



The Iron Doors of Dictatorship:

Systematic Violations of the Right to Freedom of Movement in Turkmenistan

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The international human rights campaign "Prove They Are Alive!" has been working since 2013 with the goal of eradicating enforced disappearances in Turkmenistan's prisons. The campaign members include non-governmental organizations Crude Accountability (USA), Center for the Development of Democracy and Human Rights (Russia), Analytical Center Freedom Files (Russia), Human Rights Center "Memorial" (Russia), Norwegian Helsinki Committee, and Turkmen civic activists. The campaign acts with the support of Human Rights Watch and the international Civic Solidarity Platform and actively interacts with a broad range of human rights defenders, experts, and inter-governmental organizations, including the Organization for Security and Cooperation in Europe, the United Nations, and the European Union. For additional information, please see the campaign's website <http://provetheyarealive.org>.

The Prove They Are Alive! campaign thanks the individuals and organizations who have contributed valuable information to this report, many of them anonymously out of necessity. We could not have compiled the report without their support and assistance. Crude Accountability and the Prove They Are Alive! campaign assume full responsibility for the contents of the report. While we have made every effort to ensure the accuracy of the information presented in this report, we cannot be held liable for any errors, omissions or inconsistencies.

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SUMMARY

The authorities in Turkmenistan use arbitrary and politically motivated travel bans as an instrument of mass repression. Turkmen law has serious gaps in protection for freedom of movement, starting with a constitution that does not include a guarantee for the right to travel abroad. Turkmen law and practice grossly violate Turkmenistan's obligations under international law of freedom of movement.

For the first time ever, this report provides a detailed account of how Turkmen authorities clamp down on its citizen's foreign travel. It analyses legal restrictions on foreign travel, including the impact the annulment of a dual citizenship treaty with Russia. It also details how these restrictions are carried out through the practice of blacklisting several categories of people whom the government sees as "disloyal" or against whom it is retaliating for their civic, political, or journalistic activities. Finally, the report also describes the impact of blacklisting on individuals: separating them from their families, denying them medical treatment, and in effect using foreign travel bans against extended family members as a means of collective punishment.

In the early post-Soviet period, Turkmen legislation did not create significant obstacles to travel abroad, particularly to former Soviet countries (the "near abroad") and Turkey. But the government nonetheless used administrative pretexts to stop people, particularly journalists and civic activists, from traveling to Western Europe and the USA. The authorities gradually increased restrictions in practice over the years, finally formally introducing the requirement for an exit visa in April 2002. Internal political developments, such as a massive theft of Central Bank funds and an alleged attempt upon the life of the president of Turkmenistan, led to more severe enforcement of travel restrictions. In parallel, Turkmenistan made it illegal to hold double Russian-Turkmen citizenship, forcing many thousands of dual nationals to choose one, closing off the possibility of using a Russian passport for freer travel.

Following international criticism, the government formally abolished the exit visa requirement in (put YEAR here). However, in practice the authorities made blocking foreign travel a widespread practice, targeting not only journalists and civic activists, but also anyone suspected of disloyalty, or even potential disloyalty. Other categories of people blocked from foreign travel came to include students who have travelled to study in foreign universities, government employees who have access to classified information, former employees of international organisations and embassies, local experts in social and economic issues, and people suspected of Islamic extremism. In addition, relatives of people falling into any of those categories can also be banned: this affects particularly relatives of civic activists or opposition politicians living abroad in exile, or relatives of people imprisoned on politically motivated charges, including those who have disappeared in the prison system. Thus, travel bans have become a form of collective punishment as well as hostage taking to prevent journalists, activists, and others from speaking at international meetings, and victims of human rights violations from using international legal instruments in their defence. Estimates vary of the total number of people banned from foreign travel, from several thousand to 37,000. We believe it to be as high as 20,000.

The Migration Law, adopted in 2008 and amended in 2012, states in article 30 that *“Turkmen citizens can be subjected to temporary restrictions on exit from Turkmenistan.... if their exit contravenes the interests of national security of Turkmenistan.”* The vagueness of this stipulation and the authorities’ extremely authoritarian and paranoid approach to the concept of national security has led to a widespread application of “temporary restrictions”. The Turkmen authorities established a system of blacklists that include an estimated 20,000 people banned from traveling abroad. The compilation of such lists and the enforcement of the subsequent bans are completely non-transparent. This report describes examples of people who have find out about a ban on their travel abroad only at passport control, when trying to cross a land border or board a plane. Only rarely have some people mustered the stamina to persistently seek official reasons for blacklisting or even to challenge the travel ban through the court system. Their efforts have brought no results. In one of the most high-profile cases, the Ruzimatov-Kakabaeva family—an elderly couple and their son—exhausted all their court appeals, including at the Supreme Court in 2015, and the government still refused to lift the 15-year old travel ban and failed to inform the family of the reasons for the ban.

Sustained international pressure has proven effective in persuading the Turkmen authorities, in several notable cases, to lift a travel ban. For example, the renowned horse breeding expert Geldy Kiaryzov was banned from foreign travel after his release in 2007 from politically motivated imprisonment until 2015. After years of pressure from the US, the European Union, and several EU member states, he and his family were allowed to travel abroad.

The Turkmen government’s foreign travel bans are a continuous, mass violation of a fundamental human right. The Turkmen authorities, however, deny the existence of blacklists and declare at every opportunity that Turkmen nationals enjoy full freedom of movement – in spite of numerous facts proving the contrary.

The “Prove They Are Alive!” campaign demands that the government of Turkmenistan stop the practice of arbitrary and collective travel bans. We urge the government to provide explicit legal guarantees to freedom of movement, full transparency about the reasons and the decision-making process to impose limitations, the possibility to appeal and effective remedy. We demand international organisations such as the UN, the OSCE and the EU, as well as democratic states to raise the issue of travel bans in every dealing with Turkmenistan and seek solutions – including making further economic and trade relations conditional to relevant legal changes and abolition of the blacklists practice.

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Roots of the Problem

The right to freely leave one's country and return to one's country is an essential component of a fundamental human right stipulated in international agreements, the right to freedom of movement. However, this right has never been a legal imperative for the Turkmen authorities. Instead, the absence of constitutional guarantees of this fundamental right and numerous legal gaps in a number of laws¹ has created the grounds for arbitrary and often politically motivated bans on leaving the country and has provided the authorities with an infallible instrument of repression or threat of repression throughout the history of independent Turkmenistan.

No version of the Constitution of Turkmenistan since 1992 to the present, including the most recent version, adopted on September 14, 2016, has included provisions to guarantee the right to leave the country and come back. It is important to take into account the painful experience of Soviet times, when entire ethnic and social groups were stripped of their rights. While the different versions of the Constitution of Turkmenistan repeatedly declared a commitment to international law, the absence in of a specific provision to guarantee the right to free exit has always caused legitimate fears in society. Such fears, in fact, have been fully confirmed by practice.

After the collapse of the Soviet Union and up to 1999, exit from Turkmenistan to other countries of the former Soviet Union was governed by the Bishkek Agreement of 1992,² providing, inter alia, for visa-free travel for CIS citizens throughout the Commonwealth. Travel outside the so-called "near abroad" was initially regulated under the USSR regulatory framework, gradually replaced by the Ministry of Foreign Affairs instructions concerning the issue of foreign passports. In the absence of specific legislation on migration, the mechanism of exit restriction relied on criminal justice provisions, such as "pledge not to leave," which effectively prohibited any movement both in and outside the country, yet they were not backed by any specific mechanism to control people's movement across the state border. Confiscation of passports was rarely practiced as a migration control measure in the first half of the 1990s.

The first law regulating the procedure for exiting Turkmenistan was adopted in 1995.³ This law, however, did not create any serious obstacles to free movement across the state border, since the Bishkek agreement (see above) provided for visa-free travel to CIS countries, which is where the main stream of migration was headed, while travel to Turkey, another increasingly popular destination for labour and trade migration, was regulated by a separate agreement adopted in early 1990s, providing for visa-free entry of Turkmen citizens.

However, since the mid-1990s, the Turkmen authorities have increasingly refused to issue to citizens passports required for travelling "far abroad," in particular to Western Europe and the U.S. While a

¹ In addition to the law governing migration, there are other rules imposing temporary restrictions on exit, such as the so-called "written pledge not to leave" required by criminal investigators or courts.

² The Bishkek Agreement on Visa-free Movement of Citizens of the CIS Members within the CIS. Adopted on October 9, 1992. See the text of the agreement in Russian at http://www.carim-east.eu/media/legal%20module/1_CIS_RU.pdf. Turkmenistan withdrew from the Bishkek Agreement in 1999 and it was officially terminated in 2000.

³ The Law of Turkmenistan on Exit and Entry Procedures, 1995.

lack of passport forms was often mentioned by the authorities as the reason for refusals to issue passports,⁴ it is well-known that at least some of the refusals were in fact designed to stop specific individuals from leaving the country. Thus, for example, the authorities prevented a number of Turkmen journalists from travelling to the FOJO Media Institute in Sweden⁵ to attend a training course for journalists of the former USSR. Those Turkmen journalists who managed to bypass the restrictions and travel abroad to attend the course were fired from state-controlled media upon their return to Turkmenistan.⁶

However, the “iron curtain” began to fall with Turkmenistan’s withdrawal from the Bishkek Agreement in 1999. Noteworthy is the motive of the Turkmen authorities’ decision to withdraw from the agreement. On March 8, 1999, Turkmenistan deported two independent Russian journalists and human rights activists, Vitaliy Ponomarev and Nikolay Mitrokhin.⁷ Following their deportation, on the next day, the Turkmen authorities announced plans to take measures to prevent “undesirable elements” from entering the country. “Turkmenistan has made this conscious and in many ways forced move also because we do not want to jeopardize our peaceful and safe environment in terms of public order and security.”⁸ According to the deported journalists, however, the decision to introduce visa requirements for entry into Turkmenistan may have been linked both with their case and with increased activity of the Turkmen opposition leaders abroad and their desire to return to Turkmenistan and participate in the legal political process, including the parliamentary elections.⁹ Thus, by introducing entry visas for visitors from the CIS countries, the Turkmen authorities eliminated the possibility for independent journalists, and civic and opposition activists from the so-called “near abroad” to enter the country.

Also in late 1999, the first reliably known case occurred where a ban on exiting Turkmenistan was used to put pressure on a civil society activist. Vyacheslav Mamedov, an activist of the ethnic Russian community in Turkmenistan, was arrested in late January 1999 by Turkmenistan’s National Security Committee, but then released without criminal charges or trial following pressure from the international human rights community and the intervention of foreign diplomats.¹⁰ In September 1999, as he was about to depart from Ashgabat to Almaty, Mamedov was not allowed to board the aircraft, no reasons given. By coincidence, a delegation of OSCE ambassadors to the CIS countries was on the same flight from Ashgabat. Fearing scandal at the OSCE level, the Turkmen authorities delayed

⁴ Prior to the 2000s, Turkmenistan printed travel passports on blank forms used in the USSR, which were produced in Russia and shipped to other CIS countries until late 1990s.

⁵ See the Institute’s website at <http://www.fojo.se/>

⁶ There were no mass media free from state control in Turkmenistan at the time, and there are none at present.

⁷ Deportation of Russian journalists Ponomarev and Mitrokhin. Human rights in Turkmenistan (review of developments in January-April 1999). Memorial Human Rights Centre.

<http://www.memo.ru/hr/politpr/cntrasia/turkm2/index.htm>

⁸ Turkmenistan declares its withdrawal from the CIS agreement on visa-free travel. Human rights in Turkmenistan (review of developments in January-April 1999). Memorial Human Rights Centre.

<http://www.memo.ru/hr/politpr/cntrasia/turkm2/index.htm>

⁹ Human rights in Turkmenistan (review of developments in January-April 1999). Memorial Human Rights Centre. <http://www.memo.ru/hr/politpr/cntrasia/turkm2/index.htm>

¹⁰ Persecution targeting Mamedov and other activists of the Russian community in Turkmenistan. Human rights in Turkmenistan (review of developments in January-April 1999). Memorial Human Rights Centre.

<http://www.memo.ru/hr/politpr/cntrasia/turkm2/index.htm>

the flight for one and a half hours but finally allowed Mamedov to fly to Almaty. However, eventually Mamedov was forced to leave Turkmenistan following threats and psychological pressure from the authorities.¹¹

National Legislation and International Law

It is worth a separate mention that during this period, Turkmenistan became a member of the UN and OSCE (in 1992) and joined nearly all major international human rights treaties, including the International Covenant on Civil and Political Rights (1995).

In addition, in 1995, Turkmenistan proclaimed its status of “permanent neutrality,” noted by the UN General Assembly. The legal framework and interpretation of the country’s “permanent neutrality” were provided in the Constitutional Law of Turkmenistan on Neutrality and in the Declaration on the International Obligations of Neutral Turkmenistan in the Field of Human Rights,¹² also adopted in 1995. These documents and relevant amendments to the 1995 Constitution of Turkmenistan repeatedly emphasized the primacy of international law over national legislation.

Despite numerous references to the role and rule of international law, membership in international organizations and ratification of a number of key treaties in the field of human rights, Turkmenistan’s domestic law remains incompatible with international obligations and standards. Thus, starting with Turkmenistan’s first Constitution of 1992 to the present, no guarantee has been provided in the basic law to safeguard the right to freely leave the country. The concept of freedom of movement has been understood only to include travel within the country:

Everyone has the right to move freely and choose their residence within the borders of Turkmenistan.

Restrictions on entry in certain areas and movement in these certain areas may only be established by law.

The same article, virtually without any change other than its number, has been included in all versions of the Constitution adopted in 1995, 1999, 2003, 2006, and 2008,¹³ and the same wording is included in Article 39 of the new Constitution¹⁴ adopted on September 14, 2016.¹⁵

In essence, this article of the Turkmen Constitution reproduces the first part of Article 13 of the Universal Declaration of Human Rights on freedom of movement. However, the respective article of

¹¹Turkmenistan: Security services on a search for Vyacheslav Mamedov. Press release of the Memorial Human Rights Centre. <http://www.memo.ru/hr/politpr/asia/2004/pres-tu/mamedov2.htm>

¹² The declaration on the international obligations of neutral Turkmenistan in the field of human rights. 27.12.1995 <http://cis-legislation.com/document.fwx?rgn=19487>

¹³ The Constitution of Turkmenistan (2008) <http://tdh.gov.tm/index.php/ru/2013-04-29-11-55-24/2013-04-13-07-33-58/16112-2016-02-14-00-00-29->

¹⁴The Constitution of Turkmenistan (new edition). 14.09.2016. <http://www.infoabad.com/zakonodatelstvo-turkmenistana/konstitucija-turkmenistana-novaja-redakcija.html>

¹⁵ President of Turkmenistan Signs Law Endorsing New Constitution. Turkmenistan: Golden Age. 14.09.2016. <http://www.turkmenistan.gov.tm/?id=11789>

the Universal Declaration also declares the right to leave any country, including one's own, and to return to one's country,¹⁶ which has been omitted by the Turkmen authorities. The absence of this provision in the country's Constitution for nearly 25 years has enabled massive violations of the right to freedom of movement and has served the authorities as a mechanism of repression and intimidation.

Iron Curtain: The Beginning

Total control over exit from the country and mechanisms whereby exit can be restricted have evolved simultaneously with the development of Turkmenistan's national legislative framework. The 1995 Law on Exit and Entry Procedures, the country's withdrawal from the Bishkek Agreement in 1999, and the issuance of new types of travel passports laid the foundation for the government's system of controls and restrictions concerning citizens' movement across the border. In addition, the resonant political events of 2002 and 2003 led to tighter controls and tougher restrictions on exiting the country.

In the summer of 2002, a large amount of money was stolen from the Turkmen Central Bank accounts, reportedly US \$41 million.¹⁷ The main suspects disappeared in Russia and then escaped to Europe. Niyazov, the country's first president, in office at the time, demanded their extradition from Russia. The problem, however, was that all suspects had so-called "dual citizenship" of both Russia and Turkmenistan, which was legal under the intergovernmental agreement of 1993 (see more on this below). Having extradited one of the suspects to Turkmenistan, Russia later sought and obtained his return to Russia based on a judgment from the European Court of Human Rights.¹⁸ President Niyazov responded by demanding an "adjustment" of the "dual citizenship" agreement with Russia arguing that it "creates a legal loophole for those who break the law in Turkmenistan and then hide in Russian territory."¹⁹ These events led to massive repression against the main suspects' relatives still living in Turkmenistan. Starting in September 2002, many were arrested and convicted on trumped-up charges and sentenced to long prison terms, and those not imprisoned were banned from leaving the country "for national security reasons." The decisions denying citizens their rights were made by investigative authorities without a judicial procedure.

On November 25, 2002, an event occurred that the country's authorities, led by the president, described as an "attempted assassination of Turkmen President Niyazov,"²⁰ but other sources interpreted as a peaceful attempt to remove Niyazov from power, accompanied by provocation from the authorities. In the context of this report, we only note that no matter how the November 2002 incidents may be interpreted, they led to large-scale repression, numerous arbitrary arrests, unfair trials, politically motivated verdicts and disappearances in custody of dozens of people, which continue to this day.²¹ The scale of repression outraged the international community to such an extent that the

¹⁶ The Universal Declaration of Human Rights. <http://www.un.org/en/universal-declaration-human-rights/>

¹⁷ Global Witness, It's a Gas: Funny Business in the Turkmen-Ukraine Gas Trade, April 2006, p. 18.

¹⁸ Garabayev v. Russia. Russian Justice Initiative. ECtHR judgments.

http://www.srji.org/resources/search/38/?sphrase_id=176150

¹⁹ Turkmenistan-Russia dual citizenship agreement to be amended. Turkmenistan.ru. 13.01.2003.

<http://www.turkmenistan.ru/ru/node/15423>

²⁰ "Only madmen betray their Motherland," from Niyazov's address to the People's Council session.

Turkmenistan.ru. 02.01.2003. <http://www.turkmenistan.ru/ru/node/15457>

²¹ See materials of the Prove They Are Alive! international campaign at <http://provetheyarealive.org/>

OSCE initiated a special investigation procedure under the Moscow Mechanism²² and published a report documenting the repression,²³ and the UN General Assembly adopted two resolutions on the repression.^{24 25}

In response, the Turkmen authorities once again raised the argument that “some of the criminals have escaped or are hiding outside of Turkmenistan” as they introduced a series of draconian provisions in domestic law. A requirement that citizens must “obtain a visa to travel outside the country” was already included in the Law on Exit and Entry Procedures through amendments adopted on April 22, 2002. However, this provision was not enforced until after the November 2002 events. To make sure no one escaped, the rules for obtaining such “exit visas” were further tightened by the amendments of June 14, 2003.²⁶ In other words, it was no longer possible to freely leave the country, and obtaining an “exit visa” was effectively a requirement for citizens to prove their loyalty to the regime.

It is extremely difficult to estimate the number of people affected by such measures during that period. Given that the number of suspects in the “attempted assassination” and “Central Bank theft” cases stands at some two hundred people, and exit restrictions were imposed on all members of their immediate families, we can safely estimate the number of affected individuals at a few thousand people, banned from leaving the country in what was a collective punishment imposed in connection with the cases.

After a flurry of international criticism and the Turkmen authorities’ defensive reaction,²⁷ in 2004 the Turkmen government made a few statements aimed at improving the image of the country. Observers attributed such statements to Turkmenistan’s attempts to improve its relations with the West and escape the country’s isolation after the tough international response to the 2002-2003 repression campaign. Thus, in early 2004, President Niyazov announced, “... Turkmenistan does not have a system of exit visas as such,”²⁸ although the 2003 amendments to the 1995 law clearly established such a system.

This statement by Niyazov was so much at odds with the real state of affairs that the Turkmen Foreign Ministry had to issue a special clarification stating that exit visas would de jure be abolished, and “...starting on January 9, exit from the country is possible upon presentation of the citizen’s passport and an entry visa to a foreign country or another document to confirm the permission for the

²² The OSCE human dimension mechanisms: the Moscow Mechanism. <http://www.osce.org/node/84451>

²³ OSCE Rapporteur’s Report on Turkmenistan. ODIHR.GAL/15/03. 12 March 2003. <http://www.osce.org/odihr/18372?download=true>

²⁴ The UN General Assembly Condemns Turkmenistan. Vremya Novostei. 27.11.2003. <http://vremya.ru/2003/222/5/85939.html>

²⁵ Situation of human rights in Turkmenistan. Resolution 58/194 adopted by the UN General Assembly on December 22, 2003, and Situation of human rights in Turkmenistan. Resolution 59/206 adopted by the UN General Assembly on December 20, 2004.

²⁶ The Law of Turkmenistan on Exit and Entry Procedures (as amended by Laws of April 22, 2002 and June 14, 2003). Bulletin of the Mejlis of Turkmenistan, 1995, No. 2, p. 13.

²⁷ Turkmenistan-OSCE: exchange of barbs. Turkmenistan.ru. 17.03.2003. <http://www.turkmenistan.ru/ru/node/14921>

²⁸ Niyazov says, “... Turkmenistan does not have a system of exit visas as such.” Turkmenistan.ru. 06.01.2004. <http://www.turkmenistan.ru/ru/node/16376>

holder to enter a foreign country.”²⁹ This legal provision was eventually introduced, but the authorities, in addition to requiring a visa to enter the country of destination, imposed additional requirements, thus creating several new obstacles to exiting Turkmenistan, inter alia, through selective application of laws restricting exit (see details below).

Only after Niyazov’s death in December 2006, were travel bans lifted on some of the people included earlier in the “black lists.”

“The Russian Question”

After the collapse of the Soviet Union, its former constituent republics retained a certain proportion of people who defined themselves as Russians or Slavs and, to varying degrees, identified with historical Russia and the Russian Federation. According to many observers, the existence of numerous intergovernmental agreements between the Russian Federation and Turkmenistan was the key factor contributing to a balanced and civilized solution to the challenges faced by national minorities in Turkmenistan, in contrast to the situations of the Russian minorities in some other countries of the former USSR. In 1993, President Niyazov and Boris Yeltsin signed an intergovernmental agreement on mutual guarantees of the rights of compatriots, which included provisions designed to facilitate the border crossing and the movement of property between the countries, and some other guarantees of the rights of both returnees and expatriates in both countries.

After the 2002-2003 events and the mass repressions that followed, President Niyazov, taking advantage of the Russian government’s obvious interest in purchasing Turkmenistan’s natural gas, began to insist on a revision of the so-called “dual citizenship” agreement, which had served, among other things, to enable free movement between Turkmenistan and Russia.

As a result, the Russian authorities agreed to denounce the “dual citizenship” agreement and signed a notorious package of new agreements in 2003, subsequently dubbed “gas for people,” whereby Russia was given exclusive rights to purchase Turkmen natural gas. In exchange, Russia agreed to withdraw its guarantees protecting the rights of Russians living in Turkmenistan who had obtained Russian citizenship in accordance with the intergovernmental agreement of 1993.³⁰

President Niyazov used his status and dictatorial powers to push the denunciation of the agreement through the Mejlis (Parliament) of Turkmenistan in 2003 and gave people a choice of just one citizenship. Also in 2003, the Constitution of Turkmenistan was amended with a provision which prohibited Turkmen citizens to have any other nationality in addition to Turkmen. The same provision remains intact in the new Constitution of September 2016.

²⁹ Exit visas abolished in Turkmenistan, but this does not make it easier to leave the country. Kommersant. 09.01.2004. <http://www.kommersant.ru/doc/439420>

³⁰ Turkmen media releases the Protocol of Termination of the Dual Citizenship Agreement between Turkmenistan and the Russian Federation. Turkmenistan.ru. 17.04.2003. <http://www.turkmenistan.ru/ru/node/15023>

At that time, more than 120,000 people held two passports, Turkmen and Russian. However, less than a half of this number lived permanently in Turkmenistan and were negatively affected by the deal between the governments of Russia and Turkmenistan.

As a result, the Russian authorities agreed to denounce the “dual citizenship” agreement, and in 2003, signed a notorious set of agreements informally termed ‘the gas for people transaction.’ According to these agreements, Russia received exclusive rights to purchase the majority of Turkmen natural gas in exchange for the termination of 1993 intergovernmental agreement on dual citizenship.³¹

Soon, at the initiative of President Niyazov, dual citizens were given two months to choose a single citizenship. At the same time, in 2003, the Constitution of Turkmenistan was amended prohibiting Turkmen citizens from having dual citizenship.

Because Russia expressed its disagreement with such a position, the legal situation regarding the uncertainty of dual citizenship was frozen for 10 years.

Russian-Turkmen negotiations on issues of dual citizens were resumed in the spring of 2013, but some important issues related to freedom of movement remain unresolved.

Legal Mechanism of Foreign Travel Bans

In recent years, the Law on Migration adopted in 2008 (and amended in 2012) to replace the Law on Exit and Entry Procedures has been the main act governing the right to travel outside of Turkmenistan.

At the time of this writing, however, we have learned that the Mejlis has been discussing amendments to the migration law, so we cannot rule out a possibility that our criticism of the law detailed below may soon be applicable only to the version effective prior to such amendments.

Despite references to the right to freedom of movement and declared guarantees of this right in the current Law on Migration, the key provision leading to massive violations of this right is contained in Article 30, Paragraph 10:

Article 30. Grounds for temporary restriction of exit from Turkmenistan for Turkmen citizens

1. Turkmen citizens can be subjected to temporary restrictions on exit from Turkmenistan:

<...>

10) if their exit contravenes the interests of national security of Turkmenistan.

The excessive vagueness of this provision and the possibility of its selective application, the lack of clear indications as to who defines “national security interests,” no criteria or definitions of “national security” in the text of the law have led to large-scale human rights violations. Virtually any security official has the power to impose an unmotivated exit ban on any citizen, not necessarily a suspect or defendant in criminal, administrative or judicial proceedings.

³¹ Turkmen Media Published a Protocol on Ceasing the Authority of the Agreement between Turkmenistan and the Russian Federation on Regulating Issues of Dual Citizenship. Turkmenistan.ru. 17.04.2003. <http://www.turkmenistan.ru/ru/node/15023>

The case of the Ruzimatov/Kakabaeva family clearly illustrates what harm can come from this legal provision. No member of this family has ever faced criminal or administrative charges. Nevertheless, Rashid Ruzimatov Sr. and his wife Irina Kakabaeva have been banned from leaving Turkmenistan for more than 13 years. Their son, who had studied and worked in Russia for a long time, came to Turkmenistan to visit his parents in 2014 and was immediately banned from leaving the country. Numerous inquiries and letters, including appeals to the President, Prosecutor General, Institute of Democracy and Human Rights and commissions supervising the law enforcement agencies, have been to no avail. The typical response to their appeals was, “Your request to lift the temporary ban on exiting the country has been denied.” In 2015, the family appealed to all judicial instances in an attempt to challenge the ban. They took legal action against the Migration Service of Turkmenistan, which oversees the border crossings and compiles what are popularly known as “blacklists” of people banned from exiting Turkmenistan. However, none of the courts, not even the Supreme Court, satisfied Ruzimatov’s and Kakabaeva’s claims against the Migration Service, and the travel ban is still in force. During all court proceedings, the Migration Service representative refused to disclose either the authority which had imposed the ban or any reason why it was imposed. Having exhausted domestic remedies, the family has taken the case to international human rights mechanisms.

How “Blacklists” Work

In the context of Soviet and post-Soviet reality, the term “blacklist” is generally understood to mean a list of persons whose rights have been restricted. In Turkmenistan, “blacklists” stand for lists of persons denied the right to leave the country. Based on our own and our colleagues’ research, we can construct a tentative picture of how the Turkmen authorities use this mechanism of repression against certain categories of citizens whom the authorities consider “disloyal.”

Virtually any security agency in Turkmenistan can impose a travel ban, including the Ministry of Internal Affairs, Ministry of National Security, Prosecutor General’s Office, and the State Committee for Protection of State Secrets under the Cabinet of Ministers of Turkmenistan. The procedure is extrajudicial, i.e. no court order is required. A ban can be imposed for a specified period or indefinitely.

No one notifies the individual that they have been banned from travelling. Most people learn that they are no longer allowed to exit Turkmenistan while at the border crossing (see below). Since the spring of 2007, information on whether one has been blacklisted and prohibited from travelling abroad can be obtained from a specialised department of Turkmenistan’s State Service for Registration of Foreign Citizens, and since 2013, from the State Migration Service. However, these departments refuse to provide any written documents or motives for travel restrictions in response to inquiries, only providing verbal information about which government agency has imposed the ban, and even this information is not always disclosed.

Most “refuseniks” have no idea they have been blacklisted and only learn about it when trying to cross the border. At the Ashgabat airport, similarly to most other countries, passport control comes last after passenger and baggage check-in. Once notified they are banned from exiting the country, the person must go through these procedures in reverse order, i.e. go back to receive their baggage, cancel the flight and return their ticket.

Travellers present their passports at the border to a migration officer who performs a computer check. If the passport holder's name is listed as restricted from travelling abroad, the officer calls border and migration officials who escort the "refusenik" back in the reverse order. In some cases, their passports are not handed back to them, but forwarded to the agency which has imposed the travel ban. Attempts to find out the reasons for exit ban from the border officers or police yield no information, as the officers only say that the person is on the list of persons "restricted from travelling abroad."

The same procedure applies in other places where people can cross the border.

Blacklist Structure and Content

No official data are available on the number of people blacklisted and banned from travelling outside of Turkmenistan without special permission from the authorities.

Various experts and organizations provide different numbers, categories, and functions. All sources, however, point to the fact that the blacklist includes several dozens of thousands of persons, and that the categories of people barred from leaving the country are expanding. In 2010, Uzbekistan-based Human Rights Group Nazhot revealed that a secret decree of President Berdymukhamedov on the prohibition of entry and exit of certain citizens would take effect that year. The human rights group stated that the blacklist of people barred from leaving Turkmenistan consisted of 37,057 individuals, falling into categories of civil servants, employees of executive administrations in the regions, and Turkmen citizens under constant surveillance by security services.³²

In 2012, the opposition website Gundogar.org stated that those falling into the blacklist categories of journalists, civic activists, political dissidents, relatives of political prisoners and dissenters, and Turkmen students studying abroad totalled 18,000 individuals. All of these categories fall under the article "threat to national security of Turkmenistan" of the Law on Migration. In a case of mass refusal to allow exit from the country, the Lebap Province Migration Board denied 315 applications for travel passports, referring to the "blacklists," and citing a false pretext of an upcoming population census.³³

People included in the travel ban are civil servants of different levels of authority and access to information constituting state, military and other secrets protected by law. The total number of civil servants thus listed is kept secret. By expert estimates, the total number of public officials who are altogether banned or partially restricted, subject to permission from different levels of government, from travelling outside of Turkmenistan, stands at 5,000 to 6,000. Estimates vary because the types of "state secrets" these officials may have access to, such as grain and cotton crops in certain parts of the country, may be different from year to year, affecting the number and type of individuals who are privy to such secrets. On some occasions, their family members are also banned from exiting the country, adding another few thousand affected people. However, the situation of public servants is not the subject of this report.

³² "Black lists" of suspicious citizens have been compiled in Turkmenistan. Ferghana.ru. 29.07.2010.
<http://www.ferghananews.com/news.php?id=15276>

³³ "Doors are closing!" Nurmurat Niyazmuradov. Gundogar.org. 11.05.2012.
<http://www.gundogar.org/?0120512451000000000000011000000>

Another group of approximately 50,000 people added and deleted each year from the black list are young conscripts legally restricted from exiting the country under the Law on Migration to ensure they comply with their military duty obligations. These 50,000 conscripts include those eligible for both spring and autumn drafts, depending on when they reach conscription age.

Several thousand of the blacklisted persons fall into another category of persons lawfully banned for travel due to restrictions imposed on them with respect to their status in criminal or administrative proceedings: persons facing administrative liability imposed by the court; debtors; persons under probationary sentence; conditionally released or amnestied; those sentenced to living in a settlement colony (Turkmenistan's law provides for this type of administrative penalty); and, very often, witnesses in criminal and administrative proceedings.

However, what makes the blacklists a particular social and political concern in Turkmen society, which sees them as injustice, is that they also affect the rights of other categories of people who do not have access to state secrets, and are not involved in any criminal offenses against the state or society.

Most of these people are relatives or close acquaintances of individuals convicted under the "presidential assassination attempt" or the "Central Bank theft" cases, and also individuals and families repressed under other high-profile cases, such as the "oil rigger case" of 2005, including former deputy prime minister Yolly Gurbanmuradov, the cases of former prosecutor general Kurbanbibbi Atadjanova, former vice premier Enebay Atayeva, former head of presidential security service General Atamurad Rejepov and many others, for whom the Turkmen "justice" tradition had failed to devise any other punishment than incommunicado incarceration for many years and prohibition for family members to leave the country.

Travel bans on relatives and acquaintances are often accompanied by their dismissal from jobs or universities, restrictions on employment and studies, eviction, and internal exile. This type of repression against family members serves several purposes. First, it is a form of collective punishment widely applied by the Turkmen authorities. Second, by restricting exit from the country for witnesses of repression, the government seeks to avoid international publicity and measures under international instruments which may be triggered by relatives' testimony.

The Kyarizov family is a prominent example of collective punishment of blacklisting in Turkmenistan. Geldy Kyarizov is a renowned international horse expert who brought the Akhal-Teke horse back from the brink of extinction. Falling out of favour with then-President Saparmurad Niyazov, Kyarizov spent over five years in prison, including in the infamous Ovadan Depe penitentiary.³⁴ After his release, his entire family was continuously harassed and blacklisted from leaving the country for many years. On two occasions, his daughter and sister-in-law suffered violent attacks by unknown individuals in moving vehicles. After several attempts to leave the country, broad appeals to the international community

³⁴ For information about this prison see "Ovadan Depe: Medieval Torture in Modern Turkmenistan." Report by the Prove They Are Alive! campaign. September 2014. <http://provetheyarealive.org/ovadan-depe-medieval-torture-in-modern-turkmenistan/>

and a sustained campaign by international civil society, including the Prove They Are Alive! campaign, all members of the Kyarizov family were finally able to flee the country in September 2015.³⁵

No official statistics are available, but according to experts, some 5,000 to 7,000 family members and close friends of people sentenced to long prison terms are currently banned from travelling abroad.

Another category includes dissenters and other people perceived as “disloyal,” current and former journalists, individuals having access to foreign diplomats or independent means of communication (e.g. unrestricted web access at foreign embassies), and reporters or stringers of the Turkmen Service of Radio Liberty/Radio Azatlyk. All of them are suspected of disloyalty and face the looming threat of a travel ban without any explanation or a real possibility of appeal. This category also includes former employees of foreign organizations or local experts knowledgeable of the real situation with healthcare, epidemiology, disease prevalence in prisons and the army, etc., who have collaborated with Medecins Sans Frontieres, Red Cross TB in Prisons Program, certain USAID and UNDP programs. The total number of dissidents, journalists and former employees of international organizations banned from exiting Turkmenistan is estimated at 1,000. In most cases, their immediate relatives are also banned from exiting the country, thus adding up to 3,000 thousand more people.

In February 2016, a former employee of the international NGO Medecins Sans Frontieres and a dual citizen of Turkmenistan and Russia, Yevgeniya Deeva, was stopped at passport control in the Ashgabat airport. She was refused passage to her Moscow bound flight and was told that, for unspecified reasons, her name was on a blacklist for exit from the country. She was advised to inquire with the Migration Service of Turkmenistan at her place of residence, which was Dashoguz. Deeva had arrived in Turkmenistan in December 2015 to visit her sick mother and intended to return to Russia as her mother’s health improved.³⁶

Blatant pressure targeting family members of journalists, civil society activists and regime opponents who have emigrated from Turkmenistan deserves a special mention. Their families living in Turkmenistan are often banned from leaving the country. Travel restrictions for family members effectively amount to hostage-taking in addition to collective punishment, since those who live in exile are forced to practice self-censorship to avoid harming their relatives still under control of the regime. Experience reveals that appealing to Turkmenistan’s domestic mechanisms ostensibly designed to restore justice and protect human rights such as courts, the National Institute for Democracy and Human Rights, the Prosecutor General’s Office, and the Presidential Commission for Public Complaints against Law Enforcement and Security Service Misconduct never works. All inquiries are forwarded to the State Migration Service whose written replies do not give information about which body imposed the ban, on what grounds, and for how long. Although no statistics of such appeals are publicly available, their ineffectiveness has been confirmed by interviews and by Turkmen human rights defenders’ field experience of helping victims of repression.

³⁵ Government of Turkmenistan allows family members of horse breeder Geldy Kyarizov to leave Turkmenistan. Press release by the Prove They Are Alive! campaign. 21.09.2015. <http://provetheyarealive.org/government-of-turkmenistan-allows-family-members-of-horse-breeder-geldy-kyarizov-to-leave-turkmenistan/>

³⁶ One more person is included in the black lists in Turkmenistan. Chronicles of Turkmenistan. 18.02.2016. <http://www.chrono-tm.org/2016/02/eshhe-odin-chelovek-vklyuchen-v-chnyie-spiski-turkmenistana/>

In one striking case, Aydzhemal Rejepova, the daughter of a Turkmen opposition leader and former parliamentarian Pirmkuli Tanrykuliev, was blacklisted from leaving the country with her two underage children. Tanrykuliev had been granted political asylum in Norway, where he had been living for over a decade. On July 22, 2015, Aydzhemal and her children were denied boarding an Istanbul bound flight from Ashgabat. After a lengthy interrogation, a representative of the Migration Service told her that she was blacklisted from leaving the country for life, due to her father's political activities. An "exit denied" stamp was placed into her and her children's passports, one of whom was only 3 years old at the time.³⁷ Members of the Prove They Are Alive! campaign successfully advocated on their behalf, which contributed to lifting of the travel ban. Rejepova and her daughters successfully left the country on June 4, 2016.

Students attending western universities have also been subject to blacklists, implying that western, pro-democratic ideas are a security threat to the establishment. In 2009, Turkmen authorities denied exit to over 150 Turkmen students enrolled in the American University of Central Asia (AUCA), a liberal and progressive institution located in Bishkek, Kyrgyzstan. Some students, who were returning to AUCA after the summer holidays, were literally taken off the airplane for Bishkek. According to Fergana.ru, the AUCA leadership in Bishkek had never received any explanatory letter from the Turkmen authorities.³⁸

Some of the students barred from resuming their studies were on financial scholarships from the U.S. State Department Turkmenistan AUCA Scholarship Program (TASP). According to WikiLeaks, these scholarship students were blacklisted directly by Deputy Prime Minister for Education and Health, Khidir Saparliev, specifically due to "security concerns." Only after six months of negotiations between U.S. embassy officials and Turkmen authorities, including Foreign Minister Rashid Meredov, were TASP students allowed to exit the country. Their names, however, were not taken off the blacklist; an exception was made for a one-time exit.³⁹

Concerns over the rise of extremism have also been used as a reason to blacklist individuals and their relatives. In 2010, when Shikhmurat Rejepdurdyev returned home to Turkmenistan for student vacation, the authorities did not allow him to return to Saint Petersburg to continue his studies because he was regularly reading *namaz*. Half a year later, he was convicted on trumped-up charges. His mother was also forbidden to travel to Russia for medical treatment in 2015. We know of other similar cases.

On October 24, 2015, 45 Turkmen citizens were stopped at passport control and prevented from boarding their Istanbul bound flights: 27 individuals on a Turkmen Airlines flight and 18 more with Turkish Airlines. All of these passengers had proper tickets and did not need visas to Turkey. After inquiries, some of the blacklisted individuals learned that they were stopped due to extremism related

³⁷ Turkmenistan: Daughter and grand-daughters of a dissident are banned from traveling abroad for life. Vitaliy Ponomarev. Human Rights Centre Memorial. 27.06.2015. <http://memohrc.org/news/turkmenistan-docheri-i-vnuchkam-dissidenta-pozhiznenno-zapreshchen-vyezd-iz-strany>

³⁸ Turkmenistan does not allow students of the Bishkek-based American University to leave the country. Fergana.ru. 07.09.2009. <http://www.fergananews.com/news.php?id=12908&mode=snews>

³⁹ WikiLeaks Dispatches: Truth about the "black list" of people banned from exiting Turkmenia. Deutsche Welle. 13.09.2011. <http://www.dw.com/ru/депешы-wikileaks-правда-о-черном-списке-невъездных-в-туркмении/a-15383097>

concerns. Turkmen authorities feared that Turkish ISIL cells and other extremist groups were carrying out recruitment of Turkmen individuals.⁴⁰ The campaign has also learned that in 2015-2016 travel bans were imposed on family members of several hundred persons who left for Turkey and are suspected by the Turkmen authorities in having joined ISIL.

Sometimes, Turkmen citizens are blacklisted from travelling abroad without any basis in Article 30 of the Law on Migration. One such victim of blacklisting is a well-known Turkmen writer, 74-year-old Turkish Dzhumageldyev. He learned of his situation after his son, who was living in Moscow, invited him for a visit. Despite numerous inquiries with various officials of the State Migration Service, no reason for the travel ban was given. His subsequent appeals to the Ministry of National Security of Turkmenistan and four letters addressed to President Berdymukhamedov have never been answered.⁴¹

The categories of those blacklisted are ever changing and expanding. According to our information, the current number of people included in the black lists on political grounds: “disloyal” dissenters, former workers of international organizations, former and current journalists, relatives of the above groups, relatives of emigrants, students of Western universities, or having no guilt other than being relatives of people imprisoned for long-term sentences or relatives of people suspected in Islamic extremism, is more than 17,000.

Conclusions

Legal restrictions and bans on leaving from and returning to Turkmenistan constitute a gross violation of the fundamental human right to freedom of movement and clearly contravene the international law and Turkmenistan’s obligations as state party to the UN and OSCE.

Such violations are not limited to individual cases; they are widespread, systematic, and have been ongoing for many years.

These restrictions are not based in the rule of law and run counter to the key principles of international law: proportionality and necessity in a democratic society. In addition to this, they fail to satisfy the principle of predictability, as individuals subject to travel restrictions are not aware of them and cannot foresee which situations or actions may lead to restriction of their rights.

Those already under a travel ban are not notified of the ban or any grounds for it.

Travel bans are extra-judiciary, arbitrary, selective and politically motivated. They effectively serve as a tool of political repression, control and intimidation, and in some cases amount to hostage-taking.

⁴⁰ Turkmenistan: The number of bans on exiting the country is growing. Chronicles of Turkmenistan. 02.11.2015. <http://www.chrono-tm.org/2015/11/turkmenistan-kolichestvo-zapretov-rastet/>

⁴¹ Well-known Turkmen author was put on the “black list” of people banned from exiting the country. Atadzhan Akiyev, Gundogar.org. 03.11.2012. <http://www.gundogar.org/?0120513041000000000000011000000>

In addition, widespread travel bans, along with media censorship, restrictions on access to information and means of communication, further support the government's policy of isolating Turkmen society from the outer world.

While formally one can appeal a decision violating one's rights, including in most cases a travel ban, people in Turkmenistan are afraid to send written inquiries to government institutions or take the government to court. The judicial mechanism is therefore ineffective as a remedy and its use could lead to retaliation against the authors of complaints or appeals. In the one case that we know of in which a family attempting to appeal a travel ban in courts of various instances, all judges upheld the ban and refused to offer any explanation as to why it had been imposed.

International organizations and foreign countries, Turkmenistan's economic partners, must pay close attention to this pattern of restrictions affecting freedom of movement in Turkmenistan. In recent years, the international community, driven by human rights organizations, has become aware of this problem and started raising the issue before the Turkmen government during negotiations, conferences, and human rights dialogues. Perhaps such increased international attention has started to bring results: according to recent reports following a new wave of international criticism, the Turkmen authorities have started drafting amendments to the Law on Migration.

However, based on prior experience, it is essential that all stakeholders monitor the process closely to make sure that the Turkmen authorities are not faking change instead of making it. Even though laws can be amended by specific provisions to ensure freedom of movement, transparent decision-making and effective judicial appeal, there is still a risk that security agencies may continue the abusive practice of imposing travel bans for "national security" considerations. Given the fear of repression in Turkmen society and the lack of independent judges, defence lawyers and experts, it is likely that neither the people affected nor the courts will dare to challenge the powerful security agencies and question their decisions as to whether a certain individual may be a threat to national security if allowed to travel abroad. It is more likely that courts will simply rubber stamp judgments upholding the bans.

Thus, even a change of law may still leave room for selective, arbitrary and politically motivated travel bans supported by submissive courts. It is therefore essential that the international community follow the situation closely, put forward concrete requirements, track progress based on specific, measurable and realistic benchmarks, and avoid buying into empty declarations and imitation.

Should the Turkmen authorities continue massive and systematic violations of the right to freedom of movement and keep the number of "refuseniks" high, similar to the Soviet-era "iron curtain," Turkmenistan's international partners may consider adopting tougher measures, such as a renewal of the Jackson-Vanik amendment.⁴²

⁴² Jackson-Vanik Agreement. <http://www.encyclopedia.com/doc/1G2-3404100609.html>

Recommendations

The “Prove They Are Alive!” campaign demands that the government of Turkmenistan stop the practice of arbitrary and collective travel bans, and particularly:

- a. Provide explicit legal guarantees of the right to free exit from, and return to Turkmenistan, including in the Constitution of Turkmenistan.
- b. Amend the Law on Migration,⁴³ which allows selective application of exit bans, *inter alia* as a repressive measure, to remove article 30, part 1, paragraph 10.
- c. Provide an exhaustive and detailed list of possible grounds for travel restrictions; ensure that any such restrictions comply with the principles of proportionality and necessity.
- d. Ensure that the procedures for making decisions to impose travel restrictions are clearly articulated and publicly available.
- e. Provide an exhaustive list of government bodies authorized to make such decisions.
- f. Introduce a provision stating that only a competent court may impose a temporary restriction on exiting the country through a judicial procedure.
- g. Ensure immediate notification of individuals subject to travel restrictions.
- h. Secure an unconditional right to appeal any exit ban in domestic courts and to international bodies.
- i. Lift existing travel bans and cease the practice of compiling informal “black lists,” for people such as relatives of the disappeared, former prisoners, relatives of exiled activists and students studying abroad, etc.
- j. In the interim, provide to those banned from foreign travel an official written explanation for the ban including information about appeal procedures.

In order to achieve these objectives, the Prove They Are Alive! campaign recommends the following actions to the international community:

The UN

- Appoint a special rapporteur to investigate large-scale violations of the right to freedom of movement in different countries, including Turkmenistan.
- Raise the issue of travel bans in Turkmenistan consistently and publicly at the highest level, denouncing the practice of arbitrary, politically motivated restrictions on leaving the country as inadmissible and violating the fundamental principles of international law and Turkmenistan’s obligations arising from its membership in the UN.

The OSCE political bodies, institutions, and participating states

- Indicate to the Turkmen authorities that the right to freely leave any country and come back to one’s country is a fundamental human right and its systematic and massive violations, aggravated by a lack of systemic safeguards of this right in national law are unacceptable and contrary to Turkmenistan’s commitments as an OSCE participating State.

⁴³ Article 30. Grounds for temporary restriction of exit from Turkmenistan for Turkmen citizens. 1. Turkmen citizens can be subjected to temporary restrictions on exit from Turkmenistan: <...> 10) if their exit contravenes the interests of national security of Turkmenistan.

- Advise the Turkmen authorities to bring national legislation and enforcement in line with international standards, taking into account the recommendations set out above.

The EU institutions and Member States

- Continue to include the issue of travel bans in all its dealings with Turkmenistan, including the Human Rights Dialogue and the Human Rights Country Strategy, and urge the Turkmen authorities to stop this practice, including the compilation of “black lists” of people suspected of “disloyalty” to the regime and their relatives.
- Make economic and trade relations with Turkmenistan conditional on ending violations of the right to freedom of movement.
- No steps forward toward final ratification of the Partnership and Cooperation Agreement between the EU and Turkmenistan should be made until Turkmenistan meets the human rights benchmarks the European Parliament set out in 2009 which include “the removal of obstacles to free travel;” and ensure that visible and measurable progress on freedom of movement remains one of the conditions for ratification, as requested by a group of 29 NGOs in March 2016.⁴⁴
- Advise the Turkmen authorities to bring national legislation and enforcement in line with international standards, taking into account the recommendations set out above.
- Ensure that Member States’ Embassies as well as the EU Office in Ashgabat closely follow and monitor the situation of freedom of movement, and meet with people under travel ban.

The US Congress

- Make economic and trade relations with Turkmenistan conditional on ending violations of the right to freedom of movement. In particular, withdraw the waiver of the Jackson-Vanik amendment granted to Turkmenistan as long as the country engages in large-scale violations of freedom of movement. Such a step will not only make the development of trade relations conditional on Turkmenistan’s efforts to bring its legislation in conformity with international standards and put an end to violations of this fundamental right in practice, but also send a clear signal to the Turkmen authorities that their conduct is closely monitored and assessed by the international community.

⁴⁴ For the benchmarks proposed by a group of 29 NGOs as conditions for the European Parliament’s ratification of the Partnership and Cooperation Agreement between the EU and Turkmenistan, see <https://www.fidh.org/en/international-advocacy/european-union/joint-ngo-letter-on-the-eu-turkmenistan-partnership-and-cooperation>



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