



# UNIVERSAL PERIODIC REVIEW SUBMISSION FOR TURKMENISTAN

NGO Submission

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Prepared and submitted by:  
The Human Rights Foundation Center for Law and Democracy

Authors:  
Joy Park, International Legal Associate, HRF  
Email: joy@hrf.org

Rachel Qi, Legal and Policy Intern, HRF  
Email: rachel.qi@hrf.org

Human Rights Foundation  
350 Fifth Avenue, # 4202,  
New York, NY 10118  
hrf.org

# ABOUT HRF

The Human Rights Foundation (HRF) is a nonpartisan nonprofit organization that promotes and protects human rights globally, with a focus on closed societies. HRF unites people in the common cause of defending human rights and promoting liberal democracy. Our mission is to ensure that freedom is both preserved and promoted around the world.

We focus our work on the founding ideals of the human rights movement, those most purely represented in the 1948 Universal Declaration of Human Rights (UDHR), and the 1976 International Covenant on Civil and Political Rights (ICCPR).

The Human Rights Foundation Center for Law and Democracy (HRF-CLD) is a program of the Human Rights Foundation (HRF). HRF-CLD promotes legal scholarship in the areas of comparative constitutional law and international law, with a focus on international human rights law and international democracy law.

# INTRODUCTION

This submission was prepared by HRF for the Universal Periodic Review (UPR) of Turkmenistan. In this submission HRF evaluates Turkmenistan's implementation of recommendations made in the previous UPR, and sets forth the national human rights framework. Lastly, this submission focuses on the current crackdown on a group of citizens in the country based on their association with a transnational religious and social movement.

## FOLLOW UP TO THE PREVIOUS REVIEW

On September 18, 2013, the Human Rights Council considered and adopted the outcome of the review of Turkmenistan at its 19th meeting. After reviewing a total number of 183 recommendations made by the member states, the government of Turkmenistan fully accepted 166 recommendations, partly accepted one recommendation, and refused to support the other 16 recommendations.<sup>i</sup>

Although Turkmenistan had accepted the majority of the recommendations regarding acceding to various international human rights instruments, it has not made much progress on the ratification of these instruments. Turkmenistan has yet to ratify the Optional Protocol to the Convention Against Torture (OP-CAT)<sup>ii</sup> and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW),<sup>iii</sup> which Turkmenistan promised to seriously consider during the 2013 review. Additionally, Turkmenistan failed to accede to or ratify the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).<sup>iv</sup> Turkmenistan also has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure.<sup>v</sup> Since the government did not submit a midterm report in 2015, there is no information on whether these international instruments are being considered or the stage of the ratification process of these treaties.

Furthermore, despite numerous recommendations asking the Turkmenistan government

to invite special procedures and working groups to visit the country, the government has yet to extend any invitation and respond to requests for visits from various special rapporteurs and the Working Group on Arbitrary Detention.<sup>vi</sup>

In the 2013 periodic review, many member states noted the gap between law and practice and called attention to the protection of political and civil freedoms. Specifically, member states expressed concerns of politically motivated imprisonment, mistreatment of journalists and religious and ethnic groups, torture and ill-treatment, and implementation of the law on the freedom of media.<sup>vii</sup> While the president of Turkmenistan signed and approved a National Plan of Action in the field of human rights, the plan of action has not been successfully implemented, as illustrated in the case below.<sup>viii</sup>

## TURKMENISTAN'S NATIONAL FRAMEWORK FOR PROTECTING HUMAN RIGHTS

The constitution of Turkmenistan provides a basic framework for protecting human rights of its citizens. Section II of the 2008 constitution lays out the civil and political rights enjoyed by the citizens of Turkmenistan:

### **Article 29**

Citizens are guaranteed freedom of assembly, rallies and demonstrations in the manner prescribed by law.

### **Article 30**

Citizens have the right to form political parties and other public associations operating within the framework of the Constitution and laws.

[...]

[...]

### **Article 43**

Citizens are guaranteed judicial protection of [...] personal and political rights and freedoms of individual and citizen [as stipulated] by the Constitution and laws.

Citizens have the right to appeal in the court against the decisions and actions of the state bodies, public associations and officials.

Article 19 guarantees the protection of these listed rights without discrimination:

**Article 19**

Turkmenistan guarantees the equality of rights and freedoms of individual and citizen, and also the equality of the individual and citizen before the law regardless of their nationality, race, gender, origin, [...] language, religion, political beliefs, party affiliation or lack of affiliation to any party.

Article 28 protects the right to freedom of expression as well as the right to information:

**Article 28**

Citizens of Turkmenistan have the right to freedom of opinion and expression, as well as to receive information if it is not a state or other secret protected by law.

Religious freedom is guaranteed in Section I of the constitution:

**Article 12**

The state guarantees freedom of religion and worship, and equality before the law. [...] Each person independently determines his attitude toward religion, has the right to, individually or jointly with others, profess any religion or none, to express and disseminate beliefs related to attitude toward religion, to participate in religious observances, rituals, and ceremonies.<sup>ix</sup>

# ARBITRARY ARRESTS BASED ON ASSOCIATION AFFILIATION

## Overview

According to HRF's trusted sources, 19 Turkmen<sup>1</sup> were arbitrarily taken into custody at the end of 2016 by the Department 6 Secret Police<sup>2</sup> within the Internal Affairs Ministry in Turkmenistan. No arrest warrant was presented to the 19 Turkmen at the time of their arrest, and they were not informed of the charges behind their arrest.<sup>x</sup> Several individuals received phone calls and were summoned to police stations and other government facilities. Since then, one of the Turkmen arrested was believed to have died in detention.

There is strong evidence to suggest that the Turkmen were arrested due to their association with Turkish-Turkmen educational institutions in Turkmenistan. According to Freedom House, freedom of association in Turkmenistan remains restricted in practice since the onerous registration requirements and the state's unfettered ability to monitor NGOs inhibit the capacity of civil society.<sup>xi</sup> Freedom House also reported that Turkmenistan's regime subjects people to fines for being a part of "unregistered" religious groups.<sup>xii</sup>

Currently, Turkmenistan is cracking down on alleged followers of the Gulen movement, of which the Turkish-Turkmen schools<sup>xiii</sup> have historically been affiliated with.<sup>xiv</sup> As HRF's sources have explained, throughout the 1990s, the Gulen movement, through support that was provided by various Turkish business associations, established many schools in Central Asia. The priority of these schools was to provide a modern and secular education in accordance with local norms that adhered to the official curricula and specificities of every country. In 1993, Turkmenistan opened its first Gulen affiliated schools, which promoted a Western style education, in both Turkish and English.<sup>xv</sup> By 2011, the schools were seized by the government and closed. There was no specific reason for the forced closure. However, one of HRF's source believes that there was a misperception by the government that the schools were promoting religion in that their teachers and other staff that were employed by the schools had read Gulen's books, naturally given that they were his followers and the schools were inspired by him, as well as other religious texts. Gulen's books are known to address religion, among other topics.

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<sup>1</sup> The names of 18 of the arbitrarily arrested Turkmen are Mekan Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Shatlyk Durdygylyjov, Mekan Godekov, Nurmuhammet Orazov, Merdan Gylycdurdyev, Guvanch Gazakbayev, Sapardurdy Yagshybayev, Myrat Gullyyev, Resulberdi Atageldiyev, Dovletgeldi Amangeldiyev, Dovletmyrat Atayev, Annamammet Orazmammedov, Tachmuhamet Orazmuhamedov, Batyr Atayev, Ovezdurdy Melayev, and Saparmyrat Ibrayymov. The identity of 19<sup>th</sup> Turkman, who died in detention, is unknown.

<sup>2</sup> While the Department 6 Secret Police is the main party to this case, a source of HRF has noted that the National Security Department and the Secret Police share intelligence with one another. When individuals are summoned it is often by either the Secret Police or the National Security Department.

The arrests and detention of former affiliates of the educational institutions has also coincided with Turkmen President Gurbanguly Berdymukhammedov's efforts to increase ties with Turkish President Recep Erdogan in midst of a deteriorating economy to join the Turkish and Russian governments in a Turkish stream development project.<sup>xvi</sup> Furthermore, Turkey is an important trade partner and a major source of foreign investment for Turkmenistan.

After a failed coup in Turkey in July 2016, Erdogan has been purging individuals associated with the Gulen movement and pressuring countries in Central Asia, including Turkmenistan, to do the same. This has led to the arbitrary arrest and detention of anyone associated with the Gulen Movement and Turkish-Turkmen educational institutions.

## *Torture and Ill-treatment in Detention*

Upon their detention, the 19 Turkmen were subjected to "relentless and embarrassing torture and ill-treatment" during interrogation to force them to confess about anyone else that is associated with them; "they were kept naked in dark rooms for long periods of time and subjected to severe beatings and other methods of torture. Torture resulted, *inter alia*, in broken bones, long-term psychological trauma and other effects on the detainees."<sup>xvii</sup>

They were held incommunicado in pretrial detention in an interrogation isolation center in Yashlyk city in the Ahal province of Turkmenistan from September, October, and November 2016 until February 8, 2017, the date of their closed court trial. During this period, the families of the 19 Turkmen were unable to communicate with them, and had to learn about their detention through informal channels. Furthermore, the Turkmen did not have access to their lawyers during their pretrial detention.

According to credible reports, the initial court date had been postponed for marks of torture to disappear and reports state that one of the 19 Turkmen died after being tortured, but due to the strict control that the Turkmen regime has over information flow it cannot be corroborated with the available evidence.

## *Violation of Due Process*

The Turkmen were tried in a closed trial on February 8, 2017 at the Ahal Province's PM's AH-D1 Crime Investigation Detention House. The trial concluded in two hours, and the

defendants were denied their right to lawyers. They were wrongfully convicted under Article 177 (“Incitement of social, national, ethnic, racial or religious hostility”), Article 275 (“Organization or participation in organized group, criminal organization or other forms of criminal organization), and Article 275<sup>1</sup> (“Financing of criminal structures”) of Turkmenistan’s criminal code.

Nine of the Turkmen were sentenced to 12 years in a “highly strict correctional facility.” The other nine Turkmen were sentenced to 25 years in prison, with the first five years of their sentence being in a “heavy confinement jail,” which HRF’s sources have described as a form of solitary confinement that subjects individuals to torturous prison cells with low ceilings forcing them to remain in a hunchback position, and the remaining 20 years in a “highly strict correctional facility.”

The court order <sup>xviii</sup> for the case does not provide any clear evidence of criminal activities to justify their detention. It merely contained a list of their biographies, the verdict, the beginning of their prison sentence, and property confiscated and transferred to the state treasury.<sup>3</sup> HRF’s sources stated that no one was aware of who the prosecutor or the judge were<sup>xix</sup>, lawyers were not allowed to present evidence in defense of their clients, and family members were not present at the trial. After the trial, their families were able to communicate with them over the phone. HRF’s sources stated that the families were forced to sign consent forms stating that they were informed of the accusations against the Turkmen, though there was no clarification of the nature of the activities that the Turkmen were convicted of under Article 177, Article 275, and Article 275<sup>1</sup>.

The most recent information that HRF has on the status of the 18 Turkmen was that some of their families submitted a handwritten appeals letter (“zayavleniye”) on March 15th, 2017<sup>4</sup> asking a higher court to reevaluate the case as well as request to have any property that was confiscated returned. Only some of the families of the Turkmen appealed; others did not appeal out of fear that it may prolong their sentences. In regards to this appeals process, HRF’s sources have stated that “nothing came out of it, and it was conducted in closed session and announced.” According to a source of HRF, the 18 Turkmen are now being held in the Ovadandepe prison.

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<sup>3</sup> HRF’s sources stated that the court order is not sufficient and that by law there should be a public document that contains evidence, accusations, witnesses, and facts of the case. For unknown reasons, this document has remained classified. Lawyers have asked for a complete document on behalf of the Turkmen’s families, but they have yet to receive one.

<sup>4</sup> Given that the court order states that the verdict could be appealed to the Criminal Court Collegium of the Supreme Court of Turkmenistan within 10 days, it is apparent that the appeals process was postponed prolonging the duration of the continuous imprisonment and wrongful conviction of the 18 Turkmen.



Based on these facts, it is conclusive that the 18 Turkmen's right to due process was violated. HRF is concerned that the continuous and clearly arbitrary and unjustified imprisonment and wrongful conviction of the 18 Turkmen will result in further deterioration of their physical and mental health, especially in light of the death of one of the detainees during pretrial detention.

## RECOMMENDATIONS

*HRF calls on the Turkmenistan government to:*

1. Release the imprisoned 18 Turkmen at once, absent compelling evidence pointing to any criminal activities conducted by these Turkmen.
2. Conduct a thorough investigation into the death of the 19<sup>th</sup> Turkmen, and make records of the investigation available to the public.
3. Allow the 18 Turkmen, the 19<sup>th</sup> Turkmen who died in detention, and their families to seek damages for their unjust detention, injury, and loss of life.
4. Ratify the Rome Statute of the International Criminal Court and the International Convention for the Protection of All Persons from Enforced Disappearance (CPED).
5. Extend invitation to and/or respond to requests for visits from various special rapporteurs and the Working Group on Arbitrary Detention.
6. Ensure that anyone under detention receives humane treatment in accordance with the Convention Against Torture, which Turkmenistan ratified in 1999.

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<sup>i</sup> Human Rights Council, *Report of the Human Rights Council on its Twenty-Fourth Session*, A/HRC/24/2, January 27, 2014, para 279.

<sup>ii</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Turkmenistan*, A/HRC/24/3, July 5, 2013, recommendations 113.1-113.6 (Mexico, France, Switzerland, Costa Rica, Estonia, Montenegro, Romania), and in A/HRC/24/2, para 285.

<sup>iii</sup> A/HRC/24/3, recommendations 113.14 (Tajikistan) and 113.15 (Egypt), and A/HRC/24/2, para 285.

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- <sup>iv</sup> A/HRC/24/3, recommendations 113.7 (Uruguay), 113.9 (Slovakia, Slovenia), 113,10 (Switzerland), 113.12 (Latvia), and 113.13 (Sweden).
- <sup>v</sup> A/HRC/24/2, para 285.
- <sup>vi</sup> A/HRC/24/3, recommendations 113.30-113.47. About current status of visit requests by the special procedures of the Human Rights Council please see <http://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/ViewCountryVisits.aspx?Lang=en&country=TKM>.
- <sup>vii</sup> A/HRC/24/3, paras 36, 37, 42, 47, 51, 56, 59, and 61.
- <sup>viii</sup> National Action Plan on Human Rights launched in Turkmenistan, <http://www.tm.undp.org/content/turkmenistan/en/home/presscenter/pressreleases/2016/03/17/national-action-plan-on-human-rights-launched-in-turkmenistan.html>; <http://www.tm.undp.org/content/turkmenistan/en/home/presscenter/articles/2016/01/22/turkmenistan-adopts-national-action-plan-on-human-rights-.html>.
- <sup>ix</sup> The Constitution of Turkmenistan, *available at* [https://www.constituteproject.org/constitution/Turkmenistan\\_2008.pdf?lang=en](https://www.constituteproject.org/constitution/Turkmenistan_2008.pdf?lang=en).
- <sup>x</sup> According to HRF's source, it is typical for the local police to carry out arrests without presenting warrants. The warrants are sometimes generated weeks after the detention of the arrested.
- <sup>xi</sup> See Freedom House, Freedom in the World 2016: Turkmenistan (2016), <https://freedomhouse.org/report/freedom-world/2016/turkmenistan> (last visited June 6, 2017).
- <sup>xii</sup> In Turkmenistan, any "unregistered" religious group is deemed illegal.
- <sup>xiii</sup> Specifically, there were 20 schools as well as the International Turkmen-Turkish University.
- <sup>xiv</sup> See Nick Ashdown, Turkmenistan Cracking Down on Gulen Followers (2016), <http://www.eurasianet.org/node/81611> (last visited June 6, 2017).
- <sup>xv</sup> *Id.*
- <sup>xvi</sup> See Fergananeews, Turkmenistan: Repressing Gulen Supporters to Cajole Erdogan? (2016), <http://enews.fergananeews.com/articles/2983> (last visited on June 6, 2017).
- <sup>xvii</sup> According to a memo prepared by HRF's source.
- <sup>xviii</sup> See copy of the court order, *available at* <https://docs.rferl.org/tk-TM/2017/04/04/3571b995-9c76-4939-bbee-8b5ef9ca8d1a.pdf> (last visited on June 6, 2017).
- <sup>xix</sup> In the translation of the court order that HRF has access to, there is a list of the Board of Criminal Judges of Superior Court of Ashkhabad City: Judges M. Halmyradov (who led the hearing), O. Hudaygulyyev, and B. Annagulyyev as well as Secretary Y. Durdykov and Prosecutor B.Seyitmammedov. There was also listed the name of four lawyers, I. Atayev, A. Orazov, G. Annaberdiyeva and A. Rejepov, but HRF's sources state that these lawyers were only present in the closed court session for the sake of formality.