

**SUBMISSION**

**TO THE 137<sup>th</sup> SESSION OF THE HUMAN RIGHTS COMMITTEE**

**TURKMENISTAN**

**Conscientious objection to military service and related issues**

Updated January 2023

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## ISSUES OF CONCERN

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

Turkmenistan applies conscription to all male citizens.

Military service for men between the ages of 18 and 27 is generally two years.<sup>1</sup>

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.<sup>2</sup>

Despite the above, as well previous concluding observations and numerous Views<sup>3</sup> adopted by the Committee under the Optional Protocol, Turkmenistan still fails to recognise the right to conscientious objection to military service.

According to the third periodic report submitted by Turkmenistan:

“136. The Constitution provides that every citizen has a sacred duty to defend Turkmenistan. Military service is compulsory for all male citizens. Article 41 of the Constitution provides that the defence of Turkmenistan is the sacred duty of every citizen. Military service is compulsory for all male citizens. Article 18 of the Military Duty and Military Service Act lists the grounds for exemption from conscription.”<sup>4</sup>

However, no details are provided about the grounds for exemption from conscription and there is no indication that there can be exemption on grounds of conscience, religion or belief.

In the List of Issues, the Committee has asked the State Party:

“With reference to the Committee's previous concluding observations,<sup>5</sup> please report on any steps taken or envisaged to recognize the right to conscientious objection to

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<sup>1</sup> 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](https://www.forum18.org/archive.php?article_id=2656)

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

<sup>2</sup> 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 Hudaybergenov v. Turkmenistan, para. 7.5; Ahmet Hudaybergenov 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.

<sup>3</sup> 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. *Yegendurdyyew 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).

<sup>4</sup> CCPR/C/TKM/3, 29 June 2020, [Date received: 27 March 2020], para. 136.

<sup>5</sup> [CCPR/C/TKM/CO/2](https://www.unhcr.org/refugees/country/countryinfo/turkmenistan.html), para. 41.

compulsory military service and to provide alternatives to military service, as previously also recommended in the Views adopted by the Committee. Please provide statistics for the reporting period on the number of cases involving conscientious objectors to military service and prosecutions and convictions of such individuals, including information on repeated punishment of these individuals, in violation of article 14 (7) of the Covenant, which prohibits repeated punishment for the same offence. Please provide information on steps taken to expunge past convictions under article 219 (1) of the Criminal Code for conscientious objection to military service occurring after the Covenant came into force for the State party.”<sup>6</sup>

However, the State Party refrained from providing the requested information, and only repeated what had been already stated in para. 136 of its third periodic report.<sup>7</sup> It is therefore assumed that the situation has not changed.

To this date, Turkmenistan not only does not recognise the right to conscientious objection to military service as such, but also, in practice, does not offer any civilian alternative to its compulsory military service, in contravention of Article 18(1) of ICCPR.

## **B) IMPRISONMENT OF CONSCIENTIOUS OBJECTORS**

Turkmenistan does not only 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.

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”.

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.

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).<sup>8</sup>

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.<sup>9</sup>

Sentencing and imprisonment of conscientious objectors to military service, usually Jehovah’s Wit-

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<sup>6</sup> Human Rights Committee, List of issues in relation to the third periodic report of Turkmenistan, (CCPR/C/TKM/Q/3, 25 August 2022), para. 22.

<sup>7</sup> Replies of Turkmenistan to the list of issues in relation to its third periodic report, [Date received: 9 November 2022], (CCPR/C/TKM/RQ/3, Distr.: General, 30 November 2022), para. 105.

<sup>8</sup> 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](https://www.forum18.org/archive.php?article_id=2656)

<sup>9</sup> 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](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](https://www.forum18.org/archive.php?article_id=2495)

nesses, is a longstanding practice in Turkmenistan. In December 2011, Conscience and Peace Tax International reported that “More than 30 conscientious objectors have been sentenced under Article 219(1) since 1999”.<sup>10</sup>

According to Forum 18, six conscientious objectors were freed under amnesty in 2014. Since 2014, courts punished conscientious objectors with “corrective labour” or suspended prison terms, (and/or the state withheld 20 percent of their salary for one to two years as a penalty - as Mr. Kerven Kakabayev had experienced in 2014<sup>11</sup> and Mr. Mr. Eldor Saburov in 2017<sup>12</sup>) rather than imprisonment. In February 2015 the last Jehovah’s Witness imprisoned for conscientious objection was released.<sup>13</sup>

However, imprisonments 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.<sup>14</sup>

This means that recently the jail terms for conscientious objectors to military service are between one and four years.

This is corroborated by the information provided in the submission of The European Association of Jehovah’s Witnesses, for the List of Issues, where 15 cases are detailed.<sup>15</sup>

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.

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.*”<sup>16</sup>

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.<sup>17</sup>

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<sup>10</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FNGO%2FTKM%2F104%2F10139&Lang=en)

<sup>11</sup> Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018.

Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

<sup>12</sup> AL TKM 2/2020, 10 December 2020.

Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25740>

<sup>13</sup> Turkmenistan Ignores the Right to Freedom of Conscience, *jw.org*, 28 March 2018.

Available at: <https://www.jw.org/en/news/legal/by-region/turkmenistan/ignores-right-to-freedom-of-conscience/>

<sup>14</sup> 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](https://www.forum18.org/archive.php?article_id=2656)

<sup>15</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCCPR%2FICO%2FTKM%2F47369&Lang=en)

<sup>16</sup> See Young-kwan Kim et al. v. Republic of Korea, para. 7.5, *Petromelidis v. Greece*, para. 9.8.

<sup>17</sup> “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](https://www.forum18.org/archive.php?article_id=2656)

To the date of the submission, IFOR does not have information of conscientious objectors currently imprisoned in Turkmenistan.<sup>18</sup>

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**

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.<sup>19</sup>

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.<sup>20</sup>

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.*”<sup>21</sup>

To the date of this submission, no response of the authorities of Turkmenistan appears in the relevant UN website.

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<sup>18</sup> For example, the official website of the Jehovah's Witnesses does not provide information for imprisoned conscientious objectors in Turkmenistan as of January 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 21<sup>st</sup> of November 2022.

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

<sup>19</sup> Conscience and Peace Tax International, Submission to the 104<sup>th</sup> 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%2fI04%2fI0139&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2fI04%2fI0139&Lang=en)

<sup>20</sup> 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.

<sup>21</sup> AL TKM 2/2020, 10 December 2020. Available at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25740>

The repeated punishment of conscientious objectors can be considered also a violation of article 18 (2) of the ICCPR.

The UN Working Group on Arbitrary Detention has stated that:

“Notwithstanding the above, repeated incarceration in cases of conscientious objectors is directed towards changing their conviction and opinion, under threat of penalty. The Working Group considers that this is incompatible with article 18, paragraph 2, of the International Covenant on Civil and Political Rights, under which no one shall be subject to coercion which would impair his freedom to have or adopt a belief of his choice”.<sup>22</sup>

The concept of repeated punishment “tantamount to compelling a person to change his or her convictions and beliefs” can be found also in opinions of the UN Working Group on Arbitrary Detention on individual cases of conscientious objectors.<sup>23</sup>

The Committee has referred to such opinions of the UN Working Group on Arbitrary Detention on individual cases, and the exact paragraphs, when it commented on the issue of repeated punishment of conscientious objectors.<sup>24</sup>

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

Torture and other ill-treatment of conscientious objectors to military service, as well inappropriate conditions of imprisonment have been longstanding issues in Turkmenistan.<sup>25</sup>

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.<sup>26</sup>

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.<sup>27</sup>

While some of the steps in this regard, cited in the Replies of the State Party, might be in the right direction, it is difficult for them to be independently corroborated, and therefore, the above issues remain of concern.

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<sup>22</sup> 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>

<sup>23</sup> Working Group on Arbitrary Detention, Opinion 16/2008 (Turkey), para. 39.

Available at: <http://undocs.org/A/HRC/10/21/Add.1>

See also: 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>

<sup>24</sup> See General Comment No. 32 of the Human Rights Committee, 23 August 2007, CCPR/C/GC/32, para. 55, (available at: <https://undocs.org/CCPR/C/GC/32>) referring with the note 113 exactly to the United Nations Working Group on Arbitrary Detention, Opinion No. 36/1999 (Turkey), E./CN.4/2001/14/Add. 1, para. 9 and Opinion No. 24/2003 (Israel), E/CN.4/2005/6/Add. 1, para. 30.

<sup>25</sup> 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](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fNGO%2fTKM%2f104%2f10139&Lang=en)

<sup>26</sup> 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 (Japarow v. Turkmenistan), Communication No. 2224-2012 (Matyakubov v. Turkmenistan), Communication No. 2226-2012 (Uchetov v. Turkmenistan), Communication No. 2227-2012 (Yegendurdyew v. Turkmenistan)

<sup>27</sup> See paras. 13 and 15.

## **SUGGESTED RECOMMENDATION TO THE STATE PARTY**

**The State party should revise its legislation without undue delay with a view to**

- **clearly recognizing the right to conscientious objection to military service;**
- **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;**
- **halt all prosecutions of individuals who refuse to perform military service on grounds of conscience;**
- **provide full reparation for those who have been already punished.**

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