

**PETITION TO:**

**UNITED NATIONS**

**WORKING GROUP ON ARBITRARY DETENTION**

Chairman/Rapporteur: Mr. Malick El Hadji Sow (Senegal)

Vice-Chairperson: Ms. Shaheen Sardar Ali (Pakistan)

Mr. Roberto Garretón (Chile)

Mr. Mads Andenas (Norway)

Mr. Vladimir Tochilovsky (Ukraine)

**HUMAN RIGHTS COUNCIL  
UNITED NATIONS GENERAL ASSEMBLY**

In the Matter of

**Juma Nazarov, Navruz Nasyrbaev, Zafar Abdullaev, and Mahmud Hudayberganov,**  
Citizens of Turkmenistan

v.

Government of Turkmenistan

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**URGENT ACTION REQUESTED**

Petition for Relief Pursuant to Resolutions 1997/50, 2000/36, 2003/31, 6/4, and 15/18<sup>1</sup>

*Submitted By:*

Mirakmal Niyazmatov and Regina Rana

Freedom Now

1776 K Street, NW, 8<sup>th</sup> Floor

Washington, DC 20006

United States of America

+1 (202) 223-3733 (tel)

+1 (202) 223-1006 (fax)

[mniyazmatov@freedom-now.org](mailto:mniyazmatov@freedom-now.org)

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<sup>1</sup> 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. Resolution 6/4 and 15/18, also extending the mandate of the Working Group on Arbitrary Detention, were adopted by the Human Rights Council which, in accordance with U.N. General Assembly Resolution 60/251, has “assume[d]... all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights...” G.A. Res. 60 /251, ¶ 6 (15 Mar. 2006).

## **BASIS FOR URGENT ACTION REQUEST**

As established in the attached petition, the Government of Turkmenistan is arbitrarily depriving Juma Nazarov, Navruz Nasyrlaev, Zafar Abdullaev, and Mahmud Hodaybergenov of their liberty.

There is reason to believe that the continued detention of Mr. Nazarov, Mr. Nasyrlaev, Mr. Abdullaev, and Mr. Hodaybergenov places their lives and health at risk. Historically, Turkmenistan has been closed to international scrutiny. Independent international organizations have not been allowed to conduct research or monitor conditions.<sup>2</sup> However, cases of torture and other ill-treatment committed against members of certain religious minorities and conscientious objectors have been reported.<sup>3</sup>

Prison conditions in Turkmenistan are notoriously poor despite President Berdymukhamedov's pledges to improve the prison system.<sup>4</sup> Jehovah's Witnesses in particular have faced ill treatment in prison due to their faith. Seydi Labor Camp, where Mr. Nasyrlaev, Mr. Abdullaev, Mr. Hodaybergenov, and almost all other prisoners of conscience are held, subjects all prisoners to harsh weather conditions. "It is set in the desert and is close to several chemical works...conditions are not easy. It is like something from the Middle Ages," the family of a then Baptist prisoner of conscience, Vyacheslav Kalataevsky, reported in 2007.<sup>5</sup> Other former prisoners of conscience and Jehovah's Witnesses, Sakhetmurad Annamamedov, Shadurdy Ushotov, and Mukhammedmurad Annamamedov, have reported cold cells, being forced to sleep in a seated position, and barely fed food in addition to instances of abuse by riot police, threats by officers if they did not renounce their faith, and spending several consecutive days in solitary confinement.<sup>6</sup>

In light of the Turkmen government's history of mistreating detainees—in particular those who are members of minority religions—the continued detention of Mr. Nazarov, Mr. Nasyrlaev, Mr. Abdullaev, and Mr. Hodaybergenov places their lives and health at risk. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to the "Urgent Action" procedure.<sup>7</sup> In addition, it is 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 Resolution 2000/36, 2003/31, and Human Rights Council Resolutions 6/4 and 15/18.<sup>8</sup>

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<sup>2</sup> Amnesty International, "Turkmenistan: Submission to the Human Rights Committee", February 2012, available at <http://www.amnesty.org/en/library/info/EUR61/003/2012/en>.

<sup>3</sup> *Id.*

<sup>4</sup> Sulehka.com, "Turkmenistan pledges to improve its prison system," 2010, available at [http://newshopper.sulekha.com/turkmenistan-pledges-to-improve-its-prison-system\\_news\\_1153375.htm](http://newshopper.sulekha.com/turkmenistan-pledges-to-improve-its-prison-system_news_1153375.htm).

<sup>5</sup> Forum 18, "TURKMENISTAN: Religious Freedom Survey, March 2012," 8 March 2012, available at [http://www.forum18.org/Archive.php?article\\_id=1676](http://www.forum18.org/Archive.php?article_id=1676) [*hereinafter* F18 Religious Freedom Survey].

<sup>6</sup> *Id.*

<sup>7</sup> *Report of the Working Group on Arbitrary Detention*, U.N. Doc. A/HRC/16/47, Annex ¶7(b) ("Revised Methods of Work") (Jan. 19, 2011), at ¶ 22-24 [*hereinafter* Revised Methods of Work].

<sup>8</sup> *Id.* at ¶ 9-20.

**QUESTIONNAIRE TO BE COMPLETED BY PERSONS ALLEGING ARBITRARY  
ARREST OR DETENTION**

***I. IDENTITY***

1. **Family name:** Nazarov, Nasyrlaev, Abdullaev, Hudaybergenov
2. **First name:** Juma, Navruz, Zafar, Mahmud
3. **Sex:** Male
4. **Birth date:** Unknown
5. **Nationality:** Turkmenistan
6. (a) **Identity document (if any):** Unknown  
(b) **Issued by:**  
(c) **On (date):**  
(d) **No.:**
7. **Profession and/or activity (if believed to be relevant to the arrest/ detention):** Mr. Nazarov, Mr. Nasyrlaev, Mr. Abdullaev, and Mr. Hudaybergenov are all member of the Jehovah's Witness faith.
8. **Address of usual residence:** Unknown

***II. ARREST***

1. **Date of arrest:** May 10, 2012, Unknown, Unknown, Unknown
2. **Place of arrest (as detailed as possible):** Police held Mr. Nazarov in pretrial detention after he was summoned to the Prosecutor's Office in Ashgabat. The place of arrest for Mr. Nasyrlaev, Mr. Abdullaev, and Mr. Hudaybergenov is unknown, but all three are from Dashoguz, where they were likely arrested.
3. **Forces who carried out the arrest or are believed to have carried it out:** Unknown
4. **Did they show a warrant or other decision by a public authority?** Unknown
5. **Authority who issued the warrant or decision:** Unknown

6. **Relevant legislation applied (if known):** Article 8 of the Turkmenistan Military Act<sup>9</sup> holds citizens who fail to appear on summon for military duty without a valid exemption liable under the laws of Turkmenistan.<sup>10</sup>

### ***III. DETENTION***

1. **Date of detention:** May 10, 2012, Unknown, Unknown, Unknown
2. **Duration of detention (if not known, probable duration):** 6 months and 10 days, at least 6 months, at least 8 months, at least 1 year and 3 months.
3. **Forces holding the detainee under custody:** Unknown
4. **Places of detention (indicate any transfer and present place of detention):** Unknown, Seydi Labor Camp, Seydi Labor Camp, Seydi Labor Camp.
5. **Authorities that ordered the detention:** Azatlyk District Court, Dashoguz City Court, Dashoguz City Court, Dashoguz District Court
6. **Reasons for the detention imputed by the authorities:** Mr. Nazarov, Mr. Nasyrlaev, Mr. Abdullaev, and Mr. Hudaybergenov have allegedly evaded military service as a result of conscientiously objecting to such service on the grounds of their Jehovah's Witness faith.

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<sup>9</sup> Conscription and Military Service Act (Turkmenistan), art. 8: (1) A citizen, who failed to appear on the summon of the military commissariat of military registration, conscription (military training), other activities related to military duty, within the specified period without good cause or who has an illegal exemption or deferment from military service, is subject to liability under the laws of Turkmenistan" (2) Valid reasons for failure to appear on a call or order of the Military Commissariat or Military Commissioner (with the condition of providing documentary evidence for absence) are:

- 1) disability due to illness or injury;
- 2) serious health condition of his father, mother, wife (husband), children, siblings, grandparents or adoptive parent of the person or attendance in the funeral of these persons;
- 3) obstacles of natural character or circumstance that are beyond citizen's control, depriving him of ability to come to the required place and time according to the call of the military commissariat or the summons of military commissar;
- 4) other circumstances stipulated by the legislation of Turkmenistan, and other conditions set forth by the drafting board or the military commissar as good cause.

<sup>10</sup> *Id.* at art. 18: The following citizens can be exempted from military service:

- 1) recognized in the established order as not fit for military service due to health;
- 2) who completed military service;
- 3) past military or other type of service in the armed forces of another State;
- 4) twice convicted for committing a minor offense or convicted for a serious or especially serious crime

7. **Relevant legislation applied (if known):** Article 219 of Turkmenistan’s Criminal Code punishes evasion of military service with correctional labor up to two years or imprisonment up to two years.<sup>11</sup>

***IV. DESCRIBE THE CIRCUMSTANCES OF THE ARREST AND/OR THE DETENTION AND INDICATE PRECISE REASONS WHY YOU CONSIDER THE ARREST OR DETENTION TO BE ARBITRARY***

**I. STATEMENT OF FACTS**

Part A of this section discusses Turkmenistan’s history of suppressing minority religious groups in law and practice. Part B describes how Turkmenistan arbitrarily detains Jehovah’s Witnesses who conscientiously object to compulsory military service. Part C documents international disapproval of Turkmenistan’s criminalization of conscientious objection, efforts to urge the state to change its laws, and the consistent failure of Turkmenistan to respond to international calls for reform. Finally, Part E details the circumstances of the detention of four Jehovah’s Witnesses, Juma Nazarov, Navruz Nasyrlaev, Zafar Abdullaev, and Mahmud Hodaybergenov, currently imprisoned for conscientious objection.

**A. Suppression of Minority Religions in Turkmenistan**

Writing anonymously, a Turkmen Protestant succinctly expressed the discrepancy between Turkmenistan’s commitments to the international community and its domestic practices: “Outsiders sometimes look at Turkmenistan’s Constitution and government statements and think that freedom of conscience exists in our country. But the reality is very different. Not only are published legal restrictions – which break international human rights standards – tight, but secret unwritten laws operate as well as the published laws.”<sup>12</sup>

Under this regime, the state registration system functions as a way of controlling religious groups.<sup>13</sup> Under Article 11 of Turkmenistan’s Religion Law, all religious organizations are required to obtain legal status and operation of an unregistered religious organization is prohibited.<sup>14</sup> Any religious activity conducted without registration constitutes an offense under Article 205 of the Code of Administrative Offences.<sup>15</sup> Registration status also comes with a number of extralegal requirements, which allow state officials to attend meetings, read

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<sup>11</sup> Criminal Code (Turkmenistan), art. 219(1): evasion of military service in the absence of legal grounds for exemption from such service shall be punished with correctional labor for up to two years or imprisonment for up to two years.

<sup>12</sup> Forum 18, “COMMENTARY: Turkmenistan’s Fictitious Religious Freedom,” 16 Feb. 2006, *available at* [http://www.forum18.org/Archive.php?article\\_id=728](http://www.forum18.org/Archive.php?article_id=728).

<sup>13</sup> Forum 18 Religious Freedom Survey, *supra* note 5.

<sup>14</sup> Law of Turkmenistan on Religious Freedom and Religious Organizations, art. 11 (*last amended* 2 July 2009) [*hereinafter* Religion Law] *available at* <http://legislationline.org/documents/action/popup/id/16341>.

<sup>15</sup> Code of Turkmenistan of Administrative Offences, art. 205 (*last amended* 2002), *available at* <http://asgabat.net/stati/zakonodatelstvo-turkmenistana/kodeks-turkmenistana-ob-administrativnyh-pravonarushenijah.html>.

community documents, and check donations.<sup>16</sup> In practice, however, registration is rarely given to religious minority groups.<sup>17</sup> Arbitrary denials are generally accompanied with explanations that the applications contain grammatical mistakes or errors.<sup>18</sup> Consequently, minority religious communities are often reluctant to discuss human rights violations for fear of government backlash in the form of stripping or denying registration status.<sup>19</sup>

In addition to legal interference and arbitrary implementation of its law, Turkmenistan subjects believers of minority religions, especially Protestants and Jehovah's Witnesses, to discrimination outside the law. Members of minority religions have been fired from their jobs or evicted from their homes because of their faith.<sup>20</sup> Harassment in the form of threats, beatings, and confiscation of religious literature has been reported<sup>21</sup> and the secret police are known to work closely with local imams to intimidate these minority religious groups.<sup>22</sup> Common police tactics include pretending a Jehovah's Witness resembles a wanted suspect, involuntary admission into psychiatric hospitals, and stalling a community's application for legal exercise of religion under the state registration system.<sup>23</sup>

## **B. Turkmenistan's Criminalization of Conscientious Objection**

In addition to harassment, young male Jehovah's Witnesses face the threat of imprisonment for conscientious objection to military service. Jehovah's Witnesses who have spoken to international organizations insist they are willing to do any form of alternative, non-military service if the government were to offer it.<sup>24</sup> Currently, there is no such option, and all conscientious objectors face up to two years imprisonment under Article 219(1) of the Criminal

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<sup>16</sup> Forum 18 Religious Freedom Survey, *supra* note 5; *See also* Religion Law at art. 25: "The Ministry of Justice of Turkmenistan shall have the right to request constituent documents from the governing bodies of religious organizations; to send representatives for participation in events organized by religious organizations... financial and tax authorities shall exercise control over the sources of income of religious organization, over amounts of funds that they receive and payment of taxes and levies in accordance with the legislation of Turkmenistan."

<sup>17</sup> Forum 18, "TURKMENISTAN: Upsurge in raids, threats, fines," 5 Sept. 2012, *available at* [http://www.forum18.org/Archive.php?article\\_id=1737](http://www.forum18.org/Archive.php?article_id=1737).

<sup>18</sup> Forum 18 Religious Freedom Survey, *supra* note 5.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*; *See also* Forum 18, "TURKMENISTAN: Upsurge in raids, threats, fines," *supra* note 17.

<sup>21</sup> Forum 18, "TURKMENISTAN: Fines, beatings, threats of rape and psychiatric incarceration," 25 Nov. 2008, *available at* [http://www.forum18.org/Archive.php?article\\_id=1221](http://www.forum18.org/Archive.php?article_id=1221).

<sup>22</sup> Forum 18, "TURKMENISTAN: Another conscientious objector prisoner of conscience," 17 Aug. 2012, *available at* [http://www.forum18.org/Archive.php?article\\_id=1733](http://www.forum18.org/Archive.php?article_id=1733).

<sup>23</sup> *See supra* note 21. The many cases of harassment include Bilbil Kulyyeva, a mother of four who lives in Ashgabat. Kulyyeva filed official complaints in 2008 for harassment of her and her family, and authorities threatened to lock her up in a psychiatric hospital, place her two underage children in a children's home and deport the other two. That same year, Jehovah's Witness Igor Nazarov was detained by police with his family while they were leaving a home in Ashgabat. Police claimed he looked like a suspect in a recent burglary.

<sup>24</sup> Forum 18 Religious Freedom Survey, *supra* note 5.

Code<sup>25</sup> for refusal to serve in the armed forces during peacetime.<sup>26</sup>

In the past five years, there have been at least twenty-two<sup>27</sup> known Jehovah's Witnesses charged and sentenced under Article 219(1).<sup>28</sup> Of those sentenced, fifteen were imprisoned.<sup>29</sup> Currently, there are four Jehovah's Witness conscientious objectors serving their sentences: Juma Nazarov, Navruz Nasyrlaev, Zafar Abdullaev, and Mahmud Hudaibergenov.<sup>30</sup>

Additionally, the possibility of amnesty for these conscientious objectors has been slim,<sup>31</sup> and seems to have worsened in recent years.<sup>32</sup> In 2008, President Gurbanguly Berdymukhammedov released 1,269 prisoners under amnesty, but excluded the country's most

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<sup>25</sup> Criminal Code (Turkmenistan), art. 219(1): "evasion of military service in the absence of legal grounds for exemption from such service shall be punished with correctional labor for up to two years or imprisonment for up to two years."

<sup>26</sup> Forum 18, "TURKMENISTAN: Another conscientious objector prisoner of conscience," *supra* note 22.

<sup>27</sup> Ahmet Hudaibergenov, 18 months imprisonment; Sunet Japbarov, 18 months imprisonment; Matkarim Aminov, 18 months imprisonment; Douran Matyakubov, 18 months imprisonment; Mahmud Hudaibergenov, 2 years imprisonment; Dovleyet, Byashimov, 18 months imprisonment; Sakhet Annamamedov, 2 years imprisonment; Shadurdy Ushotov, 2 years imprisonment ; Mukhammedmurad Annamamedov, 2 years imprisonment; Juma Nazarov, 18 months imprisonment; Zafar Abdullaev, 2 years imprisonment; Navruz Nasyrlaev, 2 years imprisonment; Aziz Roziev, 18 months imprisonment; Nuryagdy Gayyrov, 18 months imprisonment; Denis Petrenko, 2 year suspended sentence; Merdan Tachmuradov, 2 year suspended sentence; Jamshid Kurbanov, 2 years suspended sentence; Nazargeldy Chariyev, 2 year suspended sentence; Begench Nabatov, 2 years suspended sentence; Begench Shakhmuradov, 2 year suspended sentence; Bayram Ashirgedyyev, 18 month suspended sentence; Ashirgeldy Taganov, 1 year imprisonment following 1 year suspended sentence (pardoned twice).

<sup>28</sup> See Forum 18 Religious Freedom Survey, *supra* note 5; see *infra* notes 36, 52, 63 and 74; see also Forum 18, "TURKMENISTAN: Jailing for religious conscientious objection starts again," 20 Jul. 2007, available at [http://www.forum18.org/Archive.php?article\\_id=998](http://www.forum18.org/Archive.php?article_id=998); Forum 18, "TURKMENISTAN: Another conscientious objector sentenced, another police raid," 10 Jan. 2008, available at [http://www.forum18.org/Archive.php?article\\_id=1069](http://www.forum18.org/Archive.php?article_id=1069); Forum 18, "TURKMENISTAN: Eleven prisoners of conscience in one camp," 29 Apr. 2011, available at [http://www.forum18.org/Archive.php?article\\_id=1566](http://www.forum18.org/Archive.php?article_id=1566).

<sup>29</sup> *Id.*

<sup>30</sup> See *infra* Part D.

<sup>31</sup> Forum 18, "TURKMENISTAN: Maximum sentence for conscientious objector," 22 Sept. 2011 available at [http://www.forum18.org/Archive.php?article\\_id=1616](http://www.forum18.org/Archive.php?article_id=1616) (noting that, since 2007, only one religious prisoner of conscience, AshirgeldyTaganov, had been released).

<sup>32</sup> Turkmenistan Helsinki Foundation, "Amnesty International: The Clampdown on Dissent and Religious Freedom Continues in Turkmenistan," 20 May 2005, available at <http://www.tmhelsinki.org/en/modules/news/index.php?storytopic=0&start=310>. Six conscientious objectors were released in June 2004 and four were released in April 2005. However this is believed to be the result of international pressure. Moreover, the four released in 2004 were only those conscientious objectors whose cases were known to the international community at the time. Particularly, the release of prisoners was believed to be an attempt to avoid being classified as a "country of particular concern" under the United States' International Religious Freedom Act. Such classification can lead to the United States taking measures ranging from diplomatic protest to targeted trade sanctions; see also United States Commission on International Religious Freedom, *USCIRF Annual Report 2012 - Countries of Particular Concern: Turkmenistan*, (20 Mar. 2012) available at <http://www.unhcr.org/refworld/docid/4f71a66f3c.html> [*hereinafter* USCIRF Annual Report]. The USCIRF recently reiterated its recommendation that the U.S. government designate Turkmenistan as a "country of particular concern" (CPC) and urge Turkmenistan to restore genuine legal alternatives to military service.

well-known dissidents and human rights defenders.<sup>33</sup> In 2010, just before the May prisoner amnesty, those conscientious objectors imprisoned at the time were sent to the Seydi Labour Camp punishment unit for allegedly violating prison rules.<sup>34</sup> Members of the religious group believed this was to make them ineligible for amnesty.<sup>35</sup> In the most recent presidentially decreed prisoner amnesty on May 18, 2012, only one Jehovah's Witness, Vladimir Nuryllayev, was freed after six months imprisonment.<sup>36</sup> However, Nuryllayev was sentenced on charges of spreading pornography rather than conscientious objection.<sup>37</sup>

Meanwhile, those conscientious objectors given suspended sentences are required to work for reduced wages for up to two years.<sup>38</sup> Even those who serve suspended sentences are, in some cases, still subjected to harsh pretrial detention conditions including overcrowding and inadequate ventilation in the daytime heat.<sup>39</sup> If past cases are any indication, first time offenders serving suspended sentences also face a high risk of re-imprisonment upon completion of their sentence should they again refuse military service.<sup>40</sup> Two of the four Jehovah's Witnesses now imprisoned, Zafar Abdulleev and Navruz Nasyrlaev, are serving second sentences.<sup>41</sup> Of these two, Mr. Abdullaev served a suspended sentence before his current imprisonment.<sup>42</sup>

Reports indicate that Jehovah's Witnesses who are sentenced to imprisonment face the threat of ill-treatment while in detention. In September 2010, Dovleyet Byashimov's parents were granted a brief meeting with him in Turkmenabad prison, where they saw that he had been "beaten black and blue".<sup>43</sup> The Seydi Labour Camp, where almost all prisoners of conscience are held, has also been a source of ill-treatment. Sakhetsmurad Annamamedov reported that he was placed in a cold cell, forced to sleep in a seated position, and barely fed food.<sup>44</sup> Shadurdy Ushotov stated members of the Omon riot police entered his cell on two occasions and beat him on the head and neck.<sup>45</sup> Mukhammedmurad Annamamedov reported spending six consecutive

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<sup>33</sup> Radio Free Europe, "Turkmenistan: President Announces Amnesty, Excluding Political Prisoners," 14 Feb. 2008, available at <http://www.rferl.org/content/article/1079475.html>.

<sup>34</sup> Forum 18 Religious Freedom Survey, *supra* note 5.

<sup>35</sup> *Id.*

<sup>36</sup> Forum 18, "TURKMENISTAN: Prisoner of conscious freed but remains under restrictions," 28 May 2012, available at [http://www.forum18.org/Archive.php?article\\_id=1706](http://www.forum18.org/Archive.php?article_id=1706).

<sup>37</sup> *Id.*

<sup>38</sup> Forum 18, "TURKMENISTAN: Another conscientious objector prisoner of conscience," *supra* note 22.

<sup>39</sup> Forum 18, "TURKMENISTAN: Conscientious objectors detained for trial," 4 Jul. 2007 available at [http://www.forum18.org/Archive.php?article\\_id=987](http://www.forum18.org/Archive.php?article_id=987).

<sup>40</sup> Forum 18, "TURKMENISTAN: Maximum sentence for conscientious objector," *supra* note 31 (Ashirgeldy Taganov was given a suspended sentence in 2007 and a one year prison sentence in 2011 for twice refusing service).

<sup>41</sup> *See infra* Part D. Both Zafar Abdullaev and Navruz Nasyrlaev were sentenced for conscientious objection in 2009 before being sentenced again this year.

<sup>42</sup> *Id.*

<sup>43</sup> Forum 18, "TURKMENISTAN: Amid new sentences, new law fails to introduce alternative military service," 4 Oct. 2010 available at [http://www.forum18.org/Archive.php?article\\_id=1495](http://www.forum18.org/Archive.php?article_id=1495).

<sup>44</sup> Forum 18 Religious Freedom Survey, *supra* note 5.

<sup>45</sup> *Id.*

days in solitary confinement and facing threats by officers to put him in a stricter prison regime if he did not denounce his faith.<sup>46</sup> In addition to coercive tactics and physical abuse, Jehovah's Witness prisoners are routinely denied access to religious literature and worship,<sup>47</sup> which violates Turkmen law.<sup>48</sup>

### C. International Efforts Urging Turkmenistan to Reform Its Laws

On September 10, 2008, the UN Special Rapporteur on Freedom of Religion or Belief, expressed her concern that conscientious objection was a criminal offense during her visit to Ashgabat.<sup>49</sup> She stressed that the right to freedom of thought, conscience, and religion guaranteed in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) encompasses the right to perform alternative, non-military service.<sup>50</sup> Turkmenistan has since insisted it will not allow conscientious objection, rejecting recommendations of the UN Human Rights Council with the assertion that the defense of Turkmenistan is the "sacred duty" of every citizen under Article 38 of its Constitution.<sup>51</sup> The government also noted that those who have religious reasons for rejecting military service may serve in medical or construction units within the military.<sup>52</sup> However, non-combat military service fails to satisfy the objections of Jehovah's Witnesses, who cannot serve in any structure linked to the military for religious reasons.<sup>53</sup>

On February 12, 2010, the UN Special Rapporteur on Freedom of Religion or Belief issued an urgent appeal to the Turkmen government regarding imprisoned Jehovah's Witness conscientious objectors.<sup>54</sup> However, the Turkmen government failed to respond.<sup>55</sup> The following

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<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> Religion Law, *supra* note 14 at art. 10. The law guarantees prisoners the right to religious freedom, which includes the right of those in a lower security designated labor camp to visit places of worship where the camp is located. Prisoners in stricter prison regimes have the right to invite clergy of registered religious organizations and are allowed access to religious literature; *see also* Forum 18 Religious Freedom Survey, *supra* note 5.

<sup>49</sup> *See UN Special Rapporteur on Freedom of Religion or Belief Concludes Visit to Turkmenistan*. Office of the High Commissioner for Human Rights. (10 Sept. 2008) *available at* <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=8421&LangID=E>

<sup>50</sup> *Id.* The Special Rapporteur also noted the vagueness of provisions in Turkmenistan's Law on Freedom of Conscience and Religious Organizations, which are susceptible to arbitrary interpretation and abuse by law enforcement.

<sup>51</sup> Forum 18, "TURKMENISTAN: Conscientious objector convicted as criminal," 20 Apr. 2009, *available at* [http://www.forum18.org/Archive.php?article\\_id=1285](http://www.forum18.org/Archive.php?article_id=1285); *Constitution of Turkmenistan (Includes 2003 Amendment)* [Turkmenistan], art. 38, (19 May 1992) *available at* <http://www.unhcr.org/refworld/docid/3df0739a4.html>. "Everybody has the sacred duty of helping to defend Turkmenistan. Universal military duty is established for men, citizens of Turkmenistan."

<sup>52</sup> *See* Forum 18, TURKMENISTAN: Conscientious objector convicted as criminal," *supra* note 52.

<sup>53</sup> *Id.*

<sup>54</sup> Forum 18, "TURKMENISTAN: 'Principles of mercy, justice, and humanism' fail to free religious prisoners of conscience," 9 Mar. 2011, *available at* [http://www.forum18.org/Archive.php?article\\_id=1550](http://www.forum18.org/Archive.php?article_id=1550); *See also* UN Doc. A/HRC/16/53/Add.1 (14 February 2011) *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt* at par. 384.

year, the Special Rapporteur appealed to the Turkmen government to ensure freedom of thought, conscience, and religion under Article 18 of the ICCPR.<sup>56</sup> Once again, the government failed to respond to the UN inquiry.<sup>57</sup>

In spite of stonewalling, the international community continues to push for reform in Turkmenistan. In June 2010, the Organization for Security and Co-operation in Europe reviewed Turkmenistan's laws on religion and called on the government to expressly allow for alternative civilian service owing to religious belief.<sup>58</sup> More recently, the UN Human Rights Committee expressed its concern that the state's Conscription and Military Service Act does not recognize the right to conscientious objection to military service and specifically cited the repeated prosecution of Jehovah's Witnesses.<sup>59</sup> The Committee recommended that Turkmenistan take all necessary measures to provide for alternative military service, halt the prosecution of all conscientious objectors, and release those imprisoned for the offense.<sup>60</sup>

Attempts by non-governmental organizations and international bodies to engage with Turkmenistan have not been met with cooperation.<sup>61</sup> When the government does issue statements to the international community, it expresses the spirit of reform, but fails to take any substantial action towards such reform.<sup>62</sup> In 2008, Turkmen officials reported that they were considering including a provision providing for alternative non-military service.<sup>63</sup> However, it is not known

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<sup>55</sup> *Id.*; *Human Rights Council Continues General Debate on the Promotion and Protection of All Human Rights*. The United Nations Office at Geneva, (11 Mar. 2011) available at [http://www.unog.ch/80256EDD006B9C2E/\(httpNewsByYear\\_en\)/E00F4BD15B18CB9DC1257850005F34AD?OpenDocument](http://www.unog.ch/80256EDD006B9C2E/(httpNewsByYear_en)/E00F4BD15B18CB9DC1257850005F34AD?OpenDocument). During the general debate, Derek Brett of the non-governmental organization Conscious and Peace Tax International drew attention to the Special Rapporteur's urgent appeal, and expressed concern that no reply was received from Turkmenistan.

<sup>56</sup> UN General Assembly, *Report of the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeldt, addendum*, ¶ 389, (14 Feb. 2011), A/HRC/16/53/Add.1, available at <http://www.unhcr.org/refworld/docid/4d74d7162.html>.

<sup>57</sup> *Id.*

<sup>58</sup> OSCE, *Comments on the Law of Turkmenistan on Religious Freedom and Religious Organizations*, Office for Democratic Institutions and Human Rights (ODIHR), ¶ 30, (25 Jun. 2010) available at <http://www.legislationline.org/documents/id/16060>.

<sup>59</sup> UN Human Rights Committee (HRC), *Consideration of reports submitted by States parties under article 40 of the Covenant : concluding observations of the HRC – Turkmenistan*, ¶¶ 16, (30 March 2012), CCPR/C/SR.2887, available at <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TKM.CO.1.doc>.

<sup>60</sup> *Id.*

<sup>61</sup> See Forum 18, "TURKMENISTAN: Upsurge in raids, threats, fines," *supra* note 17; See also Forum 18, "TURKMENISTAN: Another conscientious objector prisoner of conscience," *supra* note 22; When asked to discuss the continued sentencing of conscientious objectors on August 16, 2012, Chair of the Mejlis Committee on the Protection of Human Rights and Freedoms, told Forum 18 they must speak with the Foreign Ministry and hung up. In September 2012, Forum 18 was also unable to find any official in Ashgabat willing to comment on the upsurge in raids, fines, and threats against minority religions.

<sup>62</sup> See USCIRF Annual Report, *supra* note 32. The report noted that despite few limited reforms by President Berdimuhamedov since 2007, the laws, policies, and practices of Turkmenistan continue to violate international human rights norms, including those on freedom of religions or belief.

<sup>63</sup> Forum 18, "TURKMENISTAN: Will the state respect everyone's right to conscientious objection?" 31 Jul. 2008, available at [http://www.forum18.org/Archive.php?article\\_id=1166](http://www.forum18.org/Archive.php?article_id=1166).

whether a concrete proposal had ever been prepared.<sup>64</sup> In February 2010, the government admitted that work on a draft text to reform its Religion Law had not even begun,<sup>65</sup> and eventual changes to the Criminal Code approved in May 2010 left penalties for refusing compulsory military service unchanged.<sup>66</sup> When the Committee Against Torture considered the initial report of Turkmenistan, it noted a lack of statistical and practical information to support reforms.<sup>67</sup> Likewise, in a 2012 press release by the Turkmen Embassy to the United States of America, the government claimed to be facilitating reform of its laws related to refugees and stateless persons, but failed to make any mention of religious rights.<sup>68</sup> Thus, despite occasional claims to the contrary, few strides toward real reform have been made by the government.<sup>69</sup>

#### **D. Jehovah's Witnesses Currently Imprisoned for Conscientious Objection**

**Juma Nazarov** is a 19-year old Jehovah's Witness from Ashgabat.<sup>70</sup> On April 25 2012, Mr. Nazarov lodged his refusal to perform military service and his case was handed over to prosecutors.<sup>71</sup> On May 7, 2012, prosecutors summoned him to the Prosecutor's Office and questioned him about this refusal. Mr. Nazarov again signed a statement that he was refusing compulsory military service on grounds of his faith.<sup>72</sup> He was then allowed to return home, but the next day he was told to return on May 10, at which time the court ordered him held in pretrial detention.<sup>73</sup> When Mr. Nazarov's mother attempted to discover why this decision had been made, the prosecutor replied, "...she could complain wherever she liked, but that it would not change anything."<sup>74</sup> On July 23, 2012, Mr. Nazarov was sentenced to 18 months in prison by the Ashgabat Azatlyk District Court.<sup>75</sup> He is due to be released November 9, 2013.<sup>76</sup>

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<sup>64</sup> *Id.*

<sup>65</sup> Forum 18, "TURKMENISTAN: Work not even begun on new Religion Law," 12 Feb. 2010, *available at* [http://www.forum18.org/Archive.php?article\\_id=1408](http://www.forum18.org/Archive.php?article_id=1408).

<sup>66</sup> Forum 18, "TURKMENISTAN: Jailed conscientious objectors punished again," 24 May 2010, *available at* [http://www.forum18.org/Archive.php?article\\_id=1448](http://www.forum18.org/Archive.php?article_id=1448); Criminal Code (Turkmenistan), art. 219(1), *supra* note 11.

<sup>67</sup> Committee Against Torture, *Consideration of reports submitted by States parties under article 19 of the Convention - Turkmenistan*, ¶ 2, (15 Jun. 2011), CAT/C/TKM/CO/1, *available at* <http://www.unhcr.org/refworld/docid/4ef0540f2.html>.

<sup>68</sup> "Priority Positions of Turkmenistan at the 67<sup>th</sup> session of the UN General Assembly," Embassy of Turkmenistan, Aug. 2012, *available at* <http://turkmenistanembassy.org/en/press-releases/>.

<sup>69</sup> Human Rights Watch, "World report 2012: Turkmenistan," 23 Jan. 2012, *available at* <http://www.hrw.org/world-report-2012/world-report-2012-turkmenistan>. Human Rights Watch stated that Turkmenistan has continued to expand relations with foreign governments and international organizations, but remains one of the world's most repressive countries.

<sup>70</sup> *See* Forum 18, "TURKMENISTAN: Another conscientious objector prisoner of conscience," *supra* note 22.

<sup>71</sup> Forum 18, "TURKMENISTAN: Another prisoner of conscience jailed on false charges?" 17 May 2012, *available at* [http://www.forum18.org/Archive.php?article\\_id=1702](http://www.forum18.org/Archive.php?article_id=1702).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* As with many other reports to Forum 18, the account of Nazarov's mother came from fellow Jehovah's Witnesses.

<sup>75</sup> *See* Forum 18, *supra* note 22.

<sup>76</sup> War Resisters' International, Prisoners for Peace Database, *available at* <http://wri-irg.org/node/15224>.

**Navruz Nasyrlaev** is a 21-year old Jehovah's Witness from Dashoguz.<sup>77</sup> In May 2012, Mr. Nasyrlaev was sentenced to two years in a strict regime labor camp for refusing military service.<sup>78</sup> This is Mr. Nasyrlaev's second sentence on the same charge. He was first called up for military service when he reached 18 years of age in March 2009.<sup>79</sup> On December 7, 2009, he was sentenced to two years in a general regime labor camp.<sup>80</sup> After an appeal, the Dashoguz Regional Court upheld the original sentence on January 2, 2010.<sup>81</sup> Mr. Nasyrlaev is currently imprisoned in Sedyi Labor Camp.<sup>82</sup>

**Zafar Abdullaev** is a 24-year old Jehovah's Witness from Dashoguz.<sup>83</sup> Shortly after completion of a suspended sentence for the same offense served on April 8, 2009, the government called up Mr. Abdullaev for military service a second time.<sup>84</sup> When he refused again, the Dashoguz City Court handed down a two year prison sentence on March 6, 2012.<sup>85</sup>

**Mahmud Hudaybergenov** is a 22-year old who was given the maximum two year sentence by the Dashoguz District Court in August 2011.<sup>86</sup> It was reported that authorities prevented him from appealing the decision.<sup>87</sup>

## II. LEGAL ANALYSIS

Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR) states that, "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."<sup>88</sup> Turkmenistan is a party to the ICCPR and thus bound by its terms.<sup>89</sup> The current detention of Mr. Nazarov, Mr. Nasyrlaev, Mr.

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<sup>77</sup> See *Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, supra* note 56 at ¶ 384.

<sup>78</sup> See Forum 18, *supra* note 22.

<sup>79</sup> See *supra* note 55 at ¶ 385.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> War Resisters International, *available at* <http://wri-irg.org/node/9638>.

<sup>83</sup> Forum 18, "TURKMENISTAN: Maximum prison sentence for latest conscientious objector," 18 Apr. 2012, *available at* [http://www.forum18.org/Archive.php?article\\_id=1691](http://www.forum18.org/Archive.php?article_id=1691).

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> Forum 18, "TURKMENISTAN: Maximum prison sentence for latest conscientious objector," 22 Sept. 2011, *available at* [http://www.forum18.org/Archive.php?article\\_id=1616](http://www.forum18.org/Archive.php?article_id=1616).

<sup>87</sup> *Id.*

<sup>88</sup> International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, entered into force 23 Mar. 1976, at art. 9(1) [*hereinafter* ICCPR]. ; *see also* U.N. General Assembly, Universal Declaration of Human Rights, (10 Dec. 1948), 2 17 A(III) at art. 9 [*hereinafter* UDHR]: "No one shall be subjected to arbitrary arrest, detention or exile."

<sup>89</sup> Acceded on May 1, 1997. United Nations Treaty Collection (U.N.T.C.), *available at* [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en).

Abdullaev, and Mr. Hodaybergenov (Jehovah's Witnesses) is arbitrary<sup>90</sup> under Category II as established by the UN Working Group on Arbitrary Detention (Working Group) because Turkmenistan imprisoned them for exercising their fundamental right to freedom of thought, conscience, and religion. The detention of Mr. Nasyrbaev and Mr. Abdullaev is also arbitrary under Category III as established by the Working Group because Turkmenistan has sentenced them twice for the same offense.

**A. Turkmenistan's Detention of the Jehovah's Witnesses for Conscientious Objection is Arbitrary Because it Violates Their Right to Freedom of Thought, Conscience, and Religion.**

The Working Group recognizes a detention as arbitrary where the deprivation of liberty results from the exercise of fundamental rights or freedoms, including freedom of thought, conscience, and religion.<sup>91</sup> Because Turkmenistan imprisoned the Jehovah's Witnesses for their conscientious objection on grounds of religion, their objection falls within the right to freedom of thought, conscience, and religion as codified under international law.<sup>92</sup> Further, Turkmenistan has no necessary justification for limiting this right.

**1. The right to freedom of thoughts, conscience, and religion protects conscientious objection to compulsory military service.**

Article 18 of the ICCPR provides that "[e]veryone shall have the right to freedom of thought, conscience, and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in a community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."<sup>93</sup> The Human Rights Committee (Committee)<sup>94</sup> has highlighted the importance of this right, interpreting it as both "far reaching and profound" and encompassing "freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested

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<sup>90</sup> Fact Sheet No. 26, The Working Group on Arbitrary Detention. "When determining the mandate of the Working Group, the Commission used a pragmatic criterion: while it did not define the term "arbitrary", it considered as arbitrary those deprivations of liberty which for one reason or another are contrary to relevant international provisions laid down in the Universal Declaration of Human Rights or in the relevant international instruments ratified by States."

<sup>91</sup> *Id.* Category II detentions occur "when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights."

<sup>92</sup> *See infra* part II-A-1.

<sup>93</sup> ICCPR at art 18(1); *see also* UDHR at art. 18: "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

<sup>94</sup> As a party to the Optional Protocol to the International Covenant on Civil and Political Rights, Turkmenistan recognizes the competence of the Committee to consider complaints from individuals who claim to be victims of a violation by Turkmenistan of any rights set forth in the ICCPR. *See* UN General Assembly, *Optional Protocol to the International Covenant on Civil and Political Rights*, art. 1, (19 Dec. 1966), U.N.T.S., vol. 999, p. 171. [*hereinafter* Optional Protocol]; *Acceded to on 1 May 1997*. U.N.T.C. available at [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en).

individually or in a community with others.”<sup>95</sup> Moreover, “[t]he freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts.”<sup>96</sup>

In light of its broad scope and importance, the Committee has found that the right to conscientious objection “can be derived from Article 18, inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest one’s religion or belief.”<sup>97</sup> As a whole, this interpretation has been embraced as an international standard based on 25 years of mandated reporting practice by the Special Rapporteur on Freedom of Religion or Belief<sup>98</sup> and Resolution 1998/77 of the UN Commission on Human Rights.<sup>99</sup> Furthermore, the Working Group has specifically recognized that religious conscientious objectors “fall within the ambit of [A]rticle 18 paragraph 1” of the ICCPR.<sup>100</sup>

Despite the importance and scope of Article 18(1), Turkmenistan’s laws do not respect this right to conscientious objection. Article 8 of Turkmenistan’s Conscription and Military Service Act calls for compulsory conscription,<sup>101</sup> yet provides no exception for conscientious objectors and no alternative civilian service.<sup>102</sup> Those who refuse military service are sentenced under Article 219(1) of the Turkmen Criminal Code, which makes it a crime to evade service in peacetime, and carries a penalty of up to two years imprisonment.<sup>103</sup>

Here, the Jehovah’s Witnesses have refused military service based on their religion. This is because the Jehovah’s Witness belief system calls for neutrality in war.<sup>104</sup> Motivated to remain

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<sup>95</sup> UN Human Rights Committee, CCPR General Comment No. 22: *Article 18, Freedom of Thought, Conscience or Religion*, ¶ 1, (30 Jul. 1993).

<sup>96</sup> *Id.* at par. 4.

<sup>97</sup> *Id.* at par. 11.

<sup>98</sup> See Office of the High Commissioner for Human Rights, The Special Rapporteur’s framework for communications, I3k, *available at* <http://www.ohchr.org/EN/Issues/FreedomReligion/Pages/IstandardsI3k.aspx>. Citing 25 years mandate reporting practice, including recommendations that “Conscientious objectors should be exempted from combat but could be required to perform comparable alternative service of various kinds, which should be compatible with their reasons for conscientious objection.”

<sup>99</sup> U.N. Commission on Human Rights, Res. 1998/77 (*adopted without vote* 22 Apr. 1998) at ¶ 1, “draw[ing] attention to the right of everyone to have conscientious objections to military service as a legitimate exercise of the right to freedom of thought, conscience and religion, as laid down in article 18 of the Universal Declaration of Human Rights and article 18 of the International Covenant on Civil and Political Rights.”

<sup>100</sup> See *Halil Savda v. Turkey*, opinion no. 16/2008 at ¶ 36. The Working Group also explained why an earlier decision rejecting the absolute right to conscientious objection was not contrary to its current holding: “In as far as the Opinion No. 24/2003 of the Working Group could be interpreted as holding that the evolution towards recognition of a right of an individual to refuse, on grounds of religious beliefs or conscience, to serve in the military, has not reached a stage where the rejection by a State of the right to conscientious objection is incompatible with international law. *The Working Group clarifies that this statement was related to the necessary balancing act, which an assessment of the limitation clause of article 18, paragraph 3, of the International Covenant, involves [emphasis added].*”

<sup>101</sup> Conscription and Military Service Act (Turkmenistan) at art. 8(1), *supra* note 9.

<sup>102</sup> *Id.* at art. 8(2).

<sup>103</sup> Criminal Code (Turkmenistan) at art 219(1), *supra* note 11.

<sup>104</sup> Watchtower, “Does God Support Wars Today?” g8/11 pp.22-23, *available at* <http://m.wol.jw.org/en/wol/d/r1/lp-e/102011289#s=0:0-21:106> “Witnesses are known for their public ministry and their neutrality toward politics and

faithful to this genuinely held belief, those currently imprisoned in this case have conscientiously objected to all service involving the military. As a result, Turkmen authorities charged and imprisoned them under article 219(1) of the Criminal Code.<sup>105</sup> Given the direct link between religion and the objection to military service here, the refusal to perform military service in this case is protected under the scope of Article 18(1) of the ICCPR.

## **2. Limitations on the Jehovah's Witnesses' right to religious conscientious objection are not necessary under the meaning of Article 18(3).**

Article 18(3) of the ICCPR states that “[f]reedom to manifest one’s own religion or beliefs may be subject only to such limitations as are prescribed by law<sup>106</sup> and are necessary to protect public safety, order, health, or moral or the fundamental rights and freedoms of others.”<sup>107</sup>

With regard to Article 18(3), the Committee has noted that “restrictions are not allowed on grounds not specified there, even if they would be allowed as restrictions to other rights protected in the Covenant... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated.”<sup>108</sup> This interpretation lays out a very strict standard that state parties must meet when restricting Article 18 rights—both preventing justifications outside those delineated and prohibiting all restrictions that “impair the very essence of the right in question.”<sup>109</sup> The Working Group has expressed the same principle in the form of a “balancing act.”<sup>110</sup>

Where, as in this case, a genuinely held religious belief forbids military service, both the Committee and the Working Group have found that restrictions on the right to conscientious objection fall outside the meaning of the Article 18(3) limitations clause.<sup>111</sup> This holds true even

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carnal warfare...Jehovah's Witnesses make up a multinational brotherhood and maintain neutrality in the wars of the nations.”

<sup>105</sup> See part I-D.

<sup>106</sup> Note that discussion concerning this prong of 18.3 is unnecessary because Turkmenistan has codified its restrictions on conscientious objection. See *supra* Part II-A-1.

<sup>107</sup> ICCPR at art. 18(3); see also UDHR at art. 29(2): “In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

<sup>108</sup> General Comment No. 22: The right to freedom of thought, conscience and religion (30 Jul. 1993) CCPR/C/21/Rev.1/Add.4 at ¶ 8.

<sup>109</sup> See *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea*, Communication Nos. 1321/2004 and 1322/2004 at ¶ 8.3; see also General Comment 22 at ¶ 8, “Limitations imposed must be established by law and must not be applied in a manner that would vitiate the rights guaranteed in article 18.”

<sup>110</sup> *Halil Savda v. Turkey*, *supra* note 101.

<sup>111</sup> See *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea*, at ¶ 8.3; see also *Halil Savda v. Turkey* at ¶ 36.

though principles of universal conscription are embodied in Turkmenistan's Constitution.<sup>112</sup> In a similar case considered by the Working Group, the government of Turkey confirmed that it also criminalized conscientious objection in accordance with constitutional principles and had no civil service scheme provided for by law.<sup>113</sup> The Working Group nevertheless found that the detention of a Turk for conscientious objection, even in units which would not be directly engaged in combat, was a Category II arbitrary detention.<sup>114</sup> The Committee has also reached the same result in the case of genuine conscientious objectors, reasoning that "it is in principle possible, and in practice common, to conceive alternatives to compulsory military service that do not erode the basis of universal conscription."<sup>115</sup> This conclusion echoes an observation previously made by the Committee that a "growing number of States have in their laws exempted from compulsory military service citizens who genuinely hold religious or other beliefs that forbid the performance of military service and replaced it with alternative national service."<sup>116</sup> As such, it is not necessary for Turkmenistan to imprison conscientious objectors without first providing such alternative service.

Similarly, justifications based on broad understandings of public welfare are inapplicable in the criminalization of religious conscientious objection. When the Committee considered two cases concerning Jehovah's Witnesses who were nationals of the Republic of Korea, the government argued the restrictions were justified in the name of national defense,<sup>117</sup> social unification,<sup>118</sup> and unique internal and external security, economic, and social conditions.<sup>119</sup> However, the Committee reminded the government that even restrictions named in Article 18(3) should not impair the very essence of the right<sup>120</sup> and found that the government had failed to show what special disadvantage it would suffer if the rights therein were fully respected.<sup>121</sup> Here, Turkmenistan cannot use Article 18(3) to introduce justifications so overbroad that they essentially eliminate the right of Jehovah's Witnesses under Article 18(1). Because the conscientious objection in this case is a manifestation of religion, to criminalize it would in fact impair the right to freedom of religion itself.<sup>122</sup>

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<sup>112</sup> Constitution of Turkmenistan, (last amended 15 Aug. 2003) at art. 38, available at <http://www.unhcr.org/refworld/docid/3df0739a4.html> "Everybody has the sacred duty of helping to defend Turkmenistan. Universal military duty is established for men, citizens of Turkmenistan."

<sup>113</sup> *Halil Savda v. Turkey* at ¶ 15; see also *id.* at ¶ 13. In its response, the Government notes at the outset that article 72 of the Constitution of Turkey provides that "patriotic service is a right and a duty for every Turkish citizen".

<sup>114</sup> *Id.* at ¶¶ 44 and 33.

<sup>115</sup> See *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea* at ¶ 8.4.

<sup>116</sup> General Comment 22 at par. 11.

<sup>117</sup> See *Mr. Yeo-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea*, *supra* note 110 at ¶ 2.2

<sup>118</sup> *Id.* at ¶ 4.3.

<sup>119</sup> *Id.* at ¶ 4.4.

<sup>120</sup> *Id.* at ¶ 8.3.

<sup>121</sup> *Id.* at ¶ 8.4. Note: As to the issue of social cohesion and equitability, the Committee considered that respect on the part of the State for conscientious beliefs and manifestations thereof is itself an important factor in ensuring cohesive and stable pluralism in society.

<sup>122</sup> See *supra* part II-A; General Comment 22 at ¶ 11.

In light of the international recognition of religious conscientious objection, the compatibility of alternative service with universal conscription, and the incompatibility of a broad interpretation of permissible limitations on the right to religious freedom with protection of the right itself, the narrow limitations contained in Article 18(3) do not apply in this case. As such, the continued imprisonment of the Jehovah's Witnesses is a violation of their right to freedom of thought, conscience, and religion as protected by Article 18(1) if the ICCPR.

### **B. Turkmenistan's Detention of Mr. Nasyrlaev and Mr. Abdullaev is Arbitrary Because it Violates the Principle of *Ne Bis In Idem*.**

The principle of *ne bis in idem*, or double jeopardy, is codified in Article 14(7) of the ICCPR,<sup>123</sup> which states: "No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country."<sup>124</sup> The Working Group has recognized detentions resulting from violation of this principle as a Category III deprivation of liberty.<sup>125</sup> Traditionally, the Working Group has decided Article 14(7) cases based on whether additional penalties imposed for disobedience have the same content or purpose.<sup>126</sup>

In the context of conscientious objectors, those who exhibit a constant resolve not to obey a second summons exercise a single action with the same consequences.<sup>127</sup> Within this framework, the Working Group has previously declared as arbitrary the detention of conscientious objectors following a second conviction when to do so would compel objectors to change their beliefs for fear of being subject to further persecution.<sup>128</sup> Even in cases where the Working Group has not found a genuinely held belief to be the basis of the objection, it has still held that sustained conscientious objections cannot be the basis for subsequent charges once an objector has already served one sentence.<sup>129</sup>

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<sup>123</sup> Human Rights Committee, CCPR General comment no. 32, *Article 14, Right to equality before courts and tribunals and to fair trial*, ¶¶ 3, 54, (23 Aug. 2007) (stating Art 14.7 embodies the principle of *ne bis in idem*, prohibiting double jeopardy, thus guaranteeing a substantive freedom).

<sup>124</sup> ICCPR at art. 14(7).

<sup>125</sup> Fact Sheet No. 26: "When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out 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..."

<sup>126</sup> *Matan Kaminer et al. v. Israel*, Working Group on Arbitrary Detention, Opinion No. 24/2003 at ¶ 30; *see also Osman Murat v. Turkey*, Working Group on Arbitrary Detention, Opinion No. 36/1999, ¶ 8: "It is generally acknowledged that this principle, which is the corollary of the principle of *res judicata*, presupposes the meeting of three conditions: identity of the parties, identity of the purpose and identity of the subject-matter...the condition of the identity of the defendant (the conscientious objector) may be presumed to have been met. The same applies to the condition of identity of the purpose, since in criminal cases, unlike civil cases, the purpose is always the same: to establish guilt and fix a penalty. It remains, therefore, to determine whether there is identity of subject-matter."

<sup>127</sup> *See* 36/1999 at ¶ 9; *see also* General Comment 32 at ¶ 55: "Repeated punishment of conscientious objectors for not having obeyed 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."

<sup>128</sup> *See Halil Savda v. Turkey*, 16/2008 at ¶ 39.

<sup>129</sup> *See* 24/2003 at ¶¶ 27 and 30 (Finding there was no right to conscientious objection in this case, but rejecting Israel's argument that subsequent charges were based on the repeated crime of refusing military service, and finding a category III violation).

Here, Turkmenistan's detention of Mr. Nasyrlaev and Mr. Abdullaev is a straightforward violation of Article 14(7) because their sentences were based on objections stemming from the same belief as their initial objection. Both Jehovah's Witnesses were charged and sentenced for evasion of military service<sup>130</sup> in 2009 and again in 2012<sup>131</sup>. Each conviction was the result of repeated refusals to serve because to do so would conflict with their Jehovah's Witness faith.<sup>132</sup> As such, their imprisonment cannot be classified as a repeated crime.<sup>133</sup>

Additionally, even if Turkmen law sanctioned the sentencing of conscientious objectors up to two times,<sup>134</sup> such codification cannot excuse a violation of Article 14(7). The Committee has affirmed that Article 14 contains guarantees that states parties must respect, regardless of their legal traditions and domestic laws.<sup>135</sup> As with fundamental rights, interpretations of Article 14 cannot be left to the sole discretions of domestic law.<sup>136</sup> This principle is also recognized in Article 2(2) of the ICCPR, requiring state parties to give effect to the rights set for in the ICCPR in its laws.<sup>137</sup> Specifically, the Committee has stated that Article 2(2) "operates so as to prevent States parties from invoking provisions of the constitutional law or other aspects of domestic law to justify a failure to perform or give effect to obligations under the treaty."<sup>138</sup> As such, any allowance Turkmen law might give for multiple sentences cannot excuse a violation of the ICCPR in this case.

Therefore, Turkmenistan's imprisonment of Mr. Nasyrlaev and Mr. Abdullaev is arbitrary because repeated sentencing for their conscientious objection contravenes the international principle of *ne bis in idem* as protected by Article 14(7) of the ICCPR.

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<sup>130</sup> Criminal Code (Turkmenistan), *supra* note 11.

<sup>131</sup> *See infra* Part I-D (detailing the circumstances surrounding Mr. Nasyrlaev and Mr. Abdullaev's arrests and sentencing.)

<sup>132</sup> *See* Watchtower, *supra* note 105.

<sup>133</sup> *See supra* note 130.

<sup>134</sup> Turkmenistan's practice of repeated sentencing may be implied under Article 18.4 of the Military Act, which provides exemption for those twice convicted for committing a minor offense or convicted for a serious or especially serious crime, and article 18.2 which exempts those who have "completed military service". A once convicted conscientious objector may not be considered to have completed service, nor is he considered exempt as a prior convict until he has been convicted twice. *See supra* notes 9 and 10; *See also Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, supra* note 56 at ¶ 391 "...the Government should also revise the Conscription and Military Service Act which refers to the possibility of being sanctioned twice for the same offence."

<sup>135</sup> *See* General Comment 32 at ¶ 4.

<sup>136</sup> *Id.*

<sup>137</sup> ICCPR at art. 2(2): "Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant."

<sup>138</sup> UN Human Rights Committee, CCPR General Comment No. 31: *Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, ¶ 4, (26 May 2004).

### **C. Conclusion**

The current detention of the Jehovah's Witnesses is punishment for exercising their right to freedom of thought, conscience, and belief guaranteed under Article 18(1) of the ICCPR. Furthermore, the repeated detention of Mr. Nasyrlaev and Mr. Abdullaev for continuing to exercise this right violates due process protections under Article 14(7) of the ICCPR. As such, the Working Group should find the detention of all four men arbitrary under Category II and the detention of Mr. Nasyrlaev and Mr. Abdullaev arbitrary under Category III.

***V. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN.***

There is no specific information regarding whether Mr. Nazarov, Mr. Nasyrlaev, or Mr. Abdullaev were allowed to appeal their convictions. Reports have indicated that the government prevented Mr. Hudaybergenov from lodging an appeal.

***VI. FULL NAME AND ADDRESS OF THE PERSONS SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE).***

Mirakmal Niyazmatov and Regina Rana  
Freedom Now  
1776 K Street, NW, 8<sup>th</sup> Floor  
Washington, DC 20006  
United States of America  
+1 (202) 223-3733 (tel)  
+1 (202) 223-1006 (fax)  
mniyazmatov@freedom-now.org