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WRITTEN STATEMENT IN WORKING SESSION 13: RULE OF LAW II, including: right to a fair trial;
independence of the judiciary and democratic law making

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**Tajikistan: restrictions on access to independent and adequate legal defence and harassment, torture
or other ill-treatment, prosecution and imprisonment of lawyers.**

Amnesty International would like to draw the attention of the authorities of Tajikistan and OSCE participating States to a number of concerns in relation to restrictions on access to independent and adequate legal defence in Tajikistan and increasing harassment, prosecution and imprisonment of lawyers.

In May 2017, Amnesty International published the briefing, *In the line of duty: Harassment, prosecution and imprisonment of lawyers in Tajikistan*¹, which reveals a raft of repressive government tactics used to intimidate, silence and crush lawyers in the country, punishing them for the legitimate exercise of their professional duty.

To be a lawyer, and particularly a human rights lawyer, comes with unprecedented risks in present-day Tajikistan.

Stifling legitimate dissent in the name of national security

Over the last three years, the space for free expression and particularly for peaceful dissent has shrunk dramatically in Tajikistan, and fear of reprisals for any form of criticism, or apparent criticism, of the authorities has permeated Tajikistani society. National security and counter terrorism concerns – real and perceived – dominate the political agenda and official discourse to the clear detriment of respect for human rights. The authorities relentlessly invoke national security concerns to justify ever harsher restrictions on the freedoms of expression and association, arguing that these measures are necessary to ensure stability. There is an ongoing clampdown in Tajikistan on virtually any form of dissent, including persecution of those associated or perceived to be associated with various banned opposition groups and political parties, such as the Islamic Renaissance Party (IRPT) and Group 24.²

Since the violent unrest of September 2015³, the authorities have imposed further sweeping restrictions on freedom of expression and the media, and currently control virtually all access to information. This has affected not only media freedom and freedom of expression in Tajikistan, but also matters relating to access to justice and fair trial.

Furthermore, legal amendments introduced in November 2015 to the law on the legal profession (Law on Advokatura) have increased the control over the licensing of lawyers by the executive branch of government and cut the number of lawyers licensed to practice (*advokaty*) drastically.

¹ Amnesty International, *In the line of duty: Harassment, prosecution and imprisonment of lawyers in Tajikistan*, 23 May 2017, Index number: EUR 60/6266/2017), available at <https://www.amnesty.org/en/documents/eur60/6266/2017/en/>.

² The IRPT was a legally registered political party, and the only Islamist political party in the whole of Central Asia. From the late 1990s and until 2015, it had participated in elections, winning seats in the country's parliament. However, following the widely disputed 1 March 2015 parliamentary elections in Tajikistan, the party lost its two remaining parliamentary seats. On 28 August 2015, the IRPT received an order from the Ministry of Justice to cease its activities by 7 September on the basis that it "lacked sufficient popular support" to qualify as a registered party. Group 24 was a secular opposition movement co-founded by businessman and opposition politician Umarali Kuvvatov. Group 24 was banned by the Supreme Court as "extremist" in October 2014. Umarali Kuvvatov was assassinated in Turkey on 5 March 2015.

³ Several government buildings in the capital Dushanbe and the districts of Vakhdat and Rudaki (near Dushanbe) were attacked on 4 September 2015. According to the official narrative of these events, the attacks were led by the then Deputy Minister of Defence Abdukhalim Nazarzoda, previously a member of the United Tajik Opposition during the 1992-1997 civil war. Abdukhalim Nazarzoda himself was killed later in what was described as a security operation. Alternative accounts of these events have been put forward, in most cases anonymously on social networks and/or outside Tajikistan. Due to the authorities' near-total grip on news reporting in the country, there has been very little independent public scrutiny of the official account of these events.

The effect of the harassment and persecution of lawyers in Tajikistan, combined with the recent, drastic reduction in the number of registered lawyers (advokaty), is crippling for the respect for rights in the country, given the essential role lawyers play in the protection of human rights and in facilitating access to justice for all.

Limiting the independence of lawyers

In March 2015 a new law on the legal profession (Law on Advokatura) came into force, with amendments introduced in November 2015.⁴ This new law should have been a positive development, guaranteeing in law and practice the independence of lawyers (advokaty) from the executive branch of government in line with international standards. However, prominent lawyers and domestic and international experts and NGOs expressed concern that some of the provisions subsequently introduced in the amendments threatened the independence of the legal profession and jeopardized access to legal defence.⁵

The original law established a single national bar association – the Union of Lawyers – and provided for it to be an independent non-governmental, non-commercial organization, which would elect its own chair and governing body. However, the amendments introduced in November 2015 brought control over the licensing of lawyers firmly back into the hands of the executive branch of government by instituting the Qualifying Commission⁶ (the body responsible for professional exams and awarding lawyers their licenses) under the Ministry of Justice, and not under the Union of Lawyers as required under international standards.⁷

The amended law also mandated that the Permanent Presidency of the Qualifying Commission – and ultimately the deciding vote on who has qualified as a lawyer – is held by a Deputy Minister of Justice.⁸

The amendments also forced all lawyers, including those with more than 10 years' experience (who had been exempt under the new law as it was passed in March 2015), to pass the new qualification exams by the end of March 2016, or lose their licence to practice.⁹

These developments have been instrumental in cutting the numbers of licensed lawyers (advokaty) by more than half and consequently restricting further the already limited access to justice for all citizens in Tajikistan, not only for those individuals charged with national security-related offences. By May 2017, only around half of the previously licensed lawyers had successfully requalified under the new system. Tajikistan now has around 600 lawyers (advokaty) for a population of over eight million, a ratio of approximately one lawyer per 13,000 inhabitants.¹⁰

⁴ The Law of the Republic of Tajikistan "On Advokatura and Advocates' Activities" signed into law on 18 March 2015. Amendments to the law were approved by parliament on 4 November 2015 and entered into legal force on 26 November 2015.

⁵ See Independent Commission of Jurists (ICJ) report "Recommendations on the Independence of the Legal Profession in the Republic of Tajikistan", 23 February 2016, <https://www.icj.org/wp-content/uploads/2016/02/Tajikistan-Independence-of-legal-profession-Publications-Reports-Thematic-reports-2016-ENG.pdf>, (last accessed 17 May 2017). The Special Rapporteur on Torture, Juan E. Mendez, also wrote in his follow-up report on his second mission to Tajikistan, that he remained 'highly concerned about the lack of adequate access to independent legal counsel in Tajikistan', A/HRC/28/68/Add.2, points 17-19 Access to lawyers, <http://antitorture.org/wp-content/uploads/2015/03/Follow-Up-Report-Tajikistan-Tunisia.pdf> (last accessed 17 May 2017).

⁶ The nine-member Commission is composed of two representatives of the Ministry of Justice, one judge, five lawyers elected by the Union's assembly, one academic. Law on Advokatura, Art. 13(2).

⁷ In its final report on the proposed reforms to the Law on Advokatura, the ICJ noted in 2013 that "[t]he procedure would risk cleansing the profession of independent lawyers and leading to the de facto domination of the profession by the Ministry of Justice, contrary to UN Basic Principles on the Role of Lawyers." Their recommendations were not taken on board. ICJ, "Independence of the Legal Profession in Central Asia", p.16, September 2013, <http://icj.wpengine.netdata-cdn.com/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>, (last accessed 17 May 2017).

⁸ For more information see ICJ 2016 report cited above.

⁹ Under the new law a lawyer has to be a member of the Union of Lawyers and must pass the re-qualification exam in order to be able to represent a client in criminal proceedings.

¹⁰ Prior to the amended Law on Advokatura there were only between 1,200 and 2,000 lawyers (advokaty) licensed to practice.

Harassment, prosecution and imprisonment of defence lawyers

Over the last three years defence lawyers who have taken up politically sensitive cases or cases related to national security and counter terrorism, have faced increasing harassment, intimidation and pressure in connection with their legitimate professional activities. In some cases, lawyers have been subjected to punitive arrest, criminal prosecution on national security-related or politically-motivated charges, and sentenced to long prison terms following unfair trials. Some lawyers have chosen to flee the country rather than face persecution. Meanwhile, security forces and local authorities have also targeted their families for harassment, threatening relatives with reprisals.

Arbitrary arrests of human rights lawyers, their prosecutions on politically-motivated charges, harsh prison sentences and the harassment of their families have served as a deterrent to anyone daring to defend the fundamental rights of those willing to or perceived to challenge the authority of the president and the government. Notably, assuming the defence of those lawyers arrested on politically-motivated charges has, in turn, become risky for other lawyers. Few have been prepared to take up this role, and some of those who did have faced harassment and threats.

This appalling situation is exemplified by the cases of human rights lawyers Buzurgmekhr Yorov and Nuriddin Makhkamov, and Shukhrat Kudratov, described below. They are stark reminders of the risks faced by lawyers in Tajikistan when performing their professional duties in politically sensitive cases – particularly where the client is accused by the authorities of being a threat to national security.

Human rights lawyer **Shukhrat Kudratov** worked on a number of politically “sensitive” cases in the years preceding the September 2015 events. Amongst others, he represented the independent news agency Asia-Plus in defamation cases brought against it by the government.

Shukhrat Kudratov was the defence lawyer for opposition activist and former Minister of Energy and Industry, Zaid Saidov (sentenced in 2013 to 26 years in prison convicted of a number of charges, including large-scale fraud and corruption).

Law enforcement officers arrested Shukhrat Kudratov on 21 July 2014 on charges of bribery just six days after he sent a public appeal to nongovernmental groups, the news media, and diplomatic missions in Tajikistan highlighting procedural violations in Zaid Saidov’s prosecution and trial. In the appeal he also gave details of ongoing harassment against himself, his family and the legal team defending Zaid Saidov, including threats of imprisonment and death. Shukhrat Kudratov believed that his client was being prosecuted in retaliation for his attempt to set up an opposition party and run in the November 2013 presidential election.

On 13 January 2015, Shukhrat Kudratov was sentenced to nine years in prison and confiscation of property on charges of fraud and bribery. He claimed the charges were politically motivated and linked to his work for the defence of Zaid Saidov. The Supreme Court reduced Shukhrat Kudratov’s sentence on appeal to five years and four months.

Buzurgmekhr Yorov and Nuriddin Makhkamov

Defence lawyer Buzurgmekhr Yorov, who had been representing several co-defendants in the case against the IRPT leadership, was arrested by police on 28 September 2015 on charges of fraud and forgery, unrelated to the IRPT case. However, during his arrest, police seized documents relating to the case against his IRPT clients in violation of lawyer-client privilege. Shortly before his arrest, Buzurgmekhr Yorov had told the media that one of his IRPT clients arrested on 13 September 2015, Umarali Khisainov (also known as Saidumur Khusaini), had complained about beatings and other ill-treatment while in the custody of the Police Unit for Combating Organized Crime, the very same police unit that later detained the lawyer himself. In October 2015, his legal counsel, Nuriddin Makhkamov, was also arrested. In December 2015, additional extremism-related charges were brought against both Buzurgmekhr Yorov and Nuriddin Makhkamov – by this point, his co-defendant.

On 6 October 2016, Dushanbe City Court sentenced Buzurgmekhr Yorov and Nuriddin Makhkamov, to 23 and 21 years in prison respectively following an unfair trial. Representatives of the media and international monitors were allowed access to the courtroom only at the first hearing on 3 May. All other hearings were

closed to the public. The court found both lawyers guilty of “arousing national, racial, local or religious hostility” under Article 189 of the Criminal Code, “fraud” (Article 247), “public calls for violent change of the constitutional order of the Republic of Tajikistan” (Article 307), “public calls for undertaking extremist activities” (Article 307-1), and in Burgzurgmekhr Yorov’s case, of forgery (Article 340). The evidence on which they were convicted has never been made public.

Buzurgmekhr Yorov pleaded not guilty and denied any wrongdoing, insisting in his closing statement on 3 October that he was “not an extremist, but a lawyer”. State media reports had portrayed Buzurgmekhr Yorov as a “terrorist” since only a “terrorist” would defend “terrorists”.¹¹ The Supreme Court turned down his appeal against his sentence in February 2017.

On 12 December 2016, a second closed trial against Buzurgmekhr Yorov opened, at the pre-trial detention centre (SIZO) number 1 in Dushanbe. He now stood accused of “disrespecting” the court and insulting government officials, on account of quoting the celebrated 11th century poet Omar Khayyam in his closing statement to Dushanbe City Court in his original closed trial.¹² On 16 March 2017 the Supreme Court found him guilty and sentenced him to an additional two years in prison.

In February 2017, Firdavs district court in Dushanbe started hearings into a third case brought by the authorities against Buzurgmekhr Yorov on further charges of fraud allegedly in relation to new complaints made against him by members of the public. This crime carries a sentence of up to 12 years in prison. To punish him even further a fourth criminal case against him was opened for allegedly insulting ‘the leader of the Nation’. In August 2017, Buzurgmekhr Yorov was sentenced to an additional three years in prison on charges of fraud and of insulting ‘the leader of the Nation’ for statements he made in court in response to the fraud charges brought against him.¹³ His wife Zarina Nabieva explained to reporters that Buzurgmekhr Yorov had told the court that as a lawyer, he had always operated within the legal framework of the country, which was signed by the president. Therefore, if he was guilty of fraud, then everyone in the country was. The subsequent publication of this statement on the independent website Payom.net apparently formed the basis of the new criminal charge.

Amnesty International recommends to the authorities in Tajikistan to:

- Fully respect and protect the human rights of lawyers and implement in law, policy and practice protections provided for by international law and standards;
- Investigate promptly, independently and effectively any credible allegations of lawyers being threatened, intimidated and/or subjected to prosecution under trumped-up charges;
- In consultations with the professional legal community, review the existing legislation, and in particular the amendments to the Law on Advokatura, with a view to repealing or replacing those provisions that

¹¹ Jumhuriyat, “Mo Agar Nomus Dorem”, 9 October 2015, №: 202, http://jumhuriyat.tj/index.php?art_id=21261, as cited in Eurasianet, “Tajikistan Extends Lawyer’s long Prison Sentence for Quoting Poet”, 16 March 2017, <http://www.eurasianet.org/node/82876>.

¹² Approximate translation as cited in Eurasianet article above: “Society is spoiled by a few ignorant people who believe themselves the wisest; those that would make infidels of all who do not abide by their wishes. See also RFE/RL, “Reading of 11th Century Poet Could Earn More Time For Imprisoned Tajiki Lawyer”, 14 December 2016, <https://www.rferl.org/a/tajikistan-lawyer-rights-poem-yorov/28176119.html> (last accessed 17 May 2017).

¹³ Asia Plus, “Бузургмехру Ёрову дали ёще 3 года за оскорбление Лидера нации. На оглашение приговора никого не позвали” [Buzurgmekhr Yorov was given another three years for insulting ‘the Leader of the Nation’. No one was called for verdict’s announcement], 23 August 2017, available at <https://news.tj/ru/news/tajikistan/laworder/20170823/buzurgmekhr-yorovu-dali-etshe-3-goda-za-oskorblenie-lidera-natsii-na-oglashenie-prigovora-nikogo-ne-pozvali>

limit the independence of lawyers;

- Release immediately human rights lawyers Buzurgmekhr Yorov, Nuriddin Makhamov and Shukhrat Kudratov. If they are guilty of any recognisable criminal offences, these must be established in fair trial proceedings, which include, amongst other, public hearing, equality of arms, and being represented by a lawyer of one's choice;

- Respect freedom of expression and association for all, and in particular end harassment and persecution of government critics, including political activists and other dissenting voices.

Amnesty International calls on the OSCE participating states to:

- Raise the cases of lawyers Buzurgmekhr Yorov, Nuriddin Makhamov and Shukhrat Kudratov in all bilateral and multilateral meetings with the Tajikistani authorities, and send a clear message that the conduct of the authorities in relation to these cases contravenes Tajikistan's international obligations;

- Insist that Tajikistan fully upholds its international human rights obligations, including freedom of expression and association, and the right to a fair trial and all standards and principles associated with it;

- Commit to monitoring and reporting human rights violations in the country, and ensure that concerns about Tajikistan's human rights record are considered at every opportunity where the Tajikistani authorities are represented in bilateral and multilateral fora.