

SUBMISSION

TO THE 44th SESSION OF THE UNIVERSAL PERIODIC REVIEW

TURKMENISTAN

Military service, conscientious objection and related issues

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INTRODUCTION

1. Turkmenistan has a longstanding record of serious violations of human rights of conscientious objectors to military service. Turkmenistan has received recommendations concerning conscientious objection to military service in the context of all previous Cycles of the Universal Periodic Review (UPR), as well in the context of concluding observations and views on individual cases of the UN Human Rights Committee. Despite the positive step of release of conscientious objectors from prison, there is still no recognition of the right to conscientious objection to military service and not adequate reparation to victims of previous violations.

PREVIOUS RECOMMENDATIONS

2. In the context of the 1st Cycle of UPR, Turkmenistan received a recommendation from Slovenia: “To recognize conscientious objection to military service in law and practice and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors”. Turkmenistan initially stated that the recommendation would be examined.ⁱ Later, Turkmenistan “provided information that conditions existed that allowed for guaranteeing the right to freedom of religion and the fulfilment of military duty by serving in non-military structures of the Ministry of Defence, such as medical and construction units”.ⁱⁱ However this does not constitute a genuinely civilian alternative to military service.
3. In the context of the 2nd Cycle of UPR, Turkmenistan received a recommendation from the United States of America to: “Call for and support reform to laws that restrict freedoms of religion and expression; in particular protect the rights of conscientious objectors and ensure that individuals are not punished for expressing their opinions”.ⁱⁱⁱ Turkmenistan accepted the recommendation stating that “the matters raised therein are currently being examined”.^{iv} However the recommendation was not implemented.
4. In the context of the 3rd Cycle of UPR, Turkmenistan received a recommendation from Argentina to: “Adopt the necessary measures in order to recognize the right to conscientious objection to compulsory military service”.^v This time, Turkmenistan did not accept the recommendation stating that: “Article 58 of the country’s Constitution provides that the defence of Turkmenistan is the sacred duty of each citizen. Male citizens of Turkmenistan are obliged to perform universal military service”.^{vi}

ISSUES OF CONCERN

A) NON-RECOGNITION OF THE RIGHT TO CONSCIENTIOUS OBJECTION TO MILITARY SERVICE

5. Turkmenistan applies conscription to all male citizens. Military service for men between the ages of 18 and 27 is generally two years.^{vii}
6. The right to conscientious objection to military service inheres in the right to freedom of thought, conscience and religion. It entitles any individual to an exemption from compulsory military service if such service cannot be reconciled with that individual’s religion or beliefs. The right must not be impaired by coercion. A State may, if it wishes, compel the objector to undertake a civilian alternative to military service, outside the military sphere

- and not under military command. The alternative service must not be of a punitive nature. It must be a real service to the community and compatible with respect for human rights.^{viii}
7. Despite the above, as well previous UPR recommendations and concluding observations and numerous Views^{ix} adopted by the Human Rights Committee under the Optional Protocol, Turkmenistan still fails to recognise the right to conscientious objection to military service.
 8. In its recent concluding observations in the context of the third periodic report of Turkmenistan, the Human Rights Committee “regrets the lack of recognition of the right to conscientious objection to compulsory military service and the lack of provision of alternatives to military service, as previously communicated in the Views adopted by the Committee (arts. 2, 14, 18 and 26)” and repeats that “The State Party should also adopt the legislation necessary to recognize the right to conscientious objection to compulsory military service and ensure that alternative service is not punitive or discriminatory in nature or duration in comparison with military service.”^x

B) IMPRISONMENT OF CONSCIENTIOUS OBJECTORS

9. Turkmenistan not only does not recognise the right to conscientious objection to military service and does not provide a civilian alternative to its compulsory military service, but it also criminalises conscientious objectors who are punished with imprisonment.
10. Conscientious objectors to military service generally face prosecution under Criminal Code Article 219, Part 1. This punishes refusal to serve in the armed forces in peacetime with a maximum penalty of two years of imprisonment or two years of “corrective labour”.
11. Criminal Code Article 219, Part 2 punishes refusal to serve in the armed forces in peacetime “by means of inflicting injury to oneself, or by simulation of illness, by means of forgery of documents, or other fraudulent ways”. Punishment is a jail term of one to four years.
12. There have been at least two known cases of use of Article 219, Part 2 to punish a conscientious objector (Mr. Azat Ashirov and Mr. Serdar Dovletov).^{xi}
13. Furthermore, there has been at least one case of a conscientious objector who has been punished under Criminal Code Article 344, Part 2, Mr. Bahtiyar Atahanov, as he was first forcibly conscripted and then punished as a soldier trying to avoid his obligations and received a four-year ordinary regime labour camp term.^{xii}
14. Following a period of 3 years without known cases, imprisonment of conscientious objectors resumed in January 2018. Courts handed down 32 known convictions and imprisonments of conscientious objectors since Turkmenistan resumed such jailing in January 2018. Courts jailed 12 conscientious objectors in 2018, two of them for two years and ten for one year. Courts jailed 7 conscientious objectors in 2019, one of them for four years, one for three years, one for two years and four for one year. Courts jailed 5 conscientious objectors in 2020, four of them for two years and one for one year. Courts jailed 8 conscientious objectors in 2021, seven of them for two years and one for one year.^{xiii}
15. This means that in recent years the jail terms for conscientious objectors to military service are between one and four years. This was corroborated by the information provided in the submission of The European Association of Jehovah’s Witnesses, for the List of Issues to the Human Rights Committee, where 15 cases were detailed.^{xiv}
16. Imprisonment of conscientious objectors to military service, apart from a violation of art. 18 (1) of ICCPR, also constitutes a violation of art. 9 (1) of ICCPR.^{xv} The Human Rights

Committee has repeatedly stated in recent years *“that just as detention as punishment for the legitimate exercise of the right to freedom of expression, as guaranteed by article 19 of the Covenant is arbitrary, so too is detention as punishment for legitimate exercise of freedom of religion and conscience, as guaranteed by article 18 of the Covenant.”*^{xvi}

17. Furthermore, as found by the Human Rights Committee in the case of Arslan Begenchovich Begenchov, pre-trial detention of conscientious objectors constitutes a violation of art. 9(3) of ICCPR.^{xvii}
18. On 8 May 2021, the authorities of the state party freed from prison all 16 of Turkmenistan's known jailed conscientious objectors - all of them Jehovah's Witnesses- in a prisoner amnesty.^{xviii}
19. To the date of the submission, IFOR does not have information of conscientious objectors currently imprisoned in Turkmenistan.^{xix}
20. However, Military Conscription Offices have continued to summon young Jehovah's Witnesses, including in the autumn 2022 call-up, Jehovah's Witnesses told Forum 18. No conscientious objectors are known to have been convicted and punished since the release from prison of the 16 Jehovah's Witnesses under amnesty in May 2021. Nor are any criminal cases known to have been launched.^{xx}
21. The amnesty for conscientious objectors, while being a step in the right direction, should not obfuscate the situation. There is no information that the state party has made any moves towards offering a genuinely civilian alternative to those unable to perform compulsory military service on grounds of conscience. This means that conscientious objectors could be imprisoned again at any moment.

C) REPEATED IMPRISONMENT OF CONSCIENTIOUS OBJECTORS IN VIOLATION OF THE *NE BIS IN IDEM* PRINCIPLE AND ARTICLE 18 (2) OF THE ICCPR

22. In Turkmenistan, punishment for failure to perform military service does not entail exemption from military duties. Therefore, those who have been punished, even if they have served prison sentence remain subject to call-up and if they persist in their refusal may be sentenced for a second time. As this is seen as a repeated offence, such persons may be subject to a stricter prison or work-camp regime.^{xxi}
23. The Human Rights Committee has repeatedly stated that *“repeated punishment of conscientious objectors for not obeying a renewed order to serve in the military may amount to punishment for the same crime if such subsequent refusal is based on the same constant resolve grounded in reasons of conscience”* and has found a violation of Article 14 (7) of ICCPR in at least five different cases of conscientious objectors from Turkmenistan.^{xxii}
24. On 10 December 2020, four UN Special Procedures including the Working Group on Arbitrary Detention wrote to Turkmenistan's government expressing "serious concern" about the second sentences handed down in August 2020 to two of the conscientious objectors, Sanjarbek Saburov and Eldor Saburov. Besides regretting the criminalisation of conscientious objection in the first place, they also pointed out: *“Furthermore, we note with concern that Messrs. Sanjarbek Saburov and Eldor Saburov have been tried and convicted twice for the same alleged offence, for which they had been finally convicted in the past, in accordance with the national law and penal procedure, and which is a violation of the rule against double jeopardy, or non bis in idem, enshrined in article 14(7) of the International*

Covenant on Civil and Political Rights.^{xxiii} To the date of this submission, no response of the authorities of Turkmenistan appears in the relevant UN website.

25. The repeated punishment of conscientious objectors is directed towards changing their conviction and opinion and therefore can be considered also a violation of article 18 (2) of the ICCPR, according to the UN Working Group on Arbitrary Detention.^{xxiv}

D) CONDITIONS OF IMPRISONMENT AND ILL-TREATMENT OF CONSCIENTIOUS OBJECTORS

26. Torture and other ill-treatment of conscientious objectors to military service, as well inappropriate conditions of imprisonment have been longstanding issues in Turkmenistan.^{xxv}
27. The Human Rights Committee has found violations of articles 7 and/or 10 of ICCPR in at least 9 cases of conscientious objectors from Turkmenistan.^{xxvi}
28. The Committee has further pointed out such issues, including *inter alia* as for conscientious objectors imprisoned, also in the List of Issues in relation to the third periodic report of Turkmenistan.^{xxvii} While some of the steps in this regard, might be in the good direction, the relevant concluding observations of the Committee leave no doubt that such issues remain of concern.^{xxviii}

SUGGESTED RECOMMENDATIONS

29. IFOR suggests the following recommendations:

- **Revise the legislation without undue delay in order to recognise the right to conscientious objection to military service and provide for alternative service of a civilian nature outside the military sphere and not under military command for conscientious objectors, which should not be punitive or discriminatory.**
- **Provide full reparation for conscientious objectors who have been already punished.**

ⁱ Report of the Working Group on the Universal Periodic Review, [1st Cycle] Turkmenistan (A/HRC/10/79), 6 January 2009, para. 70 (12).

ⁱⁱ Report of the Human Rights Council on its tenth session, (A/HRC/10/29), 9 November 2009, para. 555.

ⁱⁱⁱ Report of the Working Group on the Universal Periodic Review, [2nd Cycle] Turkmenistan (A/HRC/24/3) 5 July 2013, recommendation 113.74 (United States of America).

^{iv} Report of the Working Group on the Universal Periodic Review, Turkmenistan, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/24/3/Add.1) 4 September 2013, p. 5, recommendation 113.74.

^v Report of the Working Group on the Universal Periodic Review, [3rd Cycle] Turkmenistan (A/HRC/39/3) 6 July 2018, recommendation 116.59 (Argentina).

^{vi} Report of the Working Group on the Universal Periodic Review, Turkmenistan, Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, (A/HRC/39/3/Add.1), 13 September 2018, para. 6, recommendation 116.59.

^{vii} Felix Corley, "TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain", *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

See also: The International Institute for Strategic Studies (IISS) - The Military Balance 2020, p. 210.

^{viii} See, Min-Kyu Jeong et al. v. Republic of Korea (CCPR/C/101/D/1642-1741/2007), para. 7.3; Jong-nam Kim et al. v. Republic of Korea, para. 7.4; Abdullayev v. Turkmenistan, para. 7.7; Mahmud Hidaybergenov v. Turkmenistan, para. 7.5; Ahmet Hidaybergenov v. Turkmenistan, para. 7.5; Sunnet Japparow v. Turkmenistan, para. 7.6; Akmurad Nurjanov v. Turkmenistan, para. 9.3; Shadurdy Uchetov v. Turkmenistan, para. 7.6; Dawletow v. Turkmenistan, para.

6.3 and others.

^{ix} 1. *Abdullayev v. Turkmenistan* (CCPR/C/113/D/2218/2012, 25 March 2015), 2. *Ahmet Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2222/2012, 29 October 2015), 3. *Japparow v. Turkmenistan* (CCPR/C/115/D/2223/2012, 29 October 2015), 4. *Mahmud Hudaybergenov v. Turkmenistan* (CCPR/C/115/D/2221/2012, 29 October 2015), 5. *Aminov v. Turkmenistan* (CCPR/C/117/D/2220/2012, 14 July 2016), 6. *Matyakubov v. Turkmenistan* (CCPR/C/117/D/2224/2012, 14 July 2016), 7. *Yegendurdyew v. Turkmenistan* (CCPR/C/117/D/2227/2012, 14 July 2016), 8. *Nasyrlayev v. Turkmenistan* (CCPR/C/117/D/2219/2012, 15 July 2016), 9. *Nurjanov v. Turkmenistan* (CCPR/C/117/D/2225/2012, 15 July 2016), 10. *Uchetov v. Turkmenistan* (CCPR/C/117/D/2226/2012, 15 July 2016), 11. *Dawletow v. Turkmenistan* (CCPR/C/125/D/2316/2013, 29 March 2019), 12. *Nuryllayev and Salayev v. Turkmenistan* (CCPR/C/125/D/2448/2014, 29 March 2019), 13. *Nazarov et al v. Turkmenistan* (CCPR/C/126/D/2302/2013, 25 July 2019), 14. *Begenchov v. Turkmenistan* (CCPR/C/134/D/3272/2018, 5 August 2022).

^x UN Human Rights Committee, Concluding observations on the third periodic report of Turkmenistan, (CCPR/C/TKM/CO/3), 24 March 2023, paras. 40-41.

^{xi} Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

^{xii} Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656 And Felix Corley, “TURKMENISTAN: Conscientious objector jailed for four years”, *Forum 18*, 23 July 2019. Available at: https://www.forum18.org/archive.php?article_id=2495

^{xiii} Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

^{xiv} The European Association of Jehovah’s Witnesses, Submission to the United Nations Human Rights Committee, Prior to the Adoption of the List of Issues, 134th session (28 February–25 March 2022), TURKMENISTAN, 31 December 2021, paras. 28-42. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FICO%2FTKM%2F47369&Lang=en

^{xv} *Begenchov v. Turkmenistan* (CCPR/C/134/D/3272/2018, 5 August 2022), paras. 6.5 and 7.

^{xvi} See *Young-kwan Kim et al. v. Republic of Korea*, para. 7.5, *Petromelidis v. Greece*, para. 9.8.

^{xvii} *Begenchov v. Turkmenistan* (CCPR/C/134/D/3272/2018, 5 August 2022), paras. 6.6, 6.7 and 7.

^{xviii} “Turkmenistan Releases 16 Brothers From Various Prisons”, *jw.org*, 8 May 2021.

Available at: <https://www.jw.org/en/news/jw/region/turkmenistan/Turkmenistan-Releases-16-Brothers-From-Various-Prisons/>

See also Felix Corley, “TURKMENISTAN: 16 conscientious objectors freed, Muslim prisoners of conscience remain”, *Forum 18*, 10 May 2021. Available at: https://www.forum18.org/archive.php?article_id=2656

^{xix} For example, the official website of the Jehovah’s Witnesses does not provide information for imprisoned conscientious objectors in Turkmenistan as of April 2023. <https://www.jw.org/en/news/legal/by-region/world/jehovahs-witnesses-in-prison/> Equally, War Resisters’ International does not cite imprisoned conscientious objectors from Turkmenistan in its Prisoners for Peace List issued on the 21st of November 2022.

Available at: <https://wri-irg.org/en/story/2022/prisoners-peace-list-november-2022>

^{xx} Felix Corley, “TURKMENISTAN: Muslim prisoners of conscience transferred to new labour camps”, 28 October 2022.

^{xxi} Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011.

Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en

^{xxii} See the Committee’s general comment No. 32 (2007) on article 14: right to equality before courts and tribunals and to a fair trial, paras. 54–55. See also communication *Zafar Abdullayev v Turkmenistan* para 7.4 and 7.5. See also *Nasyrlayev v. Turkmenistan*, para. 8.5, *Nurjanov v. Turkmenistan*, para. 9.7, *Aminov v. Turkmenistan*, para. 9.5, *Matyakubov v. Turkmenistan*, para. 7.5.

^{xxiii} AL TKM 2/2020, 10 December 2020. Available at: <https://spcommreports.ohchr.org/TMResultsBase/Download-PublicCommunicationFile?gId=25740>

^{xxiv} Report of the Working Group on Arbitrary Detention, E/CN.4/2001/14 (Recommendation 2: detention of conscientious objectors), para. 93. Available at: <https://undocs.org/E/CN.4/2001/14> See also: Working Group on Arbitrary Detention, Opinion 16/2008 (Turkey), para. 39. Available at: <http://undocs.org/A/HRC/10/21/Add.1> Opinion No. 24/2003 (Israel), para. 30. Available at: <http://undocs.org/E/CN.4/2005/6/Add.1> Opinion No. 36/1999 (Turkey) para. 9. Available at: <http://undocs.org/E/Cn.4/2001/14/add.1>

^{xxv} For the situation in previous years see: Conscience and Peace Tax International, Submission to the 104th Session of the Human Rights Committee: March 2012, TURKMENISTAN, Conscientious objection to military service and related issues, Submission updated December 2011. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en

^{xxvi} Communication No. 2218-2012 (*Abdullayev v. Turkmenistan*), Communication No. 2219-2012 (*Nasyrlayev v. Turkmenistan*), Communication No. 2220-2012 (*Aminov v. Turkmenistan*), Communication No. 2221-2012 (*Hudaybergenov v. Turkmenistan*), Communication No. 2222-2012 (*Hudaybergenov v. Turkmenistan*), Communication No. 2223-2012 (*Japparow v. Turkmenistan*), Communication No. 2224-2012 (*Matyakubov v. Turkmenistan*), Communication No. 2226-2012 (*Uchetov v. Turkmenistan*), Communication No. 2227-2012 (*Yegendurdyew v. Turkmenistan*)

^{xxvii} See paras. 13 and 15.

^{xxviii} UN Human Rights Committee, Concluding observations on the third periodic report of Turkmenistan, (CCPR/C/TKM/CO/3), 24 March 2023, paras. 26-27.