

## SUBMISSION

### TO THE 39<sup>th</sup> SESSION OF THE UNIVERSAL PERIODIC REVIEW

## TAJIKISTAN

1. This submission was prepared in March 2021, including the latest information available. It focusses on the right to conscientious objection to military service, arbitrary detention of conscientious objectors, the right of the child and underage recruitment.

### BASIC INFORMATION ON TAJIKISTAN

2. **Population** (July 2021, estimated)<sup>1</sup>: 8,990,874.

**Military expenditure** (last available figures date back to 2015):

- in millions of US \$ at current exchange rates: 95.8 m. <sup>2</sup>
- per capita US \$: 11.3. <sup>3</sup>
- as percentage of gross domestic product: 1.2%<sup>4</sup> of GDP.

**Military service:** compulsory to each (male) citizen of 18-27 years old. <sup>5</sup>

**Minimum recruitment age:** 18, but students in military schools, for which the admission age is no higher than 15, are classified as “voluntary military personnel”.

**Duration of compulsory military service:** 12-18 months.

**Right to conscientious objection:** not recognised.

**Alternative (non-military) service:** not available.

**Armed forces** (2020): approximately 9,500 active troops divided in 8,000 Land and Mobile Forces; 1,500 Air and Air Defence Forces. <sup>6</sup>

**Total Military Personnel** (2021 est.): 16,500 divided in 9,000 active personnel and 7,500 paramilitary (no reserve personnel). <sup>7</sup>

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<sup>1</sup> Central Intelligence Agency (CIA), The World Factbook. Information available here: [www.cia.gov/the-world-factbook/countries/tajikistan/#people-and-society](http://www.cia.gov/the-world-factbook/countries/tajikistan/#people-and-society).

<sup>2</sup> SIPRI (Stockholm International Peace Research Institute), Military expenditure database 2020. Last figures available are related to 2015.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Central Intelligence Agency (CIA), op. cit.

<sup>6</sup> Ibid.

<sup>7</sup> Global Firepower online analytical database based on the CIA World Factbook. Information available here: [www.global-firepower.com](http://www.global-firepower.com).

## **CONSCIENTIOUS OBJECTION TO MILITARY SERVICE**

(Article 9 and 18 of the Universal declaration of human rights, article 9 and 18 of the International Covenant on civil and political rights)

### ***Duration and age for compulsory service***

3. Tajikistan maintains a system of compulsory military service.

According to the Universal Military Obligations and Military Service Act, male citizens aged from 18 to 27 years who are registered with the military authorities or are required to be registered and are not entitled to a deferral or exemption are subject to call-up for military service in the armed forces or other troops or military units, in the ranks or as sergeants.

4. The following persons are exempted from call-up: (a) those who have been declared unfit or partially unfit for military service on medical grounds; (b) those who are performing or have performed military or alternative service; (c) those who have performed military service in another State; and (d) those who hold a master's degree or a doctorate. Persons who have an unexpunged or outstanding conviction for an especially serious or serious offence may not be called up for military service.

### ***The failure to recognise the right to conscientious objection***

5. Tajikistan does not recognise the right to conscientious objection on any grounds and has not introduced a possibility for a genuinely civilian alternative service.

Indeed, article 1.3 of the Law on Military Duty and Military Service states that alternative service may be carried out in accordance with legislation, but there is no specific mention of conscientious objection, and proposals to draft such legislation have hitherto come to nothing.

This human rights violation has been the object of repeated concerns of the UN Human Rights Committee.

6. In its 2004 Concluding Observations, the UN Human Rights Committee recommended that the State party should take all necessary measures to recognize the right of conscientious objectors to be exempted from military service.<sup>8</sup>

This concern was reiterated in the 2013 Human Rights Committee's Concluding Observations.<sup>9</sup>

7. Eventually, this concern was restated in the Concluding Observations adopted on 18 July 2019:

"The State party should step up its efforts to adopt the legislation necessary to recognize the right to conscientious objection to military service without discrimination as to the nature of the beliefs (religious or non-religious beliefs grounded in conscience) justifying the objection, and to ensure that alternative service is not punitive or discriminatory in nature or duration by comparison with military service."<sup>10</sup>

It is noticeable, therefore, the unwillingness of Tajikistan to put its legislation in line with international

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<sup>8</sup> CCPR/CO/84/TJK, para. 20.

<sup>9</sup> CCPR/C/TJK/CO/2, para. 21.

<sup>10</sup> CCPR/C/TJK/CO/3, para. 46.

human rights standards related to the right of freedom of conscience and belief.

### ***Figures about conscientious objectors and the ban of the activity of Jehovah's Witnesses***

8. It is not available an official information about how many conscientious objectors there have been and there are and how many of them are imprisoned.

All recorded conscientious objectors in Tajikistan are Jehovah's Witnesses and this religious minority is the only available source of information.

9. Moreover, on 11 October 2007 the Ministry of Culture cancelled the legal registration of the Religious Association of Jehovah's Witnesses, effectively banning the activity of Jehovah's Witnesses throughout the country. The Ministry of Culture justified its banning decision, inter alia, on individual Jehovah's Witnesses who refused military service "asking instead that alternative service be provided".<sup>11</sup>

The decision to cancel legal registration in turn exposes unregistered religious groups to detention and harassment for engaging in religious activities.

### ***Arbitrary detention of conscientious objectors***

10. As determined by the UN Working Group on Arbitrary Detention in its deliberation No. 9,<sup>12</sup> the legislation allowing military recruitment by means of arrest and detention by the armed forces or repeated imprisonment of conscientious objectors to military service may be deemed arbitrary if no guarantee of judicial oversight is available. The Working Group has, on occasion, found the detention of conscientious objectors in violation of, inter alia, article 9 of the Universal Declaration of Human Rights and articles 9 and 18 of the International Covenant on Civil and Political Rights.<sup>13</sup>

11. Hereinafter, the details about the two more recent and well-known individual cases of arbitrary detention of conscientious objectors.

#### **- The case of Norov Rustamjon**

The Jehovah's Witness Norov Rustamjon (22 years old) is currently imprisoned in Tajikistan for his conscientious objection to military service.<sup>14</sup>

In 2016, Mr. Norov voluntarily reported to the local conscription office. He presented himself as a conscientious objector and requested alternative civilian service. The following year, he repeated the process and for the next three years Mr. Norov was not summoned for compulsory military service.

12. However, on September 24<sup>th</sup> 2020, Mr. Norov was summoned to the district conscription office.

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<sup>11</sup> EAJCW - European Association of Jehovah's Christian Witnesses Submission to the Universal Periodic Review, 17 September 2015, available at: [https://www.upr-info.org/sites/default/files/document/tajikistan/session\\_25\\_-\\_may\\_2016/eajcw\\_european\\_association\\_of\\_jehovahs\\_christian\\_witnesses\\_upr25\\_tjk\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/tajikistan/session_25_-_may_2016/eajcw_european_association_of_jehovahs_christian_witnesses_upr25_tjk_e_main.pdf)

<sup>12</sup> Working Group on Arbitrary Detention, COMPILATION OF DELIBERATIONS, para 64.

<sup>13</sup> See, for example, Working Group, opinions No. 8/2008 (Colombia) and 16/2008 (Turkey); see also, Human Rights Committee, Yoon and Choi v. Republic of Korea, communications Nos. 1321/20041322/2004, Views adopted on 3 November 2006.

<sup>14</sup> Information available on the official Jehovah's Witnesses website ([www.jw.org](http://www.jw.org)) available at [www.jw.org/en/news/legal/by-region/tajikistan/jehovahs-witnesses-in-prison/](http://www.jw.org/en/news/legal/by-region/tajikistan/jehovahs-witnesses-in-prison/).

The conscription officers questioned him for three hours and declared him fit to perform military service.

Mr. Norov and his father reported to the prosecutor's office on October 1<sup>st</sup> and Mr. Norov was held in custody for two days without a formal charge and preventing him from consulting with his lawyer.

On October 3<sup>rd</sup>, Mr. Norov was transferred to a military unit in the city of Khujand, some 300 kilometres away from his family in Dushanbe. On October 17<sup>th</sup>, a Tajik military court accused him of falsifying his medical history to evade military service and ordered him into pretrial detention.

On January 7<sup>th</sup> 2021, Mr. Norov was sentenced to three and a half years of detention, and he is currently detained.

#### **- The case of Daniil Islamov**

(UN Working group on Arbitrary Detention opinion 43 of 2017 and Human Rights Committee individual complain n. 3603/2019)

13. The case of the Jehovah's Witness Daniil Islamov has been object of the opinion 43 of 2017 of the UN Working Group on Arbitrary Detention (WGAD) and more recently of an individual communication to the Human Rights Committee.

In April 2017, Daniil Islamov (18 years old) received his military call-up and presented himself to the enlistment office. He informed the military officials that his religious conscience did not allow him to perform military service and explained that he would be willing to perform alternative civilian service. The Military Commissariat rejected Mr. Islamov's request, stating that no alternative civilian service was available in Tajikistan. On that same day, April 22<sup>nd</sup> 2017, Mr. Islamov was arrested, transferred to a military prison and placed in detention without a court hearing or trial.

14. On July 31<sup>st</sup> 2017, Mr. Islamov was charged under article 376(1) of the Criminal Code of Tajikistan for evading military service. He remained in military detention, where officers repeatedly tried to force him to take the military oath and to put on a military uniform.

On October 5<sup>th</sup> 2017, the UN Working Group on Arbitrary Detention rendered its opinion.<sup>15</sup>

The WGAD underlined that the right to conscientious objection is well established in international law and derives from article 18 of the Covenant. The Human Rights Committee has specifically recommended that Tajikistan provides for alternatives to military service in such cases (see CCPR/C/TJK/CO/2, para. 21). In the present case, it is also without doubt that Mr. Islamov's fate derives directly from his religious expression as a Jehovah's Witness.<sup>16</sup>

Therefore, the WGAD rendered the opinion that the deprivation of liberty of Daniil Islamov, being in contravention of articles 9, 18 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III and V.<sup>17</sup>

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<sup>15</sup> Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 43/2017, concerning Daniil Islamov (Tajikistan), A/HRC/WGAD/ 2017/43, 5 October 2017.

<sup>16</sup> Ibid. para 36.

<sup>17</sup> Ibid. para 38.

15. Consequently, the WGAD requested the government of Tajikistan to take the steps necessary to remedy the situation of Mr. Islamov without delay and bring it into conformity with the standards and principles set forth in the international norms on detention, including the International Covenant on Civil and Political Rights.<sup>18</sup>

The WGAD considered that the appropriate remedy would be to release Mr. Islamov immediately and to accord him an enforceable right to compensation and other reparations, in accordance with international law.<sup>19</sup>

The WGAD also stated that among the follow up actions were that within six months of the date of transmission of the October 2017 Opinion the government should inform the Working Group "*whether any legislative amendments or changes in practice have been made to harmonize the laws and practices of Tajikistan with its international obligations in line with the present opinion*".

16. On October 13<sup>th</sup> 2017, the military court disregarded the WGAD's opinion and convicted Mr. Islamov of "evasion by an enlisted serviceman of fulfilment of military service obligations" under Article 376(1) of the Criminal Code of the Republic of Tajikistan. He was sentenced to six months in prison. On January 11<sup>th</sup> 2018, the Military Collegium of the Supreme Court of Tajikistan unilaterally rejected Daniil Islamov's appeal for acquittal and upheld Mr. Islamov conviction on the charge of evading military service. The hearing was conducted in a closed court.

17. On February 17<sup>th</sup> 2018, Mr. Islamov was transferred from the prison in Kurgan-Tube to the Yavans one.

On April 13<sup>th</sup> 2018, Mr. Islamov was released after having served his sentence in full.

In its 2019 Report, the WGAD<sup>20</sup> informed that no further actions have been taken to implement the opinion.

On January 24<sup>th</sup> 2019, Mr. Islamov filed an individual communication to the UN Human Rights Committee. The communication has been registered and is under review.

### ***The second cycle of the UPR (2016)***

18. Tajikistan had undergone the second review cycle within the UPR procedure of the UN Human Rights Council in 2016. 203 recommendations were provided by the countries members, of which Tajikistan has accepted 151 recommendations.

There have been 7 recommendations on the theme Freedom of thought, conscience and religion (D42).<sup>21</sup>

Argentina, in its recommendation 118.47, invited to the state-party to "*take the measures necessary to*

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<sup>18</sup> Ibid. para 39.

<sup>19</sup> Ibid. para 40.

<sup>20</sup> A/HRC/39/45, 2 July 2018.

<sup>21</sup> These recommendations are: 118.46 (Sierra Leone), 118.47 (Argentina), 118.58 (Czech Republic), 118.10 (Austria), 115.87 (Singapore), 118.45 (Poland), 118.49 (Turkey).

*eliminate restrictions on freedom of worship, including the possibility of exercising the right to conscientious objection to compulsory military service”.*

19. Tajikistan accepted this recommendation as *“it believes that it is already being fulfilled. Freedom of religion is guaranteed to every person in Tajikistan and there are no restrictions on peaceful religious activity, either for individuals or for groups. Specific locations are designated where people can perform religious rites. Certain requirements exist with regard to receiving a religious education and disseminating religious literature. These measures are necessary to protect the rights of children and to prevent the incitement of religious hatred, and they have been developed in accordance with international human rights standards”*.<sup>22</sup>

This recommendation is far away from being fulfilled: the country’s legislation has failed to recognise and implement the right to conscientious objection to compulsory military service on the grounds of religious or other beliefs.

## **THE RIGHTS OF THE CHILD AND UNDERAGE RECRUITMENT**

(Article 38 of the Convention on the Rights of the Child, Article 3.3 of CRC Optional protocol on Children and armed conflict)

20. In its Concluding observations of the Optional Protocol to the Convention on the Rights of the Child, on the involvement of children in armed conflict (2017),<sup>23</sup> the Committee on the Rights of the Child (CRC) is seriously concerned that the legislation of the State party does not explicitly criminalize the recruitment and use of children under 18 years of age in hostilities, by the armed forces and non-State armed groups. The Committee is also concerned that the recruitment of children under 15 years of age has not been defined as a war crime in the State party’s legislation.

21. Therefore, the CRC urges the State party to, inter alia:

- (a) Explicitly prohibit and criminalize in law the recruitment and use of children under 18 years of age in hostilities, by the armed forces, non-State armed groups and security companies;
- (b) Define and punish the recruitment of children under the age of 15 as a war crime.<sup>24</sup>

Moreover, in relation to military school issue, the Child Rights Committee is concerned that:

- (a) The curricula in military schools are not under the auspices of the Ministry of Education and Science;
- (b) Children can enrol in upper secondary military school from the age of 15 and receive military training;

22. (c) Children in military colleges are on active military service as conscripts, are trained in the use

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<sup>22</sup> Report of the Working Group on the Universal Periodic Review\* Tajikistan Addendum, Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/33/11/Add.1, 7 September 2016), p. 5.

<sup>23</sup> CRC/C/OPAC/TJK/CO/1

<sup>24</sup> CRC/C/OPAC/TJK/CO/1 paras 20-21.

of weapons, and, after completing their first year of studies, may participate in hostilities.

Therefore, the Committee recommends that the State party ensure that:

- (a) The curricula in military schools are designed by the Ministry of Education and Science, taking into account human rights principles;
- (b) Students of military schools are not trained in the use of weapons or deployed to any armed conflict before the age of 18.<sup>25</sup>

***The second cycle of the UPR (2016)***

During the last cycle of the UPR, no recommendations were specifically related to the underage recruitment.

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<sup>25</sup> CRC/C/OPAC/TJK/CO/1 paras 16-17.

## **SUGGESTED RECOMMENDATIONS:**

### **Prohibition of torture and cruel, inhuman or degrading treatment**

- Take all necessary measures to effectively fight against torture and ill-treatment, particularly in places of detention and military units, by creating an independent national preventive mechanism and ratifying the Optional Protocol to the Convention against Torture.

### **Freedom of thought, conscience and religion**

- Recognise and fully implement, by means of a dedicated legislation, the right to conscientious objection to military service on any grounds and ensure an alternative service which is not punitive or discriminatory in nature or duration.

- Release immediately all the conscientious objectors detained and end the illegal practices of ill-treatment and arbitrary military detention.

### **Freedom of opinion and expression**

- Ensure that freedom of opinion and expression is encouraged and protected, including for conscientious objectors to military service and individuals that support them.

### **Rights of the child**

- Explicitly prohibit and criminalize in law the recruitment and use of children under 18 years of age in any armed conflict and define and punish the recruitment of children under the age of 15 as a war crime.

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