

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 30th Session

TURKMENISTAN

I. BACKGROUND INFORMATION

Turkmenistan acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 1998. In June 2017, it adopted a new *Law on Refugees*¹, which sets out Turkmenistan's framework on asylum and which superseded the 2012 *Law on Refugees*. The current refugee population consists of 21 refugees (12 families) as of May 2017, all of whom were individually recognized under UNHCR's mandate between 1998 and 2002.

Turkmenistan is the only country in Central Asia that has acceded to the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*), in December 2011, and to the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*), in August 2012. In 2013, the *Law on Citizenship* was passed, superseding the *1992 Law on Citizenship* and its amendments. Since 2011, Turkmenistan has granted nationality to over 6,400 stateless persons and refugees. The true extent of statelessness in the country is however unknown in the absence of reliable and comprehensive data.

The current refugee population, mostly from Afghanistan, has resided in the country for some 17 years, and is culturally and linguistically well integrated. Most of them have established families with citizens of Turkmenistan and have expressed their wish to be naturalized in Turkmenistan.

Statelessness

The 2013 *Law on Citizenship* provides Turkmen nationality to children born to stateless persons or children born in Turkmenistan and whose parents are unknown. Children born to parents with undetermined nationality can acquire Turkmen nationality once their parents' statelessness status is formally confirmed.

Almost all stateless persons and persons with undetermined nationality in the country are citizens of the former Soviet Union, with some having resided in Turkmenistan before its independence, some who arrived after its independence in 1991, and some born in the country. The known stateless persons speak either Russian or Turkmen and are very well integrated into local communities, given their long residence and the common legacy of the former Soviet Union. They primarily reside along the border with Uzbekistan (in Dashoguz and Lebap provinces).

¹ *Turkmenistan: Law on Refugees of 2017* [Turkmenistan], 3 June 2017, available at: <http://www.turkmenistan.gov.tm/?id=14004> (only in Russian language).

In 2011, as a result of a joint Government/UNHCR registration campaign, approximately 8,000 persons with undetermined nationality were identified through legal clinics operating under UNHCR projects. Between 2011 and 2016, Turkmenistan granted citizenship to over 6,400 stateless persons and refugees. However, UNHCR does not have an update of the number of stateless persons or those of undetermined nationality, despite regular requests to the Government for these statistics. It is estimated that there are some 6,000 applications by stateless persons that are pending a decision from the authorities, either to confirm or obtain citizenship of Turkmenistan. An additional 2,000 individuals are thought to be in need of assistance to confirm their citizenship or non-citizenship from relevant CIS embassies as well as further support in the naturalization process.

In 2014, the Turkmen authorities started issuing International Civil Aviation Organization (ICAO)-compliant ID and travel documents to stateless persons. All children in Turkmenistan, regardless of their legal status, have access to primary education and healthcare. According to Turkmen legislation, stateless persons have the right to state social assistance, including pensions and allowances, but they are not covered by medical insurance.

Refugees and asylum-seekers

Turkmenistan has a long tradition of facilitating durable solutions for refugees in the country. In August 2005, as a consequence of a registration exercise, the Government granted citizenship to 10,158 *prima facie* refugees of Turkmen ethnicity from Tajikistan and residence permits to 2,341 Tajik *prima facie* refugees of other ethnicities as well as to 709 Afghan *prima facie* refugees.

Currently most of the 22 mandate refugees reside in urban areas, primarily in the capital city of Ashgabat, with few others in Turkmenbashi and Turkmenabat. There are no reports of confrontation or hostility towards refugees from the local community. All of the refugees speak Russian, Turkmen, or both languages. In the context of Turkmenistan, permanent residency or naturalization are the most appropriate durable solutions for these persons.

There have not been any new asylum-seekers officially registered in Turkmenistan since 2005. Without having access to the border areas, UNHCR is not in a position to verify instances of *refoulement* or effective access to the territory of Turkmenistan particularly with regard to those who are from Afghanistan where insecurity persists. The Government continues to exert strict control over the borders as well as internal and external movements of people. There are no available statistics related to asylum.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Access to asylum

Linked to 2nd cycle UPR recommendation no. 113.62: “Allow visits by international humanitarian organizations to all detention places (Poland).”

UNHCR notes with concern that there have not been any new asylum-seekers officially registered in Turkmenistan since 2005. Without having access to border areas in the country, UNHCR is not in a position to verify instances of *refoulement* or effective access to asylum particularly at border entry points. The Government continues to exert strict control over borders as well as the internal and external movement of people. There are no available statistics related to asylum.

UNHCR has reiterated its readiness to assist the Government in developing fair and efficient asylum procedures that take the Government's legitimate concerns related to national security into account. Since 2015, the Government has consistently participated in UNHCR's support initiatives to establish a referral mechanism for asylum-seekers at their borders, and to establish a sustainable training mechanism on refugee protection for relevant government officials, including those working at the borders or on asylum issues. UNHCR encourages the Government to take advantage of these initiatives to establish a border management system that ensures effective access to the territory and to asylum procedures for those who may be in need of international protection, while at the same time taking into account the concerns of national security and threat of extremism.

UNHCR also wishes to note that asylum-seekers' access to independent, qualified, and free legal advice and representation is not consistently available in Turkmenistan. UNHCR is particularly concerned that persons at border entry points, or persons detained for immigration offences, do not have access to information about asylum procedures, and do not have the opportunity to receive legal assistance regarding their potential asylum claims. UNHCR recommends the Government of Turkmenistan allows ICRC and UNHCR partner organizations to access detention centres to reduce the risk of *refoulement*.

Recommendation:

UNHCR recommends that the Government of Turkmenistan:

- (a) Ensure access to the territory and asylum procedures for persons in need of international protection and ensure the prohibition against *refoulement* is respected in practice;
- (b) Establish fair and efficient asylum and referral procedures that are accessible at all border points, including at international airports and transit zones;
- (c) Ensure that referral and asylum procedures are enforced in practice, authorizing monitoring visits to the border regions and places of detention for the ICRC, United Nations agencies and human rights mechanisms; and,
- (d) Ensure that asylum-seekers, including detainees, have access to independent, qualified and free legal advice and representation, and that their protection needs are duly recognized and potential instances of *refoulement* prevented.

Additional Protection Challenges

Issue 2: Birth registration

UNHCR received reports indicating that children born to stateless parent(s) who lack any valid identity documentation may not be able to have their birth registered, nor have access to birth certificates, until their parent(s) are confirmed to be stateless and obtain relevant documentation. The process of confirming the statelessness or citizenship of the parent(s) may take a long time, during which the children will remain without a birth certificate and be put at greater risk not having their basic rights fulfilled.

In this regard, Turkmenistan received a recommendation from the Committee on the Rights of the Child, in March 2015, to: "[e]nsure registration for all children born on the territory of Turkmenistan, regardless of the citizenship and/or documentation status of their parents, to guarantee their right to a nationality, legal identity and protection without discrimination."²

² UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined second to fourth periodic reports of Turkmenistan*, 10 March 2015, CRC/C/TKM/CO/2-4, available at: <http://www.refworld.org/docid/566e81304.html>.

Recommendation:

UNHCR recommends that the Government of Turkmenistan:

- (a) Ensure birth registration for all children, without discrimination and irrespective of their parents' legal status.

Issue 3: Implementation of the 2013 Law on Citizenship

The main challenge stateless persons and refugees face in accessing citizenship arises from the partial implementation of the 2013 *Law on Citizenship* and *ad hoc* practices. Citizenship applications for many stateless persons have been pending final decisions for several years. The procedure is lengthy and bureaucratic as an application must be cleared by the State Migration Service, the Ministry of National Security, and the Citizenship Commission before finally being endorsed by the President. UNHCR estimates that there was a backlog of some 6,000 applications as of 2016.

Recommendation:

UNHCR recommends that the Government of Turkmenistan:

- (a) Ensure full implementation of the 2013 *Law on Citizenship*, streamlining administrative practices and clearing the backlog of individuals awaiting decisions on their applications for citizenship.

Issue 4: Statelessness determination procedures

Despite having acceded to the two Statelessness Conventions, Turkmenistan does not currently have statelessness determination procedures (SDPs). SDPs should be in place to effectively identify stateless persons and ensure that their rights are protected in accordance with the *1954 Convention*. The 2013 *Law on Citizenship*, in Article 8, states that “*stateless persons shall mean persons who are not citizens of Turkmenistan and who have no proof of possessing the citizenship of any foreign state.*” This definition is not in line with the definition of a stateless person contained in Article 1 of the *1954 Convention*³, which is also considered to be a part of customary international law and as such binding on all States. The challenge with the definition adopted by Turkmenistan is that persons who are citizens of another country may be recognized as stateless solely because they do not hold proof or documentation of their citizenship.

The absence of SDPs jeopardizes the legitimate stay in Turkmenistan of undocumented stateless persons. Unrecognized stateless persons may be at risk of mistreatment and may be denied access to basic services. SDPs should thus be established and implemented in line with international standards as soon as possible so as to permit stateless persons to acquire a secure legal residence, which will allow them to enjoy their basic rights and provide them with a clear path to naturalization in Turkmenistan.

Additionally, UNHCR considers that the relaxation of onerous documentary requirements could simplify administrative procedures to clarify nationality. At present, an individual who wishes to obtain status as a stateless person or confirm their citizenship of Turkmenistan is required to submit a formal letter from the embassy of their country of birth or residence confirming that they do not hold the nationality of the country. Turkmen administrative regulations require this certificate to have been issued within a month to be accepted in the procedure. However, these certificates are extremely difficult to obtain due to practical reasons.

³ Art 1(1) of the 1954 Convention: Stateless person is someone who is not considered as a national by any State under the operation of its law.

Furthermore, accurate data is essential for national policy making and to facilitate the assessment of the human rights situation of minority groups, including refugees and stateless persons. Timely release of data to the public can assist in the identification of individuals who may face obstacles in accessing their rights and services and improve the response. As noted above, specific information regarding stateless populations is not regularly shared by the Government, hindering the ability of UNHCR to target and assist stateless persons, or persons at risk of statelessness.

Recommendations:

UNHCR recommends that the Government of Turkmenistan:

- (a) Amend the national definition of a stateless person, and develop and implement a statelessness determination procedure, in line with international standards; and
- (b) Simplify administrative procedures for stateless persons to establish their lack of a nationality; and,
- (c) Share detailed statistical data on the number of stateless persons in the country, including the 2012 National Census data.

UNHCR
October 2017

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

TURKMENISTAN

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to Turkmenistan.

I. Universal Periodic Review (Second Cycle – 2013)

Recommendation ⁴	Recommending State/s	Position ⁵
Accession to international instruments and compliance with international obligations		
113.15. Ratify the International Convention on the Protection of the Rights of Migrant Workers and the members of their families	Egypt	Supported ⁶
113.16. Ratify the ICRMW and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and extend a standing invitation to the United Nations Special Procedures	Guatemala	Supported
113.21. Call for and support amending the Law on Migration to comply with ICCPR obligations	United State of America	Supported
Women and children's rights		
112.32. Continue to promote and protect the rights of women and children through the adoption of necessary domestic legislation	Bhutan	Supported
112.33. Maintain the positive trend in improving national laws and institutions, in particular the protection of women and children's rights	Cuba	Supported
Discrimination against women		
112.41. Consider bringing legislation in line with international standards in combating discrimination against women	State of Palestine	Supported
112.44. Continue promoting and protecting the rights of women through the adoption of adequate laws and the introduction of institutional mechanisms	Bulgaria	Supported
112.46. Implement a comprehensive strategy aimed at modifying or eliminating patriarchal attitudes and stereotypes which discriminate against women, in accordance with the provisions of CEDAW, included in the educational system; promote campaigns in the media to strengthen the understanding of equality between women and men, as well as expand public education programmes, particularly in rural and remote areas	Uruguay	Supported
Violence against women		
113.50. Take measures to further protect and promote the rights of women, including by enforcing laws against domestic violence	Australia	Supported

⁴ All recommendations made to Turkmenistan during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Turkmenistan" (5 July 2013), A/HRC/24/3, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TMindex.aspx>.

⁵ Turkmenistan's views and replies can be found in: *Addendum* (4 September 2013), A/HRC/24/3/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/TMindex.aspx>.

⁶ **Addendum:** "Turkmenistan accepts the recommendations. Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is currently under consideration."

113.51. Consider further addressing violence against women through legal measures	Bangladesh	Supported
113.52. Find ways to overcome the culture of silence and impunity surrounding domestic violence against women, including marital rape, to provide all necessary protection and assistance to victims, to enforce applicable legislation against perpetrators, and to draft specific legislation dealing with these issues	Netherlands	Supported
113.53. Incorporate in the Criminal Code specific provisions on domestic violence along with concrete sanctions against the perpetrators of domestic violence	Norway	Supported
113.54. Adopt specific legislation on domestic violence, in particular which ensures (i) such violence constitutes a criminal offence; (ii) victims have access to means of redress; and (iii) perpetrators are held accountable	Brazil	Supported
Trafficking in persons		
112.34. Continue efforts to combat trafficking in women and children within the framework of implementing national legislation and international obligations	United Arab Emirates	Supported
112.35. Continue the efforts to enable tangible progress in combating trafficking in persons, especially women and children	Indonesia	Supported
112.36. Increase further the efforts aimed at preventing and eradicating human trafficking, including considering the possibility for the development of the national plan of action	Belarus	Supported
112.37. Take appropriate measures for ensuring prosecution for trafficking in human beings	Kazakhstan	Supported
112.38. Strengthen the implementation of programmes aimed at the rehabilitation of victims of human trafficking, including the provision of counselling, shelter, legal assistance and other rehabilitative services to victims	Kyrgyzstan	Supported
Economic, social and cultural rights		
112.66. Pursue its excellent policies in the field of economic, social and cultural rights, in order to further increase the living conditions of its people, particularly those of the most vulnerable sectors of the population	Venezuela (Bolivarian Republic of)	Supported
112.67. Continue to promote economic and social development in an effort to eliminate poverty and further improve the living standards of the people	China	Supported
112.70. Continue measures on expanding the population's access to the quality services in the area of health and education	Uzbekistan	Supported
12.71. Continue its programme to improve social and living conditions in rural areas	Myanmar	Supported
112.74. Make more efforts to develop poverty reduction strategies and adopt legislations to ensure safe drinking water and sanitation	State of Palestine	Supported
112.75. Adopt appropriate legislative and administrative measures to ensure the full realization of the right to drinking water and sanitation for the whole population, with special attention to rural areas (Spain); 112.75. Adopt appropriate legislative and administrative measures to ensure the full realization of the right to drinking water and sanitation for the whole population, with special attention to rural areas	Spain	Supported
Detention		
112.85. Comply with international standards on arbitrary detention, in particular establishing forms of non-custodial sentences, such as community work, and separating strictly minors from adult detainees at detentions centres, which should lead to specific detention centres for minors and their reintegration into society	Belgium	Supported
113.62. Allow visits by international humanitarian organizations to all detention places	Poland	Supported

II. Treaty Bodies

Committee on the Elimination of All Forms of Discrimination against Women

Concluding Observations, (9 November 2012), [CEDAW/C/TKM/CO/3-4](#)

Violence against women

22. The Committee expresses its deep concern at the absence of specific legislation to deal with violence against women, in particular domestic and sexual violence, as well as at the lack of information and statistical data on its nature, extent and causes. The Committee is deeply concerned that violence against women appears to be socially legitimized and accompanied by a culture of silence and impunity, and that cases of violence are therefore underreported, it being considered a private issue that should remain within the family.

23. The Committee urges the State party to give priority attention to combating violence against women and girls and adopt comprehensive measures to address such violence, in accordance with its general recommendation No.19 (1992) on violence against women, including to:

- (a) Expeditiously adopt a comprehensive law addressing all forms of violence against women, including domestic and sexual violence, and ensuring that women and girls who are victims of violence have access to immediate means of redress and protection and further ensuring that perpetrators are prosecuted and punished;**
- (b) Develop a comprehensive national plan to combat all forms of violence against women;**
- (c) Raise public awareness, through the media and educational programmes and to provide mandatory training for judges, prosecutors, police officers, health-service providers, journalists and school staff in order to ensure that they are sensitized to all forms of violence against women and girls and can provide adequate gender-sensitive support to victims;**
- (d) Encourage women to report incidents of domestic and sexual violence by de-stigmatizing victims and raising awareness about the criminal nature of such acts and to provide adequate assistance and protection to women victims of violence by establishing shelters, especially in rural areas, and enhancing cooperation with non-governmental organizations providing shelter and rehabilitation to victims;**
- (e) Collect statistical data on domestic and sexual violence disaggregated by sex, age, nationality and relationship between victim and perpetrator, and undertake studies and/or surveys on the extent of violence against women and its root causes.**

Trafficking and exploitation of prostitution

24. While noting the adoption in 2007 of the Human Trafficking Act and several joint projects undertaken by the State party with International Organization for Migration to combat trafficking, the Committee is concerned at the absence of a National Plan of Action to combat trafficking and exploitation of prostitution. The Committee is further concerned at the lack of statistical data, disaggregated by sex and location, on trafficking and exploitation of prostitution in the State party. The Committee is also concerned about the lack of efforts to prevent the exploitation of prostitution and to address its root causes, and the lack of protection and services available to victims of exploitation.

25. The Committee calls upon the State party to fully implement article 6 of the Convention and:

- (a) To adopt, within a concrete timeframe, a National Plan of Action in order to ensure effective implementation of the Human Trafficking Act;**

- (b) **To include in its subsequent report information and data on the prevalence of exploitation of prostitution and trafficking;**
- (c) **To conduct studies and surveys for the above purpose, including on the prevalence of prostitution, and to seek international assistance as required;**
- (d) **To increase efforts at international, regional and bilateral cooperation with countries of origin, transit and destination to prevent trafficking through information exchange and to harmonize legal procedures aiming at prosecution of traffickers;**
- (e) **To address the root causes of trafficking and prostitution, including poverty, in order to eliminate the vulnerability of girls and women to sexual exploitation and trafficking, and to strive to ensure the recovery and social integration of victims, by providing them with shelters and assistance.**

Committee on the Rights of the Child

Concluding Observations, (10 March 2015), [CRC/C/TKM/CO/2-4](#)

Non-discrimination

18. The Committee welcomes the amendments to the Guarantees of the Rights of the Child Act (3 May 2014), which in articles 4 to 6 provides for the principle of non-discrimination in the exercise of children's rights and freedoms. The Committee further welcomes the information provided by the State party that the requirement to submit a document certifying Turkmen origin to access university education has been removed. However, the Committee remains concerned at:

- (a) The discriminatory practices towards children belonging to national minorities, particularly Kazakh and Uzbek children, who have limited access to language classes in their mother tongue;
- (b) Girls continuing to be discriminated against, owing to cultural biases, patriarchal attitudes and deep-rooted stereotypes, as was already noticed by the Committee on the Elimination of Discrimination against Women (CEDAW/C/TKM/CO/3-4, paras. 20 and 21), in spite of gender discrimination being forbidden in law;
- (c) The State party's limited efforts to tackle discrimination against girls and to modify or eliminate stereotypes and negative traditional values and practices.

19. **The Committee recommends that the State party:**

- (a) **Adopt legislative and administrative measures to prevent and eliminate disparities in the enjoyment by children of their rights, as well as discriminatory attitudes against certain groups of children, in particular girls and children belonging to national minorities;**
- (b) **Guarantee the right to education in their mother tongue for children belonging to national minorities and abolish restrictions in that regard;**
- (c) **Undertake comprehensive public education and awareness-raising campaigns, in particular in rural areas, to prevent and combat negative societal attitudes, including discrimination, based on, inter alia, sex, gender, nationality, ethnicity or religion.**

Best interests of the child

20. The Committee welcomes the information on the recent incorporation of the right of the child to have his or her best interests taken into account as a primary consideration in national legislation, such as in article 81 of the Family Code and article 6 of the Guarantee of the Rights of the Child Act. However, the Committee remains concerned that the concept of the best interests of the child is not always fully understood and implemented in judicial and administrative decisions, projects, programmes and services which have an impact on children, as well as in the determination of statelessness.

21. In the light of its general comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, the Committee recommends that the State party strengthen its efforts to ensure that this right is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings and decisions, as well as in all policies, programmes and projects that are relevant to and have an impact on children. The State party is therefore encouraged to develop procedures and criteria to provide guidance to all relevant persons in authority for determining the best interests of the child in every area—including in the determination of statelessness—and for giving them due weight as a primary consideration.

Right to life, survival and development

22. While noting that the suicide rate among adolescents has decreased, the Committee remains concerned about the persistence of this phenomenon in the State party.

23. The Committee recommends that the State party strengthen its efforts to prevent suicide among children and youth, including by increasing psychological consultation services and special psychosocial support programmes, and by addressing the root causes of the phenomenon. Moreover, the State party should collect disaggregated data on the occurrence of suicide.

Right to nationality

24. While noting the adoption of the Citizenship Act in 2013, the Committee is concerned that certain gaps remain that may lead to the statelessness of children born in the State party.

25. The Committee recommends that the State party review its citizenship legislation and procedures to ensure their full compliance with international standards aimed at the prevention and reduction of statelessness and ensure that all children born in its territory acquire Turkmen nationality, if otherwise they would be stateless, irrespective of the legal status of their parents.

Torture and other cruel or degrading treatment or punishment

30. While welcoming the amendment of the Criminal Code in 2012 to bring the definition of torture into line with the Convention against Torture, the Committee echoes the concerns of the Committee against Torture and the Human Rights Committee about the use of torture and ill-treatment for the purposes of punishment or extraction of confessions, and that children might be among those affected. Moreover, the Committee is concerned at the absence of independent mechanisms to monitor places of detention and to allow children to complain in cases of abuse by law enforcement officials.

31. The Committee urges the State party to:

- (a) Take appropriate measures to put an end to torture and ill-treatment by, inter alia, establishing an independent body to carry out in all places of detention inspections and investigations of alleged misconduct by law enforcement officials;
- (b) Set up a mechanism to which children deprived of liberty in all areas, including children's institutions and psychiatric institutions, can address complaints of torture or other cruel, inhuman or degrading treatment or punishment;
- (c) Ensure that allegations of torture and ill-treatment of children are effectively investigated, that the perpetrators are prosecuted and punished with appropriate sanctions, and that the victims receive adequate reparation;
- (d) Ensure that law enforcement personnel receive training on the prevention of torture and ill-treatment, by integrating the 1999 Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or

Degrading Treatment or Punishment (the Istanbul Protocol) in all training programmes for law enforcement officials.

Freedom of the child from all forms of violence

32. The Committee is concerned at the lack of information about the level of violence against children, including in schools and children's institutions.

33. **In the light of its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee recommends that the State party assess the level of violence in all settings and establish an appropriate reporting mechanism through which children can address complaints.**

Children deprived of a family environment

36. While noting with appreciation the low rates of institutionalization in the State party, the Committee is nevertheless deeply concerned that it is possible for parents to temporarily place their children in State institutions. The Committee is further concerned at the lack of State support for parents experiencing difficulties in the upbringing of their children, which results in increased institutionalization of children.

37. **With reference to the Guidelines for the Alternative Care of Children (General Assembly resolution 64/142, annex), the Committee recommends that the State party:**

- (a) **Improve the system of family support and take measures to strengthen families, in order to prevent abuse, neglect and abandonment of children;**
- (b) **Continue to develop and implement a comprehensive deinstitutionalization strategy;**
- (c) **Facilitate family-based care for children and establish a system of foster care for children who cannot stay with their families;**
- (d) **Abolish the practice of temporary placement of children in children's institutions;**
- (e) **Conduct periodic reviews of the placement of children and ensure that institutionalization is used only as a last resort.**

Committee against Torture

Concluding Observations, (23 January 2017), [CAT/C/TKM/CO/2](#)

Incommunicado detention and enforced disappearances

9. The Committee remains concerned at continued reports that an estimated 90 persons are being held by the State party in long-term incommunicado detention, a practice that amounts to enforced disappearance and violates the Convention. It is particularly concerned about the State party's failure to inform the Committee of the whereabouts of Boris and Konstantin Shikhmuradov, Batyr Berdyev and Rustam Dzhumayev, and of a number of other persons who were convicted in connection with the assassination attempt on the former President in November 2002 (arts. 2, 11-14 and 16).

10. **The Committee reiterates its recommendations (see CAT/C/TKM/CO/1, para. 15) that the State party should:**

- (a) **Put an end to incommunicado detention and ensure that all persons held incommunicado are released or are allowed to receive visits from their family members and lawyers;**
- (b) **As a matter of priority, inform the Committee of the fate and whereabouts of all persons convicted and imprisoned for allegedly attempting to assassinate the former President;**
- (c) **Take the measures necessary to ensure prompt, impartial and thorough investigations into all outstanding cases of alleged disappearance and**

prosecute those responsible, notify the relatives of the victims of the outcomes of such investigations and prosecutions, and provide remedy, as appropriate.

Monitoring of places of detention

19. The Committee remains concerned that the State party does not permit independent non-governmental organizations, particularly the International Committee of the Red Cross (ICRC), to monitor all detention facilities. It is also concerned that the State party has not extended invitations to United Nations special procedure mandate holders who have requested to visit the country, particularly the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary Detention. The Committee is also concerned that the Oversight Commission of the Penal Corrections Department, which monitors places of detention in the State party, is part of the Ministry of Internal Affairs and therefore lacks independence. It is also concerned about the absence of an independent oversight body to carry out independent inspections of all places of detention (arts. 2, 11 and 16).

20. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/CO/1, para. 14) and urges the State party to:**

- (a) Establish a national system that independently, effectively and regularly monitors and inspects all places of detention without prior notice and that is able to meet in private with detainees and receive complaints;**
- (b) Grant access to independent organizations, in particular ICRC, to all detention facilities in the country and expedite the signing of a memorandum of understanding with ICRC;**
- (c) Strengthen cooperation with the United Nations human rights mechanisms by permitting visits as soon as possible by special procedure mandate holders who have requested them, in particular the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Arbitrary detention, in conformity with the terms of reference for fact-finding missions by special rapporteurs and special representatives (E/CN.4/1998/45);**
- (d) Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

Fundamental legal safeguards

21. The Committee is concerned that persons deprived of their liberty do not in practice enjoy all fundamental legal safeguards against torture from the moment of their apprehension (arts. 2, 11 and 16). The Committee is further concerned that many people are held in custody for more than 48 hours and that the State party's law permits suspects to be held in detention, during the investigation of a criminal case, without being presented before a judge for up to six months, and even longer with authorization from the Procurator General (arts. 2, 11 and 16).

22. **The State party should ensure that fundamental legal safeguards against torture are guaranteed in practice by appropriate means of regulation and not merely by law to all detained persons, including remand prisoners, from the outset of their deprivation of liberty, according to international standards. The State party should monitor the provision of such safeguards to persons deprived of their liberty and should ensure that any official who fails to provide them in practice is subjected to disciplinary or other appropriate punishment. Such rights include the right of detainees to:**

- (a) Be promptly informed, in a language that they understand, both orally and in writing, of their rights, the reasons for their arrest and the charges against them and to sign a paper confirming that they have understood the information provided to them;**

- (b) **Undergo a medical examination by an independent doctor within 24 hours of their arrival in a place of detention;**
- (c) **Have prompt and confidential access to a qualified and independent lawyer, or to free legal aid when needed, from the time of their apprehension;**
- (d) **Promptly contact a family member or any other person of their choice about their detention immediately after apprehension;**
- (e) **Be promptly brought before a competent, independent and impartial court within 48 hours of their apprehension;**
- (f) **Have the legality of their detention challenged through an habeas corpus procedure and to have their detention recorded in a register at the place of detention and in a central register of persons deprived of their liberty, which their lawyers and family members can access.**

Conditions of detention in prisons

23. The Committee is concerned about the use of solitary confinement and the reduced regime for persons placed in solitary confinement, which has resulted in mental health problems and suicides. Additionally, while noting the renovations of existing facilities and the building of new ones during the period under review, the Committee remains deeply concerned about reports that inadequate material and hygienic conditions in places of deprivation of liberty, including continued severe overcrowding, inadequate bathing and toilet facilities, lack of access to an adequate quantity and quality of food, natural and artificial lighting, proper ventilation and health care, lack of outdoor activities and unnecessary restrictions on family visits continued during the period under review. The Committee is particularly concerned by reports that numerous prisoners may have died as a result of conditions at Ovadan-Depe prison. The Committee is also concerned about reports that prisoners with diseases such as active and multidrug-resistant tuberculosis continue to be held together with healthy prisoners, which results in high infection, morbidity and mortality rates among detainees. While noting the improvements made during the period under review in specialized facilities, the Committee is concerned about reports that prisoners with active tuberculosis are referred to the MR/K-15 hospital only when they are close to death or by bribing the relevant officials. The Committee is also concerned that the supervision of conditions of detention in detention facilities is not within the remit of judicial bodies (arts. 2, 11-14 and 16).

24. **The Committee reiterates the recommendations contained in its previous concluding observations (see CAT/C/TKM/CO/1, paras. 18-19) that the State party should:**

- (a) **Ensure that solitary confinement remains an exceptional measure of limited duration;**
- (b) **Intensify further its efforts to bring the conditions of detention in places of deprivation of liberty into line with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);**
- (c) **Reduce further prison overcrowding in all places of detention, including by renovating existing facilities and building new ones in accordance with international standards and implementing amended legislation allowing for alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**
- (d) **Ensure that detainees are provided with adequate material and hygienic conditions, including bathing and toilet facilities, an adequate quantity and quality of food, adequate space for each prisoner, natural and artificial lighting, proper ventilation, health care, outdoor activities and family visits;**
- (e) **Separate healthy prisoners from those suffering from active tuberculosis in all detention facilities, implement the National Tuberculosis Prevention and Control Programme and the short-course directly observed treatment programme foreseen by it, and provide specialized medical care at the MR/K-15 hospital and**

- at other medical facilities to prisoners suffering from active and multidrug-resistant tuberculosis and equip them with proper ventilation and Dezar devices;
- (f) **Amend legislation in order to allow for judicial oversight of all places of detention and allow independent monitoring bodies to carry out regular unannounced visits to all places of detention and meet in private with detained persons.**

Violence against women, including domestic and sexual violence

31. While commending the State party's zero-tolerance policy on violence against women and the adoption of the national plan of action for gender equality in Turkmenistan for 2015-2020, the Committee is concerned that domestic violence is not a separate crime in the Criminal Code. It is also concerned about the prevalence of violence against women in the State party, including in penitentiary facilities, and at the low number of complaints, investigations and prosecutions in this regard (arts. 2 and 12-16).

32. The Committee recommends that the State party:

- (a) **Define and introduce domestic violence, including sexual violence and marital rape, as specific criminal offences in its Criminal Code, with appropriate sanctions, and that it consider drawing up a national plan of action to reduce violence against women;**
- (b) **Ensure the effective implementation of the national plan of action for gender equality in Turkmenistan for 2015-2020 and regularly assess its results;**
- (c) **Establish an effective and independent complaints mechanism for victims of domestic violence;**
- (d) **Ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police, that all allegations of violence are promptly, impartially and effectively investigated and that the perpetrators of such violence are prosecuted and punished;**
- (e) **Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, redress and rehabilitation, as well as to safe and adequately funded shelters throughout the country;**
- (f) **Provide mandatory training for police and other law enforcement officials, social workers, lawyers, prosecutors and judges on the vulnerabilities of victims of gender-based and domestic violence.**

Non-refoulement

33. While welcoming the adoption by the State party of legislation establishing procedures for recognizing and protecting the rights of refugees, and noting the information provided by the State party that it granted Turkmen citizenship by presidential decree to a number of stateless persons and migrants during the reporting period, the Committee is concerned by reports that the State party did not register any new asylum seekers during the reporting period and regrets that the State party did not provide the information it had requested on the number of asylum requests considered by its authorities during the reporting period and the outcome of those requests (art. 3).

34. The Committee recommends that the State party adopt the following measures in order to ensure that the prohibition against *refoulement* is respected in practice:

- (a) **Establish fair and efficient asylum and referral procedures that are accessible at all border points, including at international airports and transit zones;**
- (b) **Ensure that asylum seekers, including detainees, have access to independent, qualified and free legal advice and representation, that their protection needs are duly recognized and that *refoulement* is prevented;**
- (c) **Establish a system for collecting and providing the following data to the Committee and other relevant observers, for the period from 2012 to the present:**

- (i) **The number of asylum applications received;**
- (ii) **The number of foreigners who have been expelled, returned or otherwise refused entry at the borders, and to which countries;**
- (iii) **The number of foreigners detained in detention facilities;**
- (iv) **The number of individuals whose asylum applications are pending with the authorities.**

Committee on the Elimination of Racial Discrimination

Concluding Observations, (7 February 2017), [CERD/C/TKM/CO/8-11](#)

Situation of non-citizens

16. The Committee regrets the lack of information on the current situation of non-citizens of the State party, including migrants, refugees and asylum seekers, and their capacity to access education, health care, employment and registration of births in the State party. The Committee also notes with concern that no new asylum seekers have been registered since 2005 in the State party. The Committee is also concerned about discrimination on the basis of nationality of citizens with dual citizenship and Turkmen citizens married to non-citizens, and their difficulties in obtaining entry visas and long-term family visas (arts. 5 and 7).

17. **Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 22 (1996) on refugees and displaced persons in the context of article 5 of the Convention and refugees and displaced persons, the Committee recommends that the State party:**

- (a) **Ensure that non-citizens have access to education, housing, health care, employment and birth registration in the territory of Turkmenistan without discrimination;**
- (b) **Prevent the refoulement of asylum seekers and take effective reception measures and ensure that they have access to equitable and effective asylum information and procedures without discrimination, and that it provide updated information on the number of asylum seekers in the State party that have been registered since 2005;**
- (c) **Provide the Committee with information on residential and family visas requested and approved or rejected;**
- (d) **Provide the Committee in its next periodic report with information on the implementation of the present recommendations.**

Situation of stateless persons

18. The Committee welcomes the decision of the State party to grant citizenship to over 1,750 stateless persons between 2013 and 2015, as well as its adoption of the Law of 2013 on Citizenship, the Law of 2012 on Refugees and its accession to the Convention on the Reduction of Statelessness in 2012. The Committee continues to express concern, however, at the large number of stateless persons in the State party and the impact of statelessness on their ability to access basic rights and services (art. 5).

19. **The Committee recommends that the State party continue to take expeditious measures to reduce statelessness and to ensure that stateless persons in the State party have access to basic rights and services. The Committee requests that the State party provide in its next periodic report updated information about the number of stateless persons in the State party and their ability to access basic rights and services.**

Complaints of racial discrimination

20. Recalling its previous concluding observations, the Committee reiterates its concern at the continued lack of information on the domestic application of the Convention, including

detailed examples of cases in which the provisions of the Convention have been applied by national courts, as well as statistical data on complaints of racial discrimination and investigations or prosecutions of perpetrators. The Committee further notes that the absence of complaints does not necessarily signify the absence of racial discrimination in the State party, but rather may signify barriers in invoking the rights in the Convention domestically, including lack of public awareness of the rights under the Convention and relevant domestic legislation, or a lack of access to, availability of or confidence in procedures to seek judicial redress for racial discrimination (art. 6).

21. The Committee recommends that the State party provide in its next periodic report detailed information on cases where the Convention has been applied. The Committee further requests statistical data on numbers of complaints of racial discrimination and on investigations, prosecutions and convictions, disaggregated by the age, gender and ethnic or ethno-religious origin of the victims. The Committee also recommends that the State party ensure that lack of complaints of racial discrimination is not the result of victims' lack of awareness of their rights under the Convention or lack of confidence in judicial redress.