 2018, at 9 n.40, *available at* <https://www.ohchr.org/DOCUMENTS/COUNTRIES/SS/UNMISSFEB2018.PDF>.

⁶³ *Johannesburg Principles*, *supra* note 61, at Principle 7(a)(i)–(ii).

⁶⁴ METHODS OF WORK, *supra* note 31, at ¶ 8(c).

⁶⁵ ICCPR, *supra* note 37, at Art. 9(2); *see also id.*, at Art. 14(3) (“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him . . .”).

⁶⁶ TURKISH CONSTITUTION, *supra* note 34, Art. 19.

⁶⁷ AZERBAIJAN CONSTITUTION, *supra* note 32, Art. 67.

⁶⁸ Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment, G.A. Res. 47/173, U.N. Doc. A/43/49, *adopted* 1988, at Principles 2, 10 [hereinafter *Body of Principles*], *available at* <https://www.globaldetentionproject.org/wp-content/uploads/2016/06/The-Body-of-Principles-for-the-Protection-of-All-Persons-under-Any-Form-of-Detention-or-Imprisonment.pdf>.

As stated above, Abdullayev was arrested on April 21, 2018, in the city center of Istanbul, Turkey by Turkish authorities acting without any legal justification whatsoever. The arresting officers did not present Abdullayev with an arrest warrant or explain the reason for his arrest. Because of the restrictions placed by Azerbaijani authorities on Abdullayev's access to counsel, it is unclear what reasons Turkish authorities imputed for his arrest. However, they do not appear to have had a valid reason for his arrest, given that he was arrested in the center of Istanbul, several days into his trip, while in possession of a valid visa. Contrary to the statements of Azerbaijani officials after the fact, Abdullayev was not arrested on the basis of a valid INTERPOL Red Notice. INTERPOL cancelled the prior Red Notice in November 2014 after Abdullayev complained that it was politically motivated. German authorities later confirmed that there was no active INTERPOL Notice for Abdullayev at the time of his arrest. Abdullayev and his legal counsel are unaware of any administrative extradition proceedings in Turkey which could have authorized his arrest. Although a court in Baku had ordered his arrest in October 2016, this ruling could not justify his arrest in Turkey.

b. Abdullayev Was Not Promptly Brought Before A Judge

ICCPR Article 9(3) states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge." The UN Human Rights Committee has explained that this normally means within 48 hours, unless there are exceptional circumstances, and that this "requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity."⁶⁹ ICCPR Article 9(4) similarly provides that a detained person is "entitled to take proceedings before a court, in order that that court may decide *without delay* on the lawfulness of his detention."⁷⁰ The Body of Principles reiterate the necessity of bringing a detainee before a judge in a timely manner.⁷¹ The Turkish Constitution and Azerbaijan's Criminal Procedure Code both require a detained person to be brought before a court within 48 hours.⁷²

Abdullayev was not brought before any court in Turkey before his extraordinary rendition. In *Mustafa Ceyhan v. Azerbaijan and Turkey*, the Working Group held the extraordinary rendition of an individual under similar circumstances constituted a violation of his right to be brought promptly before a judge under ICCPR Article 9(3).⁷³ Furthermore, after being extraordinarily rendered to Baku on April 22, 2018, he was not brought before a court there until April 25, 2018 – well beyond the 48 hours allowed under Article 148.4 of Azerbaijan's Criminal Procedure Code and international law.

c. Abdullayev Was Denied the Right to the Presumption of Bail

Article 9(3) of the ICCPR states "[i]t shall not be the general rule that persons awaiting trial shall be detained in custody." The UN Human Rights Committee has explained that pretrial detention "must be based on an individualized determination that it is reasonable and necessary . . . for such purposes as to prevent flight,

⁶⁹ *General Comment No. 35 on Article 9: Liberty and Security of Person*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/GC/35, Dec. 16, 2014, at ¶¶ 32–33 [hereinafter *General Comment No. 35*].

⁷⁰ ICCPR, *supra* note 37, at Art. 9(4) (emphasis added).

⁷¹ Body of Principles, *supra* note 68, at Principles 11(1) ("A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority."), 32(1) ("A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful."), 37 ("A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest.").

⁷² TURKISH CONSTITUTION, *supra* note 34, Art. 19 ("The person arrested or detained shall be brought before a judge within at latest forty-eight hours . . .") and Azerbaijan Criminal Procedure Code, *supra* note 29, at Art. 148.4 ("The detained person shall be charged within 48 hours of being taken into custody and shall be brought before a court . . .").

⁷³ *Mustafa Ceyhan v. Azerbaijan and Turkey*, *supra* note 51, at ¶ 65.

interference with evidence or the recurrence of crime.”⁷⁴ Similarly, Article 155 of Azerbaijan’s Criminal Procedure Code provides that, in order to impose pretrial detention on an accused, there must be “sufficient grounds” to suspect that the accused will, *inter alia*, flee, obstruct the investigation, or commit additional crimes.⁷⁵ The Azerbaijani Government provided no evidence to justify Abdullayev’s pretrial detention, and the court did not make an individualized determination that it was reasonable and necessary.

d. Abdullayev Was Denied the Presumption of Innocence

Under Article 14(2) of the ICCPR, “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.” The right to the presumption of innocence imposes on the prosecution the burden to prove the charge, and to ensure that the accused in trial has the benefit of doubt.⁷⁶ According to the Human Rights Committee, “[d]efendants should normally not be shackled or kept in cages during trial or otherwise presented to the court in a manner indicating that they may be dangerous criminals.”⁷⁷

Abdullayev is being held in a cage with metal bars during his trial, which is a direct violation of the presumption of innocence. Although his mother and some of the other co-defendants are accused of similar crimes, they have been granted bail and are permitted to sit with their attorneys at the front of the courtroom.

e. Abdullayev Was Denied an Independent and Impartial Tribunal

Article 14(1) of the ICCPR requires that trials be adjudicated by an “independent and impartial tribunal established by law.” Both the Working Group and the Human Rights Committee have noted that the trial of civilians by a military court can harm the right to an independent and impartial tribunal.⁷⁸ The Human Rights Committee has emphasized that “Trials of civilians by military or special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials.”⁷⁹ The Working Group has gone further and insisted that military tribunals should *never* try civilians, even if civilians are indicted alongside military personnel.⁸⁰

⁷⁴ *General Comment No. 35, supra* note 69, at ¶ 38; *see also Teymur Akhmedov v. Kazakhstan*, Opinion No. 62/2017, U.N. Doc. A/HRC/WGAD/2017/62, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* Aug. 25, 2017, at ¶ 41 (“[P]retrial detention must be an exceptional measure and as such should be justified in each individual case and assessed by a competent, independent judge . . .”).

⁷⁵ Azerbaijan Criminal Procedure Code, *supra* note 29, at Art. 155.1–155.1.5.

⁷⁶ *General Comment No. 32 on Article 14: Right to Equality Before Courts and Tribunals and To A Fair Trial*, U.N. HUMAN RIGHTS COMM., U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, at ¶ 30 [hereinafter *UNHRC General Comment No. 32*].

⁷⁷ *Id.*

⁷⁸ *UNHRC General Comment No. 32, supra* note 76, at ¶ 22 (“[T]he trial of civilians in military . . . courts may raise serious problems as far as the equitable, impartial and independent administration of justice is concerned.”) and REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/13/30, Jan. 18, 2010, at ¶ 66 (“[T]he trial of civilians by military tribunals usually has an adverse effect on the enjoyment of . . . the right to a fair . . . trial, [and] the right . . . to be tried in public by a legally established, independent, competent and impartial court . . .”).

⁷⁹ *UNHRC General Comment No. 32, supra* note 76, at ¶ 22.

⁸⁰ REPORT OF THE WORKING GROUP ON ARBITRARY DETENTION, U.N. Doc. A/HRC/27/48, June 30, 2014, at ¶ 69 (“(a) Military tribunals should only be competent to try military personnel for military offences; (b) If civilians have also been indicted in a case, military tribunals should not try military personnel . . .”); *Sayed Mohammed Abdullah Nimr et al. v. Egypt*, Opinion No. 11/2012, U.N. Doc. A/HRC/WGAD/2012/11, U.N. WORKING GROUP ON ARBITRARY DETENTION, *adopted* May 3, 2012, at ¶ 18 (“[W]hatever the charges faced, civilians should not be tried by military courts, as such courts cannot be considered independent and impartial tribunals for civilians.”); and Basic Principles, *supra* note 43, at ¶ 55 (“Military tribunals are not competent to review the arbitrariness and lawfulness of the detention

Abdullayev is being tried before the Military Court of Baku, even though he is a civilian. The Government of Azerbaijan has sought to justify this under Article 68.2 of the Criminal Procedure Code, which provides for civilians to be tried before military courts when offences committed by military personnel involve the participation of a civilian.⁸¹ However, Article 68.2 clearly contradicts the Working Group’s longstanding rule that civilians should never be tried by a military court. Even under the Human Rights Committee’s more forgiving standard, Abdullayev should not be tried before a military court for two reasons. First, his case is not exceptional – rather, Article 68.2 makes the trying of certain civilians in military courts the rule rather than the exception. Second, Azerbaijan has not shown that trying him by a military tribunal is “is necessary and justified by objective and serious reasons,” nor that “regular civilian courts are unable to undertake the trial[.]”⁸² The Government has provided insufficient justification for why the border guards cannot be tried before a civilian court or why his case cannot be tried separately from theirs.

f. Abdullayev Was Denied Access to Counsel

Under Article 14(3)(b) of the ICCPR, everyone has the right, “[i]n the determination of any criminal charge against him,” to “communicate with counsel of his own choosing.” This requires that an accused be given “prompt access to counsel.”⁸³ The Basic Principles clarify that detainees “have the right to legal assistance by counsel of their choice . . . immediately after the moment of apprehension.”⁸⁴ Azerbaijan’s Constitution also protects the right to counsel.⁸⁵

After Abdullayev was first arrested in Turkey, he was not allowed to contact either his asylum lawyer in Germany or a local Turkish lawyer. He was returned to Baku by extraordinary rendition without ever having accessed legal counsel. Furthermore, the Government of Azerbaijan prevented Abdullayev from choosing his own legal counsel for the first week after his return, instead forcing him to work with a government-appointed lawyer. Not only did this violate international law, but the fact that the Government assigned Abdullayev a defense lawyer even though he was able and willing to appoint his own counsel is a violation of Azerbaijani law. The Criminal Procedure Code states that the government “shall have no right to suggest that the suspect or the accused instruct a certain defence counsel”⁸⁶ and that a public defender should be appointed only “if the financial position of the detainee does not enable him to retain a lawyer at his own expense.”⁸⁷

Finally, Abdullayev has not been permitted access to his international counsel, Jared Genser, who was initially turned away at his prison on June 18, 2019. Subsequently, Genser sought further permission to access his client in correspondence with Prosecutor General Zakir Qaralov, Minister of Justice Fikrat Mammadov, and Military Judge Habib Hasanov.⁸⁸ All failed to allow Genser access to meet Abdullayev in prison.

of civilians. Military judges and military prosecutors do not meet the fundamental requirements of independence and impartiality.”).

⁸¹ Azerbaijan Criminal Procedure Code, *supra* note 29, at Art. 68.2 (“The military courts shall hear cases concerning war and military service which do not pose a major public threat and concern minor offences, and cases concerning such offences committed by military personnel (if the offence is committed with the participation of a person who is not military personnel, his case shall also be heard by the military court).”).

⁸² *UNHRC General Comment No. 32*, *supra* note 76, at ¶ 22.

⁸³ *Id.*, at ¶ 34.

⁸⁴ Basic Principles, *supra* note 43, at ¶ 12.

⁸⁵ AZERBAIJAN CONSTITUTION, *supra* note 32, Art. 61.

⁸⁶ Azerbaijan Criminal Procedure Code, *supra* note 29, at Art. 92.14.

⁸⁷ *Id.*, at Art. 153.2.7.

⁸⁸ Letters to Prosecutor General Zakir Qaralov from Jared Genser, June 19, July 2, and July 12, 2019. In a response dated July 4, 2019, but received July 15, 2019, Deputy Director of the Department for Consideration of Applications Toghrul Ahmadov stated: “the Baku Military Court deals with the criminal case against Abdullayev Huseyn Abbas . . . in accordance with the requirements of criminal procedure legislation of the Republic of Azerbaijan, it [Genser’s letters] was forwarded to the above court.” Subsequently Genser sent a letter to Military Judge Habib Hasanov on July 17, 2019, including the correspondence with the Prosecutor General’s office, requesting the opportunity to visit his client in prison. Judge Hasanov later told local counsel he could not grant the request, suggesting Genser reach out to the Ministry of Justice. On July 25, 2019, Genser met Emil Huseynov, Chief of the Group of Extradition, at the Ministry of

g. ~~Abdullayev Was Denied Access to Family~~

The Body of Principles states that “communication of the detained or imprisoned person with the outside world, and in particular his family . . . shall not be denied for more than a matter of days.”⁸⁹ It further provides that a “detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world.”⁹⁰ The UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) similarly assert: “Prisoners shall be allowed . . . to communicate with their family and friends at regular intervals,” including “[b]y receiving visits.”⁹¹

Abdullayev has not been able to see, talk on the phone with, or write members of his family in the sixteen months he has been in detention since his extraordinarily rendition. His only interaction with his family in this time has been brief moments during or after his court hearings. Although his mother and sister attempted to visit him at the detention facility for his birthday in May 2019, they were not permitted to see him.

Because Abdullayev was arrested without a valid arrest warrant, was not promptly brought before a judge in either Turkey or Azerbaijan, was denied the presumption of bail and innocence, was denied a competent, impartial, and independent tribunal, and has been denied access to his counsel and family, his ongoing detention is arbitrary under Category III.

4. **Category IV: Detention Violated the Rights of Asylum Seekers**

A detention is arbitrary under Category IV when states violate the rights of asylum seekers as established under international law.⁹² Abdullayev’s arrest and extraordinary rendition to Azerbaijan despite his status as a political asylee in Germany constitutes a refoulement by Turkey – in violation of international and domestic law – and thus his ongoing detention is *ultra vires* and arbitrary under Category IV.

The Convention Relating to the Status of Refugees, of which both Azerbaijan and Turkey are States Parties, establishes that “[n]o contracting state shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”⁹³ Guidance from UNHCR indicates that an asylum determination by one country must be respected and honored by other countries. For example, as far back as 1978, the Executive Committee of the UN High Commissioner for Refugees stated that “the very purpose of the 1951 Convention and the 1967 Protocol implies that refugee status determined by one Contracting State will be recognized also by the other Contracting States” and that “refugee status as

Justice, who requested receiving a letter with the request, which was submitted the same day. On August 2, 2019, Teymur Malik-Aslanov, Deputy Director of the International Cooperation Department of the Ministry of Justice, sent a letter stating “according to Article 26 of the Law of the Republic of Azerbaijan ‘On Lawyers and Legal Practice,’ rendering legal assistance by lawyers-foreigners in the territory of the Republic of Azerbaijan shall be restricted exclusively to the provision of advice and opinions on application of laws of the state of birth of the foreigner or international law norms. Lawyers-foreigners shall be allowed to the territory of the Republic of Azerbaijan to court proceedings on civil cases, criminal cases . . . on the basis of mutual relations in accordance with international agreements to which the Republic of Azerbaijan is a party to.” After receiving Malik-Aslanov’s letter on August 10, 2019, Genser wrote again to Emil Huseynov, pointing out that although the Ministry of Justice had explained he was authorized to provide advice and opinions about international law norms, it was practically impossible for him to do so while being blocked from meeting Abdullayev in prison. He received no further response back from the Ministry of Justice.

⁸⁹ Body of Principles, *supra* note 68, at Principle 15.

⁹⁰ *Id.*, at Principle 19.

⁹¹ United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc. A/RES/70/175, *adopted* Dec. 17, 2015, at Rule 58(1).

⁹² See METHODS OF WORK, *supra* note 31, at ¶ 8(d).

⁹³ Convention Relating to the Status of Refugees, 189 U.N.T.S. 137, *entered into force* Apr. 22, 1954, at Art. 33(1).

determined in one Contracting State should only be called into question by another Contracting State in exceptional cases when it appears that the person manifestly does not fulfill the requirements of the Convention.”⁹⁴ A more recent research paper commissioned and published by UNHCR reiterates that a “determination by a State that a person is a refugee under the 1951 Convention is not only binding on the authorities of the country concerned but also extraterritorially, at the very least with respect to other States Parties to the 1951 Convention.”⁹⁵ The paper further states that, before a government can extradite a person with refugee status in another country, the government must, at the very least, contact that other country to inquire about the person’s protected status:

The fact that the wanted person was recognised as a refugee by another State should, at a minimum, alert the requested State to their special status and the need to ensure that they are not exposed to a danger of persecution if extradited. The requested State should contact the authorities of the country which recognised the person concerned as a refugee to obtain the full facts of his or her case, and to enable that country to exercise diplomatic protection, if it so wishes.⁹⁶

The Working Group has previously found detention to be arbitrary under Category IV where a legally recognized refugee was returned to the country that was persecuting him.⁹⁷ The Working Group explained that he “could not be expelled without a lawful reason accepted by a court and could be expelled only to a country which also recognized his refugee status.”⁹⁸

Germany granted Abdullayev political asylum on November 26, 2013. Abdullayev communicated this fact to the Turkish authorities throughout his arrest and detention in Turkey prior to being handed over to Azerbaijani officials. The Government of Turkey not only had an affirmative obligation under the European Convention on Extradition and broader international legal standards to ensure that Azerbaijan’s extradition request was not politically motivated, but also had an obligation to respect Abdullayev’s status as an asylee and not refohl him by returning him to the country from which he sought refuge. Nevertheless, Turkey did not respect the determination of the Government of Germany that Abdullayev qualified for international legal protection and failed to abide by Turkish legal safeguards designed to protect against refolement. As such, the actions of the Turkish Government violated Abdullayev’s rights as a political asylee and are thus arbitrary under Category IV.

5. Category V: Discrimination Based on a Protected Class

A detention is arbitrary under Category V when it “constitutes a violation of international law on the grounds of discrimination based on birth, national, ethnic or social origin, language, religion, economic condition, political or other opinion, gender, sexual orientation, disability, or any other status.”⁹⁹ There is a “strong presumption” that detention based on the exercise of fundamental civil and political rights will also

⁹⁴ Addendum to the Report of the United Nations High Commissioner for Refugees, U.N. Doc. A/33/12/Add.1, GAOR, 33d Sess., Supp. No. 12A (1978), at ¶ 68(2)(f)–(g), available at [https://undocs.org/A/33/12/ADD.1\(SUPP\)](https://undocs.org/A/33/12/ADD.1(SUPP)); see also NOTE ON THE EXTRATERRITORIAL EFFECT OF THE DETERMINATION OF REFUGEE STATUS UNDER THE 1951 CONVENTION AND THE 1967 PROTOCOL RELATING TO THE STATUS OF REFUGEES, UNHCR, U.N. Doc. EC/SCP/9, Aug. 24, 1978, at ¶ 37, available at <https://www.unhcr.org/en-us/excom/scip/3ae68cccc/note-extraterritorial-effect-determination-refugee-status-under-1951-convention.html> (noting “the internationally recognized character of refugee status”).

⁹⁵ SIBYLLE KAOFERER, THE INTERFACE BETWEEN EXTRADITION AND ASYLUM, Nov. 2003, at ¶ 264, available at <https://www.unhcr.org/3fe84fad4.pdf>.

⁹⁶ *Id.*, at ¶ 266.

⁹⁷ *Abbas Shadar Zabed al-Lami v. Lebanon*, Opinion No. 12/2011, U.N. Doc. A/HRC/WGAD/2011/12, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted May 4, 2011.

⁹⁸ *Id.*, at ¶ 17.

⁹⁹ METHODS OF WORK, *supra* note 31, at ¶ 8(e).

constitution discrimination based on political opinion.¹⁰⁰ The Working Group takes particular note of cases involving current or former elected officials since such positions “necessarily attract[] respect.”¹⁰¹

Here, Abdullayev is being targeted for his outspoken criticism of the government. The Azerbaijani Government’s persecution of Abdullayev consistently tracks with his criticism of President Ilham Aliyev and his government. As mentioned above, the UN Human Rights Committee recently expressed concern about the use of “politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred etc.” to target political opponents in Azerbaijan.¹⁰² Similarly, the current charges against Abdullayev stem from an investigation of his parents’ company that the Ministry of Taxes initiated the day after Abdullayev posted a video condemning police violence against opposition protestors in Baku. Azerbaijani authorities have targeted Abdullayev – while ignoring the similar or more egregious activities of other elites – because of his political opposition to President Aliyev and his government. Therefore, Abdullayev’s ongoing detention is arbitrary under Category V because it results from discrimination based on political opinion.

V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN

Currently, Abdullayev is defending himself against the government’s politically-motivated charges in the Military Court of Baku. Abdullayev’s lawyers have petitioned the court to rectify the numerous due process violations, but the motions have been consistently denied. The political and legislative context in Azerbaijan has not improved since his conviction in 2007 – if anything, the situation has deteriorated – so Abdullayev is not optimistic that his grievances will be redressed by the court.

¹⁰⁰ *Thirumurugan Gandhi v. India*, Opinion No. 88/2017, U.N. Doc. A/HRC/WGAD/2017/88, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Nov. 23, 2017, at ¶ 43.

¹⁰¹ *See Ahmed Mahloof v. The Maldives*, Opinion 15/2017, U.N. Doc. A/HRC/WGAD/2017/15, U.N. WORKING GROUP ON ARBITRARY DETENTION, adopted Apr. 21, 2017, at ¶ 93.

¹⁰² *UNHRC Fourth Periodic Report on Azerbaijan*, *supra* note 56, at ¶ 36(a).