

Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences

REFERENCE:
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Excellency,

We have the honour to address you in our capacities as Working Group on Arbitrary Detention; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on contemporary forms of slavery, including its causes and consequences, pursuant to Human Rights Council resolutions 33/30, 34/5 and 33/1.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **forced labour in the cotton sector and the arbitrary detention of labour rights defender, Mr. Gaspar Matalaev**.

According to the information received:

Thousands of workers from the public and private sector are forced by the Government of Turkmenistan to pick cotton every year during the cotton harvest. If they refuse to cooperate, a bribe has to be paid or someone has to be hired as a replacement worker to pick cotton instead. Threats of punishment such as public censure, wage deductions, termination of employment, and loss of state benefits are frequent.

Teachers, doctors, nurses, civil servants, military conscripts, students of the country's two agriculture universities and many others are forced to pick cotton, and are assigned with a daily picking quota (around 50kg). To fulfil these quotas, parents often have to rely on their children's help, despite national and international laws against forced and child labour. In 2017, children were forcibly mobilised by the local authorities to pick cotton during the school holidays, organised by the local education departments and often accompanied by their teachers. This happened especially in Ahal, Lebap and Dashoguz provinces. While we did not receive reports of organised child labor in 2018, children were still seen picking cotton, either as paid replacement workers or as substitutes for their adult family members.

Cotton picking is arduous work and conditions in the fields are often poor, especially in more remote areas where pickers have to stay overnight. Access to fresh drinking water is often limited. Private bus companies are forced to transport cotton pickers, and the mandatory participation of members of the military has also been reported, with national security officers in plain clothes conducting surveillance in the fields. As a result of the mass mobilisation of public sector

workers to pick cotton, many services are disrupted during the harvest including education, healthcare and public transportation.

The Government allegedly uses systematic coercion to force farmers and other citizens to fulfil cotton production and picking quotas, respectively. A strict chain of command to mobilise workers is followed, starting with the President who holds regional governors accountable for the fulfilment of their cotton quota. The chain continues through deputies and their administrators in regional organisations. The state-owned enterprise Turkmenpagta assigns annual production quotas to farmers, and the Government uses coercion and threats to ensure compliance with the cotton production plan. In April 2017, the Human Rights Committee expressed its concern about the “reported widespread use of forced labour of farmers, students, public and private sector workers during the cotton harvest under threat of penalties such as loss of land, expulsion from university, loss of wages or salary cuts, termination of employment and other sanctions” (CCPR/C/TKM/CO/2, para 26).

The ILO Committee of Experts on the Application of Conventions and Recommendations also noted deep concern regarding forced labour in the cotton sector in 2016.

State-sponsored forced labour in Turkmenistan takes place in a climate of widespread human rights violations in the country. According to information received, the Government is allegedly also responsible for forced disappearances; denies freedom of association, movement, expression and religion.

Arbitrary detention of human rights defender

It is alleged that those who document and report on forced labour face harassment, arrest and imprisonment. Among such, Mr. Gaspar Matalaev, who has been imprisoned on allegedly politically motivated charges since 4 October 2016. Allegedly, he published a report on extensive use of forced labour in the 2016 cotton harvest. It is reported that he has been tortured with electric shocks while detained.

In May 2018, the Working Group on Arbitrary Detention concluded that Mr. Matalaev’s detention was arbitrary and that it was “an attempt by the Government to censor his activities as a human rights defender and to curtail his freedom of expression” (A/HRC/WGAD/2018/4). The Working Group on Arbitrary Detention requested the immediate release of Mr. Matalaev but to date, no information has been provided by your Excellency’s Government on compliance in this regard. On 1 May 2017, the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment issued a joint communication to

the Government regarding Mr. Matalaev's imprisonment. Moreover, the Human Rights Committee expressed concern about Mr. Matalaev's imprisonment in April 2017, referring to "continuous use of harassment, intimidation, torture and arbitrary arrests, detention and convictions on reportedly politically motivated charges as a retaliation tool, including those seeking to document forced labour in the cotton harvest, such as Gaspar Matalaev".

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would therefore be grateful for your observations on the following matters:

1. Please provide any additional information you may have on the abovementioned allegations.
2. Please indicate how forced labour in the cotton sector is prevented and addressed and to what extent the legal framework prohibiting forced labour has been implemented. Please also indicate how your Excellency's government intends to implement UPR recommendations related to forced labour in the cotton industry, for example through a partnership with the ILO and through the introduction of legal measures that prohibit forced and child labour.
3. Also, please confirm if any prosecutions for forced labour have taken place and if any victims have accessed reparation measures.
4. Please provide information about planned or already provided remedies with regard to the arbitrary detention and imprisonment of Mr. Gaspar Matalaev on alleged politically motivated grounds, including consideration of his immediate release, and ensuring his right to compensation and other reparations, as recommended by the Working Group on Arbitrary Detention in its Opinion No. 4/2018.
5. Please provide information on ensuring full and independent investigation of the circumstances surrounding Mr. Matalaev's arbitrary deprivation of liberty, and measures taken against those responsible for the violation of his rights.
6. Please indicate which policies, measures, and procedures your Excellency's government has in place to prevent labour exploitation, including forced labour.

7. Please provide information on measures taken to ensure a safe and open environment for human rights defenders in Turkmenistan.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of our highest consideration.

Elina Steinerte
Vice-Chair of the Working Group on Arbitrary Detention

Michel Forst
Special Rapporteur on the situation of human rights defenders

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, without expressing at this stage an opinion on the facts of the case, we would like to draw your Excellency's Government's attention to the applicable international human rights norms and standards, as well as authoritative guidance on their interpretation. These include:

- The Universal Declaration of Human Rights;
- The International Covenant on Economic, Social and Cultural Rights;
- The International Covenant on Civil and Political Rights;
- The Slavery Convention;
- The Protocol amending the Slavery Convention;
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- The Forced Labour Convention, 1930 (No. 29)
- The Abolition of Forced Labour Convention, 1957 (No. 105)
- The Convention on the Rights of the Child;
- The Worst Forms of Child Labour Convention, 1999 (No. 182).

We wish to draw your Excellency's Government's attention to obligations under international human rights instruments, to which Turkmenistan is party. The Universal Declaration of Human Rights (UDHR), adopted by the UN General Assembly on 10 December 1948, contributes to the international standards related to the elimination of all forms of slavery. Article 4 states that "no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms". Recalling Articles 3 of the UDHR and Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR) which guarantee the right of every individual to life, liberty and security.

We would also like to bring your attention to Article 8 of the International Covenant on Civil and Political Rights (ICCPR), accessed by Turkmenistan in 1997, which prohibits slavery and slavery-trade in all their forms and states in its paragraph 3 that 'no one shall be required to perform forced or compulsory labour'. We believe it is also pertinent in this case to refer to Article 24 of this international instrument, which specifically recognizes the right of every child to the measures of protection as are required by his status as a minor. We would also like to call your attention to General Comment No. 25 of the Human Rights Committee (HRC) on the liberty and security of person, as well as to its General Comment No. 17 on the rights of the child.

Additionally, Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), also accessed by Turkmenistan in 1997, enshrines the right of everyone to the enjoyment of just and favourable conditions of work, including safe and healthy working conditions. Moreover, Article 10 of the ICESCR recognizes that special measures of protection and assistance should be taken on behalf of all children and young persons, who should be protected from economic and social exploitation. States should

also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

We would particularly like to draw your Excellency's attention to the obligations established under the 1926 Slavery Convention, of which Turkmenistan is party since 1997. Article 1 of the 1926 Slavery Convention states:

“For the purpose of the present Convention, the following definitions are agreed upon:

(1) Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”

Article 2 of the 1926 Slavery Convention places a duty on states to “bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms”.

Article 2 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, which expanded the definition of slavery presented in the 1926 Slavery Convention and, states:

“Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926:

- (a) Debt bondage, that is to say, the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined;
- (b) Serfdom, that is to say, the condition or status of a tenant who is by law, custom or agreement bound to live and labour on land belonging to another person and to render some determinate service to such other person, whether for reward or not, and is not free to change his status;
- (c) Any institution or practice whereby:
 - (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
 - (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or

- (iii) A woman on the death of her husband is liable to be inherited by another person;
- (d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour, such as debt bondage, serfdom, child exploitation and slavery practices related to family life, such as forced marriage for money, the inheritance of women after the death of their husband and the transfer of women between men.”

We would also like to refer to the Forced Labour Convention, 1930 (No. 29), to which Turkmenistan is Party since 15 May 1997. Article 1 states that ‘Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress the use of forced or compulsory labour in all its forms within the shortest possible period’. As per Article 2, paragraph 1, ‘term *forced or compulsory labour* shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily’. Moreover, Turkmenistan has also been party to the Abolition of Forced Labour Convention, 1957 (No. 105) since 15 May 1997, and this instrument states in its Article 1 subparagraph b) that ‘Each Member of the International Labour Organisation which ratifies this Convention undertakes to suppress and not to make use of any form of forced or compulsory labour (...) as a method of mobilising and using labour for purposes of economic development’.

Article 32 of the Convention on the Rights of the Child (CRC) recognizes the right of the child to be protected from economic exploitation, as well as from ‘performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development’. In addition, Article 36 of the CRC contains the State's obligation to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. We would also like to bring your attention to Article 19 of the CRC, which states that ‘States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation’.

Article 1 of the Worst Forms of Child Labour Convention, 1999 (No. 182), ratified by Turkmenistan in 15 November 2010, establishes the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

In addition, we would also like to refer to articles 1 and 2 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, also known as the UN Declaration on Human Rights Defenders, which state that everyone has the right to promote and to strive for the protection and realization of human rights and

fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms. In addition, we wish to remind to your Excellency's Government that, according to Article 12.2 of this Declaration, "[t]he State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, [...] as a consequence of his or her legitimate exercise of the rights".

We also like to remind your Excellency's Government of the guarantees included in articles 3, 9 and 10 of the UDHR, 9 and 14 of the ICCPR which protect the right to liberty, to not be arbitrarily arrested or detained and to have a fair and public hearing. In this regard, we would also like to draw your Excellency's Government's attention to Principles 10, 11 and 15 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. We further remind your Excellency's Government of the Opinion No. 4/2018 of the Working Group on Arbitrary Detention regarding this individual.

We believe it is also pertinent to refer to the last Report of the Working Group on the Universal Periodic Review (UPR) of Turkmenistan (A/HRC/39/3). In the third cycle UPR in 2018, the Government of Turkmenistan supported a recommendation by the UK to work in partnership with the ILO to eliminate forced labour in the cotton industry (paragraph 114.50). Additionally, I would like to refer to the recommendation made by Poland (paragraph 116.89) regarding the introduction of legal measures that prohibit forced and child labour, which was also supported by Turkmenistan. Finally, we would like to refer your Excellency's attention to recommendation made by Chile (paragraph 116.85), regarding the establishment of a 'a time-bound national plan of action to address forced labour in cotton farming and abolish mandatory production and sanctions for non-compliance with cotton quotas', which has not been accepted by your Excellency's Government.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.