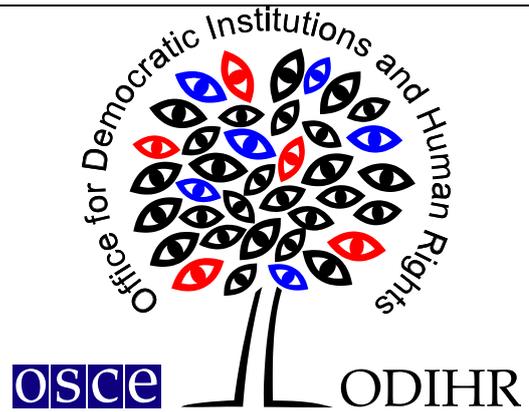


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OSCE/ODIHR

Advisory Panel on Freedom of Religion or Belief

Comments

on the Law of Turkmenistan

on Religious Freedom and Religious Organizations

*Based on an unofficial English translation of the Law
provided by the OSCE Centre in Ashgabat*

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ANNEX A: TEXT OF THE LAW OF TURKMENISTAN ON RELIGIOUS FREEDOM AND RELIGIOUS ORGANIZATIONS (UNOFFICIAL TRANSLATION)

I. INTRODUCTION

1. *In July 2009, the Centre in Ashgabat of the Organization for Security and Co-operation in Europe (OSCE) submitted to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for comments on the Law of Turkmenistan on Religious Freedom and Religious Organizations (hereinafter, the “Religious Organizations Law” or “the Law”), enacted in 2003, with subsequent amendments.¹ A first set of Comments focusing mainly on the latest amendments to the Law was completed in December 2009. Following clarifications from the Centre, this second version of Comments (hereinafter, the “Comments”) has been drafted in response to the above request for review and advice.*
2. *The Comments have been prepared by the OSCE ODIHR Legislative Support Unit together with the Advisory Council of the OSCE ODIHR Advisory Panel on Freedom of Religion or Belief (hereinafter, the “Advisory Council”). The Advisory Council is a consultative body of the OSCE ODIHR with acknowledged expertise in the field of freedom of religion or belief. The Advisory Council includes members from many OSCE participating States of diverse geographical, political, legal and religious backgrounds, with extensive experience in advising ODIHR and OSCE participating States on legislation pertaining to freedom of religion or belief. The Advisory Council is also familiar with the broad range of laws that exist in OSCE participating States on or pertaining to freedom of religion or belief.*

II. BASIS AND SCOPE OF REVIEW

3. *These Comments have been prepared taking into account Turkmenistan’s international commitments,² including its commitments as a participating State in the OSCE,³ focusing in particular on freedom of religion or belief and relevant international standards with respect to religious association laws.⁴ While efforts have been made to include relevant provisions of the Constitution of Turkmenistan⁵ and select domestic*

¹ Amendments introduced through the Laws of Turkmenistan of 16 March 2004, 18 April 2009 and 2 July 2009.

² Turkmenistan is a party to the following international human rights instruments: The Convention on the Rights of the Child (CRC) (acceded on 20 September 1993) and its two Optional Protocols (acceded in 2005); International Convention on the Elimination of All Forms of Racial Discrimination (acceded on 29 September 1994); International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceded on 1 May 1997); International Covenant on Civil and Political Rights (ICCPR) (acceded on 1 May 1997) and its two Optional Protocols (acceded in 1997 and 2000); Convention on the Elimination of All Forms of Discrimination against Women (acceded on 01 May 1997), and others. See UN Treaty Collection, Multilateral Treaties deposited with the Secretary-General, Chapter IV: Human Rights, Participation Status, <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>.

³ Turkmenistan is a participating State in the OSCE and is accordingly bound by OSCE commitments. For a compilation of relevant OSCE commitments, see OSCE ODIHR, OSCE Human Dimension Commitments, Volume 1: Thematic Compilation (2d. ed. 2005), available at: <www.osce.org/publications/odihr/2005/09/16237_440_en.pdf>.

⁴ The term “religious association laws” is used in these Comments to cover the body of law dealing with registration, recognition, establishment, creation, operation and dissolution of legal entities for religious organizations.

⁵ Key provisions of the Constitution of Turkmenistan related to freedom of religion or belief are Articles 12 and 17, which provide as follows:

Article 12: The state guarantees freedom of religion and faith and the equality of religions and faiths before the law. Religious organizations are separate from the government, and may not perform governmental functions. The governmental system of education is separate from religious organizations and is secular in nature. Everyone has the right independently to determine her or his

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laws which may affect freedom of religion or belief within the purview of the Comments, the scope remains as defined in paragraph 5 below.

4. The Comments contained herein take into account the “Guidelines for Review of Legislation Pertaining to Religion or Belief” (hereinafter, the “OSCE Guidelines”)⁶ that have been prepared by the OSCE ODIHR Advisory Panel of Experts on Freedom of Religion or Belief in consultation with the Council of Europe’s Commission for Democracy Through Law, and which are based on international standards in this area.
5. The Comments cover the Religious Organizations Law, but do not constitute a full and comprehensive review of the entire body of legislation governing the issue of freedom of religion or belief and/or of religious associations in Turkmenistan.
6. The Comments are based on an unofficial English translation of the text of the Religious Organizations Law, provided to ODIHR by the OSCE Centre in Ashgabat, and attached hereto under Annex A. Errors from translation may result.
7. In view of the above, and in light of the fact that future changes or reforms of the Religious Organizations Law (as well as of the general legal setting in Turkmenistan) may call for additional or modified comments, the OSCE ODIHR and the Advisory Council notes that these Comments are without prejudice to any written or oral recommendations and comments to the Religious Organizations Law and related legislation that the OSCE ODIHR and its Advisory Council may wish to make in the future.

own religious preference, to practice any religion alone or in association with others, to practice no religion, to express and disseminate beliefs related to religious preference, and to participate in the performance of religious cults, rituals, and ceremonies.

Article 19: Turkmenistan guarantees the equality of the rights and freedoms of its citizens and, likewise, the equality of citizens before the law regardless of nationality, ethnic origin, property holdings, official status, place of residence, language, religious preference, political convictions, or political party membership.

In addition to the foregoing provisions aimed at protecting freedom and equality rights with respect to religion, **Article 30** provides limits on the right to form religious (and other) associations “having as their goal violent change in the constitutional order, allowing violence in their activities, agitating against the constitutional rights and freedoms of citizens, advocating war, racial, national, social, or religious animosity, encroaching on the health or morality of the people, or forming militaristic associations or political parties based on national or religious traits.”

⁶ The OSCE Guidelines were adopted by the Venice Commission of the Council of Europe at its 59th Plenary Session (Venice, 18-19 June 2004) and were welcomed by the OSCE Parliamentary Assembly at its Annual Session (Edinburgh, 5-9 July 2004). The OSCE Guidelines have also been commended by the United Nations Special Rapporteur on Freedom of Religion or Belief in the Report of the Special Rapporteur on the Freedom of Religion or Belief to the 61st Session of the Commission on Human Rights, E/CN.4/2005/61, para. 57, <<http://www2.ohchr.org/english/issues/religion/annual.htm>>. For the text of the OSCE Guidelines, see <www.legislationline.org>.

III. EXECUTIVE SUMMARY

8. In order to ensure the compliance of the Religious Organizations Law with international standards and obligations to which Turkmenistan is signatory and has committed, it is recommended as follows:

Key recommendations:

- A. In Art. 3 par. 4,⁷ to delete the ground of “national security” from the list of permissible limitations to the “practicing” of religious freedom; [par. 25]
- B. also in Art. 3 par. 4, to provide expressly that any limitation on manifestations of freedom of religion or belief must be directly related and proportionate to the specific need on which they are predicated; [par. 26]
- C. in Art. 5, to phrase with greater precision the prohibitions on the activities of religious organizations and to clarify what constitutes “illegal religious activities”, in line with international standards, and delete the term “sect”; [paras. 33-36]
- D. to remove from Art. 11 the blanket prohibition on operating unregistered religious organizations and the provision imposing liability for conducting activities on behalf of unregistered religious organizations; [paras. 56-57]
- E. in Art. 11, to simplify and streamline the procedure for registering religious organizations; [par. 59]
- F. with respect to Art. 12, to ensure that state authorities are not allowed to review or evaluate the legitimacy of a religious organization and to deny registration on such ground; [par. 60]
- G. to provide that decisions to terminate the activities of religious organizations (Art. 14), and to distribute their property (Art. 18), shall be taken by a court of law, and that such decisions shall be appealable; [paras. 64, 70-71, 74]

Additional recommendations:

- H. to expand the scope of the Law to reflect the fact that freedom of thought, conscience and belief extends to non-religious worldviews, so as to ensure that those with non-religious life stances are equally protected and are not discriminated against; [paras. 17-19]
- I. to amend Article 3 by:
 - a. expanding the scope of the provision to include also at minimum “worship, observance, practice and teaching” of religion, these being important aspects of religious life; [par. 20]
 - b. expanding the definition of “freedom of religion” contained therein so as to cover also the right to adopt, or to change, a religion or belief; [par. 21]

⁷ Please note that the text of each provision in the Law does not include numbering of paragraphs. For ease of reference in this Comment, paragraph numbers have therefore been assigned to each sentence of a provision which has been indented.

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- c. including in par. 2 an express prohibition against forcing persons to disclose their religious or non-religious beliefs and extend the prohibition of coercion so that it covers all aspects of the expression of belief; [paras. 22 and 23]
- J. to amend Art. 4 so as to expressly allow for an alternative civilian service for persons who refuse to perform military service owing to religious beliefs; [par. 31]
- K. to amend Art. 4 par. 2 to ensure a proper balance between the freedom of religion or belief and the freedom of expression; [paras. 27-29]
- L. to amend Art. 6 by:
 - a. revising par. 4 so as to allow for children to receive religious education not only at mosques but also at similar establishments belonging to other religious denominations; [par. 37]
 - b. amending par. 5 to ensure that any requirement for seeking and obtaining approval of the Council of Religious Affairs, by teachers to provide religious education, is only applicable to teaching in public schools, so that the article does not cover the scope of private religious education and impose the same requirement thereon; [par. 38-39]
 - c. removing the prohibition against providing religious education in private, contained in par. 6; [par. 40]
- M. to define in Art. 7 with greater precision the nature and degree of control which the Council on Religious Affairs is entitled to exercise over the activities of religious organizations, as well as the composition of this body; [paras. 41-43]
- N. to revise Art. 8 by:
 - a. either clarifying the differences in the legal status of religious groups and religious organizations, or revoking that distinction and instead mentioning only religious organizations; [par. 46]
 - b. excluding the final paragraph (par. 5) which requires the approval of the Council on Religious Affairs for religious organizations to establish and maintain international relations for making pilgrimages and participating in other religious events; [par. 45]
 - c. revising par. 4 to ensure respect for religious communities' rights to select, appoint and replace their personnel; [par. 47]
- O. to amend and clarify Art. 10 so as to allow religious organizations more flexibility in framing their charter goals; [paras. 48-54]
- P. to amend Art. 11 par. 3 so that it no longer compels the disclosure of a religious organization's members' beliefs; [par. 58]
- Q. to clarify in Art. 12 which "other legislation of Turkmenistan" religious organizations should comply with in their charter and documents; [par. 61]
- R. to formulate with greater precision the grounds for refusing registration (Art. 12) and for liquidation (Art. 14) of religious organizations and include the right to appeal against such decisions; [paras. 62-69]

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- S. to reconsider the blanket prohibition contained in Art. 19 par. 2 on the wearing of religious attire in public, in line with international standards; [paras. 78-80]
- T. in Art. 19 par. 2, to allow for religious services and ceremonies to be held at home when people so desire, and not only “if necessary for ritual reasons”; [par. 75]
- U. in Art. 20, to take out the restrictions on the delivery and sale of religious literature published abroad, in accordance with international standards; [par. 81]
- V. to include in Art. 25 guarantees against unlawful interferences by the control bodies with everyone’s right to privacy and freedom to manifest religion or belief; [paras. 83-91] and
- W. to ensure that Art. 27 shall not be used to unjustifiably deny the re-registration of the charter and other documents of religious organizations which were already functioning legitimately in Turkmenistan prior to the entry into force of this Law; [par. 92].

IV. ANALYSIS AND RECOMMENDATIONS

A. General Comments

9. Without prejudice to other legal provisions that also have to be taken into account, the most relevant international instruments on which these Comments are based are provided in Appendix I of the OSCE Guidelines.⁸ The majority of these instruments are directly applicable in Turkmenistan,⁹ and have supremacy over any provisions contained in domestic legislation which may come into conflict therewith.¹⁰ While some of the referenced instruments do not have direct binding force in Turkmenistan, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), they give valuable reference points as to possible interpretation of Turkmenistan's international commitments. In the case of the ECHR, this document also serves as the basis for judgments of the European Court of Human Rights (ECtHR), and these judgments can be considered highly persuasive given that they emanate from the longest-functioning international court with expertise and jurisdiction exclusively in the area of human rights.¹¹
10. The most significant provisions and documents defining Turkmenistan's international obligations with respect to freedom of religion or belief are Article 18 of the International Covenant on Civil and Political Rights (ICCPR) and its official interpretative commentary, the UN Human Rights Committee's General Comment No. 22.¹²
11. It is important to note that under the ICCPR, the right to internal freedom of belief, including the right to have or adopt a religion or belief, may not be regulated by the state. Under Art. 18 par. 3, as in the parallel limitation clauses of all other major international human rights instruments, limitations may *only* be imposed on *manifestations* of belief. Inner beliefs may not be subject to limitations of any kind.

⁸ These international instruments and commitments include excerpts from: The Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), the UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (proclaimed by General Assembly Resolution 36/55 of 25 November 1981), the UN Human Rights Committee General Comment 22 (48th Session 1993, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc HRI/GEN/1/Rev.1 at 35 (1994), Helsinki Final Act (1975), the OSCE Concluding Document of Vienna (1989), and the OSCE Copenhagen Document (1990). Appendix I also includes excerpts from the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its First Protocol (1952) and the American Convention on Human Rights (O.A.S. Treaty Series No. 36, 1144, U.N.T.S. 123, in force from 18 July 1978). These have no binding effect in Turkmenistan, but they provide some basis for understanding how freedom of religion or belief is understood around the world.

⁹ For a list of relevant international commitments that Turkmenistan has assumed, see footnotes 2 and 3 *supra*.

¹⁰ Art. 6 of the Constitution of Turkmenistan recognizes the precedence of generally recognized norms of international law over domestic legislation in case of conflict, and Art. 2 par. 2 of the Religious Organizations Law provides that "Should an international treaty to which Turkmenistan is a signatory party set rules different from those contemplated in this Law, the rules of the international treaty shall apply".

¹¹ Moreover, the ECHR human rights protection system often serves as a model for the rest of the world, a fact expressly appreciated by the UN High Commissioner for Human Rights. See the speech given by Mrs. Louise Arbour, UN High Commissioner for Human Rights, on the occasion of the opening of the 2008 judicial year of the European Court of Human Rights, 25 January 2008, available at: http://www.echr.coe.int/NR/rdonlyres/D5B2847D-640D-4A09-A70A-7A1BE66563BB/0/ANNUAL_REPORT_2008.pdf (page 43).

¹² U.N. Human Rights Committee, General Comment No. 22(48). Adopted by the U.N. Human Rights Committee on 20 July 1993. U.N. Doc. CCPR/C/21/Rev.1/Add.4 (1993), reprinted in U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

12. In practice, the key issue in most cases is whether a particular limitation on a manifestation of religion is permissible under international law as provided by the so-called “limitation clauses” of the pertinent international instruments – most notably Art. 18 par. 3 of the ICCPR. Specifically, limitations on manifestations of religion are permissible only if the three rigorous criteria, set out below, are met.
13. First, limitations can only be imposed by law, and in particular, by laws that comport with the rule of law ideal.¹³ Thus, limitations may not be retroactively or arbitrarily imposed on specific individuals or groups; neither may they be imposed by laws that are so vague that it is unclear which actions will be permissible and which will not, and leave room for arbitrary enforcement.¹⁴ Due process considerations, such as the rights to prompt decisions and to appeals, also reflect these basic rule of law requirements.
14. Second, limitations must aim at a narrowly circumscribed set of legitimating social interests, namely public safety, order, health, or morals, or the fundamental rights and freedoms of others. Significantly, the UN Human Rights Committee’s official commentary on Art. 18 par. 3 of the ICCPR emphasizes that the language of the limitations clause is to be strictly interpreted and that restrictions must be directly related and proportionate to the specific need on which they are predicated and must not be imposed or applied in a discriminatory manner.¹⁵
15. Third, even if a particular limitation on freedom of religion or belief passes all the foregoing tests, it is only permissible as a matter of international human rights law if it is genuinely necessary.
16. It is important to note that the Religious Organizations Law complies with international standards on freedom of religion or belief in many respects. However, for the purposes of concision, this Comment will focus on areas that are a source of concern, rather than on the positive features of the Law. It is the hope of OSCE ODIHR that these Comments will assist the authorities of Turkmenistan in any planned future amendments to the Religious Organizations Law¹⁶ or in the decision to undertake requisite reforms.

B. Analysis of the Law and specific recommendations for amendments

1. Scope of the Law

17. As a result of some definitional constructions and wordings used in the text of the Religious Organizations Law, the scope of the Law and the protections it provides appear too narrow. In the first place, it is not clear whether the Law covers non-religious as well as religious beliefs. While the preamble of the Law mentions

¹³ In this context, see W. Cole Durham, Jr. and Brett G. Scharffs, *Law and Religion: National, International and Comparative Perspectives* (Wolters Kluwer, Aspen Publishers, 2010), p. 232; Malcolm Evans, *Religious Liberty and International Law in Europe* (Cambridge: Cambridge University Press, 1997), pp. 319-320.

¹⁴ Paul M. Taylor, *Freedom of Religion: UN and European Human Rights Law and Practice* (Cambridge: Cambridge University Press, 2005), pp. 293-301.

¹⁵ United Nations Human Rights Committee, General Comment No. 22 (48), *supra* note 11, para. 8.

¹⁶ In an 11 January 2010 Report submitted to the UN Human Rights Committee, the state authorities of Turkmenistan have indicated that they are currently engaged in a process of reforming national legislation, which will also affect the legislation on freedom of religion. See paragraph 589 of the Report, available here: <http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.TKM.1_ru.doc> (in Russian only).

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“religion and belief” as seemingly distinct and independent concepts, the text of the Law then establishes a nexus between “religion” and “belief”. The nexus between the said concepts is evident in Art. 3 par. 1 which defines freedom of religion as “a guaranteed constitutional right [...] to practice or not to practice any religion, to express and disseminate *beliefs related to religion* and to participate in practicing religious cults, rituals and ceremonies” (emphasis added).¹⁷ However, the Law does not clearly distinguish between these concepts and may thus be interpreted as applying only to those beliefs that are strictly connected with religion. This would mean that the Law is too narrow in its scope, in so far as it fails to afford equal protection to beliefs that are non-religious and/or un-related to religion.¹⁸

18. International standards clearly protect the right “to have or to adopt a religion or belief”, thus extending the sphere of protection also to non-religious belief systems, such as atheism and agnosticism.¹⁹ The aim is to assure that adherents of deeply held but non-religious conscientious beliefs about the human condition and the world are afforded equivalent protection to religious believers. Therefore, the Religious Organizations Law should be revised to remove any doubt on this point. Specifically, Art. 1 on “Subject Matter of the Law” and Art. 3 on “The Right to Religious Freedom” should be amended so as to widen the scope of the Law to protect the freedom of religion or belief as required by the relevant international instruments.
19. The above remarks apply also to other provisions of the Law, such as Art. 3 par. 5, Art. 4 par.1, Art. 4 par. 3 and Art. 6 par. 2, which similarly refer only to “religion” or “religious beliefs” and fail to include non-religious beliefs within the ambit of protection. In this context, Art. 4 par. 2 marks a positive step forward in that it prohibits limitations of rights and privileges based on “religious *and atheistic convictions*” (emphasis added); while this provision is welcome in so far as it expressly extends the protection from discrimination also to atheists (and thus goes beyond the strict sphere of religion), it nonetheless fails to protect persons who hold other non-religious beliefs, such as agnostics. It is therefore recommended that the above legal provisions be revised to ensure that they protect the full range of freedom of religion or belief, in full compliance with international standards. This correction could usefully be reflected in the title of Article 3, which could be “The Right to Freedom of Religion or Belief”.
20. The initial provisions of the Law are unduly narrow in another respect in that they tend to focus on “worship” dimensions of religious behaviour, thereby overlooking other aspects of religious life. Significantly, international instruments specify that the right to freedom of religion or belief *includes* the right “to manifest . . . religion or belief in *worship, observance, practice and teaching*”.²⁰ Article 3 par. 1, in contrast, appears to define the scope of religious freedom by reference to “practicing religious cults, rituals, and ceremonies”. However, religious life is a much broader notion, and religious freedom protections need to be correspondingly expansive. This oversight in the Law

¹⁷ Such wording in fact reflects that found in Art. 12 of the Constitution of Turkmenistan, which guarantees freedom of religion and provides that everyone has the right “to express and disseminate *beliefs related to attitude toward religion*” (emphasis added).

¹⁸ Of note, Art. 28 of the Constitution of Turkmenistan provides that “Citizens of Turkmenistan have the right to freedom of beliefs and their free expression, and the right to information provided it is not a state, official or commercial secret”.

¹⁹ See Art. 18 ICCPR (as well as Art. 9 ECHR). See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 8.

²⁰ ICCPR, Art. 18(1) (emphasis added).

could be remedied by making sure that the language defining the scope of religious freedom indicates that it includes at a minimum “worship, observance, practice and teaching”.

21. Art. 3 of the Law defines “freedom of religion” as a guaranteed constitutional right “to practice or not to practice any religion, to express and disseminate the views related to religion, and to participate in religious rituals and ceremonies”. Such a definition is too narrow given that it does not include the right to *change* one’s religion (or belief). Freedom of religion under Art. 18 of the ICCPR – a treaty to which Turkmenistan is a party, and whose provisions therefore override conflicting provisions of the Religious Organizations Law²¹ – has been interpreted by the UN Human Rights Committee as necessarily entailing the freedom to choose a religion (or belief), including, *inter alia*, the right to replace one’s current religion or belief with another or to adopt atheistic views.²² The definition of “freedom of religion” contained in Art. 3 of the Law is therefore recommended to be expanded to include also the right to adopt, or to change, a religion or belief.
22. A distinct yet related definitional comment must be made with respect to Art. 3 par. 2 of the Law, which prohibits coercions that impair religious freedom. International standards provide that “no one can be compelled to reveal his thoughts or adherence to a religion or belief”.²³ The English translation of Art. 3 par. 2 appropriately prohibits “[c]oercing a citizen to *determine* his or her attitude towards religion” (emphasis added), but neglects to note that there should also be a prohibition on coercion or other state pressure to require an individual’s religion or belief to be *revealed*, or *disclosed*. Unless owing to imprecision in translation,²⁴ it is suggested that the paragraph be amended to contain an express prohibition against forcing a person to disclose his or her religious (or non-religious) beliefs.
23. In general, the provision of Article 3 par. 2 of the Law dealing with coercion should be broadened to make it clear that coercion is inappropriate with respect to participating or not participating in public *or private* worship, in religious rituals and ceremonies. Similarly, coercion should not be allowed with respect to receiving *or not receiving* theological *or other religious* education, and in general should not be allowed if it *would otherwise impair an individual’s right to freedom of religion or belief*.

2. Legally-prescribed limitations on the manifestation of religious freedom

24. Article 3 par. 4 of the Law sets forth what is commonly referred to as the “limitation clause”, specifying the criteria for permissible limitations on manifestations of freedom of religion or belief. Such clauses are common in legislation pertaining to religious freedom, and have been discussed in pars. 11-15 *supra*.²⁵

²¹ See Art. 6 of the Constitution of Turkmenistan and Art. 2 par. 2 of the Religious Organizations Law.

²² See paragraph 5 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR. See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 10.

²³ See paragraph 3 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR.

²⁴ The wording “to determine” may be an inaccurate English translation of the Russian “определение” – which can also be interpreted as “disclosure”.

²⁵ See also Art. 18(3) ICCPR.

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25. The problematic aspect of Art. 3 par. 4 is that it prescribes “national security” as a ground for restricting manifestations of religious freedom. Such a limitation clause clearly oversteps the permissible scope of restrictions allowed under international law. According to Art. 18 par. 3 of the ICCPR, the “[f]reedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others”. The UN Human Rights Committee has interpreted this list of limitations restrictively, and has expressly stated that restrictions on grounds which are not specified therein, such as national security, are not allowed.²⁶ Art. 3 par. 4 of the Law should therefore be amended so as to exclude the ground of “national security” from the series of permissible limitations to the “practicing” of religious freedom.
26. As noted in paragraphs 14-15 above, international standards also prescribe that restrictions must be strictly necessary in the sense of being directly related and proportionate to the specific legitimating ground on which they are based, and that the least invasive restrictions should be employed (the so-called “proportionality rule”).²⁷ Art. 3 of the Law, in its current reading, contains no such guarantees. To prevent any potential abuse or discretionary application of state power in regulating manifestations of the right to freedom of religion or belief, and to assure full compliance with international standards, it is necessary that such safeguards be included in Art. 3.
27. Art. 4 par. 2 of the Law prescribes liability for, *inter alia*, “causing animosity and hatred or *offending citizens’ feelings*” (emphasis added). The causing or incitement to inter-faith animosity and hatred are common grounds for liability, found in the legislation of many OSCE participating states. Moreover, under the ICCPR, states are in fact required to prohibit expressions if they amount to advocacy of [national, racial or] religious hatred that constitutes incitement to discrimination, hostility or violence.²⁸ At the same time, however, holding someone liable for merely “offending citizens’ feelings” – even if this relates to religious or other deeply held feelings – may amount to an unjustified interference with that person’s right to freedom of expression, guaranteed by Art. 19 ICCPR, which covers also critical expressions.²⁹ Such interference would be legitimate only if it can be justified according to the limitations-clause test.
28. In this context, the UN Human Rights Committee found in the case of *Malcolm Ross v Canada*,³⁰ that a restriction on freedom of expression is justified if public statements (for example, in this case made by a public school teacher in an off-duty setting) are discriminatory against persons of a certain faith and ancestry, denigrate the faith and beliefs of those persons, and call upon people (in this case, “true” Christians) not

²⁶ See UN Human Rights Committee, General Comment No. 22(48), *supra* note 11, par. 8. Of note, the ECHR similarly does not contemplate restrictions on manifestations of freedom of religion or belief based on “national security” grounds; see Art. 9 par. 2 ECHR.

²⁷ See UN Human Rights Committee, General Comment No. 22(48), *supra* note 11, para. 8. A similar proportionality rule is contained in Art. 9 par. 2 ECHR.

²⁸ See Art. 20 par. 2 of the ICCPR.

²⁹ “Freedom of expression is essential to creating an environment in which a critical discussion about religion can be held” – see the Joint statement by three UN Special Rapporteurs (UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; UN Special Rapporteur on freedom of religion or belief; and UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression) delivered at the OHCHR side event during the Durban Review Conference (Geneva, 22 April 2009).

³⁰ See *Malcolm Ross v. Canada*, UN Human Rights Committee, CCPR/C/70/D/736/1997, 26 October 2000.

merely to question the validity of those beliefs and teachings, but to hold those of that faith and ancestry in contempt as undermining freedom, democracy and beliefs and values. The ECtHR has established a similar system of balancing freedom of expression with freedom of religion or belief.³¹ And the UN Special Rapporteur on freedom of religion or belief has taken the view that “expressions should only be prohibited under Article 20 [ICCPR] if they constitute incitement to imminent acts of violence or discrimination against a specific individual or group”.³²

29. Thus, international standards establish that expressions which are merely offensive should not *per se* constitute a ground for liability. Instead, only such expressions should be prohibited that are more than merely offensive, e.g. by advocating discrimination and contempt for a certain group or by inciting to imminent acts of violence. It is therefore recommended that Art. 4 par. 2 of the Religious Organizations Law be amended accordingly so as to strike a more careful balance between the freedom of religion or belief, on the one hand, and the freedom of expression, on the other.

3. Conscientious objection

30. Art. 4 par. 3 regulates what is commonly referred to as the issue of conscientious objection. The current provision of the Law prohibits evasion or refusal of state duties (as provided in the Law) based on religious convictions. The substitution of one duty for another is allowed “only in cases stipulated in the legislation of Turkmenistan”³³ (left unspecified). This provision should presumably be read in conjunction with Art. 41 of the Constitution of Turkmenistan, which provides that the defence of Turkmenistan is a sacred duty of every citizen and that general military service is established for all male citizens. Also, Art. 219 of the Criminal Code of Turkmenistan criminalizes draft evasion in the absence of legal grounds exempting from military service, as well as the refusal to fight during a war.
31. On the other hand, international standards – in particular, the findings of the UN Commission on Human Rights as well as OSCE commitments³⁴ – do recognize a right to conscientious objections to military service. Particularly relevant in this regard is the UN Human Rights Committee’s statement that although the ICCPR does not explicitly refer to a right to conscientious objection, “the Committee believes that such a right can be derived from Article 18 [of the ICCPR] inasmuch as the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to manifest

³¹ The ECtHR has held that in a “democratic society”, with its inherent pluralism, tolerance and broadmindedness, the freedom of expression protections must extend “not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that *offend, shock or disturb* the State or any sector of the population” (See *Handyside v. the United Kingdom*, ECtHR Judgment of 7 December 1976, paragraph 49 (emphasis added)). At the same time, the ECtHR has also ruled that expressions which are “in regard to objects of veneration, *gratuitously offensive to others and profanatory*”, can and should be restricted (*Wingrove v. the United Kingdom*, ECtHR Judgment of 25 November 1996, paragraph 52 (emphasis added)). Such reasoning is now reflected in the legislation and domestic jurisprudence of most European states.

³² See UN Doc. HRC 2/3 (20 September 2006), Report of the Special Rapporteur on freedom of religion or belief and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, further to Human Rights Council decision 1/107 on incitement to racial and religious hatred and the promotion of tolerance, paragraph 47.

³³ See Art. 4 par. 3 of the Law.

³⁴ See the OSCE Copenhagen Document, Principles 18.1 and 18.4.

one's religion or belief".³⁵ It is therefore recommended that Art. 4 of the Religious Organizations Law be amended so as to expressly allow for an alternative civilian service for those who refuse to perform military service owing to their religious (or non-religious conscientious) beliefs. This religious or other conscientious belief should constitute a "legal ground" justifying an exemption from military service according to Article 219 of the Criminal Code.

32. More generally, conscientious objection to the military is not the only form of conscientious objection that may legitimately arise. In situations where legislation interferes with conscientious beliefs or actions under circumstances not permitted by the international limitations clauses, individuals should be protected in their rights to follow their conscientious beliefs. Article 4 par. 3 should be revised to take this into account.

4. Prohibition of specific activities of religious organizations

33. Article 5 par. 6 of the Law prohibits the establishment and operation of political parties and public movements based on religion. At this juncture, it should be noted that the approach towards the political activities of religious organizations varies considerably across the OSCE space, ranging from allowing religiously affiliated parties, to prohibition of religious-political parties, to restricting the right of religious groups to engage in political activities, to eliminating tax exemptions for religious groups engaging in political activities.³⁶ While the state has considerable flexibility in this regard, it is important that rules regarding the relationship of religion and political parties not be construed in ways that would impair the right of individuals to vote or engage in advocacy that is consistent with their religious beliefs. Moreover, the rules should not prevent religious organizations from taking stands on what they regard as moral or religious issues. Article 5 par. 7 prohibiting political propaganda on the side of religious organizations should be revised to take this latter consideration into account.
34. Article 5 par. 8 sets a series of prohibitions on activities of religious organizations. Most of those prohibitions are legitimate, and in fact reflect OSCE standards.³⁷ At the same time, the prohibition against "causing unhealthy relationships between people" appears ambiguous and may result in varying and arbitrary interpretation. Furthermore, the prohibition against "taking other actions aimed against the state, society and an individual" is equally vague and unlikely to conform to the requirements of predictability, or clarity, which are inherent in the very concept of law.³⁸ It is therefore

³⁵ See paragraph 11 of the UN Human Rights Committee's General Comment No. 22(48) on Article 18 of the ICCPR. With respect to this matter the UN Human Rights Committee has also stated that while the right to manifest one's religion or belief does not as such imply the right to refuse all obligations imposed by law, it does provide certain protection, consistent with Art. 18 par. 3 ICCPR, against being forced to act against genuinely-held religious belief (See the case of *Mr. Yeon-Bum Yoon and Mr. Myung-Jin Choi v. Republic of Korea*, UN Human Rights Committee, Communications Nos. 1321/2004 and 1322/2004 (CCPR/C/88D/1321-1322/2004), paragraph 8.3).

³⁶ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, pages 25-26. Information on the practice of OSCE participating States in this regard may be provided on request.

³⁷ See, e.g., the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 25.

³⁸ Art. 15 par. 1 of the ICCPR has been interpreted to give rise to an obligation of States parties to define *with precision* and by law all criminal offences, in the interest of legal certainty. See M. Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (1993), pages 275-276. The ECtHR, similarly, has established in

recommended that prohibitions on the activities of religious organizations be phrased with greater precision, so that everyone can reasonably foresee the consequences of his or her conduct and so as to exclude any possibility of arbitrary application of the law.

35. Article 5 par. 9 prohibits further illegal activities of religious organizations, denominations, sects and other organizations. Because the term “sect” is often used in a disparaging and discriminatory way, the OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief* recommend that legislation avoid using such terminology.³⁹ In light of the definition in Article 5 par. 9, it would be sufficient to state that “Activities of religious organizations supporting and advocating for terrorism, illicit drug trafficking and other crimes shall be prohibited”. The focus in such a provision would properly be placed on activities, not on the groups themselves. It is thus recommended to exclude the term “sect” from the wording of Article 5 par. 9.
36. Article 5 par. 10 provides that the conduct of “illegal religious activities” shall be prosecuted. The Law does not make clear, however, what constitutes an “illegal” religious activity, and the resulting uncertainty may breach international standards.⁴⁰ If “illegal religious activities” means activities proscribed by previous paragraphs of Art. 5, or other criminal or administrative laws, then the provision is redundant. In general, it is preferable to avoid having specialized forms of illegality for religious groups; instead, they should follow the same rules as individuals and other organizations or associations. On the other hand, if the idea is that religious activity by unregistered organizations is “illegal religious activity”, the notion is inconsistent with international law. Religious groups have the right to engage in religious activity, whether or not they have acquired legal entity status. For a more detailed discussion of relevant UN and OSCE standards on this matter, please refer to paragraphs 56-57 below. Article 5 par. 10 should be revised to take the foregoing requirements into account.

5. Religious education

37. Art. 6 par. 4 allows for children to receive religious education at mosques but not at similar establishments belonging to other religious denominations. In order to ensure genuine equality among believers of all denominations, as required under international law,⁴¹ religious education should not be limited to mosques, but should be permitted in all places of worship. All religious groups and organizations should be free to arrange religious education for their children in contexts and using methods and personnel that they deem fitting in accordance with their religious beliefs.
38. Art. 6 par. 5 prescribes that persons who wish to provide religious education must have the requisite specified training and seek and obtain the approval of the Council of Religious Affairs in order to provide religious education in Turkmenistan. International standards on freedom of religion or belief recognize that States enjoy

its case-law that “[a] norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”. See *Muller and Others v. Switzerland*, ECtHR Judgment of 24 May 1988, paragraph 29.

³⁹ See OSCE ODIHR *Guidelines*, *supra* note 6, at 8.

⁴⁰ International standards requiring that laws must phrase with precision what constitutes an illegal activity are referenced in footnote 38 above.

⁴¹ See paragraph 2 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR. See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 10.

wide latitude when it comes to religious instruction in public schools,⁴² and thus it may be legitimate to require that religious education be provided by graduates of higher religious education institutions. With respect to privately arranged religious education, it should be up to the religious community and not the state to determine what the qualifications of those providing instruction should be, as different religious traditions may have different expectations as to the nature and formality of religious instruction. For this reason, the requirements laid down in this paragraph of the article should not apply to private religious education, in particular since Article 6 generally indicates that religious instruction is not provided in public schools, but rather is determined by people “based on their own choice”.

39. Furthermore, restrictive measures in the field of education, as in other areas, may only be imposed if they comply with international limitations clauses, as described above (see pars. 11-15 *supra*). Unnecessary burdens should not be imposed on the private religious education process, except to the extent that considerations of public health, safety, order, morals and rights of others are involved. It is therefore recommended to amend Article 6, par. 5 to ensure that the Council on Religious Affairs under the President of Turkmenistan only supervises religious education in public schools, while private religious education is left to the respective religious community.
40. The prohibition against providing religious education in private, contained in Art. 6 par. 6, is at odds with international standards and with the legislation and practice of most OSCE participating States. The OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief* provide that “parents should be able to educate their children in private religious schools or in other schools emphasizing ideological values”.⁴³ Moreover, the prohibition in Art. 6 par. 6 could even be read as preventing parents from imparting religious education to their children in a private setting, such as at home, which would contravene international human rights standards that guarantee parents’ right to ensure the religious and moral education of their children according to their own convictions.⁴⁴ The prohibition contained in Art. 6 par. 6 should thus be removed from the text of the Law.

6. The Council on Religious Affairs

41. Art. 7 authorises the Council on Religious Affairs under the President of Turkmenistan (hereinafter, “Council on Religious Affairs”) “to exercise control over the activities of religious organizations regarding the observance of the legislation on freedom of religion and religious organizations in Turkmenistan”. The nature and degree of this “control” exercised by the Council on Religious Affairs is not specified and would be permissible only to the extent that it complies with international limitations clauses, as specified above in pars. 11-15 *supra*. Control which is excessive or overly intrusive and/or disruptive may amount to an interference with the freedom of religion or belief, and in such a case it should be circumscribed by rules which would ensure that it is carried out in accordance with a procedure detailed in the law, in pursuit of a legitimate

⁴² See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 14.

⁴³ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 14.

⁴⁴ See Art. 18 par. 4 ICCPR. See also Art. 14 of The Convention on the Rights of the Child, to which Turkmenistan is also party. See also Art. 5 of the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

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aim, and proportionately to the aim sought to be achieved.⁴⁵ The OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief* stress that “official discretion in limiting religious freedom, whether as a result of vague provisions or otherwise, should be carefully limited”.⁴⁶ Therefore, it is recommended that the nature and degree of the control which the Council on Religious Affairs is entitled to exercise over the activities of religious organizations, be clearly defined in the Law.

42. The Law also does not specify how the members of the Council on Religious Affairs are selected, what its composition is, and whether any of its members have links to certain religious groups. It would be inappropriate to give representatives of one group decision-making power in determining whether other groups will be granted legal entity status. It is therefore recommended for the Law to clarify the selection process, composition, representation and tenure of the said Council.
43. Under Art. 7 of the Law, the Council on Religious Affairs is also authorised “to promote mutual understanding and tolerance among religious organizations practicing various beliefs and operating within and outside Turkmenistan”. This provision should be amended so as to refer also to non-religious groups, such as those consisting of agnostics or atheists, which are entitled to equal protection under the right to freedom of religion *or belief*, as explained in paragraph 18 above. Also, it should be noted that international instruments, and in particular OSCE documents, call on States to ensure not mere understanding and tolerance, but also a climate of genuine respect among believers of different communities as well as between believers and non-believers.⁴⁷ Similar phrasing could be considered for Art. 7. In fact, some other provisions of the Law⁴⁸ also mention the goal of promoting “respect”, besides mutual understanding and tolerance, and this objective may also be mentioned in Art. 7 to ensure consistency and as a reinforcement of the set goal.
44. One of the primary challenges with any body such as the Council on Religious Affairs is to assure that it remains neutral, that its primary aim is to facilitate rather than control religious activity, and that it does not intrude unduly into the autonomy of religious organizations. Meeting these criteria will help ensure the effectiveness of the Council on Religious Affairs in exercising its statutory mandate of promoting mutual understanding among various religious organizations. The method for selecting the personnel of this body should be set forth with greater specificity (whether in this or other legislation) to assure that viewpoints of all religious groups, including religious minorities, are taken into account and that a neutral outlook is maintained. Such a provision would help ensure compliance with international standards. Considering the Council’s mandate under the Law, it would be improper to allow such a body, if it consists entirely of members of only one or two belief orientations (including non-belief), to have such considerable decision-making powers with regard to the registration and operation of other religious groups.⁴⁹ Furthermore, the composition

⁴⁵ See Art. 18 par. 3 ICCPR. See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, pages 18-19.

⁴⁶ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 17.

⁴⁷ See Principle 16(b) of the OSCE Vienna Concluding Document. See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 12.

⁴⁸ See the Preamble of the Law, as well as Art. 5 par. 3.

⁴⁹ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, pages 11 and 17. See also *Metropolitan Church of Bessarabia v. Moldova*, ECtHR Judgment of 13 December 2001, paragraph 116.

and decision-making procedures of the Council on Religious Affairs should also be stipulated in a transparent and detailed manner. It should be made clear that the body should not insert itself into internal doctrinal matters regarding faith, belief or internal organization of religious communities. Adequate constraints need to be in place to assure that discriminatory treatment against new or smaller religious groups is not allowed, and that there are clear standards that can guide judicial review in assessing whether decisions are taken which are discriminatory or intrude unduly into matters which should appropriately be left to the autonomy of religious communities.

45. Art. 8 par. 6, requiring the approval of the Council on Religious Affairs for religious organizations to establish and maintain international relations for the purpose of conducting pilgrimages and participating in other religious events, seems unduly burdensome and too restrictive in matters on which religious organizations should generally be afforded greater autonomy and self-determination.⁵⁰ The Council on Religious Affairs is already vested with considerable “control” powers under Art. 7 of the Law, so that Art. 8 par. 6 appears overly invasive. In general, states should not intervene for exclusively religious reasons in travel and communication necessitated in connection with religious communities that have international relations with parent or sister religious bodies.⁵¹ It is thus recommended to delete this requirement from Article 8 par. 6.

7. Registration and operation of religious organizations

7.1 “Religious groups” and “religious organizations”

46. Article 8 par. 3 makes a distinction between religious groups (which must have no more than 50 members) and religious organizations (which must have more than 50 members). The purpose of such a distinction in the Law remains unclear. Furthermore, the fact that Art. 8 par. 3 requires a religious organization to have more than 50 members seems to contradict the immediately preceding paragraph (Art. 8 par. 2), which provides that an “initiative of no less than *five* citizens” is enough to establish a religious organization in Turkmenistan (emphasis added). The purpose behind differentiating between religious groups and religious organizations is further made unclear as the only other mention of “religious groups” in the entire body of the Law is found in Art. 1 – which in fact provides that both religious groups and religious organizations shall be referred to as “religious organizations” in the text of the Law, thereby adding to the confusion. It is thus very unclear which, if any, provisions of the Religious Organizations Law apply specifically and exclusively to religious groups as opposed to religious organizations, and vice-versa. It is therefore recommended to either clarify the differences in the legal status of the two categories of religious associations, or revoke the distinction and instead speak only of religious organizations.
47. Article 8 par. 4 imposes an impermissible constraint on the methods religious groups use in selecting their religious leaders. Principle 16.4 of the OSCE Vienna Concluding Document specifies that “participating States will . . . respect the right of religious communities to . . . select, appoint and replace their personnel in accordance with their

⁵⁰ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 15, providing that “[...] the State should engage in a careful and nuanced weighing of interests, with a strong deference towards [religious] autonomy except in those cases where autonomy is likely to lead to a clear and identifiable harm”.

⁵¹ *Ibidem*, page 16.

respective requirements and standards”.⁵² It is recommended to rephrase Art. 8 par. 4 to reflect this standard.

7.2 Charter regulations

48. Article 10 prescribes that religious organizations operate on the basis of a charter, and specifies what should be included in the charter when registration is sought. Some practical problems may arise with this provision. For example, it is not clear what is meant by “type of religious organization”. However, so long as the organization is free to “organize [itself] according to [its] own hierarchical and institutional structure” as contemplated by OSCE commitments,⁵³ and is not required to fit into some pre-defined category, this does not constitute an undue burden for the religious organization.
49. Second, it is natural for the state to want to have the legal address of the organization. However, for many groups this address may shift from time to time as new facilities are rented or acquired. It is inconvenient to have to go through a charter amendment to provide the new information to the state. The Law could provide for the charter to have the initial address of the organization, and could then provide for notification to the Council of Religious Affairs of any changes to this location.
50. Article 10 also requires the charter to specify its “goals, objectives and main forms of activities”. The Law puts too much emphasis on requiring the religious organization to predict all of its future operations in advance. Article 14 subsequently provides that the organization may be subjected to involuntary liquidation if it “systematically conducts activities that contradict to its own purposes [i.e., the purposes as specified in the charter]”.⁵⁴
51. There are some circumstances in which such drastic conduct may be appropriate, but very often, a religious organization may simply be engaged in legitimate religion-related activities that were not foreseen at the time of initial religious registration. In such cases, it is recommended that religious organizations be allowed flexibility. This can be done both by allowing religious organizations to specify their activities using broad statements of purpose, and by facilitating charter amendments when needed to cover broadened activities. Significant latitude should be allowed in light of the inherent right of the community to religious autonomy in structuring its affairs. The initial registration process and subsequent amendments should facilitate the exercise of this autonomy rather than restricting it. Such flexibility would allow religious organizations to keep pace with changing circumstances and evolving perceptions within the group and the society in general – without having to go through a burdensome process of amending their charters,⁵⁵ so as to ensure their meticulousness and prevent liquidation. Allowing for greater flexibility in charter regulations would help ensure adequate observance of the right to freedom of association,⁵⁶ without

⁵² Concluding Document of Vienna – The Third Follow-up Meeting, Vienna, 15 January 1989

⁵³ *Ibid*, Principle 16.4.

⁵⁴ See Art. 14 of the Religious Organizations Law.

⁵⁵ Under Art. 11 of the Religious Organizations Law, “[a]mendments and changes to the charter of a religious organization are subject to registration that shall be done in the same order and on the same terms as the registration of the religious organization”.

⁵⁶ The right to freedom of association is guaranteed under Art. 22 ICCPR. Of note, the UN Human Rights Committee has stated that non-governmental organizations may not be subjected to difficult registration procedures (Concluding Comments on Belarus (1997) UN doc. CCPR/C/79/Add. 86, paragraph 19).

restricting the state authorities' ability to intervene in case a religious organization undertakes unlawful activities. It is therefore recommended that Art. 10 (and the referenced provision from Art. 14) be reconsidered and amended accordingly.

52. Article 10 further provides that the Charter should describe the "structure and administrative bodies, procedure of their formation and their mandates." These structures are likely to change from time to time in accordance with organizational needs. Among other things, a religious organization may wish to create subsidiary or sister legal entities to carry out its affairs in accordance with its self-understanding and in accordance with its beliefs about how the community should be organized. It may be simpler for such matters to be addressed in bylaws or other documents that do not require charter revisions with regard to minor organizational changes.
53. Article 10 also requires religious organizations to specify in their charter the procedure of joining and leaving the organization. This, of course, must be construed in light of every person's right, under Art. 18 par. 2 of the ICCPR, to "have or to adopt a religion or belief of his choice", which necessarily entails the freedom to change or replace one's religion or belief without any coercion or threat of sanction.⁵⁷ This reminder is particularly important since Art. 3 of the Law, in defining "religious freedom", omits to include also the right to change one's religion or belief as inherent in the concept of freedom of religion (see paragraph 21 above).
54. The provision from Art. 10 requiring religious organizations to also provide "other information related to the operations" is too vague, and provides no indication of what this other information should be. In fact, the other provisions already require the submission of ample information for the Council of Religious Affairs to have notice of the organization's existence. Further informational requests would appear to impose unnecessary burdens on religious communities seeking registration. This provision should therefore be either made more specific, or removed from the text of the Law.
55. The final sentence of Article 10 may be inconsistent with a religious community's beliefs about religious governance, and would accordingly be inconsistent with the right to religious autonomy. For example, in a religious organization that is hierarchical it may not be required, as a matter of religious governance, to consult with subordinate bodies. On the other hand, religious communities may have a congregational structure (all control at the local level) or a connectional structure (local control at congregational level with some wider national or international connection to other congregations of the same denomination). The Law should not require a religious community to organize itself in ways inconsistent with the religious groups' beliefs.

7.3 Mandatory registration

56. Article 11 of the Law prescribes a mandatory system of registration of religious organizations in Turkmenistan. In particular, it provides that "Operating an unregistered religious organization is prohibited". According to international standards, "[r]egistration of religious organizations should not be mandatory *per se*, although it is appropriate to require registration for the purposes of obtaining legal personality and similar benefits".⁵⁸ While it is permissible for states to provide a system for the

⁵⁷ See paragraph 5 of the UN Human Rights Committee's General Comment No. 22(48) on Article 18 of the ICCPR.

⁵⁸ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 17.

registration of religious associations, and to require such registration as a precondition for a religious community to acquire legal entity status, imposing sanctions for the manifestation of non-registered religions interferes with freedom of religion and belief, and cannot be justified under international human rights standards.

57. Article 11 par. 1 of the Law, which prohibits the operation of unregistered religious organizations and prescribes liability for any “person who conducts activities on behalf of an unregistered organization”, is thus incompatible with international law. In effect, this provision prevents individuals and groups from freely practising a religion without registration, by threat of administrative sanction.⁵⁹ As stated above, automatic liability for practicing a religion on behalf of an unregistered organization violates the right to freedom of religion or belief. This is emphasized in the OSCE Guidelines, which stress that “[i]ndividuals and groups should be free to practise their religion without registration if they so desire”.⁶⁰ Also, the European Court of Human Rights has expressly held in a recent case that although a State may legitimately establish registration systems for religious denominations that desire to acquire legal entity status, it does not follow that the State may “sanction the members of an unregistered religious denomination for praying or otherwise manifesting their beliefs”.⁶¹ It is therefore important that the blanket prohibition on operating unregistered religious organizations be deleted from the Law, together with the provision on liability for conducting activities on behalf of an unregistered religious organization. Similar amendments should be made to the Code of Administrative Offences of Turkmenistan.
58. Art. 11 par. 3 raises concerns in so far as it requires the identification not only of founders but also of members of the religious organization. It is reasonable for the state to have information about a small number of founding members in case it needs to be able to contact the organization (e.g., five, as contemplated by Art. 8 par. 2). At the same time, extending that requirement to all members of the organization (or prospective members) seems disproportionate. It is unnecessary to require this waiver of internal forum rights of all members of the organization in order to meet legitimate state purposes of registration. Moreover, requiring signatures and personal data of a large number of individuals would constitute an unwarranted intrusion on the internal forum rights of many individuals not to disclose their religion and would violate international standards.⁶² It is therefore recommended to amend Art. 11 par. 3 so that only the founders, and not all members, of a religious organization be required to disclose their religious beliefs in the process of registration.
59. The system of registration contemplated by Art. 11 should also be streamlined with respect to the time afforded to competent authorities for taking the decision on registration. The present reading of Art. 11 par. 4 provides that a religious organization’s application for registration must be “considered” within one month (extendable to three months if the Ministry of Justice requires “additional materials”) –

⁵⁹ Art. 205 of the Code of Administrative Offences of Turkmenistan provides that leaders who refuse to register their communities, leaders or participants who engage in unregistered religious activity, leaders and members of registered religious organizations who conduct youth work or activity not directly related to religious worship, and those who violate the regulations on conducting religious ceremonies and processions shall face fines ranging from five to ten months’ minimum wages.

⁶⁰ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 17.

⁶¹ See *Masaev v. Moldova*, ECtHR Judgment of 12 May 2009, paragraph 26.

⁶² See paragraph 3 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR. See also the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 10.

“from the date of submission”. The Law needs to clarify that this one-month deadline applies not only to the initiation of the process of considering the review application, but that the entire process should be completed within a reasonable time – certainly not to exceed three months. In many countries, this registration process is simple, and is completed within a matter of hours. Setting a firm maximum period for the conclusion of the review process is necessary to ensure that the process of registration in its entirety does not last unreasonably long, cannot be stalled arbitrarily at any stage, and that there is a clear point at which decisions become final and appealable. Addressing this issue is particularly important given prior history of lengthy delays in some cases in Turkmenistan, sometimes extending for several years.⁶³ Furthermore, the Law should provide legal remedies against undue delays in the examination of applications for registration.⁶⁴

7.4 Refusal of registration and liquidation of religious organizations

60. Article 12 of the Law provides that registration can be denied to a religious organization if it, *inter alia*, “is not recognized as a religious one”. Allowing state authorities discretion in deciding whether an organization is genuinely religious or not may permit the state to engage in substantive evaluation of the religious community’s beliefs or legitimacy. It is not unreasonable for an assessment to be made whether a group is religious, provided that a broad and inclusive view of what counts as religious is applied. At the same time, the state should not adopt positions that are non-neutral in the sense of being biased for or against particular religious groups. The OSCE ODIHR Guidelines provide that the neutrality requirement for state authorities means that “registration requirements that call for substantive as opposed to formal review of the statute or charter of a religious organization are impermissible.”⁶⁵ It is therefore recommended that Article 12 be revised so as to eliminate possible discretion of state authorities to engage in substantive review of religious doctrines, including beliefs, or of matters of organization and structure of the religious community.
61. Article 12 further provides that registration of a religious organization can be denied “if provisions of its charter or other documents do not meet the requirements of this Law or other legislation of Turkmenistan”. The phrase “or other legislation of Turkmenistan” allows a very broad interpretation and is arguably too vague to conform to the requirements of foreseeability inherent in the very concept of law.⁶⁶ Therefore, in order to prevent arbitrary decision-making in refusing registration of religious

⁶³ See the Report of the UN Special Rapporteur on Freedom of Religion or Belief on her Mission to Turkmenistan, released on 12 January 2009, paragraph 27.

⁶⁴ The right to an effective remedy is proclaimed in Art. 8 of the Universal Declaration of Human Rights and guaranteed by Art. 2 par. 3 ICCPR. Furthermore, Art. 43 of the Constitution of Turkmenistan provides that “Citizens have the right to appeal to the court against the actions of state bodies and public organizations, and of officials”.

⁶⁵ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 11. Note that the ECtHR has also held that the neutrality requirement in legislation dealing with the structuring of religious communities “excludes assessment by the State of the legitimacy of religious beliefs or the ways in which those beliefs are expressed”.⁶⁵ See *Metropolitan Church of Bessarabia v. Moldova*, ECtHR Judgment of 13 December 2001, paragraph 116.

⁶⁶ The ECtHR has recently held that a similar provision from Ukraine’s *Association of Citizens Act*, providing that “[t]he registration of an association may be refused if its articles of association or other documents submitted for the registration contravene the legislation of Ukraine” allowed for a “particularly broad interpretation” and was “too vague to be sufficiently ‘foreseeable’ for the persons concerned. See *Koretskyy v. Ukraine*, ECtHR Judgment of 3 April 2008, paragraph 48.

organizations, this provision should be either removed or amended so as to indicate with the requisite precision which laws of Turkmenistan a religious organization's charter and documents should comply with.

62. Article 12 also provides that registration can be denied "if the founders are legally incapable". Such a provision must not be interpreted as requiring founders to submit proof of legal capacity. The Law is therefore recommended to contain a strong presumption in favour of founders' legal capacity, and it should be incumbent upon the state bodies to rebut this presumption, if such be the case, through reliable and persuasive evidence.
63. Article 13 provides that religious organizations may appeal in court against a refusal of registration, "under a procedure established by the legislation of Turkmenistan". Even if the precise mechanism of appeal is prescribed in other law(s), it would be helpful if Article 13 would include a reference to the time limits for appeal, as well as the provision and law wherein appeals procedures are laid down.
64. Article 14, in prescribing the grounds for involuntary liquidation of religious organizations, lists some grounds which are unduly vague and prone to arbitrary interpretation and which would need to be fine-tuned to correspond to international standards and best practice. The Law provides that liquidation in court proceedings may occur "in case of repeated or gross violation of norms of the Constitution of Turkmenistan, this Law and other laws". Usually, a sanction as severe as liquidation ought to be applied for a repeated *and* gross violation of the law, and it should be clear which laws and norms are meant. It should also be clear throughout the Law that only courts may order the liquidation of an organization. Article 14 should be amended accordingly.
65. Under Article 14, an organization may be liquidated through court proceeding for "violating public safety and public order and undermining the state security". As indicated earlier, national security alone is not a permissible ground for interfering with freedom of religion or belief and should thus be deleted.⁶⁷
66. The provision allowing liquidation for "propaganda of war and kindling of social, racial, national or religious discord" should be narrowed so that it only applies in situations where there is actual incitement to real harms. The fact that that a religion calls for the introduction of an ideal society in the unforeseeable future does not necessarily warrant dissolution now. Only when plausible and reasonably imminent danger is proven, should the option of liquidation come into consideration; moreover, alternative sanctions not amounting to liquidation should also be considered.
67. Care also needs to be taken to assure that liquidation is not justified on the basis of stereotypical or prejudiced views concerning a particular religious group. For example, the Law contemplates dissolution of groups for "interfering in family relations that result in the break-up of a family". A parent opposed to the conversion of his or her child to a new religious group may claim that the group "led to breaking up of a family," but cause and effect are often complex in these settings. Convincing proof is necessary and it is important to be sure that the operative factor is not bias against the new religious group.
68. Phrases such as "infringing upon the personality and rights and freedoms of citizens" and "causing damage to the morale and health of citizens" are also inherently vague.

⁶⁷ See paragraph 25 supra.

Such grounds should be clarified and phrased with greater precision, so as to provide reasonable foreseeability and the possibility of conforming one's conduct to the relevant legal norms.

69. Liquidation is also foreseen for “instigating citizens to refuse to fulfil their civil duties [...] or to commit other unlawful acts”. If this means that a group that teaches conscientious objection to military service should be liquidated, then it would run counter to emerging beliefs about the importance of protecting conscientious objection. This point has application beyond military contexts. The provision ought to be more carefully structured to avoid penalizing groups engaged in conscientious objection, particularly since this is usually unlikely to pose serious threats to public safety, health, order and morals, or the rights of third parties.
70. In general, liquidation or termination of a religious organization has grave consequences for the religious life of all members of a religious community. Thus, great care should be taken not to terminate or suspend the activities of the religious community as a whole merely because of the wrongdoing of individual members of the community. Doing so imposes collective sanctions on the organization as a whole for actions which in fairness should be attributed to specific individuals. Any such wrongdoings of individual members of religious organisations should be addressed *in personam*, through criminal, administrative or civil proceedings, rather than by invoking general provisions on the liquidation of religious organizations and thus holding the entire organisation accountable. Among other things, consideration should be given to providing some sort of warning procedure that would enable organizations as a whole to take corrective action (or pursue appropriate appeals) before taking the harsh step of liquidating a religious organization. It is recommended to include such a procedure in Article 14.
71. Article 14 par. 1 provides that a religious organization may be liquidated, *inter alia*, if its registration “is cancelled by the Ministry of Justice” and Art. 14 par. 3 provides that the Ministry of Justice of Turkmenistan, with the consent of the Council on Religious Affairs, may take a “decision on termination of the activities of a religious organization”. Such unchecked authority on the part of executive bodies is problematic. Provisions for standards guiding executive authority in making such decisions should be clarified and the final decision on this should be taken by a court. Appeal of suspension, cancellation, termination or liquidation should be possible, and the actual interruption of the operation of the legal entity should be stayed pending such appeals.⁶⁸
72. Article 14 should furthermore provide for an appeals procedure so that a religious organization whose activities have been terminated could contest that decision, preferably before a judicial body.⁶⁹ To prevent arbitrary terminations, Art. 14 is recommended to provide guarantees similar to those contained in Articles 12 and 13 of the Law (on the procedure for contesting the refusal to register a religious organization), i.e. require a written and reasoned decision from the decision-making body, which should be appealable before a court of law within a reasonable period of time.

⁶⁸ Executive bodies may be allowed to temporarily suspend (in Russian, “приостановить”, and not “прекратить”) the activities of a religious organization, with the suspension order ideally subject to mandatory judicial review.

⁶⁹ The right to an effective remedy is proclaimed in Art. 8 of the Universal Declaration of Human Rights and guaranteed by Art. 2 par. 3 ICCPR. See also Art. 43 of the Constitution of Turkmenistan.

73. Article 15 par. 2 indicates that “[r]eligious organizations, including unregistered ones, [...] must register with the Ministry of Justice their financial and material assets [...].” This appears to contradict Art. 11 which prohibits the activities of all unregistered organizations. The solution may be to allow unregistered groups, and then call for filing of relevant information. It is recommended to clarify this provision.
74. Article 18 prescribes the rules for the distribution of the property of religious organizations “after the termination of [their] activities”. Since a decision to terminate the activities of a religious organization may be taken by the Ministry of Justice (with the consent of the Council on Religious Affairs), i.e. ultimately by an executive body, and since that decision apparently cannot be appealed against, it is not proper that it automatically triggers the distribution of a religious organization’s property. Articles 14 and 18, in their current reading, are inherently problematic in that they allow for serious interferences with fundamental rights and freedoms (namely, the right to freedom of religion or belief, and the right to property⁷⁰) by executive bodies through actions which are largely unchecked and cannot be appealed against. Decisions which affect fundamental rights and freedoms to such an extent (namely, termination of activities of a religious organization and [re-]distribution of property) should be taken by judicial bodies, following a fair process in which all parties concerned are duly heard; each party should subsequently be entitled to appeal against the court decision. It is strongly recommended that Articles 14 and 18 of the Law be amended so as to provide for such procedural guarantees.

8. Other restrictions on the exercise of the right to freedom of religion

8.1 Restrictions on places where religious ceremonies can be held

75. Article 19 par. 2 provides that religious services, rituals and ceremonies may be held not only in worship buildings and on their territories, at places of pilgrimage or cemeteries, but also at citizens’ homes – with their consent and “if necessary for ritual reasons”. This “necessity” clause is too restrictive. Everyone (and regardless of citizenship, see Art. 3 par. 5 of the Law) should be allowed to hold religious services, rituals or ceremonies at home, if he or she so desires, and not only “if necessary for ritual reasons”. It is therefore recommended that the words “if necessary for ritual reasons” be deleted from Art. 19 par. 2.
76. Article 19 par. 4 addresses issues of the right to worship in institutional settings. It is important to remember that worship and religious ceremonies are not the only concerns. Religious diet may be an issue, as well as other types of manifestation of religion, including teaching, practice and observance. Access should be made available upon request of those in such institutions to clergy or religious representatives of their choice.
77. It is advisable that Art. 19 par. 6 spell out the “procedure” for holding “public worshipping, religious rituals and ceremonies outside of buildings of worship and prayer”, rather than refer vaguely to other legislation. In this context, it is important that any such restrictions should not be unnecessarily burdensome and should be administered in a non-discriminatory manner.

⁷⁰ The right to property is recognized in Art. 17 of the Universal Declaration of Human Rights, adopted by the UN General Assembly on 10 December 1948.

8.2 Prohibition on the wearing of religious attire in public

78. Article 19 par. 7 prohibits the wearing of religious attire in public places, with a sole exception made for clergy of religious organizations. Such a blanket prohibition falls short of international standards. Under international law, it is generally agreed that the wearing of religious clothing and symbols is a protected form of manifestation of religious freedom,⁷¹ which may also be undertaken in public. For that reason, any restriction placed on the wearing of religious attire must be narrowly tailored and adequately justified, i.e. it must be prescribed by law, be “necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” and be proportionate to the aim sought to be achieved.⁷²
79. Further to the above, the UN Human Rights Committee found a violation of Art. 18 par. 2 of the ICCPR in a case concerning Uzbekistan, brought by a female Muslim student who allegedly had been suspended from the university for wearing a headscarf.⁷³ The reasoning of the UN Human Rights Committee was that “the freedom to manifest one's religion encompasses the right to wear clothes or attire in public which is in conformity with the individual's faith or religion” and that “to prevent a person from wearing religious clothing in public or private may constitute a violation of Article 18, paragraph 2, which prohibits any coercion that would impair the individual's freedom to have or adopt a religion”.⁷⁴
80. While some restrictions on religious clothing may be appropriate in particular contexts where it is necessary to preserve the religiously neutral character of the public service, a blanket prohibition of the type contained in Art. 19 par. 7 is too broad⁷⁵ and should be reconsidered. It must be borne in mind that the state should, in general, facilitate rather than restrict the manifestation of religion, including religious symbols and clothing, in the public domain. It is thus recommended to amend Article 19 par. 7 in accordance with the requirements mentioned above.

8.3 Restrictions on religious literature

81. Pursuant to Art. 20 par. 3, the “[d]elivery and sale of the religious literature published abroad shall be done after expert assessment of its content by the Council on Religious Affairs [...]”. This would appear to apply even to cases of individuals who may wish to bring one or two copies of a religious publication from abroad for personal use or to give to someone in Turkmenistan. This restrictive approach violates both freedom of expression and freedom of religion norms. As the UN Human Rights Committee has

⁷¹ See paragraph 4 of the UN Human Rights Committee's General Comment No. 22(48) on Article 18 of the ICCPR. See also ECtHR's case-law, finding that by wearing the headscarf a person may be “obeying a religious percept and thereby manifesting her desire to comply strictly with the duties imposed by the Islamic faith” (see *Leyla Sahin v. Turkey*, ECtHR [GC] Judgment of 10 November 2005, paragraph 78).

⁷² As prescribed by Art. 18 par. 3 of the ICCPR and paragraph 8 of the UN Human Rights Committee's General Comment No. 22(48) on Article 18 of the ICCPR. For instance, the UN Human Rights Committee has upheld the legitimacy of generally applicable safety legislation requiring employees of the state railway company to wear protective headgear while at work, even though this required Sikhs to remove their turbans. See *K. Singh Bhinder v. Canada*.

⁷³ See *Raihon Hudoyberganova v. Uzbekistan*, UN Human Rights Committee, CCPR/C/82/D/931/2000.

⁷⁴ *Ibidem*, paragraph 6.2.

⁷⁵ See *Ahmet Arslan v. Turkey*, ECtHR Judgment of 23 February 2010, holding that a conviction for mere wearing of religious clothing violated religious freedom protections under Art. 9 ECHR.

stated, “the freedom to manifest religion or belief in worship, observance, practice and teaching encompasses a broad range of acts [...]; the practice and teaching of a religion or belief includes [...] the freedom to prepare and distribute religious texts or publications”.⁷⁶ The UN General Assembly has also called upon States to ensure “the right of all persons to write, issue and disseminate relevant publications in these areas [of religion or belief]”.⁷⁷ This is also echoed in relevant OSCE documents.⁷⁸ It is therefore recommended that Art. 20 par. 3 be deleted from the Law.

82. Article 20 par. 2 imposes liability for “[p]roduction, import, export and dissemination of religious literature instigating religious, national, interethnic and racial discord”, and Art. 20 par. 4 imposes liability for producing, storing and disseminating materials “which contain the ideas of religious extremism, separatism, and fundamentalism”. Of note, Art. 20 par. 2 of the ICCPR provides that “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” While it is thus legitimate for a state to impose sanctions on those who incite hatred and violence, the terminology used in Article 20 of the Religious Organizations Law is too broad. It condemns literature or other media that falls short of *inciting* “discrimination, hostility or violence”. Many pieces of literature, including sacred books of various religious traditions, contain passages that could be interpreted as “contain[ing] the ideas of religious extremism, separatism and fundamentalism”. Yet they clearly should not be subjects of penal sanctions. Provisions of this type, if retained at all, need to be significantly tightened so as to avoid overly broad imposition of liability.⁷⁹

9. Control and oversight over religious organizations’ activities

83. Article 25 of the Law raises concerns because of the vagueness of some of its provisions, the arbitrary discretion that it authorizes, and the scope of intrusion it allows into spheres protected by the right to religious autonomy. It confers broad authority on state officials to engage in control and oversight over activities of religious organizations. The breadth of this mandate fails to take into account the need for careful and precise delineation of the permissible bases for state intervention where religious freedom and religious autonomy are at stake. “Control and oversight” can give rise to significant interference with religious liberty rights. As has already been mentioned, all interferences with the right to freedom of religion or belief can be justified only if they strictly comply with internationally-prescribed limitation clauses.⁸⁰ While it is understood that state authorities should be able to exert neutral and impartial regulatory powers over some aspects of the activities of religious organizations, the bounds of such control are narrowly limited, and may not be overly intrusive or disruptive of legitimate religious activities.
84. Article 25 par. 1 provides that the Ministry of Justice of Turkmenistan can “send their representatives for participation in events organized by religious organizations”. While this may be acceptable if it simply means that the Ministry can send its officials to

⁷⁶ See paragraph 4 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR.

⁷⁷ See UN General Assembly Resolution 62/157.

⁷⁸ See the OSCE Vienna Concluding Document (1989), paragraphs 16.9 and 16.10.

⁷⁹ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 9.

⁸⁰ See Art. 18 par. 3 ICCPR and paragraph 8 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR.

public events or worship services of a religious organization, it should be borne in mind that even this minimal level intrusion can have the effect of chilling or inhibiting religious expression and practice. Moreover, an intrusive monitoring and surveillance of religious groups and their members may also infringe those persons' right to private life.⁸¹ As such, Art. 25 of the Law, besides vesting considerable control and monitoring powers to the various bodies listed therein, should also provide some safeguards against arbitrary and abusive interferences with the right to privacy, as required under pertinent international standards.⁸²

85. One major focus of Article 25 par. 1 is on assuring that the activities of a religious organization conform to the purposes set forth in its charter. The discussion and recommendations pertaining to Article 10 which are elaborated in paragraph 51 above, are equally applicable hereto. Therefore, this article should not be read as conferring on the state virtually unlimited authority to assess from the state's perspective whether the religious organization is meeting its religious purposes, and to impose sanctions if in the state's view, the religious organization is not adequately fulfilling its purposes.
86. Article 25 par. 2 provides that the Ministry of Justice shall cancel the registration of a religious organization "[...] if achieving the charter goals has become impossible". Considering that many of the goals which a religious group may set down in its charter can be, by their very nature, aspirational and virtually impossible to achieve, it is suggested that this ground for cancelling registration be removed from the text of the Law.
87. Article 25 par. 3 provides that "[i]f within one year a religious organization has received more than two written warnings or instructions to eliminate the [revealed] violations or if it fails to provide within a year the Ministry of Justice with new information subject to registration, the Ministry may lodge a request with a court of justice for liquidation of this religious organization".
88. While the failure to comply with two written warnings may justify liquidation, failing to provide new information should not automatically lead to the end of a religious organization. Article 25 par. 3 should consider preliminary sanctions, such as suspension or penalty prior to liquidation. Furthermore, this ground should be cross-referenced and made consistent with the grounds laid down in Article 14, and the Law should clarify the ways these warning procedures work and the standards governing when a warning may be given and what justifies taking sanctions to the level of liquidation proceedings.
89. As mentioned above, par. 3 may arguably fit better within Art. 14 of the Law, which is the article that describes the procedure for liquidating religious organizations, rather than in Art. 25, which deals more generally with the control and oversight powers of various state authorities in Turkmenistan.

⁸¹ The right to private life is guaranteed by Art. 17 ICCPR. Note that under Art. 8 ECHR, which similarly guarantees the right to private life, the ECtHR has held that the mere existence of legislation allowing surreptitious state activity (i.e. various forms of state control or surveillance) may involve "for all those to whom the legislation could be applied, a menace of surveillance" which may amount to an interference with the right to privacy. See *Klass v. FRG*, ECtHR Judgment of 6 September 1978, paragraph 41.

⁸² The UN Human Rights Committee has stated that laws must be adopted to clearly set out conditions for legitimate interferences with privacy and to provide for safeguards against unlawful interferences (Concluding Comments on the Russian Federation (1995) UN doc. CCPR/C/79/Add. 54), and that wire-tapping and surveillance, whether electronic or otherwise, must be prohibited if there is no independent monitoring (judicial supervision) of such practices (Concluding Comments on Poland (1999) UN doc. CCPR/C/79/Add. 110).

90. The list of state bodies which under Art. 25 of the Law may exercise some form of control or oversight over the activities of religious organizations is quite extensive and includes the Ministry of Justice of Turkmenistan, the Prosecutor General of Turkmenistan and subordinate prosecutors, financial and tax authorities, ecological, fire safety, sanitary-epidemiological as well as “other authorities entrusted with control and oversight functions”. Following amendments of July 2009, the list also includes an “authorized state body” to which the Ministry of Justice must provide “information about projects and programs of foreign technical, financial and humanitarian assistance and grants if their amount exceeds a fixed threshold amount or they are not typical for the organization receiving such assistance”. It is noteworthy to also recall that the Council on Religious Affairs under the President of Turkmenistan is broadly authorized to “exercise control over activities of religious organizations regarding the observance of the legislation on religious freedom and religious organizations in Turkmenistan”.⁸³
91. From the text of the Law it thus appears that there are several state authorities (executive bodies) that may directly control or otherwise oversee the activities of religious organizations in Turkmenistan. This compounds the risk of abuse of such powers and of arbitrary or discriminatory treatment of some religious groups. It is therefore recommended that an additional paragraph be added to Art. 25 to expressly provide that the “control and oversight” powers of the various state bodies shall not be exercised discriminatorily or arbitrarily, or otherwise be employed to stifle or restrict lawful manifestations of religious freedom (or the right to privacy), and to provide religious organizations with legal remedies against unjustified and abusive controls. Such a provision would in particular help to ensure compliance with the UN Human Rights Committee’s statement that “[l]imitations [on freedom to manifest one’s religion or belief] may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated” and that “[r]estrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner”.⁸⁴

10. Final provisions. Re-registration

92. Article 27 of the Law obliges religious organizations to re-register their charters and other constituent documents if they are not in line with the provisions of the Religious Organizations Law.⁸⁵ If this relates even to minor changes that would need to be included in charters and then re-registered, then it may amount to an undue administrative burden – both for religious organizations and for the relevant state authorities – and may unreasonably restrict the right to freedom of association.⁸⁶ As was already stated in paragraph 51 above, religious organizations should be allowed certain flexibility in framing their charters. Any revision of the Religious Organization Law may wish to simplify the process of re-registration for existing religious

⁸³ See Art. 7 of the Religious Organizations Law.

⁸⁴ See paragraph 8 of the UN Human Rights Committee’s General Comment No. 22(48) on Article 18 of the ICCPR.

⁸⁵ Re-registration appears necessary because Art. 11 of the Law mandates that “[a]mendments and changes to the charter of a religious organization are subject to registration that shall be done in the same order and on the same terms as the registration of the religious organization”.

⁸⁶ The right to freedom of association is guaranteed by Art. 22 ICCPR. The UN Human Rights Committee has held that non-governmental organizations may not be subjected to difficult registration procedures, see paragraph 19 of the UN Human Rights Committee’s *Concluding Observations on Belarus (19/11/1997)* (Concluding Comments on Belarus (1997) UN doc. CCPR/C/79/Add. 86).

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organizations. Legal provisions that operate retroactively and require re-registration of religious entities under new criteria should generally be questioned and may need to be revised.⁸⁷

[END OF TEXT]

⁸⁷ See the 2004 OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Religion or Belief*, page 17. Consider also the ECtHR Judgment in the case of *Church of Scientology Moscow v. Russia*, of 5 April 2007, where the European Court held that if a religious community had operated as an independent and law abiding religious community for several years, the reasons for refusing re-registration should be “particularly weighty and compelling” (paragraph 96).

ANNEX: TEXT OF THE LAW OF TURKMENISTAN ON RELIGIOUS FREEDOM AND RELIGIOUS ORGANIZATIONS.

Law of Turkmenistan

On Religious Freedom and Religious Organizations

(Vedomosti Mejlisa Turkmenistana, 2003, no. 4, p. 37)

(as amended by laws of Turkmenistan of 16 March 2004, 18 April 2009 and 2 July 2009)

Turkmenistan, by reaffirming the right of each person to religious freedom and to the equality before the law regardless of an attitude to religion and belief, being based on the fact that Turkmenistan is a secular state, recognizing the special role of the Muslim religion in the centuries-old history of Turkmenistan and in the formation and development of its spirituality and culture, respecting other religions and considering that it is important to facilitate bringing up mutual understanding, tolerance and respect regarding the issues of religious freedom, adopts this Law.

CHAPTER I. General Provisions

Article 1. Subject Matter of this Law

In accordance with the Constitution of Turkmenistan, this Law regulates the legal relations in the area of the human and civil rights for religious freedom as well as it regulates the legal status of religious groups and religious organizations (hereinafter referred to as a “religious organization”).

Article 2. Legislation on Religious Freedom and Religious Organizations

Legislation on religious freedom and religious organizations is based on the Constitution of Turkmenistan and consists of this Law and other normative legal acts of Turkmenistan.

Should an international treaty to which Turkmenistan is a signatory party set rules different from those contemplated in this Law, the rules of the international treaty shall apply.

Article 3. The Right to Religious Freedom

Religious freedom is a guaranteed constitutional right of citizens to practice or not to practice any religion, to express and disseminate beliefs related to religion and to participate in practicing religious cults, rituals and ceremonies.

Coercing a citizen to determine his/her attitude towards religion, to practice or not to practice a religion, to participate or not to participate in public worship, religious rituals and ceremonies, to receive theological education shall not be allowed.

Involving children under the full legal age in religious organizations as well as in religious training against their will, the will of children's parents or persons replacing the parents shall not be allowed.

Exercising the right to religious freedom shall not contradict the established public legal order; it may be temporarily limited if needed to ensure national security and public order, to protect the lives, health, morale, rights and freedoms of other citizens.

Foreign citizens and stateless persons who permanently reside or temporarily stay in Turkmenistan shall enjoy the right to religious freedom on a par with citizens of Turkmenistan and bear responsibility under the legislation of Turkmenistan.

Article 4. Equality of Citizens Regardless of Their Attitude towards Religion

Citizens of Turkmenistan are equal before the law in all areas of civil, political, economic, social and cultural life regardless of their religious beliefs. Mentioning the citizen's attitude towards religion in official papers shall not be allowed.

Any direct or indirect limitation of the rights of citizens and granting them any privileges based on their religious and atheistic beliefs as well as causing animosity and hatred or offending citizens' feelings shall bring responsibility under the legislation of Turkmenistan.

Nobody shall evade, because of his/her religious beliefs, from fulfilling his/her duties established by the legislation of Turkmenistan. Replacement of one duty by another one based on one's religious beliefs shall be allowed only in cases stipulated in the legislation of Turkmenistan.

Article 5. The State and Religious Organizations

Turkmenistan is a secular state. Religious organizations in Turkmenistan are separated from the State.

Granting privileges for or imposing limitations on one religion or denomination as opposed to the others shall not be allowed.

The State shall encourage bringing up the environment of mutual tolerance and respect to different religions among citizens, organizations and those who do not practice any religion, among religious organizations of different denominations and their members. The State shall not allow the display of any religious or other kinds of fanaticism and extremism, actions aimed at clashing and aggravating the relations between different religious organizations as well as kindling animosity between them.

Turkmenistan neither entrusts any state functions to any religious organization nor interferes with activities of religious organizations unless these activities are in contradiction with the legislation of Turkmenistan.

The State does not finance activities of religious organizations as well as activities on propagandizing atheism.

Creating and operating political parties and public movements based on religion as well as branches and affiliates of religious parties established outside of the State shall not be allowed in Turkmenistan.

Activities of religious organizations are not compatible with political propaganda.

Religious organizations must observe requirements of the legislation of Turkmenistan. Using religion for the purposes of anti-governmental and anti-constitutional propaganda, kindling animosity, hatred and interethnic discord, breaching moral principles and civil peace in the society, spreading slanderous figments that destabilize the situation, creating panic among the population, causing unhealthy relationships between people and taking other actions aimed against the State, society and an individual shall not be allowed.

Activities of religious organizations, denominations, sects and other organizations supporting and advocating for terrorism, illicit drug trafficking and other crimes shall be prohibited.

Any attempts to pressure the state authorities and officials as well as to conduct illegal religious activities, including activities held at home, shall be prosecuted pursuant to the legislation of Turkmenistan.

Article 6. The Educational System and Religion

The educational system in Turkmenistan is separated from religious organizations and is of secular nature.

The right to receive secular education is guaranteed for citizens of Turkmenistan regardless of their attitude towards religion.

Citizens of Turkmenistan shall have the right to learn religious doctrine and receive theological education individually or jointly with other people based on their own choice.

Theological education for children can be provided at mosques with the approval of the Council on Religious Affairs under the President of Turkmenistan and consent from children's parents or persons replacing the parents or their legal guardians and children themselves, during the after-school hours for no longer than four hours a week.

Persons, who have graduated from higher theological education institutions and obtained an approval from the Council on Religious Affairs under the President of Turkmenistan, can deliver religious training.

Providing theological education in private is prohibited and shall bring responsibility under a procedure established by the legislation of Turkmenistan.

Article 7. State Authorities and Religious Organizations

The Council on Religious Affairs under the President of Turkmenistan is the state authority that regulates activities of religious organizations in accordance with a Regulation to be approved by the President of Turkmenistan.

Within the scope of its powers, the Council on Religious Affairs under the President of Turkmenistan shall:

- exercise control over activities of religious organizations regarding the observance of the legislation on religious freedom and religious organizations in Turkmenistan;
- ensure the implementation of constitutional rights and guarantees in the area of religious affairs;
- represent in state authorities the interests of religious organizations which are located and operating in Turkmenistan;
- consider citizens' appeals, letters and complaints related to the activities of religious organizations and take measures on eliminating revealed shortcomings and violations;
- provide explanation regarding the application of the Law on Religious Freedom and Religious Organizations;
- create a database of religious organizations in Turkmenistan;
- create an expert council comprising religious scientists, representatives of religious organizations and human rights specialists for conducting religious scientific assessment and, if necessary, give an official expert opinion upon request from state executive authorities and courts;

- facilitate strengthening mutual understanding and environment of tolerance among religious organizations of different denominations both within and outside Turkmenistan;
- maintain contacts and networking relations with religious organizations from abroad and state authorities inside the country.

CHAPTER II. Religious Organizations in Turkmenistan

Article 8. Religious Organization

Religious organization is a voluntary association of citizens of Turkmenistan created with the purpose of jointly practicing and disseminating a religion which performs worship services, rituals and other ceremonies, provides religious education and is registered under a procedure established by the legislation of Turkmenistan.

Religious organization shall be created on the initiative of no less than five citizens of Turkmenistan who have reached the full legal age and permanently reside in the territory of Turkmenistan.

A religious group shall comprise no more than 50 citizens of Turkmenistan, while a religious organization more than 50.

Citizens of Turkmenistan who, as a rule, have higher theological education can become the leaders of religious organizations.

Religious organizations, which have ecclesiastical centres abroad, shall perform their cult rituals and train their clergymen and other required religious personnel under a procedure established by these centres provided that this does not violate the legislation of Turkmenistan.

In accordance with their charters and the legislation of Turkmenistan, religious organizations shall have the right to establish and maintain international relations with the purpose of making pilgrimages and participating in other religious events with approval of the Council on Religious Affairs under the President of Turkmenistan.

Article 9. Theological Education Institutions

The Council on Religious Affairs under the President of Turkmenistan with approval of the Cabinet of Ministers of Turkmenistan shall have the right to create theological education institutions to train clergymen and religious personnel they need.

Theological education institutions shall acquire the right to conduct their activities after their registration with the Ministry of Justice of Turkmenistan and upon obtaining in a legally prescribed manner a license for carrying out activities in the area of education and professional staff training in accordance with the legislation of Turkmenistan.

Citizens shall be admitted for studies to a higher theological education institution after they have received compulsory general secondary education in accordance with the Law of Turkmenistan “On Education.”

Citizens of Turkmenistan may receive theological education at the Theological Faculty of the Magtymguly Turkmen State University.

Citizens of Turkmenistan studying in a higher theological education institution shall enjoy the rights and privileges granted to students of state educational institutions related to receiving a temporary waiver in military call-up, taxation and inclusion of the period of their studies into the overall record of their labour activities under a procedure established by the legislation of Turkmenistan.

Article 10. Charter of Religious Organization

Religious organization shall operate on the basis of its charter to be approved by its founders.

The charter of a religious organization must include the following information:

- name and type of religious organization, legal address and kind of religion;
- goals, objectives, and main forms of activities;
- terms and procedure of reorganization and liquidation as well as distribution of its assets;
- structure and administrative bodies, procedure of their formation and their mandates;
- sources of funding and other property of the organization;
- procedure of making changes in and additions to the Charter;
- procedure of entering and withdrawing from religious organization; and
- other information related to the operations of religious organization.

Charters of religious organizations, which have central administrative bodies, shall be agreed upon with these administrative bodies.

Article 11. Registration of Religious Organizations

Registration of religious organizations shall be made by the Ministry of Justice of Turkmenistan upon recommendation submitted by the Council on Religious Affairs under the President of Turkmenistan. Religious organizations shall acquire the status of legal personality from the moment of their registration and inclusion into the Unified State Register of Legal Personalities.

Operating an unregistered religious organization is prohibited. A person who conducts activities on behalf of unregistered religious organization shall bear responsibility under the legislation of Turkmenistan.

To register a religious organization, the following documents shall be submitted:

- an application signed by the founders and members of religious organization including their places of residence, last names, first names, patronymic names and dates of birth;
- charter of religious organization;
- the minutes of constituent assembly;
- document confirming the address of the religious organization to be created;
- document confirming the payment of a registration fee.

Applications for registration of religious organizations shall be considered within a month from the date of submission.

The Ministry of Justice of Turkmenistan shall have the right to request additional materials and receive an expert opinion from relevant authorities. If it is a case, the decision shall be made within three months from the date of submission of the application for registration.

Additions to and changes in the charter of religious organization shall be subject to registration under the same procedure and within the same timeframes as the registration of religious organization.

Article 12. Refusal to Register Religious Organization

Registration of a religious organization may be denied on the following grounds:

- if an organization being created is not recognized as a religious one;

- if provisions of its charter or other documents do not meet the requirements of this Law or other legislation of Turkmenistan;
- if these documents contain information which is knowingly false;
- if the founders are legally incapable.

If registration of religious organization is denied, the applicants shall be informed about this in writing, and reasons for refusal to register shall be indicated.

Refusal to register religious organization shall not be an obstacle for resubmission of documents for registration provided the reasons, which have caused the refusal, are eliminated.

Consideration of the resubmitted application and making a decision regarding the application shall be done under the procedure stipulated in this Law.

Article 13. Appeal of Refusal to Register Religious Organizations

Refusal to register a religious organization may be appealed in a court of justice under a procedure established by the legislation of Turkmenistan.

Article 14. Liquidation of Religious Organizations

Religious organizations may be liquidated:

- upon decision made by the founders or a body authorized for doing so under the charter of religious organization;
- if registration of religious organization is cancelled by the Ministry of Justice of Turkmenistan;
- by a court decision in case of repeated or gross violation of norms of the Constitution of Turkmenistan, this Law and other laws;
- if religious organization systematically conducts activities that contradict the goals for which it was created (charter goals).

The reasons for liquidating religious organization through court proceedings shall be:

- violating public safety and public order and undermining the state security;
- doing actions aimed at forcible change of the constitutional regime and disturbance of the integrity of the Turkmen state;
- creating armed units;
- propaganda of war and kindling of social, racial, national or religious discord;
- interfering in family relations that result in the break-up of a family;
- infringing upon the personality, rights and freedoms of citizens;
- causing damage to the morale and health of citizens proved in a manner specified in the law, including using in connection to their religious activities of drugs, psychotropic substances and hypnoses and committing unlawful acts;
- preventing from receiving compulsory education;
- forcing members of religious organization and other people to alienate their property to the benefit of religious organization;
- instigating citizens to refuse to fulfil their civil duties as required by the law and to commit other unlawful acts.

A decision on termination of the activities of religious organization is made by the Ministry of Justice of Turkmenistan upon agreement with the Council on Religious Affairs under the President of Turkmenistan.

Prosecutor's office, the Ministry of Justice of Turkmenistan, which is authorized to register religious organizations, and bodies of local self-government shall have the right to

lodge with a court of justice a recommendation for liquidation of religious organization or termination of the activities of religious organization.

Religious organization to be liquidated shall lose its legal capacity as a legal personality, while assets of this religious organization shall be distributed in accordance with its charter and the legislation of Turkmenistan.

CHAPTER III. Property Status of Religious Organizations

Article 15. Property of Religious Organizations

Religious organizations may own buildings, constructions, items for worshiping, production facilities, facilities for social and charitable purposes, financial assets and other property needed for conducting their activities as well as property that was acquired or created at their own expense, or donated by (or inherited from) citizens and public associations or transferred by the State as well as the property located abroad or acquired by other means stipulated in the legislation of Turkmenistan.

Religious organizations, including unregistered ones, as well as their members and participants must register with the Ministry of Justice their financial and material assets received through projects and programs on foreign technical and other assistance.

The state authorities of Turkmenistan may transfer buildings of worship and other property that is owned by the State to religious organizations for ownership or free use under a procedure established by the legislation of Turkmenistan.

Religious organizations shall possess and use land plots in the territory of Turkmenistan under a procedure established by the legislation of Turkmenistan.

Article 16. Use of Property which belongs to Turkmenistan, Public organizations or Citizens

Religious organizations shall have the right to use for their own needs the buildings and property provided to them by state and public organizations or citizens on the contractual basis.

Religious organizations shall have the preferential right for buildings of worship to be transferred to them which are located in the territory adjacent to them.

A decision on the transfer of buildings of worship and other property to religious organizations shall be made within a month from the date of receiving a petition for this; and the applicants shall be concurrently informed about it in written form.

The transfer to and the use by religious organizations of objects and items that are considered being historical and cultural monuments shall be done in accordance with the legislation of Turkmenistan.

Article 17. Production and Economic Activities

Based on the charter goals, the central administrative bodies of religious organizations shall have the right to create production, restoration, construction, agricultural and other enterprises in accordance with the legislation of Turkmenistan.

Financial and property donations and other revenues of religious organizations shall not be subject to taxation.

Article 18. Disposal of Property of Religious Organizations Which Have Ceased Their Activities

After religious organizations have ceased their activities, the property given to them for use by a state or public organization or citizens shall be returned to the previous owner or legal successor.

In the process of ceasing the religious organization's activities, the disposal of the property it used to own shall be done in accordance with its charter and the legislation of Turkmenistan. A list of worship facilities and items, which creditors cannot claim for, shall be determined by the Cabinet of Ministers of Turkmenistan upon submission of the list by the Council on Religious Affairs under the President of Turkmenistan.

In the absence of legal successors the State shall take the ownership over the property.

CHAPTER IV. Rights of Religious Organizations and Citizens Related to Religious Freedom

Article 19. Religious Rituals and Ceremonies

Religious organizations shall have the right to freely establish and maintain accessible places of worship or religious rituals as well as maintain the places for pilgrimage.

Worshiping, religious rituals and ceremonies shall be held in the area where religious organizations are located: in buildings of worship and prayer, on the land belonged to them, at places of pilgrimage, at cemeteries and, if necessary for ritual reasons, at homes of citizens at their will.

Commanders of military units shall not prevent military personnel from participating in worshiping and performing religious rituals during their free hours.

Worshiping and religious rituals in medical centres, hospitals, retirement and nursing homes, pre-trial detention centres and prisons shall be conducted at the request of citizens staying there.

Administration of these establishments shall provide assistance in inviting clergymen and take part in determining the place, time and other conditions for conducting worshiping, religious rituals and ceremonies.

Public worshiping, religious rituals and ceremonies outside of buildings of worship and prayer shall be held under a procedure established by the legislation of Turkmenistan.

It is not allowed for citizens of Turkmenistan to wear religious attire in public places (save clergymen of religious organizations).

Religious organizations shall neither have the right to forcibly collect money and fees from believers, nor apply to them measures offending their honour and dignity.

Article 20. Religious Literature and Items of Religious Function

Citizens of Turkmenistan and religious organizations shall have the right to purchase and use religious literature in any language at their own choice as well as other items and materials of religious function.

Production, import, export and dissemination of religious literature instigating religious, national, interethnic and racial discord shall not be allowed. Committing such acts shall bring responsibility stipulated by the legislation of Turkmenistan.

Delivery and sale of the religious literature published abroad shall be done after expert assessment of its content by the Council for Religious Affairs under the President of Turkmenistan under a procedure established by the legislation of Turkmenistan.

Producing, storing and disseminating printed publications, movie-, photo-, audio-, and video-products and other materials, which contain the ideas of religious extremism, separatism, and fundamentalism, shall bring responsibility in accordance with the legislation of Turkmenistan.

Article 21. Charitable, Cultural and Educational Activities of Religious Organizations

Religious organizations shall have the right to show mercy and conduct charitable and other cultural and educational activities both independently and through public funds.

Donations and contributions for these purposes shall be exempt from taxation.

CHAPTER V. Labour in Religious organizations and at their Enterprises

Article 22. Labour legal relations in religious organizations

The labour legislation of Turkmenistan shall apply to citizens employed with religious organizations and their enterprises based on a labour agreement (contract). These citizens can become members of trade-unions.

Article 23. Taxation of Citizens Employed with Religious Organizations

Incomes generated as a result of work in religious organizations and their enterprises and received by citizens, including clergymen, shall be subject to taxation at the same rates fixed for workers and officers of state enterprises, agencies and organizations of Turkmenistan.

Article 24. Social Security and Social Insurance of Citizens Employed with Religious Organizations and their Enterprises

Citizens of Turkmenistan, including clergymen, employed with religious organizations and their enterprises shall be covered by the social security system and social insurance on a par with workers and officers of state enterprises, agencies and organizations of Turkmenistan.

For these purposes, religious organizations and their enterprises shall make financial transfers to the state social insurance system under the procedure and on the amount established for state enterprises, agencies and organizations and also assist in concluding voluntary pension insurance agreements by citizens under a procedure established by the legislation of Turkmenistan.

All citizens employed with religious organizations and their enterprises shall be entitled to state pensions to be granted and paid on a general basis in accordance with the legislation of Turkmenistan.

CHAPTER VI. Control and Oversight over Activities of Religious Organizations

Article 25. Control and Oversight over Activities of Religious Organizations

The Ministry of Justice of Turkmenistan shall exercise control for compliance of activities of religious organizations with their charter goals. The Ministry of Justice of Turkmenistan shall have the right to request constituent documents from the governing bodies of religious organizations; to send their representatives for participation in events organized by religious organizations; to receive explanations from members of religious organizations and other citizens regarding the observance of their charters; and to issue a written warning to the governing bodies of religious organizations indicating reasons for issuing such a warning, if violation of the legislation of Turkmenistan by religious organizations has been revealed or they have committed acts contradictory to their charter goals.

The Ministry of Justice of Turkmenistan shall cancel the registration if religious organization has switched mainly to business activities or if achieving the charter goals has become impossible.

If within one year a religious organization has received more than two written warnings or instructions to eliminate the [revealed] violations or if it fails to provide within a year the Ministry of Justice with new information subject to registration, the Ministry may lodge a request with a court of justice for liquidation of this religious organization.

The Prosecutor General of Turkmenistan and subordinate prosecutors shall exercise oversight over the execution of the legislation on religious freedom and religious organizations.

Financial and tax authorities shall exercise control over the sources of income of religious organizations, over the amounts of funds that they receive and payment of taxes and levies in accordance with the legislation of Turkmenistan.

Under a procedure established by the legislation of Turkmenistan, the Ministry of Justice of Turkmenistan shall provide the authorized state body with the information about projects and programs of foreign technical, financial and humanitarian assistance and grants if their amount exceeds a fixed threshold amount or they are not typical for the organization receiving such assistance.

Ecological, fire safety, sanitary-epidemiological and other authorities entrusted with control and oversight functions may exercise control and oversight over the observance of existing norms and standards by religious associations.

Article 26. Responsibility for Violating the Legislation of Turkmenistan on Religious Freedom and Religious Organizations

State officials and citizens of Turkmenistan or any other persons guilty of violating the legislation on religious freedom and religious organizations shall bear responsibility in accordance with the legislation of Turkmenistan.

CHAPTER VII. Final Provisions

Article 27. Final Provisions

Charters and other constituent documents of religious organizations, which were created before this Law comes into effect, shall be brought in line with this Law.

The Law of Turkmenistan “On Freedom of Conscience and Religious Organizations in Turkmenistan” adopted on 29 May 1991 with subsequent changes and additions shall be deemed invalid from the day when this Law comes into effect.

OSCE ODIHR Comments on the Law of Turkmenistan on Religious Freedom and Religious Organizations

President of Turkmenistan

Saparmurat Turkmenbashi

The City of Ashgabat
21 October 2003
No. 199-II