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Executive summary

This submission relates to the following linked human rights concerns in Turkmenistan:
the non-recognition of conscientious objection to military service
imprisonment and repeated imprisonment of conscientious objectors
conditions of imprisonment for, and mistreatment of, conscientious objectors
pressure to change religion or belief
the age of military recruitment

Non-recognition of conscientious objection to military service and imprisonment and repeated imprisonment of conscientious objectors

1. This issue (along with the imprisonment of conscientious objectors) was raised in the first cycle of the UPR.
2. Slovenia “commended the visit by the Special Rapporteur on freedom of religion or belief” [which had taken place two months earlier, in October 2008] but was concerned about a large number of pending visit requests by special procedures [...] and] enquired about the Government’s recognition of conscientious objection to military service. It recommended that Turkmenistan recognize this and stop prosecuting, imprisoning and repeatedly punishing conscientious objectors.”¹
3. In the report of the Working Group, Turkmenistan undertook to provide its response to this recommendation in time to be included in the Outcome Report.² Before the consideration of the review by the Tenth Session of the Human Rights Council, Turkmenistan did provide written responses to a number of recommendations, but this particular recommendation was addressed only orally during the adoption of the report, so that the record is buried deep in the Annexes to the Final Report on the Tenth Session of the Human Rights Council, delivered to the General Assembly in November 2009.
4. The response was: “Concerning the recommendation to recognize conscientious objection to military service and with respect to recognizing the right of persons renouncing military service on religious grounds, 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.”³
5. Similar information had been given by Turkmenistan as a “concerned country” during the interactive dialogue earlier in the same session of the Human Rights Council⁴ with the Special Rapporteur on Freedom of Religion or Belief.
6. In her report, the then Special Rapporteur (Ms Asma Jahangir) had observed that during her mission she “was very encouraged by the political will expressed by certain of her official interlocutors to address the issue of conscientious objection and to find a suitable solution. She is

¹ A/HRC/10/79, 6th January 2009, Para 30.

² Ibid, Para 70.12

³ A/HRC/10/29, 9th November, 2009 para 555 (meeting of 19th March 2009) - CPTI subsequently intervened in the debate in order to urge Turkmenistan to institute a genuine civilian service for conscientious objectors and to desist from repeated prosecution of those who refused military service. (see para 565).

⁴ Meeting of 10th March 2009

aware that the authorities have attempted to accommodate conscientious objectors by offering them military positions which do not involve the use of weapons. Although this demonstrates the willingness on the part of the authorities to offer an alternative to these persons, the Special Rapporteur would like to draw the Government's attention to resolution 1998/77 of the Commission on Human Rights. Accordingly, conscientious objectors should be provided with various forms of alternative service compatible with the reasons for conscientious objection, of a non-combatant or civilian character, in the public interest and not of a punitive nature."⁵

7. Moreover, the Special Rapporteur recommended:

"the Government should ensure that conscientious objectors in Turkmenistan, in particular Jehovah's Witnesses who refuse to serve in the army due to their religious beliefs, be offered an alternative civilian service which is compatible with the reasons for conscientious objection. As such, the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence. The Special Rapporteur would like to recall that according to the principle of "ne bis in idem", as enshrined in article 14 (7) of the International Covenant on Civil and Political Rights, no one shall be liable to be tried or punished again for an offence for which he or she has already been convicted or acquitted in accordance with the law and penal procedure of each country."⁶

8. In neither case did the announcement indicate any progress beyond the provisions which the Special Rapporteur had already indicated were inadequate. The lack of adequate arrangements for conscientious objectors has been a continuing concern of the mandate on Freedom of Religion or Belief in its follow-up to the state visit. Moreover, on 12th February 2010 the Special Rapporteur, jointly with the Chair-Rapporteur of the Working Group on Arbitrary Detention, made an Urgent Appeal to Turkmenistan regarding the cases of five imprisoned conscientious objectors. As of 5th February 2011, no reply had been received. All five subsequently completed their full sentences and were released, but one, Navruz Nasyrlaev, was again convicted in May 2012 and, being regarded as a repeat offender, was sentenced to a two-year strict regime labour camp. This would appear to be because he is viewed as a repeat offender.

9. In his first report to the Human Rights Council as Special Rapporteur on Freedom of Religion or Belief, Mr. Heiner Bielefeldt reiterated the recommendations of his predecessor, and particularly drew Turkmenistan's attention to Opinion No. 16/2008 of the Working Group on Arbitrary Detention⁷, in which "the Working Group declared arbitrary the imprisonment – including the first term in case of repeated convictions – of a conscientious objector as being in violation of the rights guaranteed by article 18 of the International Covenant on Civil and Political Rights."⁸

10. In fact no details have reached us of any conscientious objectors who have indeed been admitted to unarmed military service, and subsequent information casts doubt on whether even such limited provision exists in practice.

11. In Turkmenistan's Initial Report under the ICCPR, dated February 2010, the account of the Military Obligations and Service Act (which appears in the section dealing with Article 8 of the Covenant - forced labour) states categorically "Turkmen law does not provide for unarmed service."⁹

⁵ A/HRC/10/8/Add.4, 12th January 2009, para 61.

⁶ Ibid, para 68.

⁷ A/HRC/10/21/Add.1, pp. 139 - 147

⁸ A/HRC/16/53/Add.1, 5th February 2011, para 390.

⁹ Ibid, para 337.

12. The only reference in the report to conscientious objection is an oblique one, quoting article 4 of Turkmenistan's Law on Religious Freedom and Religious Organisations: “No one may fail to fulfil his/her legal obligation on the grounds of his/her religious persuasion. Replacing fulfilment of an obligation with the fulfilment of another on the grounds of religious persuasion is permitted only in the cases provided for by the law.”¹⁰

13. In June 2010, the Organisation on Security and Co-operation in Europe (OSCE) recommended that the above-quoted article be amended so as to expressly allow for an alternative civilian service for those who refuse to perform military service owing to their religious (or non-religious conscientious) beliefs. This religious or other conscientious belief should constitute a “legal ground” justifying an exemption from military service according to Article 219 of the Criminal Code.”¹¹

14. The “List of Issues” on Turkmenistan's Report which was prepared by the Human Rights Committee contains the following paragraph: “According to information before the Committee, military service is compulsory and those who decline to perform this service are subject to prosecution and imprisonment under the Criminal Code. Please provide information on measures being taken, if any, to put in place arrangements for conscientious objectors to military service to perform alternative service. Please further provide statistical data on: (a) the number of persons who have been arrested and convicted for objecting to serve in the military; and (b) the number of persons who have been relieved from military service as a result of being convicted twice for objecting to it, as provided for in the Conscription and Military Service Act.”¹²

15. The reply was: “Article 2 of the Conscription and Military Service Act was amended on 25 September 2010, providing a detailed notion of compulsory military service as a special type of public service that citizens choose to perform in the Turkmen armed forces, other forces or other military bodies.”¹³

16. This did not respond to the Committee's detailed concerns, and by omission confirms what was reported at the time, namely that the revised law continues to make no provision for alternative service for conscientious objectors.¹⁴

17. In its concluding observations, the Committee stated: “The Committee is concerned that the Conscription and Military Service Act, as amended on 25 September 2010, does not recognize a person’s right to exercise conscientious objection to military service and does not provide for any alternative military service. The Committee regrets that due to this law, a number of persons belonging to the Jehovah’s Witness have been repeatedly prosecuted and imprisoned for refusing to perform compulsory military service (art. 18).

The State party should take all necessary measures to review its legislation with a view to providing for alternative military service. The State party should also ensure that the law clearly stipulates that individuals have the right to conscientious objection to military service.

¹⁰ CCPR/C/TKM/1, 19th February 2010, para 568.

¹¹ OSCE/ODIHR Advisory Panel on Freedom of Religion or Belief, Comments on the Law of Turkmenistan on Religious Freedom and Religious Organisations (Opinion -Nr:FoR-TUR/152/2010 (Warsaw, 25th June 2010, para 31.

¹² CCPR/C/TKM/Q/1, 19th August 2011, p ara 23..

¹³ CCPR/C/TKM/Q/1/Add.1, 30th November 2011, para 214.

¹⁴ Corley, F. “TURKMENISTAN: AMID NEW SENTENCES, NEW LAW FAILS TO INTRODUCE ALTERNATIVE CIVILIAN SERVICE” Forum 18 News Service <<http://www.forum18.org>>, 4th October 2010

Furthermore, the State party should halt all prosecutions of individuals who refuse to perform military service on grounds of conscience and release those individuals who are currently serving prison sentences.¹⁵

18. Murad Atabaev, Deputy Chair of the Mejlis (Parliament) Committee on the Protection of Human Rights and Freedoms, was reported in September 2011 as saying that an Alternative Service Law would be considered in 2012, but he admitted that the drafting had not begun.¹⁶ One year later, there have been no reports of further progress.

19. Meanwhile those who express a conscientious objection and refuse to perform military service continue to be liable to prosecution for “evading” such service under Article 219(1) of the Criminal Code, under which the penalty is up to two years of either corrective labour or imprisonment. Those who have served such a penalty 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 repeat offence, such persons may be subject to a stricter prison or work-camp regime, as in the case of Nasyrlaev, quoted above. Article 16(3) of the Conscription and Military Service Act stipulates that those who have served two sentences for evasion are thereafter exempt from military service.

20. More than 40 conscientious objectors have been sentenced under Article 219(1) since 1999. Four, including Nasyrlaev, are currently in detention, three serving sentences of 24 months handed down between August 2011 and May 2012, one a sentence of 18 months, handed down in August 2012. Five others have received suspended sentences, usually of 24 months, since January 2012. None of the detained conscientious objectors were among a reported 1,327 prisoners who benefited from a presidential amnesty on 12th August.¹⁷

Imprisonment conditions and mistreatment of conscientious objectors

21. Most conscientious objectors are imprisoned in the general regime labour camp some six kms from the desert town of Seydi. One former inmate reported that although this camp was designed to hold 2,100 prisoners, “. in 2007, when he was imprisoned [...] there were then some 3,500 prisoners in six or seven barracks. He said the temperature in the summer is close to being unbearably hot. He said prisoners under 50 year of age work ten hour days (with a lunch break) in the camp's industrial zone, in the brick factory, metalworking plant or clothing factory. He said food and water is adequate "though not wonderful"¹⁸

22. It is reported that in November or early December 2009 the four conscientious objectors then in prison were visited and questioned in Seydi labour camp by officials “who did not identify themselves or say which government agency they represented [...] Immediately afterwards [they] were sent to punishment cells for three days, on what Jehovah's Witnesses insist were fabricated accusations. Parents of the four prisoners then lodged complaints to local Prosecutor's Offices and the General Prosecutor's Office in Ashgabad, and sent telegrams to the President. Replies to their complaints insisted that the treatment of the prisoners in labour camp was fair and in accordance

¹⁵ CCPR/C/TKM/CO/1, adopted 28th March 2012, issued 19th April 2012, para 16.

¹⁶ Corley, F., “TURKMENISTAN: MAXIMUM SENTENCE FOR LATEST CONSCIENTIOUS OBJECTOR”, Forum 18 News Service <<http://www.forum18.org>>, 22nd September 2011

¹⁷ Corley, F. “Turkmenistan: Another conscientious objector prisoner of conscience” Forum 18 News Service <<http://www.forum18.org>>, 17th August 2012.

¹⁸ Corley, F., “TURKMENISTAN: SENTENCES ON CONSCIENTIOUS OBJECTORS A "STATE SECRET"?", Forum 18 News Service <<http://www.forum18.org>>, 3rd February 2010.

with the law. However, soon afterwards an official commission visited the labour camp and the accusations against the four were reportedly withdrawn. [but] after the commission left the labour camp [they] were each punished again, by being sentenced to one month's detention in the camp isolation punishment cells.”¹⁹ The Jehovah's Witnesses believe that the purpose of the punishments was to ensure that the imprisoned conscientious objectors were not eligible for the general amnesties proclaimed in December 2009 and May 2010, respectively.

In August 2010, when the parents of another conscientious objector were able to have a brief meeting with him in prison, they allegedly "saw that he had been beaten black and blue," ²⁰

Pressure to change religion or belief

23. In the past there were disturbing reports that prisoners detained in Turkmenistan come under pressure to swear on the Koran an oath of allegiance to President and State, and that this might be required as a condition of benefiting from one of the frequent amnesties marking various national and religious festivals. As far as Jehovah's Witnesses are concerned, this is a double violation of their freedom of thought, conscience and religion; they do not accept the Koran as a sacred text; but in any event they have a conscientious objection, based on biblical authority, to the taking of oaths in any form and under any circumstances.

24. There have also been reports that the threat of repeated call-up, with more severe penalties for refusal is used to put pressure on conscientious objectors to recant their beliefs. The use of suspended sentences can have the same effect. For instance the brothers Sakhettmurad and Mukhammedmurad Annamamedov from the western town of Serdar (formerly Gyzylarbat) were initially in 2008 given suspended sentences. When – in front of the same judge and prosecutor - they refused to change their position in the face of a repeated call-up the following year, this was treated as grounds for enforcing the sentence of imprisonment.²¹

The age of military recruitment

25. In the early years of the present Century, the minimum age first for voluntary recruitment, and subsequently for conscription had been reportedly lowered to 17.²²

26. On accession to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 29th April 2005, Turkmenistan however declared: “A citizen of male sex, at the age of 18 to 30 years, which has no right to discharge or deferment from conscription, is subject to a call to military service.

“Decision on conscription of a citizen to military service can be adopted after he has reached 18 years of age.

“Decision to call a citizen to military service can be adopted after achievement by him of 17 years of age and after his personal application for voluntary military service.”

¹⁹ Corley, F., “TURKMENISTAN: JAILED CONSCIENTIOUS OBJECTORS PUNISHED AGAIN”, Forum 18 News Service <<http://www.forum18.org>>, 24th May 2010

²⁰ Corley, F. “TURKMENISTAN: AMID NEW SENTENCES, NEW LAW FAILS TO INTRODUCE ALTERNATIVE CIVILIAN SERVICE” Forum 18 News Service <<http://www.forum18.org>>, 4th October 2010

²¹ Corley, F., “Turkmenistan: Conscientious objectors jailed” Forum 18 News Service <<http://www.forum18.org>>, 2nd June 2009

²² Coalition to Stop the Use of Child Soldiers, Child Soldiers Global Report 2004 pp 182-3.

27. Although this declaration went unchallenged, the language is rather ambiguous, and seemed to open the possibility of opting to start one's obligatory military service before the age of 18, contrary to the spirit, if not the letter, of the Optional Protocol.

28. However the Conscription and Military Service Act, as amended on 25th September 2010, put an end to the ambiguity by raising the minimum age for voluntary military service to 20 years of age.²³ In Article 2 (23) of the same Act, however, enrolment in military schools is permitted from the age of 15, and all those so enrolled are classified as members of the armed forces. This is not only inconsistent with Turkmenistan's Declaration, but contravenes the Optional Protocol itself, which prohibits all recruitment below the age of 16.²⁴

29. This issue has not yet been examined by the Committee on the Rights of the Child, as Turkmenistan has yet to produce its initial report under the Optional Protocol.

30. Finally, it might be mentioned that NGO contacts in Turkmenistan confirm that the use of military conscripts to provide forced labour in the civilian economy remains endemic, but no fresh detailed reports have been made during the period under review.

²³ Child Soldiers International, Louder than words, London, September 2012, p159.

²⁴ Ibid, pp 55, 56.