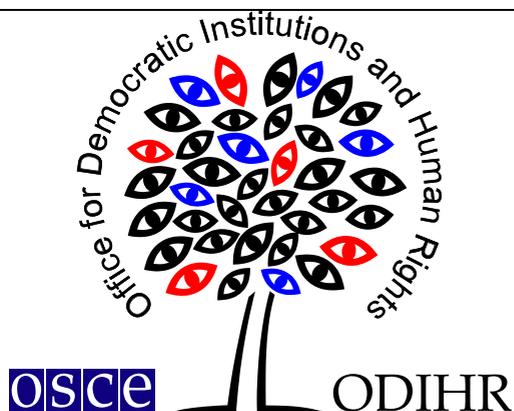


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OSCE/ODIHR COMMENTS

ON THE

LAW OF TURKMENISTAN ON COMBATING

TRAFFICKING IN PERSONS

Based on an unofficial English translation of the law provided by the

OSCE Centre in Ashgabat

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Annex 1: Law of Turkmenistan on Combating Trafficking in Persons

Annex 2: Article 129.1 of the Criminal Code of Turkmenistan

1. INTRODUCTION

1. *In February 2010, the OSCE Centre in Ashgabat requested ODIHR to review the Law of Turkmenistan on Combating Trafficking in Persons (hereinafter “the Law” or “the Anti-Trafficking Law”) and provided an unofficial English translation of this Law.*
2. *In June 2010, ODIHR was informed that on 10 May 2010, the Mejlis of Turkmenistan passed a new Criminal Code of Turkmenistan (hereinafter “the Criminal Code”) containing numerous amendments to the previous Criminal Code. One of these amendments is the introduction of Article 129.1, which criminalizes trafficking in human beings.*
3. *On 5 July 2010, the OSCE Centre in Ashgabat provided ODIHR with an unofficial English translation of Article 129.1 of the Criminal Code and requested for this new provision to come within the scope of review of these Comments.*

2. SCOPE OF REVIEW

4. The scope of these Comments covers only the above-mentioned Anti-Trafficking Law, and to the extent relevant, Article 129.1 of the Criminal Code. Thus limited, the Comments do not constitute a full and comprehensive review of all available framework legislation governing anti-trafficking issues in Turkmenistan.
5. The Comments raise key issues and provide indications of areas of concern. The ensuing recommendations are based on international anti-trafficking standards and best practices, as found in the international agreements and commitments ratified and entered into by the Republic of Turkmenistan.
6. These Comments are based on an unofficial translation of the Anti-Trafficking Law and Article 129.1 of the Criminal Code, which have been attached to this document as Annexes 1 and 2 respectively. Errors from translation may result.
7. In view of the above, the OSCE ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Anti-Trafficking Law or the Criminal Code that the OSCE ODIHR may make in the future.

3. EXECUTIVE SUMMARY

8. The OSCE ODIHR notes and welcomes in particular, that the terminology contained in the Law attempts to reflect international standards. Nevertheless, in order to ensure the full compliance of the said legislation with international standards, it is recommended as follows:

3.1 Key Recommendations

- A. To develop guidelines and procedures for relevant authorities on how to identify victims of trafficking and include them in this Law or in a separate document; [par 18]
- B. Until the identification of trafficking victims has been completed, to provide to presumed and identified victims of trafficking the same rights and assistance; [par 20]

- C. To transfer the role of coordinating anti-trafficking measures and activities from the Prosecutor General’s Office to a more neutral body; [par 33]
- D. To consider discussing and adopting a National Referral Mechanism to coordinate activities in the fight against trafficking in human beings; [par 37]
- E. To amend Article 12 to ensure that victims of trafficking may be referred to specialized institutions by the police or non-governmental organizations and that they receive sustainable assistance, even after the one month of temporary refuge granted to them is over; [pars 40 and 41]
- F. To ensure that assistance and shelter to victims of trafficking, domestic or foreign, shall be granted regardless of their willingness to contribute to criminal investigations; [par 42]
- G. To ensure that all relevant stakeholders review this Law and discuss possible revisions; [par 52]

3.2 Additional Recommendations

- H. To clarify and enhance the Preamble of the Law to cover combating trafficking, the prosecution of human traffickers and the protection of rights/provision of assistance to victims of trafficking; [pars 12 and 13]
- I. To clarify in Article 2 of the Law which other laws regulate the issue of trafficking in persons in Turkmenistan, and which laws take precedence over others; [par 14]
- J. To enhance the role of non-governmental organizations in the process of identifying victims of trafficking ; [par 19]
- K. To make consistent the definitions of trafficking in human beings found in Article 1 of this Law and Article 129.1 of the Criminal Code; [par 21]
- L. To clarify the definition of human trafficker by linking it to the definition of human trafficking in the Criminal Code; [par. 22]
- M. To include the limited exceptions to the ban on forced labour found in the C29 ILO Forced Labour Convention in Article 1 of the Law; [par 24]
- N. To include practices similar to slavery, such as forced marriage and treating women and children as objects to the list of terms under Article 1; [par 25]
- O. To remove the requirement of “entry into marriage without the purpose of starting a family” from the definition of exploitation under Article 5 of the Law; [par 29]
- P. To include in Section II provisions on the competences and activities of ministries and institutions responsible for health, education, social protection and labour; [par 35]
- Q. To include in Section II a provision on the competences of correctional institutions; [par 36]

- R. To include more information on the nature and accountability of specialized institutions in Article 11; [par 38]
- S. To extend the scope of Article 12 to include assistance to victims' families and other affected persons, as necessary; [par 39]
- T. To include in Article 14 of the Law state guardianship for children who are victims of trafficking or relatives of such victims and discuss other options for protecting child victims of trafficking; [pars 43 and 45]
- U. To extend the special protection afforded to children in Article 14 to persons with limited legal capacity and include in the Law the presumption that a person is a child, when the age of the victims is not immediately ascertainable or able to be established; [par 44]
- V. To state clearly in Article 15 that all information on victims of trafficking shall be confidential and shall only be accessed by members of law-enforcement bodies and courts in their official capacity; [par 46]
- W. To clarify in Article 15 that victims of trafficking shall determine when a serious danger exists permitting them to request that their names be changed; [par 47]
- X. To clarify which criminal offence Article 15 par 4 refers to when speaking of liability for the disclosure of confidential information on victims or the withholding of information ; [par 48]
- Y. To ensure that victims of trafficking are not held liable for criminal acts and that Article 16 does not only apply to administrative offences; [par 49]
- Z. To include in this or other laws additional court protection mechanisms to ensure the safety of victims of human trafficking; [par 50] and
- AA. To establish a fund for victims of crime, if such a fund does not yet exist. [par 51]

4. ANALYSIS AND RECOMMENDATIONS

4.1. International Documents on Combating Trafficking in Human Beings

- 9. Throughout the last decade, governments, international organizations and non-governmental institutions have realized that in order to combat the increasing trend of human trafficking, a common and comprehensive approach is needed. Their commitment to such an approach is reflected in various human rights instruments and documents, notably the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children of 2000¹ to the UN Convention against Transnational Organized Crime (hereinafter “the UN Palermo Protocol”), as well as the OSCE Action Plan to Combat Trafficking in Human Beings² (hereinafter “the

¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Protocol adopted by GA resolution 55/25 of 15 November 2000: <http://www2.ohchr.org/english/law/protocoltraffic.htm>

² OSCE Permanent Council 462nd Plenary Meeting, PC.DEC/557 of 24 July 2003: http://www.osce.org/press_rel/2003/pdf_documents/07-3447-pc1.pdf

OSCE Action Plan”). The Republic of Turkmenistan acceded to the former and has signed and committed to the latter³.

10. The three main purposes of the UN Palermo Protocol are the prevention and combat of trafficking in persons, the protection of and provision of assistance to the victims of human trafficking, and the promotion of cooperation among States Parties to meet the above objectives (Article 2). The OSCE Action Plan, while explicitly referring to the UN Palermo Protocol, also commits States to develop and implement National Referral Mechanisms, defined as national cooperative frameworks through which state actors in strategic partnership with civil society fulfill their obligations to protect and promote the human rights of trafficked persons⁴.

4.2. General Comments

11. At the outset, it should be noted that parts of this Law reflect international standards on combating human trafficking laid down in the above instruments. However, in the interests of brevity, the focus of these Comments lies on those parts of the Law that would benefit from changes or improvements. The following Comments will highlight these provisions and outline how they may be enhanced.
12. The Preamble of the Law notes that the Law sets forth “the legal and organizational basics of trafficking in persons in Turkmenistan”. It is assumed that this intends the legal and organizational basics of *combating* trafficking in persons. However, it is recommended to amend this part of the Preamble so as to make it consistent with the title of the Law.
13. Given that Article 4 also mentions “the irrevocability of bringing human traffickers to justice” as a main principle of this Law, it is further recommended to add the “prosecution of human traffickers” to the Preamble. Moreover, it is noted that the Preamble speaks of “ensuring the security of person and protection against human trafficking”, but does not include the protection of rights of trafficked persons and the provision of assistance to them. It is recommended to include references to such human rights protection, in order to make this Law consistent with the human-rights based approach to victims of trafficking adopted by the OSCE⁵.
14. Article 2 of the Law outlines the legislation on combating trafficking in human beings in Turkmenistan. Next to the Law, Article 2 also lists the Constitution of Turkmenistan, as well as “other regulatory and legal frameworks of Turkmenistan regulating the issue of trafficking in persons”. The vague referral to other legislation does not indicate which laws of Turkmenistan are being referred to, nor is it clear which laws will apply in which situation and which laws generally take precedence over others. It is recommended to clarify these vague references to other laws and their relationship in Article 2. In particular, following the adoption of Article 129.1 of the Criminal Code, the Criminal Code should be specifically mentioned in the list of laws regulating anti-trafficking issues in Turkmenistan.

4.3. Victims of Trafficking

³ The Republic of Turkmenistan acceded to the above UN Protocol on 28 March 2005 and is a participating State of the OSCE

⁴ See also OSCE Ministerial Council Decision No. 14/06 of 5 December 2006 Enhancing Efforts to Combat Trafficking in Human Beings, Including for Labour Exploitation, Through a Comprehensive and Proactive Approach, wherein OSCE participating States are recommended to establish National Referral Mechanisms

⁵ See National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, published by OSCE ODIHR in 2004, Introduction:
http://www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

15. Victims of trafficking are defined under Article 1 of the Law (Basic Concepts) as persons “who suffered as a result of trafficking in persons”; trafficking in persons is defined earlier on in the same provision. The Law is to be commended for stating that persons may be victims of trafficking irrespective of whether or not they consented to actions related to trafficking.
16. However, next to the definition of “victim of trafficking”, it is noticeable that the Law does not contain any provisions on the identification of victims. It is thus not clear which criteria will be followed when ascertaining whether a person is indeed a victim of trafficking, nor does the Law specify which bodies are mandated to conduct such an identification process, or the process to be followed in case victims identify themselves as such (self-identification).
17. Identifying victims of trafficking is a relevant step towards ensuring these persons’ rights and fighting trafficking of human beings in general, since cases of human trafficking are difficult to prove without active investigation⁶. For this reason, Guideline 2.1 of the UN High Commissioner for Human Rights’ Recommendations for Principles and Guidelines on Human Rights and Human Trafficking provides that “States should consider developing guidelines and procedures for relevant State authorities, such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.”⁷ This should be supported by adequate training for the above group of persons to ensure proper implementation of these guidelines and procedures.⁸
18. Such guidelines and procedures do not need to be included in a Law.⁹ They may also be included in sub-legal texts or be issued by the authority coordinating all state efforts to fight trafficking of human beings as internal instructions or guidelines.¹⁰ As a result of such guidelines and procedures, state authorities in contact with presumed victims of trafficking should then coordinate identification measures and be able to approach and identify victims of trafficking properly. It is recommended to include such guidelines or procedures in the Law or draft them in some other form, possibly a National Action Plan (this is discussed below under par 37). The OSCE ODIHR and the United Nations have issued documents that may provide assistance in such matters.¹¹ Once guidelines are established, it is important to bear in mind that such guidelines should be flexible and should be revised regularly to adapt to the constant evolution of the crime of trafficking in human beings, and its symptoms.
19. Also, it is highly recommended to enhance the role of non-state actors in identifying trafficking victims. Due to the coercive control that many perpetrators have over their victims, the latter are often afraid to come forward and contact state agents or law enforcement officers themselves, in particular if they have been coerced to commit an illegal act. While non-governmental organizations may already be involved in providing assistance to victims of trafficking (see Articles 11 and 12 of the Law), they

⁶ Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council E/2002/68/Add.1, 20 May 2002

⁷ Ibid

⁸ Ibid, Guideline 2.2

⁹ The Model Law against Trafficking in Persons, issued by the UN Office on Drugs and Crime (UNODC), Vienna, 2009, also sees its Article 18 on identification of victims of trafficking in persons as an optional provision, Article 18, Commentary: http://www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

¹⁰ Ibid.

¹¹ See National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons, A Practical Handbook, pp 59-64 . See also the Toolkit to Combat Trafficking issued by the UN Office on Drugs and Crime (UNODC), 2nd edition, 2008: <http://www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html>, and Combating Trafficking in Persons: A Handbook for Parliamentarians No. 16, 2009, issued by the Inter-Parliamentary Union and the UNODC, Chapter 4, subsection 2: Identifying Victims of Trafficking: http://www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

could also help identify victims of trafficking by gaining their trust. Such organizations would also be ideal access points for victims who have identified themselves as such.

20. In this context it is also important to note that until identification or registration as a victim, presumed victims should be treated and protected as victims of trafficking.¹² Due to the vulnerability of the victim and the dangerous situation that such persons often find themselves in, it is paramount that even prior to identification, presumed victims receive the assistance and protection offered to victims of trafficking. It is thus recommended to include a provision in the Law stating that prior to identification, identified and presumed victims of trafficking shall benefit from the same protection and assistance.

4.4. Definitions under Articles 1 and 5 of the Law

4.4.1 Basic Concepts

21. In Article 1, it is welcomed that the definition of trafficking in persons largely corresponds to the definition contained in the UN Palermo Protocol¹³. However, it is noted that the definition in Article 1 is wider than the definition of trafficking in human beings contained in Article 129 par 1 of the Criminal Code, which merely refers to the purchase and sale of a human being, or his/her recruitment, transportation, secretion, or disposal to another person, fulfilled with the object of his/her exploitation. This could create problems, as victims would be identified based on this Law, while perpetrators would be trafficked according to a different, more restrictive definition in the Criminal Code. It is therefore strongly recommended to adapt the definition in the Criminal Code to the wider and internationally recognized definition contained in Article 1 of the Law.
22. The definition of human trafficker, on the other hand, is slightly vague in that it involves any physical or legal entity “committing any actions” related to trafficking. This does not correspond to general international principles of legality and foreseeability of laws, since it may be difficult for individuals to know in advance which type of behaviour is criminalized or not. It would be beneficial for the proper implementation of the Law if the definition of human trafficker would limit itself to perpetrators of the criminal act of human trafficking, as defined in the Criminal Code. This would then involve the actual perpetrator, as well as aiders and abettors of the act.¹⁴ Once the wording of the Criminal Code has been adapted to the wording of this Law, it is recommended to amend this definition accordingly.
23. While the inclusion of forced labour in the list of basic concepts is welcomed, it is noted that this definition does not contain any limitations where forced labour may be permissible, e.g. in prisons or detention centres, in cases of natural catastrophes or during military service. These are some of the permissible exceptions to the ban on forced labour listed in the C29 ILO Forced Labour Convention of 1930.¹⁵

¹² See the Model Law against Trafficking in Persons, issued by UNODC, Article 18, Commentary

¹³ According to 3 a) of the UN Protocol, trafficking in persons is the “recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation” (Article 3 (a)).

¹⁴ Article 129 par. 3 c) of the Criminal Code considers trafficking by a criminal group or organization to be an aggravated form of trafficking of human beings.

¹⁵ Convention Concerning Forced or Compulsory Labour, No. C029, adopted by the General Conference of the International Labour Organization on 28 June 1930, Article 2, par. 2. This Convention was ratified by the Republic of Turkmenistan on 15 May 2007

24. Invoking a complete ban on all forms of forced labour could lead to problems when implementing the Law. It is thus recommended to include limited and very specific exceptions to the absolute ban on forced labour in Article 1 of this Law, based on the exceptions listed in Article 2, par. 2 of the above ILO Convention.
25. It is noted as positive that debt bondage has been included in Article 1 and that the definition found therein reflects the definition of practices found in Article 1 of the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery.¹⁶ At the same time, debt bondage is only one of the examples listed in the above Convention as examples of “practices similar to slavery” (Article 1). Other examples listed are serfdom (Article 1 b)), as well as forced marriage and other cases where women and children are treated as objects (Article 1 c) and d)).¹⁷ While serfdom may not be that common today, it is recommended to include the practices similar to slavery targeting women and children in the list of terms under Article 1.

4.4.2 Methods and Forms of Exploitation

26. Article 5 specifies methods and forms of exploitation that victims of trafficking may be subjected to. While Article 5 includes additional examples of exploitation that are not listed in the UN Palermo Protocol, this is generally welcomed. Indeed, Article 3 a) of the UN Palermo Protocol stresses that its examples are exploitation “at a minimum” and thus leaves room for national legislation to target other forms of exploitation.¹⁸
27. The first paragraph of Article 5 lists different means of exploitation, ranging from violence to narcotic/psychoactive substances to economic coercion, but also including legal dependence as a result of “entry into marriage without the purpose of starting a family”.
28. This last-mentioned part of Article 5, par 1 appears very difficult to apply – it will be near to impossible to prove that a person entered into a marriage without the purpose of starting a family, especially if the entry into marriage dates back years.
29. At the same time, it is not clear how entering into marriage without the purpose of starting a family would necessarily be relevant to the question of whether a spouse is being exploited or not. Even if a person enters into marriage with the intention of starting a family, his/her spouse may still become a victim of trafficking. It is thus recommended to remove this requirement from legal dependence as a result of entry into marriage.

4.5. Activities and Competences in Combating Human Trafficking

30. Section II deals with the activities and competences of various State bodies involved in combating human trafficking.

¹⁶ This Convention was adopted by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 608(XXI) of 30 April 1956. The adoption itself took place on 7 September 1956 and the Convention entered into force on 30 April 1957: <http://www2.ohchr.org/english/law/slavetrade.htm>

¹⁷ The examples listed under Article 1 c) and d) are: “c) Any institution or practice whereby:

- (i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group; or
- (ii) The husband of a woman, his family, or his clan, has the right to transfer her to another person for value received or otherwise; or
- (iii) A woman on the death of her husband is liable to be inherited by another person;

d) Any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour.”

¹⁸ For details on the Palermo Protocol, see footnote 1

31. In this context, it is noted that Article 7 designates the Prosecutor-General's Office of Turkmenistan as the state body responsible for coordinating all activities on combating trafficking in persons.
32. While trafficking of human beings is admittedly a criminal act¹⁹, the treatment of the victims, their reintegration and support, are questions that are essentially humanitarian in nature. For this reason, it may be beneficial to place the coordination of all actions against trafficking, criminal and humanitarian, in the hands of a state body that would have expertise in protection of victims and prevention measures rather than a crime prosecution profile. If all coordination of such matters lies with the Prosecutor-General's Office, which under Article 7 par. 2 (4) is also responsible for supervising institutions providing support to victims, the position and well-being of the victims risks losing its importance. Supporting, assisting and protecting victims of trafficking in human beings would no longer aim at the victims' well-being, but would be subordinate to the main aim of finding and prosecuting the perpetrator. This could well lead to compromises in the assistance to victims, which could have disastrous consequences on their emotional and physical state of mind. Furthermore, if victims of trafficking are aware of the strong role of the prosecutor's office in combating trafficking or do not believe that they will receive proper assistance from the state, they may also be hesitant to come forward for fear of being investigated for crimes they may have been coerced to commit.²⁰
33. In order to give equal importance to investigations into the crime of human trafficking and victims' support and treatment and to ensure maximum results in both fields, it is thus recommended to transfer the coordinating competences in this field to a different body, one that is not a law enforcement body.
34. In addition to this, it has been noted that while Section II covers various competences of different state bodies involved in combating human trafficking, it does not foresee any specific involvement of health, labour, social care or educational institutions, nor does it grant special competences for penitentiaries and detention centres.
35. Given the coercive nature of human trafficking offences, victims of such offences are usually in need of medical and psychological treatment. Children of persons trafficked or trafficked children may need the assistance of social and educational services. While Article 14 on assistance to child victims of trafficking requires other state bodies to notify agencies dealing with guardianship immediately upon receiving information on trafficking of children, it is important that agencies dealing with children and youth, as well as hospitals and other health institutions in general also have the obligation to inform other state bodies on instances of trafficking that they have witnessed or been informed of. For this reason, it is recommended to include in Section II provisions on the competences of health, social care and educational institutions, including the respective ministries. Also, the competent Labour Ministry and its institutions should be involved. In the same way, Article 8 on the authority of state bodies implementing their activities on combating trafficking in human beings should include provisions ensuring that the ministries responsible for health, social protection, labour and education provide access to their services and assistance as required.
36. In order to identify and assist victims of human trafficking who may have been arrested and detained, it is important to also ensure cooperation with penitentiaries and detention centres. Staff should receive training on how to recognize potential victims of human trafficking. Upon identification of an inmate as a victim of human trafficking, correctional institutions should cooperate with judicial and prosecution

¹⁹ See Article 129.1 of the Turkmenistan Criminal Code, amendment adopted on 10 May 2010 by the Mejlis of Turkmenistan

²⁰ In this context, see the Commentary to Article 20 of the UNODC Model Law against Trafficking in Human Beings

authorities to ensure that these persons are provided with proper legal aid immediately and exempted from punishment for actions resulting from their having been trafficked.²¹ It is thus recommended to include in Section II a provision on the competences of correctional institutions.

37. Next to legal provisions on the competences of different state bodies, developing a national action plan on combating trafficking in human beings could ensure greater coordination and results. Such action plans are usually the result of wide-ranging discussions involving numerous stakeholders on strategies to fight human trafficking and focusing on which state and non-governmental actors to involve in such strategies. They may be the outcome of a so-called National Referral Mechanism (hereinafter “NRM”), which is a co-operative framework through which state actors fulfill their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society²². It is worthwhile to discuss and adopt an NRM in order to implement and interpret domestic anti-trafficking legislation in a victims-oriented and flexible manner. Should relevant stake-holders in Turkmenistan agree to initiate discussions on an NRM, then OSCE ODIHR would stand ready to advise on the process.

4.6. Assistance to Victims of Trafficking

38. Article 12 on specialized institutions created to support and assist victims of trafficking in human beings lists numerous forms of assistance provided for such victims, including medical, psychological, legal and other types of assistance, also assistance in the re-integration of victims into their families and society. While Article 11 states that the Cabinet of Ministers establishes specialized institutions, it is not clear which governmental body will be responsible for supervising them. It is recommended to include more information on the nature and accountability of such institutions in the Law.
39. Support offered by such specialized institutions is limited to victims of human trafficking. In order to ensure that the after-effects of trafficking are dealt with in a comprehensive manner, it is essential that assistance is provided not only to the victims but also to their families and, as necessary, other persons affected by the issue of human trafficking. It is recommended to extend the scope of Article 12 to include assistance to such persons as well.
40. The above support also includes temporary refuge, which shall be provided to victims of trafficking upon their personal request. In order to enhance support to victims, it may be beneficial to allow victims of trafficking to be referred to places of temporary refuge or shelter by non-governmental organizations or the police²³. It is recommended to expand the scope of Article 12 accordingly.
41. Temporary refuge is usually granted for a period of up to one month and may be prolonged in case the victims of trafficking are needed for testimonies against human traffickers. However, Article 12 par 2 does not specify what happens to such victims once a month has passed. The temporary refuge in itself does not help victims in the long run, if it is not combined with sustainable solutions that address their long-term needs. In cases where victims have no family or attempts to reintegrate them into their families fail, assistance should be focused on helping former trafficking victims obtain employment to ensure that they will be able to lead an independent and self-sustainable life, which will further minimize the risk of their being re-trafficked. This

²¹ See the OSCE Action Plan to Combat Trafficking in Human Beings, III, 1.8

²² For more information on National Referral Mechanisms, see National Referral Mechanisms, Joining Efforts to Protect the Rights of Trafficked Persons – a Practical Handbook, OSCE ODIHR, 2004, I, 1. See also the OSCE Action Plan to Combat Trafficking in Human Beings, V, 3

²³ For more information on the process of referral of trafficking victims, see *ibid*, IV, 3

is also stated in Article 6, par 3 a) and d) of the Palermo Protocol, which calls upon signatory States to provide victims of trafficking of human beings with appropriate housing, as well as employment and educational and vocational training.²⁴ It is recommended to amend Article 12 to ensure that such victims are given the sustainable assistance that they are entitled to according to the Palermo Protocol.

42. Also, linking the prolongation of temporary refuge to victims' ability or willingness to contribute to criminal proceedings against human traffickers is not in line with international standards, which specifically state that assistance to the victims should not depend on their involvement in investigations against perpetrators.²⁵ Given the risks of retaliation against trafficked persons following collaboration with law enforcement authorities, it is important that victims be given the possibility of making an informed choice of whether to cooperate with law-enforcement bodies or not. They should not be coerced or tempted to do so merely because this could create advantages for them, or because non-cooperation could lead to disadvantages. Ideally, a state could provide victims of trafficking with a so-called reflection period, during which victims will have time to assess their situation, weigh their options and then decide whether or not to be part of investigations against perpetrators²⁶. In many cases, this approach engenders greater support for investigations on the side of the victims. It is recommended to assist victims in finding employment and housing or shelter, and to ensure that prolongation of temporary refuge is provided on the basis of humanitarian grounds, not on the basis of their potential value to criminal investigations. The same principle applies to foreign victims of trafficking, who should be permitted to stay in Turkmenistan as long as necessary for humanitarian reasons, regardless of their willingness to contribute to criminal proceedings against possible perpetrators.²⁷
43. Article 14 deals with assistance to children who are victims of trafficking. It is welcomed that this Law pays special attention to trafficked children, given their especially vulnerable status. In order to ensure full protection of children, each child affected by trafficking in human beings, either directly or because of the trafficking of a parent or other close relative, should be provided with a state guardian to take his or her interests into account. It is recommended to include such automatic guardianship into the wording of Article 14.
44. Furthermore, the special protection afforded to children should also be afforded to persons with limited legal capacity, given their special vulnerable status. If the age of a victim cannot be established immediately, then the law should provide for a presumption in favour of considering a victim a child, in order to ensure maximum protection. It is recommended to include these principles in Article 14.
45. Moreover, the assistance to children should not only be limited to placement in their own family or a ward. If a return to the parents of the child is impossible or not in keeping with the best interests of the child, then an additional option could be placing the child in a foster home. It is recommended to review and discuss this and other possible options for child victims of human trafficking, while bearing in mind the best interests of the child.

²⁴ For details on the Palermo Protocol, see footnote 1

²⁵ See, in this context, Guideline 6.1 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN Human Rights Commissioner, which stresses the need to ensure that adequate shelter is made available to trafficking victims and that such shelter "should not be made contingent on the willingness of the victims to give evidence in criminal proceedings". See also Article 20.1 of the UNODC Model Law against Trafficking in Persons.

²⁶ See in this context the Commentary to Article 18 of the UNODC Model Law, which urges states to consider granting (presumed) victims of trafficking such a reflection period. See also the OSCE Action Plan to Combat Trafficking in Human Beings, V, 8.1

²⁷ See Article 30 and related Commentary of the UNODC Model Law, which supports providing foreign victims of trafficking with a ninety-day reflection period in which to decide whether or not to cooperate with authorities, as well as with clear guarantees of their right to stay in the country, temporarily or permanently.

4.7. Protecting Victims of Human Trafficking

46. Articles 15 and 16 deal with different aspects of protecting victims of human trafficking. According to Article 15, access to personal information on a trafficking victim shall be denied by directory services based on the resolution of a special undercover agency, inquiry officer, investigator, prosecutor or court. It is unclear why the important and even essential matter of confidentiality of information should depend on the resolution of a state body. Due to the vulnerable situation of the victim and the ever-present possibility of threats or retaliation on the side of the trafficker, it is recommended to state in Article 15 clearly that all information on victims of trafficking (including families and organizations and individuals who helped them) shall be confidential and shall not be accessed except by members of law-enforcement bodies and courts in their official capacity.
47. Under par 3 of Article 15, victims shall have the right to request the change of their first, last or patronymic names in case of serious danger to their lives and health. In this context, it is essential that the determination of when a serious danger exists shall depend on the victim's point of view. The victim should not be obliged to prove the serious danger to his or her health (or to the health of a friend or family member), as given the victims vulnerable status and possible evidentiary difficulties, this could place a disproportionate burden on the victim. It is recommended to clarify this in Article 15, so as to ensure that all users of the Law interpret this article in the same manner.
48. Article 15 par 5 states that public officials and staff of public associations shall be liable in case they disclose information on victims or withhold assistance. In order to ensure the proper applicability of this provision, it is recommended to specify which criminal or administrative offence such action would fulfil, or the consequences this would entail.
49. Article 16 contains state guarantees to trafficking victims, including security measures and guarantees for stateless or foreign victims of trafficking. Under Article 16 par 3, a trafficking victim is not held liable for any action regarded as an administrative offence if the offence was committed due to circumstances caused by human traffickers. It is not clear whether such protection also applies in cases where criminal acts were committed. In order to ensure full protection for trafficking victims, this should be clarified in Article 16.
50. Article 19 covers special judicial proceedings with regard to cases of trafficking in human beings, focusing on making restitution/compensation to trafficking victims. In addition to protecting victims of trafficking through closed court procedures, it is recommended to foresee other court protection mechanisms, either in this Law or in other legislation, such as witness testimonies behind a screen or in a separate room with an audio link to the courtroom, possibly using voice distortion mechanisms. Also, in order to reduce the possibility of witness intimidation, it is recommended to have separate pathways and entry points to the courtroom for victims on the one hand and perpetrators on the other. Keeping contact between the victim and the perpetrator at a minimum will ensure a greater cooperation on the side of the victim, who will feel safe enough to speak openly about the potentially criminal actions in question²⁸.
51. Furthermore, if such an institution does not already exist, it would be essential for the competent authorities in Turkmenistan to create a fund for victims of crime. That way, even if it is not possible for victims of trafficking (or other serious crimes) to be compensated by the perpetrator, they would still receive some form of compensation for their suffering. The financing of shelters for victims and training for officials to

²⁸ See the OSCE Action Plan to Combat Trafficking in Human Beings, III, 4.1, which speaks of OSCE participating States taking appropriate measures to provide effective protection from potential retaliation or intimidation of witnesses.

assist victims of human trafficking could also be borne by this fund. It is recommended to debate the establishment of such a fund, should this not exist already.

5. Conclusion

52. While parts of this Law do adhere to international standards that the Republic of Turkmenistan has committed to uphold, other parts discussed in these Comments would benefit from some review. It is recommended that the relevant stakeholders in the Republic of Turkmenistan review and discuss this piece of legislation, with a view to bringing it closer to international agreements and commitments. In particular, if such a review is initiated, it is essential that the practical implementation of anti-trafficking activities and the overall coordination between different state and non-state actors be reviewed as well.
53. Should the Republic of Turkmenistan agree to review this Law and discuss possible revisions, the OSCE/ODIHR stands ready to assist in this undertaking.

[END OF TEXT]

Annex 1: Unofficial Translation by the OSCE Centre in Ashgabat

LAW OF TURKMENISTAN “On Combating Trafficking in Persons”

This law sets forth the legal and organizational basics of trafficking in persons in Turkmenistan and aims at ensuring the security of person and protection against human trafficking as guaranteed by the state

Section I. General Provisions

Article 1. Basic Concepts

The following basic concepts are used in the law:

trafficking in persons – a set of actions, such as recruitment, purchase, sale, transportation within one or several countries, handing over or holding a person or a group of people by threatening to use force or using force, trapping them into bonded labour or other forms of coercion, abduction, deception, fraud, abuse of power, or by using their vulnerability, adopting children for commercial purposes, or by offering payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation;

human trafficker – physical or legal entity committing any actions related to trafficking in persons either independently or together with other people, as well as a public official who, either by their actions or the lack thereof, promotes trafficking in persons without counteracting or suppressing it, which they are supposed to do due to their official duties;

trafficking victim – a person who suffered as a result of trafficking in persons, irrespective of whether or not this person consented to his or her transportation, transfer, sale or other actions related to trafficking;

recruitment – taking on or hiring other people to do a certain work, attracting them for some activities, including illegal ones, or involving them in some organization, including those organizations which are prohibited by law;

forced labour – any work or services required of a person under the threat of punishment or by other means of coercion to which this person did not consent voluntarily;

exploitation – forced labour or services, servitude or customs relates to servitude, servile status or removal of human organs and/or tissues, and other forms of exploitation for the purpose of committing sexual actions;

slavery – a status or the state of a person treated with some or all powers pertaining to the right of property;

debt-bondage – a condition or a state under which the debtor pledges his personal labour or the labour of someone dependent on them in order to pay off their debts, if the value of such work does not count toward redeeming the debt, or if such work is not limited in time, or if the nature of this work and compensation for it are not defined;

surrogate mother – a woman who delivers a child as result of using a medical method of artificial insemination or implantation of an embryo to act as a gestational carrier;

combating trafficking in persons – a set of activities meant to prevent, detect, suppress and minimize the consequences of trafficking in persons, as well as to provide assistance to trafficking victims;

crimes related to trafficking in persons – crimes laid down in the Criminal Code of Turkmenistan.

Article 2. Legislation of Turkmenistan on trafficking in persons

1. Legislation of Turkmenistan on combating trafficking in persons shall be based on the Constitution of Turkmenistan and consist of this law and other regulatory and legal

frameworks of Turkmenistan regulating the issue of trafficking in persons.

2. If any of international treaties to which Turkmenistan is a party contains other provisions than the ones envisaged in this law, such provisions shall be preferred.

Article 3. State policy of Turkmenistan on combating trafficking in persons

The state policy of Turkmenistan on combating trafficking in persons shall be aimed at addressing the following tasks: to ensure the implementation of one common policy on combating trafficking in persons; to protect individuals and society against trafficking in persons; to improve legislation on trafficking in persons; to regulate all relations arising in the course of combating trafficking in persons; to prevent, detect and suppress any activities on trafficking in persons; to create favourable conditions for physical, psychological and social rehabilitation of persons who fell victim to trafficking in persons; and to implement Turkmenistan's international obligations on combating trafficking in persons.

Article 4. Key principles of combating trafficking in persons

Combating trafficking in persons shall be based on the following principles: ensuring the rule of law in the area of combating trafficking in persons; irrevocability of bringing human traffickers to justice; non-discrimination of trafficking victims; ensuring a safe and fair treatment of trafficking victims; simultaneous use of legal, political, medical, social, economic, preventive and informational measures; and cooperation with public associations and international organizations.

Article 5. Methods and forms of exploitation to which trafficking victims are subject

1. Exploitation of trafficking victims may be carried out through the following means: physical coercion along with violence and/or narcotic and psychoactive substances, alcohol and other potent agents; economic coercion in the form of debt-bondage or other financial dependence, including servitude or conditions similar to servitude; psychological persuasion by means of blackmailing, deceiving, deluding or threatening to use violence; and legal dependence as a result of adoption, guardianship or entry into marriage without the purpose of starting a family.

2. Exploitation of trafficking victims may be of the following types: exploitation of physiological organs and tissues of humans for the purpose of transplantation; exploitation of a woman as a surrogate mother; exploitation of human labour in daily economic activities (household and daily services), production, agricultural works and illegal business (involvement in armed groups or production of illicit goods); sexual exploitation; and exploitation of a person for the purpose of using them for armed conflicts or military actions.

3. In case a trafficking victim consented to some form of exploitation within any specific action related to trafficking in persons, such consent shall be disregarded provided that any type of influence related to trafficking in persons was inflicted on a person.

Section II. Basics of activities on combating trafficking in persons

Article 6. State bodies implementing their activities in the area of combating trafficking in persons

1. State bodies implementing their activities in the area of combating trafficking in persons shall be the Prosecutor-General's Office of Turkmenistan, Ministry of the Interior, Ministry of National Security, Ministry of Foreign Affairs, State Border Guard Service, State Service on Registration of Foreign Nationals and other government agencies as provided for by their jurisdiction.
2. Control over the activities of state bodies on combating trafficking in persons shall be vested in the Cabinet of Ministers of Turkmenistan.

Article 7. State body coordinating all activities on combating trafficking in persons

1. The state body responsible for coordinating all activities on combating trafficking in persons shall be the Prosecutor-General's Office of Turkmenistan.
2. The following authority shall be conferred upon the Prosecutor-General's Office of Turkmenistan:
 - 1) enforcing the state policy on combating trafficking in persons;
 - 2) organizing and carrying out activities aimed at identifying and eliminating the causes of trafficking in persons more efficiently;
 - 3) overseeing the accurate and smooth enforcement of this law and other regulatory and legal frameworks of Turkmenistan on combating trafficking in persons;
 - 4) coordinating the activities of other public bodies on combating trafficking in persons and supervising the work of specialized agencies listed in Article 11 of this law;
 - 5) participating in developing international agreements of Turkmenistan on combating trafficking in persons;
 - 6) formulating proposals on improving Turkmenistan's legislation in the area of trafficking in persons;
 - 7) implementing activities on raising public awareness about the issue of trafficking in persons;
 - 8) submitting annual reports to the Cabinet of Ministers of Turkmenistan on activities in the area of combating trafficking in persons;
 - 9) exercising other authorities related to combating trafficking in persons.
3. State agencies implementing their activities in the area of combating trafficking in persons shall provide any new information on cases of trafficking in persons to the Prosecutor-General's Office of Turkmenistan.

Article 8. Authority of state bodies implementing their activities on combating trafficking in persons

1. The Ministry of the Interior in Turkmenistan shall combat trafficking in persons by preventing, detecting and suppressing crimes, as well as collecting, analyzing, and generalizing information on the scale, current condition and trends of trafficking in persons through disclosing and destroying links between individuals and organized crime groups involved in trafficking in persons and acting in Turkmenistan.
2. The Ministry of National Security of Turkmenistan, within its authority, shall combat trafficking in persons by detecting any possible links between international terrorist organizations and organized crime groups, on the one hand, and human traffickers, on the other.
3. The Ministry of Foreign Affairs of Turkmenistan, as well as diplomatic missions and consular services of Turkmenistan in other countries, shall ensure the protection of rights and interests among Turkmen nationals abroad who fall victim to trafficking in persons.
4. The State Border Guard Service of Turkmenistan shall combat trafficking in persons by preventing, detecting and suppressing any attempts by human traffickers to cross the state border of Turkmenistan illegally, as well as illicit transportation of trafficking victims through the state border.
5. The State Service on Registration of Foreign Nationals of Turkmenistan shall combat trafficking in persons by detecting and suppressing any attempts by human traffickers to pass through migration control posts at the state border of Turkmenistan, dispatching trafficking victims who are foreign nationals outside the country, and taking measures to assist trafficking victims.

Article 9. Facilitation to state bodies implementing their activities on combating trafficking in persons

Public administration institutions, local executive and self-governance bodies, public foundations, public officials and common citizens shall facilitate the state bodies in their efforts to curb trafficking in persons.

Section III. Prevention of trafficking in persons

Article 10. Activities on preventing trafficking in persons

1. State bodies implementing their activities on combating trafficking in persons shall put in efforts to prevent trafficking in persons.
2. A set of measures aimed at preventing trafficking in persons shall include the following:
 - 1) conducting monitoring activities on the issue of trafficking in persons;
 - 2) developing and carrying out programmes aimed at preventing trafficking in persons;
 - 3) raising public awareness about dangerous situations that potential trafficking victims may confront, the protection provided by the state and specialized institutions, as well as criminal prosecution and administrative punishment initiated by the state to counteract trafficking in persons;

- 4) developing and implementing educational programmes meant to prevent trafficking in persons and to reduce the risk of becoming a trafficking victim;
- 5) collaboration with public foundations working in the area of combating trafficking in persons;
- 6) other measures provided for in the legislation of Turkmenistan.

Section IV. Specialized institutions for supporting and assisting trafficking victims

Article 11. Establishment of specialized institutions for supporting and assisting trafficking victims

1. To provide protection and assistance to trafficking victims, specialized institutions for supporting and assisting trafficking victims (hereinafter specialized institutions) may be set up, as established by the Cabinet of Ministers of Turkmenistan.
2. Public foundations counteracting trafficking in persons may be involved in establishing specialized institutions mentioned in Item 1 of this article.
3. Sources of finance to implement the activities of specialized institutions shall be determined by the Cabinet of Ministers of Turkmenistan.

Article 12. Major functions of specialized institutions

1. The following shall be the major functions of specialized institutions:
 - 1) providing trafficking victims with easily understood information about a number of legal and organizational activities meant to protect their interests;
 - 2) providing medical, psychological, legal and other types of assistance to trafficking victims;
 - 3) helping trafficking victims to become re-integrated in their families and society;
 - 4) providing trafficking victims with temporary refuge.
2. Temporary refuge in specialized institutions shall be provided to a trafficking victim up to one month following their personal request.
3. In case of a need for testimonies against human traffickers, the time in refuge established in Part 2 of this article may be prolonged for the course of a case, if requested by an investigation agency, a prosecutor or court, following the request of a trafficking victim to give testimony or a justified motion of a person who suffered as a result of trafficking in persons.

Section V. Assistance to trafficking victims and their protection

Article 13. Social rehabilitation of trafficking victims

1. Social rehabilitation of trafficking victims shall be carried out to help them return to the normal way of living, which includes legal assistance to such individuals, as well as their medical, psychological, professional rehabilitation and employment.
2. Social rehabilitation of trafficking victims shall be carried out as determined by the Cabinet of Ministers of Turkmenistan.

Article 14. Providing assistance to child victims of trafficking

1. Assistance to child victims of trafficking shall be provided in accordance with the legislation of Turkmenistan and relevant international treaties ratified by Turkmenistan.
2. If state bodies implementing their activities on combating trafficking in persons or specializes institutions receive some information about a child victim of trafficking, they, as established by the legislation of Turkmenistan, shall protect the rights of the child by notifying appropriate agencies dealing with guardianship immediately.
3. In case child victims of trafficking are provided refuge in specialized institutions, they shall be placed separately from adults.

Child victims of trafficking who are provided refuge in specialized institutions shall have an opportunity to attend public educational facilities, as established by the legislation of Turkmenistan.

4. In case a child victim of trafficking is deprived of parental guardianship or does not possess any information about the whereabouts of his or her family, measures shall be taken to find the child's family or to put him or her in ward, as established by the legislation of Turkmenistan.

Article 15. Measures on protecting trafficking victims

1. Any access to personal information about a trafficking victim shall be denied by directory services based on the resolution of a special undercover investigation agency, an inquiry officer, investigator, prosecutor or court.
2. Disseminating information about trafficking victims or about specific circumstances of trafficking in persons that may pose a threat to life or health of a trafficking victim or their family members, as well as information about individuals facilitating the combat against trafficking in persons, shall be prohibited.
3. In case of a serious danger to life and health of a trafficking victim, this person shall have the right to change his or her first, last and patronymic names, as established in the legislation of Turkmenistan.
4. Disclosing information about security measures and confidential information about trafficking victims, as well as the results of a preliminary investigation and security measures taken with regard to all parties of a criminal proceeding, shall be prohibited.
5. Public officials working in public administration bodies, local executive and self-governance offices, as well as staff members of public associations, who are involved in combating trafficking in persons shall be held liable for disclosing confidential information about trafficking victims or refusing to provide assistance to such persons, as established in the legislation of Turkmenistan.

Article 16. State guarantees to trafficking victims

1. An inquiry officer, investigator, prosecutor and court shall undertake security measures, as provided for in the legislation of Turkmenistan, with regard to a trafficking victim who expressed his or her willingness to cooperate with investigation

and inquiry agencies for the purpose of finding suspects involved in trafficking in persons.

2. In case a foreign national or a stateless person who becomes a trafficking victim is considered as such in accordance with the Criminal and Procedural Code of Turkmenistan and acts as a witness in a criminal case, or provides assistance to law enforcement agencies, he or she, following a justified motion of an inquiry officer, investigator, prosecutor and court, shall not be forced to leave the country until the criminal case is finished and a final judicial decision is made with regard to those charged with trafficking in persons. Such a trafficking victim shall be given the right to a temporary stay in Turkmenistan, irrespective of how he or she entered the country.
3. A trafficking victim shall not be held liable for any action regarded as administrative offence if such offence was committed due to circumstances caused by human traffickers.

Article 17. Obligations of Turkmenistan’s diplomatic missions and consular services abroad in protecting and providing assistance to trafficking victims

1. Diplomatic missions and consular services of Turkmenistan abroad shall ensure the protection of rights and interests of Turkmen nationals who fall victim to trafficking in persons in the receiving country, and facilitate their return to Turkmenistan.
2. In case it is impossible to take away the documents from human traffickers proving that trafficking victims are Turkmen nationals or such documents are lost, diplomatic missions and consular services of Turkmenistan shall issue and provide such individuals with documents that will enable them to return to Turkmenistan.
3. According to the legislation of Turkmenistan and that of the receiving country, diplomatic missions and consular services of Turkmenistan shall provide information about Turkmenistan’s legislation on trafficking in persons to relevant bodies of the receiving state, and spread information about the rights of trafficking victims among relevant individuals.

Section VI. International cooperation in the area of combating trafficking in persons

Article 18. International cooperation in the area of combating trafficking in persons

1. Turkmenistan, pursuant to the norms and principles of international law, shall cooperate with foreign states and their relevant agencies on the issue of trafficking in persons, as well as with international organizations combating trafficking in persons and promoting the protection of rights and legal interests belonging to trafficking victims.
2. Guided by its aspiration to ensure the security of person, society and the state, and given the transnational nature of trafficking in persons, Turkmenistan shall prosecute those involved in trafficking in persons on its territory, including cases when trafficking in persons or some of its stages took place outside Turkmenistan, caused damage to Turkmen citizens or foreign nationals, and other cases provided for by international treaties ratified by Turkmenistan.

Section VII. Final Provisions

Article 19. Specific judicial proceedings with regard to cases of trafficking in persons

Cases on crimes related to trafficking in persons and cases on making restitution to trafficking victims may be considered within closed judicial proceedings, as established by the legislation of Turkmenistan.

Article 20. Liability for trafficking in persons

1. Physical and legal entities involved in crimes related to trafficking in persons shall be held liable in accordance with Turkmenistan's legislation.
2. In case a court detects cases of trafficking in persons through a legal entity in Turkmenistan intentionally covering trafficking in persons, such legal entity shall be eliminated following the resolution of a local court.
3. In case of recognizing a legal entity belonging to another country (its representative office or branch) by court as an organization involved in trafficking in persons, the court shall issue a resolution prohibiting the activities of such legal entity in Turkmenistan, and all its representative offices and subsidiaries in Turkmenistan shall be closed down.
4. All assets of a legal entity (its representative office or branch) mentioned in Item 2 and 3 of this article which were obtained through illegal means shall be seized and given to the state following a court resolution.

**President of
Turkmenistan
Gurbanguly
Berdimuhamedow**

*Ashgabat
14 December 2007
Ref. No. 155-III*

Annex 2: Unofficial Translation by the OSCE Centre in Ashgabat

**CRIMINAL CODE OF TURKMENISTAN
(Excerpt)**

Article 129.1 Trafficking in human beings

(1) Trafficking in human beings, *i.e.* the purchase/ sale of a person, or his/ her recruiting, transportation, harbouring or transfer to another person, committed for the purpose of his/ her exploitation, shall be punishable by deprivation of liberty for a term from four to ten years.

(2) The same act committed:

- a) against two or more persons;
- б) against a person who is known to the perpetrator to be a minor;
- в) with the use of official powers;
- г) related to illegally moving the abducted person across the State Border of Turkmenistan or illegally keeping him/ her outside the State Border of Turkmenistan;
- д) with the use of violence or threat of using thereof;
- e) for the purpose of extracting organs and tissues from the abducted person for transplantation

shall be punishable by deprivation of liberty for a term from eight to fifteen years.

(3) The acts mentioned by parts one or two of this Article:

- a) if they have resulted in the victim's death by negligence or infliction of grave bodily harm upon the victim or other grave consequences;
- б) committed in a manner endangering the lives and health of several persons;
- в) committed by a criminal group or by a criminal organization

shall be punishable by deprivation of liberty for a term from fifteen to twenty five years.

Note

1. A person who has committed the act specified in part one and paragraph “a” of part two of this Article, voluntarily freed the victim and assisted in investigation of the committed crime shall be relieved from criminal responsibility, provided that there is no other *corpus delicti* in his acts.

2. Under this Article, exploitation of a person shall mean his/ her use by other persons for the purpose of engagement in prostitution or other forms of his/ her sexual exploitation, slave labour (services), and servitude.