



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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**Committee against Torture**

**Consideration of reports submitted by States  
parties under article 19 of the Convention**

**Initial reports of States parties due in 2000**

**Turkmenistan\***

[9 March 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. Introduction

1. The Government of Turkmenistan has made cooperation with international organizations, and especially the United Nations, a foreign policy priority and, it has expressed its unswerving commitment to fulfilling its international obligations. In this respect, it is conducting an open and constructive dialogue with all United Nations human rights mechanisms. The present report is based on materials from the ministries, State committees and departments of Turkmenistan whose responsibilities include addressing issues related to guaranteeing and realizing human rights and responding to information from voluntary organizations. Pursuant to a presidential order of 24 August 2007, the preparation of national reports on the status of implementation of international human rights instruments for submission to the United Nations treaty bodies has been entrusted to an Interdepartmental Commission on compliance with Turkmenistan's international human rights obligations. In accordance with presidential order No. 10345 of 10 April 2009, the Commission continues to be composed of the Director of the Institute of State and Law in the Office of the President, representatives of the Ministry of Internal Affairs, the Ministry of the Economy and Development, the Chief Justice of the Supreme Court and the Procurator-General. The Interdepartmental Commission includes representatives of the parliament (*Majlis*) of Turkmenistan, the Ministry of Foreign Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Office of the Procurator-General, the Supreme Court, the Ministry of the Economy and Development, the Ministry of Education, the Ministry of Health and the Medical Industry, the Ministry of Social Welfare, the Ministry of Culture and Television and Radio Broadcasting, the Council on Religious Affairs in the Office of the President, the State Statistics Committee, the National Institute of Democracy and Human Rights in the Office of the President, the Institute of State and Law in the Office of the President, the National Trade Union Centre, the Gurbansoltan-eje Women's Union and the Makhtumkuli Youth Organization. Efforts to familiarize the general public with the content of the report began during drafting. The Commission held a number of interdepartmental meetings and consultations with international experts invited by United Nations agencies. A draft report was sent to ministries, State committees and departments, and voluntary organizations, whose comments and wishes were taken into account in the preparation of the final version. The report presents a brief overview of the situation in Turkmenistan, which is undergoing wide-ranging reforms in the following areas: harmonization of national legislation with the international norms to which Turkmenistan is a party; reinforcement of national capacity to monitor and protect human rights; improvement of the living conditions of the population, particularly in rural areas; enhancement of public awareness of and access to human rights through the establishment of legal advice bureaux providing legal services; and strengthening of the mechanism for considering communications and reports from citizens alleging violations of their rights. Recently, Turkmenistan has taken many practical measures focusing on the human dimension. To improve the procedure for considering complaints from citizens about actions by law enforcement agencies and to put into practice the principles of the rule of law and the equality of all citizens before the law, on 19 February 2007 the President of Turkmenistan established a State commission in his Office to consider such complaints. This constituted the first step towards a reform of the Turkmen legal system.

## II. Articles

### Article 1

2. In Turkmenistan, the human being is the paramount value of society and the State. The State is responsible to every citizen, ensures conditions permitting the free development of the individual and protects the life, honour, dignity, liberty, individual inviolability and natural and inalienable rights of citizens (article 3 of the Constitution of 18 May 1992 in the new version of 26 September 2008). Under article 6 of the Constitution, Turkmenistan, as a full-fledged member of the international community, pursues a foreign policy based on the principles of permanent neutrality, non-interference in the internal affairs of other countries, renunciation of the use of force and of participation in military blocs and unions, and promotion of peaceful, friendly and mutually advantageous relations with the countries of the region and States throughout the world. Turkmenistan recognizes the primacy of universally accepted norms of international law. If an international agreement concluded by Turkmenistan provides otherwise than domestic law, the provisions of the international agreement are applied.

3. Human rights and freedoms are inviolable and inalienable. No one may deprive a person of any rights or freedoms or restrict his rights or freedoms unless the Constitution or the law otherwise provides (Constitution, art. 18).

4. Article 23 of the Constitution stipulates that no one may have their rights restricted or be deprived of their rights, sentenced or punished except in strict accordance with the law. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to medical treatment (with drugs or by a physician) or other experiments against their will. A citizen may be detained by court order or with a procurator's approval only on grounds clearly prescribed by law. In circumstances that admit of no delay, as specifically prescribed by law, duly empowered State bodies are entitled to detain citizens on a temporary basis.

5. In accordance with article 43 of the Constitution, citizens are guaranteed judicial protection of their honour and dignity and of their personal, political, human and civil rights and freedoms as stipulated by the Constitution and the law. Citizens have the right to file complaints in court regarding decisions and actions of State bodies, voluntary associations or officials.

6. Citizens have the right to claim damages in a court of law for material or moral harm caused by illegal actions of State bodies, other organizations or their officials, as well as by private persons (Constitution, art. 44).

7. No one may be forced to give evidence or testimony against himself or his close relatives. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force (Constitution, art. 45).

8. The new Code of Criminal Procedure adopted by the Turkmen parliament on 18 April 2009 in accordance with international standards for the administration of criminal justice reflected the norm prohibiting decisions and actions in criminal proceedings which are humiliating or degrading for a participant.

9. The aim and principles of criminal proceedings are set out in article 7 of the Code of Criminal Procedure. In accordance with the Code, the aim is to detect crimes swiftly and fully, identify the perpetrators and ensure that the law is correctly applied so that anyone who commits a crime is justly punished and innocent persons are not prosecuted and convicted. Criminal proceedings must protect against unwarranted indictment or conviction

and the unlawful restriction of individual rights and freedoms and must also help strengthen legality and law enforcement, prevent and eradicate crime and promote respect for the law.

10. Legality is one of the basic tenets of the Code and is reflected in article 9. The person or body conducting the initial inquiry, the investigator, the procurator and the court must rigorously comply with the requirements of the Code of Criminal Procedure in the course of the criminal proceedings. The prosecuting authorities and the court may not violate the law. Violation incurs legal responsibility; the unlawful acts are declared invalid and are annulled.

11. The courts alone are responsible for the administration of justice in criminal matters. Anyone who misappropriates the powers of the court incurs liability in accordance with the law. No one may be found guilty of a crime and subjected to criminal sanctions otherwise than by a court judgement and in strict conformity with the law. The competence of the court, the limits on its jurisdiction and the procedure for criminal proceedings are defined by law and may not be modified arbitrarily. The establishment of extraordinary tribunals and other bodies vested with the powers of a criminal court, regardless of their name, is prohibited. Sentences or other decisions by a court conducting criminal proceedings in a case over which it does not have jurisdiction or in which it exceeds its authority or violates in another manner the principles of criminal justice set out in the Code of Criminal Procedure are illegal and subject to annulment.

12. Pursuant to article 12 of the Code, harm caused to a person as a result of unlawful actions of the bodies conducting the criminal proceedings is subject to compensation in accordance with the law. No one participating in criminal proceedings may use force or cruel or degrading treatment. A person who is remanded in custody as a preventive measure or held on suspicion of committing a crime must be detained in conditions which do not endanger his life or health. Harm caused to a person as a result of illegal deprivation of liberty, detention in conditions endangering life or health, or cruel treatment is subject to compensation in accordance with the Code.

13. The person conducting the initial inquiry, the investigator, the procurator and the court must take all steps prescribed by law to ensure that the circumstances of a case are thoroughly, fully and objectively investigated and to identify all facts that either incriminate or exonerate the accused person as well as mitigating and aggravating circumstances. A deposition from a suspect, accused person, defendant or other participants in the proceedings may not be obtained by force, threat or other illegal means.

14. The Code of Criminal Procedure sets out the principles of criminal law of Turkmenistan. Criminal law is based on the principles of legality, equality of citizens before the law, criminal liability, justice and humanity. The criminal nature of an act, its punishment and other penal consequences are defined in criminal law. A person is criminally liable only for those acts (or omissions) which have had harmful consequences, with regard to which his guilt is determined. No one may be found guilty of a crime and incur a criminal sanction except pursuant to a court judgement and in accordance with the law. Persons who have committed offences are equal before the law and may be held criminally liable irrespective of their sex, race, ethnic background, material circumstances, profession, attitude towards religion, beliefs or membership of voluntary organizations. Punishment and other penal measures which may be imposed on a person who committed an offence must be fair and strictly in keeping with the gravity and circumstances of the offence and the personality of the perpetrator. Punishment and other penal measures imposed on persons who commit an offence may not aim to cause physical suffering or humiliation.

15. If a person who has committed an offence is harmed while being arrested for surrender to the authorities to prevent the commission of further offences, it does not

constitute an offence if the person resisted arrest, if there was no other way of making the arrest, and if excessive measures were not permitted. Measures taken to arrest a person who has committed an offence that are clearly inconsistent with the nature and danger of the act or with the circumstances of the arrest are regarded as excessive when the person concerned needlessly suffers inordinate harm that is manifestly inconsistent with the situation. Excessive measures are punishable only if the harm caused was deliberate.

16. Criminal law prohibits abuse of power — the use by an official of his powers in a manner prejudicial to the interests of the service if the act is committed for gain or other personal motives or entails serious violations of the rights and legal interests of citizens, organizations or the State — is punishable by deprivation of the right to hold certain posts or engage in certain activities for up to 5 years, a fine of 20 to 40 average monthly salaries, corrective labour for up to 2 years or deprivation of liberty for up to 3 years. If the act has serious consequences, it is punishable by deprivation of liberty for up to 8 years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to 3 years, or the obligation to live in a specific area for 5 to 8 years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to 3 years (Criminal Code, art. 181).

17. Exceeding of authority — acts committed by an official that go clearly beyond the boundaries of his official functions and entail serious violations of the rights and legal interests of citizens or organizations or of the legally protected interests of society or the State — is punishable by deprivation of the right to hold certain posts or engage in certain activities for up to 5 years, a fine of 20 to 40 average monthly salaries, corrective labour for up to 2 years or deprivation of liberty for up to 3 years. In accordance with the Criminal Code, if the act is accompanied by actions that violate the personal dignity of the victim, is committed with physical violence, is committed with weapons or special devices or had serious consequences, it is punishable by deprivation of liberty for 3 to 8 years, with deprivation of the right to hold certain posts or engage in certain activities for up to 3 years, or the obligation to live in a specific area for 5 to 8 years with deprivation of the right to hold certain posts or engage in certain activities for up to 3 years (Criminal Code, art. 182).

18. Turkmenistan has acceded to the following international agreements:

- The International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights (Turkmen parliamentary order No. 190-1 on accession of 20 December 1996)
- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (Turkmen parliamentary order of 28 December 1999)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Turkmen parliamentary order No. 372-1 on accession of 30 April 1999)
- Agreement between Turkmenistan and the Russian Federation on the transfer of persons sentenced to deprivation of liberty for serving of sentence (ratification by the Turkmen parliament on 15 June 1995)
- The Agreement between Turkmenistan and the Republic of Belarus on the mutual transfer of persons sentenced to deprivation of liberty for further serving of sentence (ratification by the Turkmen parliament on 5 July 2002)
- The Agreement between Turkmenistan and the Republic of Uzbekistan on the transfer of persons sentenced to deprivation of liberty for further serving of sentence (ratification by the Turkmen parliament on 18 April 2009)

## Article 2

19. Turkmen policy gives priority to protecting the interests of the individual. This is set out in article 3 of the Constitution, pursuant to which the human being is the highest value of society and the State.

20. In accordance with legislation in force, protection against torture and other cruel, inhuman or degrading treatment or punishment is guaranteed by:

- The Constitution
- The Criminal Code
- The Code of Criminal Procedure
- The Code of Administrative Offences and other laws and regulations

21. The Constitution prohibits torture and other cruel, inhuman or degrading treatment or punishment. Article 23 of the Constitution provides that no one may be restricted in or deprived of their rights or sentenced or punished except in strict compliance with the law. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to medical treatment (with drugs or by a physician) or experiments without their consent.

22. Citizens are guaranteed legal protection of their honour and dignity and the individual and political human and civil rights and freedoms set out in the Constitution and the law. Citizens may challenge before a court of law the decisions and actions of State bodies, other organizations and officials (Constitution, art. 43).

23. Citizens have the right to claim in a court of law damages for material and moral harm caused by illegal actions of State bodies, other organizations or their officials, as well as by private persons (Constitution, art. 44).

24. Under article 45 of the Constitution, no one may be forced to give evidence or testimony against himself or his close relatives. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force.

25. Citizens have the right to claim in a court of law damages for material and moral harm caused by illegal actions of State bodies, other organizations or their officials, as well as by private persons (Constitution, art. 44).

26. The new Criminal Code came into force on 1 January 1998. It is based on the Constitution and universally recognized principles and norms of international law (Criminal Code, art. 1, para. 1). Article 1, paragraph 1, of the Code is in line with article 6, paragraph 2, of the Constitution, pursuant to which Turkmenistan recognizes the primacy of generally accepted norms of international law. Where an international agreement concluded by Turkmenistan provides otherwise than domestic law, the provisions of the international agreement are applied.

27. The articles of the Criminal Code specifically regulate the criminal liability of State officials for acts that exceed their official authority. Article 182 of the Criminal Code defines the offence of exceeding authority.

28. Article 182 provides that exceeding authority, namely the commission of acts by an official which go clearly beyond his official powers and entail serious violations of the rights and legal interests of citizens, organizations or the legally protected interests of society or State, is punishable by deprivation of the right to hold certain posts or engage in certain activities for up to 5 years, a fine of 20 to 40 average monthly salaries, corrective labour for up to 2 years or deprivation of liberty for up to 3 years.

29. Exceeding of authority is one form of abuse of power. The difference between this offence and other forms of official misconduct is that it is clearly outside the scope of an official's authority.
30. In accordance with national legislation, an order by a superior or a State body may not serve as justification for torture.
31. The aim of punishment and other penal measures imposed on offenders may not be to cause physical suffering or humiliate (Criminal Code, art. 3, para. 7).
32. The carrying out of an order or other instruction known to be illegal incurs criminal liability, but may be recognized as a mitigating circumstance (Criminal Code, art. 42, para. 3).
33. Failure to carry out an order or other instruction known to be illegal does not incur criminal liability (Criminal Code, art. 42, para. 4).
34. In addition, measures to prevent torture and other forms of inhuman treatment and punishment are provided for in connection with the following offences:
- Inducement to suicide and forcing of suicide (Criminal Code, art. 106)
  - Intentionally causing serious bodily harm (Criminal Code, art. 107, para. 2)
  - Intentionally causing moderate bodily harm (Criminal Code, art. 108, para. 2)
  - Battery (Criminal Code, art. 112)
  - Torture (Criminal Code, art. 113)
  - Threat of murder or serious bodily harm (Criminal Code, art. 116)
  - Abduction (Criminal Code, art. 126)
  - Unlawful deprivation of liberty (Criminal Code, art. 129)
  - Forced medical treatment of a person known to be healthy (Criminal Code, art. 131, para. 1)
  - Hostage-taking (Criminal Code, art. 130)
  - Abuse of power (Criminal Code, art. 181)
  - Exceeding of authority (Criminal Code, art. 182)
  - Criminal prosecution of a person known to be innocent (Criminal Code, art. 193)
  - Forced confessions (Criminal Code, art. 197)
  - Unlawful arrest, detention or remand in custody (Criminal Code, art. 195)
  - Subornation or coercion of a false testimony or submission or an incorrect translation (Criminal Code, art. 203)
  - Violation of rules of conduct among military service personnel of equal rank (Criminal Code, art. 340)
  - Abuse of power or office (Criminal Code, art. 358)
35. The new Code of Criminal Procedure, which entered into force on 1 July 2009, enables the provisions set out in the Criminal Code to be put into effect.
36. With the entry into force of the provisions of the new Code of Criminal Procedure, the Turkmenistan SSR Code of Criminal Procedure adopted by the act of 22 December 1961 became inoperative.

37. The aim of criminal proceedings is to detect crimes swiftly and fully, identify the perpetrators and ensure that the law is correctly applied so that anyone who commits a crime is justly punished and innocent persons are not prosecuted and convicted (Code of Criminal Procedure, art. 7, para. 1).

38. The new Code of Criminal Procedure is the basis for the law of criminal procedure, which establishes and regulates the system of criminal justice. The adoption of the new Code is linked above all to progressive social and political reforms at the national scale and is expected to ensure the effective protection of civil rights and freedoms and help create the necessary conditions for further enhancing the norms of criminal procedure on the basis of democratic values.

39. One of the new preventive measures contained in the new Code of Criminal Procedure is the granting of bail (art. 147).

40. Other notable features of the new Code include the possibility of instituting action against persons enjoying privileges and immunity from criminal prosecution (chap. 50) and of providing assistance in criminal cases to the investigation authorities and courts of States with which Turkmenistan has concluded international or bilateral legal cooperation agreements (chap. 52).

41. The above-mentioned provisions of the new Code of Criminal Procedure were not contained in the previous Code.

42. Under article 46 of the Constitution, a law which worsens the situation of a citizen may not be applied retroactively. No one may be held accountable for actions not characterized as offences at the time of their commission. Under article 6 of the Criminal Code, a law which improves an offender's situation by abolishing an offence, reducing an applicable penalty or in other ways has retroactive effect, i.e. it applies to persons who committed the offence in question before the entry into force of the law, including persons serving a sentence and persons who have served a sentence and have a criminal record as a result. A law which makes a particular act an offence, increases an applicable penalty or otherwise worsens a person's situation may not be enforced retroactively.

43. If a new law reduces the penalty of an offence while an offender is serving a sentence for that offence, the penalty may be reduced in accordance with the limits set by the new law.

44. Guided by the ideals of the Turkmen people and universally recognized norms of international law, the society and State of Turkmenistan place the highest value on the human being. Ensuring human rights and freedoms in their entirety is at the core of State policy.

45. Steadily pursuing the ongoing democratization of the State and public life, guided by the principle that human life is the highest social value and by the ideals of decency, justice and humanity, and as part of the practical implementation of the natural and inalienable right to life, Turkmenistan adopted the Act of 6 January 1999 declaring a moratorium on the enforcement of the death penalty as a means of punishment. The death penalty was subsequently abolished by a presidential decree of 28 December 1999. The requirements under the above-mentioned legal provisions are reflected in article 22 of the Constitution.

46. In accordance with article 3 of the Constitution, the State is responsible to every citizen, creates conditions permitting the free development of the individual and protects the life, honour, dignity, liberty, personal inviolability and natural and inalienable rights of citizens.

47. No one participating in criminal proceedings may be subjected to violence or cruel or degrading treatment (Code of Criminal Procedure, art. 13, para. 4).
48. No one may be found guilty of an offence or subjected to a criminal penalty except in accordance with a court judgement and in strict conformity with the law (Code of Criminal Procedure, art. 10, para. 2).
49. A person who is remanded in custody as a preventive measure or has been arrested on suspicion of committing a crime must be detained in conditions which do not endanger his life or health (Code of Criminal Procedure, art. 13, para. 6).
50. Injury caused to a person as a result of an unlawful deprivation of liberty, detention in conditions dangerous to life and health, or cruel treatment is entitled to compensation in accordance with the Code (Code of Criminal Procedure, art. 13, para. 7).
51. No one may be obliged to testify against himself or his close relatives. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force (Code of Criminal Procedure, art. 25, para. 1).
52. In accordance with the law, the Procurator-General and his subordinate procurators monitor compliance with the law in pretrial detention facilities (Code of Criminal Procedure, art. 187).
53. Detainee complaints, statements and letters are examined by the administration of the pretrial detention facility. Complaints, statements and letters addressed to the procurator are not subject to inspection and are forwarded within 24 hours from the time of their submission (Code of Criminal Procedure, art. 181, para. 2).
54. A person conducting the initial inquiry, an investigator, a procurator (prosecuting official), a judge, an assessor or a clerk of the court who has a personal, direct or indirect interest in a case must withdraw from the proceedings (Code of Criminal Procedure, art. 103).
55. A victim in criminal proceedings is a person upon whom unjustified and unlawful moral, physical or material harm has been inflicted through a criminal act (Code of Criminal Procedure, art. 86, para. 1).
56. A citizen who is deemed to be the victim of a criminal act has the right to:
- Testify in his native language or in a language that he can effectively employ, and to use the services of a translator
  - Have knowledge of the accusation levelled against the accused
  - Have access to the records of the investigation conducted with his participation and submit comments
  - Submit evidence
  - File petitions
  - Consult all documents in the case-file as soon as the preliminary inquiry is completed
  - Take part in the court proceedings
  - File objections
  - Demand damages for injury suffered
  - Have or remove his representative

- Have knowledge of the records of the court proceedings and submit comments on them
- Appeal against actions and decisions of the person conducting the initial inquiry, the investigator, the procurator, the judge and the court
- Appeal against a judgement, ruling or decision of the judge or court (Code of Criminal Procedure, art. 86, para. 4)

57. The body conducting the criminal proceedings is required to protect the rights and freedoms of participating citizens, create conditions for the realization of those rights and freedoms and promptly take appropriate measures to meet the legal requirements of participants (Code of Criminal Procedure, art. 14, para. 1).

58. In accordance with article 14 of the Code of Administrative Offences, officials are liable for administrative offences in connection with failure to observe established rules governing administrative procedure, State and public order, the environment, public health and other regulations that it is their duty to enforce.

59. Foreign nationals and stateless persons in Turkmenistan are liable for administrative offences on an equal footing with Turkmen citizens. Issues involving liability for administrative offences committed in the territory of Turkmenistan by foreign nationals who, under the legislation in force and international agreements concluded by Turkmenistan, enjoy immunity from prosecution before Turkmen administrative courts, are resolved through diplomatic channels (Code of Administrative Offences, art. 16).

60. On 1 January 2010, the Weapons Act entered into force. It establishes the procedure for the circulation of civilian, military and hand-held service firearms, cold steel weapons and ammunition in the territory of Turkmenistan, defines and governs legal relations in the area and is designed to protect the life and health of citizens, all forms of property, public order, and the environment and natural resources and to strengthen international cooperation in combating crime and the unlawful circulation of weapons.

61. Article 23, paragraph 2, of the Weapons Act prohibits the use of firearms against women, persons with manifest signs of disabilities or minors whose age is apparent or has been established, with the exception of cases in which such persons are armed or are part of a group assault. The owner of a weapon is required to promptly inform the office of the Ministry of Internal Affairs at the location at which the weapon was used of every case in which harm was caused to the health of a person in connection with the use of the weapon.

62. Article 5, paragraph 2, of the Police Act specifies that the police force is duty-bound to protect all persons, irrespective of their citizenship, social or other status, material circumstances, ethnic background, sex, age, education, language, attitude towards religion or political or other convictions.

63. Article 13 of the Police Act specifies the conditions for and limits on the use of physical force, special devices and firearms. In accordance with the Act, it is a criminal offence to use physical force, special devices or firearms in excess of authority.

64. When evidence comes to light that an official body or person conducting an investigation has violated the rights and lawful interests of physical persons or legal entities, that investigative body, a procurator or a judge is required to take measures to restore those rights and lawful interests, pay compensation for the harm suffered and prosecute the guilty parties in accordance with the law (Investigative Procedures Act, art. 4).

65. In line with the precepts of the Constitution, a judicial and legal reform currently under way includes comprehensive legislative measures aimed at ensuring the judicial

protection and strict implementation of civil rights and freedoms in accordance with universally recognized norms and principles of international law.

66. The initial stage of the reform consisted in the Judicial System and Status of Judges Act, which established the principle of the independence of judges at all court levels.

67. An important stage of the reform was the adoption of the Courts of Law Act of 15 August 2009, which consolidated all earlier legislation still in force regarding the judiciary, namely the Judicial System and Status of Judges Act; presidential decrees concerning regulations on disciplinary liability, recall and early retirement of judges, procedures for convening and conducting conferences of judges, and procedures for assessment boards for judges; and presidential decisions on certification of the qualification of judges and on the introduction of qualification courses for judges.

68. Judicial power in Turkmenistan resides solely in the courts. It is exercised by the Supreme Court and other courts, as provided by law. The establishment of extraordinary tribunals and other bodies having the powers of a court is prohibited (Courts of Law Act, art. 1, para. 1).

69. All court activity aims to ensure legality and the rule of law, social justice, the protection of the rights and freedoms, honour and dignity of citizens and the eradication of the causes and conditions contributing to the commission of crime (Courts of Law Act, art. 3, para. 2).

70. The Courts of Law Act established the court system; laid down procedures for the attribution of powers to judges and elaborated on the constitutional principles of judicial power and its autonomy and independence from the legislative and executive branches and on the inviolability of judges, the equality of all before the law and in court, the transparency of court hearings and the participation of citizens as lay judges in the administration of justice; and specified that court decisions are binding on all State and non-State bodies, officials, voluntary associations, natural persons and legal entities, without exception.

71. The improvement of the foundations of the national legal system as the basis for implementing any plans and programmes is crucial to the further development of the State and society and to the strengthening of democracy and the rule of law. President Gurbanguly Berdimukhammedov, addressing the parliament at the first meeting of the fourth parliamentary session in January 2009, underscored the importance of that task.

### **Article 3**

72. Pursuant to article 7 of the Constitution, Turkmen citizens may not be extradited or exiled to another State nor may their right to return to Turkmenistan be restricted.

73. The Turkmen State defends and protects Turkmen citizens at home and abroad.

74. Under article 8 of the Constitution, foreign nationals and stateless persons enjoy the same rights and freedoms and have the same obligations as Turkmen citizens, in conformity with the law and Turkmenistan's international agreements.

75. Turkmenistan extends the right of asylum to foreign nationals and stateless persons in accordance with universally recognized norms of international law and the procedure established by law.

76. Pursuant to the Constitutional Act on the independence and State structure of Turkmenistan, nationals of other States and stateless persons in the territory of Turkmenistan are guaranteed the rights and freedoms set out in the Constitution and laws of Turkmenistan, inter-State agreements and rules of international law.

77. Article 6 of the Foreign Nationals (Legal Status) Act specifies that the right of asylum in Turkmenistan may be granted to foreign nationals who are persecuted in their home countries on account of their political, national or religious convictions. The President of Turkmenistan decides on questions concerning the granting of asylum.

78. Turkmen law guarantees foreign nationals in Turkmenistan the inviolability of their person and their home (Foreign Nationals (Legal Status) Act, art. 18).

79. Foreign nationals in Turkmenistan have the right to appeal to the courts and other State bodies, and also to the diplomatic and consular offices of their respective countries, for protection of their personal, property and other rights. Foreign nationals enjoy the same procedural rights in court as Turkmen citizens (Foreign Nationals (Legal Status) Act, art. 21).

80. In accordance with article 3 of the Refugees Act, a refugee is not held liable for illegal entry or illegal presence in the territory of Turkmenistan if, upon entry from the territory in which his life or freedom was in danger as stipulated in article 1 of the Act, he reports promptly to the authorities.

81. Decisions and actions by State and Government bodies, regional authorities and officials which violate the rights of refugees as set out in Turkmen law may be appealed against with the above-mentioned bodies or in a court of law.

82. Under article 9, paragraph 1, of the Criminal Code, citizens of Turkmenistan who have committed a crime in the territory of another State are not subject to extradition to that State.

83. Foreign nationals and stateless persons who have committed a crime outside Turkmenistan and are present in the territory of Turkmenistan may be extradited to another State for criminal prosecution or to serve a sentence in accordance with the international agreements to which Turkmenistan is a party and agreements, conventions and other international legal documents to which Turkmenistan has acceded (Criminal Code, art. 9, para. 2).

84. Citizens of Turkmenistan and stateless persons permanently residing in Turkmenistan who have committed a crime under Turkmenistan's criminal law outside Turkmenistan are punishable under the criminal legislation of Turkmenistan if the act is punishable under the criminal law of the State in whose territory it was committed and if they have not been convicted in the other State. Punishment exceeding the maximum punishment under the law in force in the place where the crime was committed may not be imposed (Criminal Code, art. 8, para. 1).

85. In accordance with article 6 of the Constitution and article 3 of the Act on the procedure for concluding, implementing and denouncing international agreements, Turkmenistan acknowledges the primacy of universally recognized norms of international law. If an international agreement to which Turkmenistan is party establishes rules other than those envisaged in domestic law, the rules of the former apply. The provisions of article 3, paragraph 1, of the Convention and the provisions of the Constitution are the fundamental basis for not extraditing, expelling or returning persons to another State if there are grounds for believing that they will be subjected to torture.

#### **Article 4**

86. In accordance with article 18 of the Constitution, human rights and freedoms are inviolable and inalienable.

87. No one may deprive a person of any rights or freedoms or restrict his rights or freedoms unless the Constitution or the law otherwise provides.
88. Article 23 of the Constitution stipulates that no one may be limited in or deprived of their rights, convicted or punished otherwise than in strict compliance with the law or subjected to torture or cruel, inhuman or degrading treatment or punishment.
89. Under article 43 of the Criminal Code, punishment is defined as the penalty for the commission of an offence. As a coercive measure applied by the State, punishment specified in a court sentence is imposed on a person found guilty of an offence and consists in deprivation of or restrictions on the person's rights and freedoms.
90. Punishment is imposed with a view to restoring social justice, reforming the convicted offender and preventing the commission of further offences.
91. Punishment does not aim to cause physical suffering or humiliation.
92. The Criminal Code does not contain provisions specifically providing for liability for torture. However, it contains provisions on the causing of physical and moral suffering.
93. Article 112 of the Criminal Code provides that battery or other violent acts causing physical pain carry a fine of 5 to 10 average monthly salaries or correctional labour for up to 1 year.
94. In accordance with article 113 of the Criminal Code, which provides for liability for torture, causing physical or mental suffering through systematic beatings or other violent acts which do not have the consequences set out in article 107 (intentional causing of severe harm to health) or article 108 (intentional causing of moderately severe harm to health) of the Criminal Code is punishable by corrective labour for up to 2 years or deprivation of liberty for up to 2 years. The same acts are punishable by deprivation of liberty for 3 to 7 years if committed:
- (a) Against a woman whom the perpetrator knew to be pregnant;
  - (b) Against a person or that person's close relatives in connection with the fulfilment of the person's official or public duties;
  - (c) Against a minor; against a person whom the perpetrator knew to be in a helpless state or in a state of material or other dependence on the perpetrator; or against a person who has been abducted or taken hostage;
  - (d) By two or more persons not in collusion or by a group of persons in collusion;
  - (e) With the use of torture; or
  - (f) For reasons of social, ethnic, racial or religious hatred or enmity.
95. The Criminal Code also provides that premeditated murder accompanied by rape or violent acts of a sexual nature (art. 101, subpara. (e)) or of a particularly cruel nature (art. 101, subpara. (f)) is punishable by deprivation of liberty for 10 to 25 years, with or without the obligation to live in a specific area for 2 to 5 years.
96. Article 107 of the Criminal Code stipulates that intentional infliction of bodily harm that endangers life or results in loss of sight, speech, hearing, an organ or the function of an organ or in permanent facial disfigurement, causes other life-threatening injury to health or health problems combined with a permanent incapacity to work exceeding 33 per cent or complete occupational incapacity or results in a premature interruption of pregnancy or mental illness, when committed with means that constitute torment or torture, is punishable by deprivation of liberty for 5 to 10 years.

97. Article 108 of the Criminal Code provides that intentional infliction of bodily harm or other injury to health that is not life-threatening and does not result in the consequences set out in article 107 of the Code but causes lasting health problems or a significant long-term incapacity to work not exceeding 33 per cent, when committed with means that constitute torment or torture, is punishable by deprivation of liberty for up to 5 years.

98. Article 126 of the Criminal Code specifies that abduction committed with the use of violence that endangers life or health is punishable by deprivation of liberty for 5 to 10 years.

99. Under article 129 of the Criminal Code, the unlawful deprivation of liberty of a person unrelated to his abduction, when committed with violence endangering life and health, is punishable by deprivation of liberty for 3 to 5 years.

100. In accordance with article 130 of the Criminal Code, the taking and holding of hostages accompanied by the threat of murder or the infliction of bodily harm, when committed with the use of physical violence or with a weapon or other objects employed as a weapon, is punishable by deprivation of liberty for 8 to 15 years.

101. Under article 134 of the Criminal Code, rape, namely sexual intercourse with the use or threat of physical violence, and also when the helpless state of the victim is exploited, is punishable by deprivation of liberty for 3 to 10 years, with or without the obligation to live in a specific area for 2 to 5 years. Rape committed with torture of the victim is punishable by deprivation of liberty for 5 to 15 years, with or without the obligation to live in a specific area for 2 to 5 years.

102. Pursuant to article 135 of the Criminal Code, sodomy with the use or threat of physical violence, and also when the helpless state of the victim is exploited, is punishable by deprivation of liberty for 3 to 6 years, with or without the obligation to live in a specific area for 2 to 5 years. Article 135, paragraph 2, provides for a punishment of deprivation of liberty for 5 to 10 years, with or without the obligation to live in a specific area for 2 to 5 years, if:

- (a) The act was committed a second time;
- (b) The act was committed by two or more persons not in collusion or by a group of persons in collusion;
- (c) The act was committed with regard to a person known to be a minor; or
- (d) The act resulted in the victim contracting a venereal disease.

The above acts are punishable by deprivation of liberty for 10 to 20 years, with or without the obligation to live in a specific area for 2 to 5 years, if they were:

- (a) Committed with regard to a person known to be less than 14 years of age; or
- (b) Unintentionally caused the death or serious harm to the health of the victim or infected the victim with AIDS.

103. Pursuant to article 159 of the Criminal Code, parents or other persons with parental authority, teachers or other staff members at educational institutions or reform schools who deliberately neglect their duty to attend to a child's education are liable to imprisonment for up to 2 years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to 3 years, if such an act is accompanied by cruel treatment or results in serious harm to the child's health.

104. Article 181 of the Criminal Code provides that abuse of power — the use by an official of his powers in a manner prejudicial to the interests of the service if the act is committed for gain or other personal motives or entails serious violations of the rights and

legal interests of citizens, organizations or the State — is punishable by deprivation of the right to hold certain posts or engage in certain activities for up to 5 years, a fine of 20 to 40 average monthly salaries, corrective labour for up to 2 years or deprivation of liberty for up to 3 years. If the act has serious consequences, it is punishable by deprivation of liberty for up to 8 years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to 3 years, or the obligation to live in a specific area for 5 to 8 years, with or without deprivation of the right to hold certain posts or engage in certain activities for up to 3 years.

105. Article 190 of the Criminal Code specifies that the use of violence that endangers the life or health of a judge, a lay judge, a procurator, an investigator, a person conducting an initial inquiry, a defence counsel or an expert, as well as members of their family, in connection with the consideration of the case, the court records, the preliminary inquiry or the investigation is punishable by deprivation of liberty for 5 to 10 years.

106. Article 197 of the Criminal Code provides for a punishment of deprivation of liberty for up to 3 years for any procurator, investigator or person conducting an initial inquiry who uses threats, blackmail or other illegal acts to coerce a suspect, an accused person, a victim or a witness into giving evidence or an expert into giving an opinion. When the act is accompanied by violence or abuse, it is punishable by deprivation of liberty for 3 to 8 years.

107. Under article 203 of the Criminal Code, the coercion of a suspect, an accused person, a witness or a victim to give false testimony, of an expert to make a false submission or of a translator to produce an incorrect translation, when carried out with the use of violence endangering the life or health of the above persons, is punishable by deprivation of liberty for 3 to 8 years.

108. Pursuant to article 58 of the Criminal Code, an offence committed with particular cruelty, abuse or torture of the victim or members of the victim's family is deemed to be an aggravating circumstance.

109. The Criminal Code recognizes as a crime not only acts of violence already committed and carried out in full, but also attempts to commit a crime.

110. The Criminal Code recognizes as a crime not only acts of torture committed by a specific agent, i.e. the principal perpetrator or the person who directly participated in the crime together with other persons (accomplices), but also the acts of other persons who, while not directly participating in the commission of the crime, nevertheless otherwise assisted in its commission by organizing the crime or aiding or abetting the perpetrators (Criminal Code, art. 35).

111. No one may be forced to give evidence or testimony against himself or his close relatives.

112. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force.

113. Under article 14 of the Code of Criminal Procedure, suspects, accused persons, defendants, convicted offenders and acquitted persons have a right of defence.

114. The person conducting the initial inquiry, the investigator, the procurator and the court are required to ensure that suspects, accused persons, defendants, convicted offenders and acquitted persons have the possibility of defending themselves through the means established by law and that their personal and property rights are protected.

115. Suspects and accused persons have the right to know the charges brought against them and to appoint a counsel at any stage of the proceedings.

116. The counsel for the defence may participate in the proceedings from the moment the person concerned is questioned as a suspect or is charged with the commission of a crime or, if the suspect is arrested or is to be detained pending charges, from the moment he is presented with the detention order or decision, but no later than 24 hours after his arrest or provisional detention.

117. If it finds that the defendant is innocent of the act of which he is accused, the court announces his acquittal and promptly releases him.

118. Any official who brings charges against a person known to be innocent or unlawfully orders an arrest, remand in custody or pretrial detention may be liable to criminal prosecution.

119. Citizens have the right to demand damages in a court of law for material and moral harm caused by illegal actions of State bodies, other organizations or their officials, as well as by private persons. In accordance with article 1040 of the Civil Code, if an official infringes his responsibilities intentionally or through gross negligence with regard to other persons, the State or a State body for which the official works must pay compensation for the harm suffered. The official shares responsibility with the State when criminal intent or gross negligence is involved. Compensation must not be paid if, intentionally or through gross negligence, the victim did not attempt by legal means to prevent the harm. Harm caused to rehabilitated citizens as a result of unlawful conviction, unlawful criminal prosecution, unlawful remand in custody, unlawful preventive measures such as remand in custody or travel restraints, or imposition of unlawful administrative penalties such as detention or punitive deduction of earnings must be compensated by the State, irrespective of the guilt of the officials of bodies conducting the initial inquiry or the pretrial investigations, the procurator's office or the courts. If the harm was caused intentionally or as a result of gross negligence, these persons share liability with the State. Pursuant to article 1041 of the Civil Code, in the event of the death of the victim, the wrongdoer must make restitution by paying compensation in the form of financial support to persons whose financial support had been paid by the deceased. This obligation remains in force for as long as the victim would have had to pay such support; it may be replaced upon agreement by the payment of a lump sum if there are important reasons for so doing.

## **Article 5**

120. In accordance with article 7, paragraphs 1 and 5, of the Criminal Code, persons who have committed crimes in the territory of Turkmenistan are punishable under Turkmenistan's criminal law. The question of the criminal liability of diplomatic representatives of foreign States and other persons who invoke immunity when they commit a crime in the territory of Turkmenistan is resolved on the basis of the norms of international law and the international agreements to which Turkmenistan is a party.

121. Crimes committed within Turkmenistan's territorial waters or airspace are regarded as having been committed in the territory of Turkmenistan. The country's criminal legislation also applies to crimes committed on the continental shelf and in the maritime economic zone of Turkmenistan. Turkmenistan's exclusive jurisdiction extends to crimes committed on board vessels registered in a port of Turkmenistan and present in the water or airspace beyond its borders; such crimes are punishable under Turkmenistan's criminal law, unless otherwise provided for under an international agreement to which Turkmenistan is a party.

122. In accordance with the State Borders Act, the external borders of the territory of Turkmenistan are the previous State borders of Turkmenistan SSR, the creation of which was based on inter-State agreements of the former USSR with Iran and Afghanistan, as well

as on the instrument on the territorial delimitation of Turkmenistan SSR, Kazakhstan SSR and Uzbekistan SSR. When a crime is committed in the territory of two or more States, it is punishable under Turkmenistan's criminal law if it is halted or suppressed in the territory of Turkmenistan (Criminal Code, art. 7, paras. 2, 3 and 4).

123. Pursuant to article 8, paragraph 1, of the Criminal Code, citizens of Turkmenistan and stateless persons permanently residing in Turkmenistan who have committed a crime provided for under Turkmenistan's criminal law outside Turkmenistan are punishable under the criminal legislation of Turkmenistan if the act is punishable under the criminal law of the State in whose territory it was committed and if they have not been convicted in the other State. Punishment exceeding the maximum punishment provided for under the law in force in the place where the crime was committed may not be imposed.

124. Article 8, paragraph 2, of the Criminal Code provides that foreign nationals and stateless persons not permanently residing in Turkmenistan are liable under the criminal law of Turkmenistan for crimes committed outside Turkmenistan if the crime was directed against Turkmenistan or its citizens, as well as in the cases set out under international agreements to which Turkmenistan is a party, if they have not been convicted in another State and criminal proceedings have been instituted against them in the territory of Turkmenistan.

125. Under article 9, paragraph 1, of the Criminal Code, citizens of Turkmenistan who have committed a crime in the territory of another State are not subject to extradition to that State.

## **Article 6**

126. No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment, or to medical treatment (with drugs or by a physician) or experiments without their consent (Constitution, art. 23).

127. Depending on the nature of an offence which falls under the definition of cruel, inhuman or degrading treatment or punishment, the perpetrator may be subject to criminal, administrative or disciplinary liability. Criminal prosecution is conducted by the internal affairs authorities, the office of the procurator and the court which delivers the final judgment.

128. Irrespective of where the crime was committed, criminal prosecution is conducted in accordance with the Code of Criminal Procedure, which is based on the Constitution. The prosecution and trial of foreign nationals and stateless persons take place in conformity with the provisions of the Code.

129. The special features of criminal proceedings involving persons enjoying diplomatic or other privileges or immunity are defined in article 522 (persons with immunity from criminal prosecution), article 523 (personal inviolability), article 524 (immunity from the obligation to give testimony) and article 525 (inviolability of documents and premises) of chapter 50 of the Code of Criminal Procedure.

130. The body conducting the initial inquiry, the investigator and the procurator must initiate criminal proceedings as specified in the law of criminal procedure when there is evidence that a crime has been committed, and they must take all measures prescribed by law to establish the circumstances of the crime and identify and punish the perpetrators. If there are sufficient grounds, the judge or court initiates criminal proceedings and refers the case to the procurator for prosecution (Code of Criminal Procedure, art. 206).

131. The Procurator-General and his subordinate procurators monitor the strict and uniform enforcement of the law with respect to pretrial criminal procedure. The procurator

is required to take timely measures during the pretrial criminal procedure to eliminate any violation of the law, from wherever it emanates (Code of Criminal Procedure, art. 72, paras. 1 and 2).

132. The procurator exercises his authority in the pretrial criminal procedure irrespective of the bodies and officials involved and is subject only to the law. The decision of the procurator, taken in accordance with the law, is binding on all enterprises, administrations, organizations, officials and citizens.

133. A citizen may be detained by court order or with a procurator's approval only on grounds clearly prescribed by law. In circumstances that admit of no delay, as specifically prescribed by law, duly empowered State bodies are entitled to detain citizens on a temporary basis (article 23 of the Constitution). No one may be detained otherwise than on the basis of a court order or with the approval of a procurator (Code of Criminal Procedure, art. 6).

134. Pursuant to article 154 of the Code of Criminal Procedure, remand in custody as a preventive measure is applied with the approval of a procurator in cases involving crimes for which the prescribed penalty is deprivation of liberty for more than 2 years.

135. In deciding whether to approve remand in custody, a procurator must carefully weigh all grounds for pretrial detention and meet with and, where necessary, personally question the suspect or the accused. Juvenile suspects and accused juveniles must be questioned in all cases (Code of Criminal Procedure, art. 154, para. 4).

136. The Procurator-General, the provincial procurator, the municipal procurator with province-wide authority and the regional, municipal, military and specialized procurators and their deputies are vested with the power to approve a remand in custody.

137. On 18 June 1996, Turkmenistan ratified the Vienna Convention on Diplomatic Relations of 18 April 1961 and the Vienna Convention on Consular Relations of 24 April 1963. Pursuant to article 36 of the Vienna Convention on Consular Relations, the competent authorities of Turkmenistan must, without delay, inform the consular post of the sending State if a national of that State is arrested or committed to custody pending trial. Consular officers have the right to visit a national of the sending State who is in custody or detention, to converse and correspond with him and to arrange for his legal representation. They also have the right to visit any national of the sending State who is in prison, custody or detention.

## Article 7

138. Article 3 of the Criminal Code sets out the principles of criminal legislation:

- Turkmen criminal law is based on the principles of legality, equality of citizens before the law, criminal liability, justice and humanity
- Criminal law defines the criminal nature of an act, the penalty for its commission and related questions
- A person may incur criminal liability only for acts or omissions having harmful effects and in connection with which he has been found guilty
- No one may be found guilty of a crime and subjected to a criminal penalty otherwise than by a court sentence and in accordance with the law
- Persons who have committed offences are equal before the law and may be held criminally liable irrespective of their sex, race, ethnic background, material

circumstances, profession, attitude towards religion, beliefs or membership of voluntary associations

- Punishment and other punitive measures imposed on an offender must be fair and strictly commensurate with the seriousness of the crime, its circumstances and the personality of the offender
- The aim of punishment and other punitive measures imposed on offenders may not be to cause physical suffering or humiliation
- No one may incur criminal liability twice for the same crime

139. Under article 43 of the Criminal Code, punishment is defined as the penalty for the commission of an offence. Punishment specified in a court sentence is imposed on a person found guilty of an offence and consists, in accordance with criminal law, in deprivation of or restrictions on the person's rights and freedoms.

140. Punishment is imposed with a view to restoring social justice, reforming the convicted offender and preventing the commission of further offences. Punishment does not aim to cause physical suffering or humiliation.

141. The Code of Criminal Procedure has introduced provisions ensuring the fair treatment of alleged offenders. This includes the right to legal counsel, the right to be presumed innocent until proven guilty and the right to equal treatment in court.

142. Article 24 of the Code of Criminal Procedure, on the right to the assistance of counsel, provides that suspects, accused persons, defendants, convicted offenders and acquitted persons have a right of defence. They may avail themselves of that right on their own behalf or with the help of a lawyer or a legal representative as prescribed by the Code. The person conducting the initial inquiry, the investigator, the procurator and the court must to ensure that suspects, accused persons, defendants, convicted offenders and acquitted persons have the possibility of defending themselves through the means established by law and that their personal and property rights are protected.

143. Article 26 of the Code of Criminal Procedure, on legal assistance, specifies that everyone has the right to obtain legal assistance in the course of criminal proceedings in conformity with the provisions of the Code. The counsel for the defence may participate in the proceedings from the moment the person concerned is questioned as a suspect or is charged with the commission of a crime or, if the suspect is arrested or is to be detained pending charges, from the moment he is presented with the detention order or decision, but no later than 24 hours after his arrest or provisional detention.

144. Persons not fluent in the language of the legal proceedings have the right to make statements, give explanations and testify, submit petitions, lodge appeals, have knowledge of all records in the file, speak in the court in their mother tongue or in a language in which they are fluent, and use the services of a translator, as prescribed in article 28 of the Code.

145. Under article 10 of the Code of Criminal Procedure, on equal treatment in the courts, the courts alone are responsible for the administration of justice in criminal matters. Anyone who misappropriates the powers of the court incurs liability in accordance with the law. No one may be found guilty of a crime and subjected to criminal sanctions otherwise than by a court judgement and in strict conformity with the law. The competence of the court, the limits on its jurisdiction and the procedure for criminal proceedings are defined by law and may not be modified arbitrarily. The establishment of extraordinary tribunals and other bodies vested with the powers of a criminal court, regardless of their name, is prohibited.

146. A new provision on the judicial protection of human rights and freedoms has been introduced under the Code of Criminal Procedure. In accordance with the Code, everyone

has the right to protection by the courts of their rights and freedoms. The State ensures access to justice for victims and compensation for harm suffered in the cases and manner provided for by law.

147. With regard to the administration of justice on the basis of equality of citizens before the law and the courts, the Constitution, the Code of Criminal Procedure, national legislation and international agreements govern the modalities of criminal justice in respect of persons with immunity from criminal prosecution.

148. In the course of the administration of justice, no one may be subjected to any discrimination for reasons of origin, social status, material circumstances, profession, ethnic background, race, gender, education, language, attitude towards religion, political beliefs, place of residence or any other consideration.

149. Judges are independent and are subject only to the law. In the administration of criminal law, judges and assessors are independent and subject only to the law, and they are governed by their inner conviction. Interference in the work of judges from any quarter is prohibited and is punishable by law.

150. Criminal justice is administered on the basis of the principle of adversarial presence and the equality of the parties to the proceedings. Prosecution, defence and verdict are distinct, and different bodies and officials are responsible for each.

151. The State prosecutor bears the burden of proving the guilt of the accused person. The counsel for the defence must use all means prescribed by law to defend the accused person.

152. The court is not a prosecution body, it does not act on behalf of the accusation or the defence, and it does not reflect any interests, apart from the interests of law. Through its objectivity and impartiality, the court creates the conditions needed so that the two sides can comply with their obligations and assert their rights.

153. The parties to criminal proceedings are deemed to be equal. The Constitution and the Code of Criminal Procedure provide them with equal opportunities to state their case. The court bases its decision solely on evidence examined in a procedure in which the parties have participated on an equal footing.

154. A person is presumed innocent until proven guilty of an offence in a manner prescribed by the Code of Criminal Procedure and in accordance with an enforceable sentence handed down by a court.

155. If guilt cannot be clearly established, or if uncertainty arises during the application of criminal law or the law of criminal procedure, the accused person enjoys the benefit of the doubt. No one is required to prove their own innocence. In the absence of other evidence, confessions alone may not serve as proof of guilt.

156. A guilty verdict may not be based on suppositions. It must be substantiated by a sufficient accumulation of credible evidence. Evidence collected by unlawful means or of unknown origin may not be considered or used in the administration of justice (Code of Criminal Procedure, art. 18).

157. Everyone has a right to freedom and personal inviolability. No one may be arrested on the basis of a suspicion of commission of a crime, detained or otherwise deprived of liberty except on the grounds and in accordance with the procedure prescribed by the Code.

158. An arrested person must be immediately informed of the grounds for the arrest and the nature of the offence of which he is suspected or accused. The court and the procurator must immediately free any person who has been illegally arrested, remanded in custody,

placed in a medical establishment or held beyond the period specified by law or by a sentence.

159. No one who is a party to criminal proceedings may be subjected to violence or cruel or degrading treatment. No one may be forced to take part in procedural acts likely to endanger a person's life or health. Procedural acts which infringe personal inviolability may be carried out against the will of a person or his legal representative only in the cases and manner prescribed by the Code of Criminal Procedure.

160. A person who is remanded in custody as a preventive measure or held on suspicion of committing a crime must be detained in conditions which do not endanger his life or health. Harm caused to a person as a result of illegal deprivation of liberty, detention in conditions dangerous to life or health, or cruel treatment is subject to compensation in accordance with article 13 of the Code.

161. With regard to legality, the person or body conducting the initial inquiry, the investigator, the procurator and the court must rigorously comply with the requirements of the Code of Criminal Procedure in the course of criminal proceedings. The prosecuting authorities and the criminal court may not violate the law; violation incurs legal responsibility, a declaration of invalidity of the unlawful acts and their annulment (Code of Criminal Procedure, art. 9).

162. As to foreign nationals and stateless persons, the procedure for criminal proceedings in Turkmenistan is defined in the Code, which is based on the Constitution. The procedure for criminal proceedings established under the Code is identical and binding for all criminal cases and participants.

163. Turkmenistan's international agreements and the general principles and norms of international law recognized by Turkmenistan which govern rules for criminal proceedings are an integral part of the law of criminal procedure. If an international agreement to which Turkmenistan is a party establishes provisions which differ from those set out in the Code, the provisions of the international agreement are applied.

164. The application in the territory of Turkmenistan of the law of criminal procedure of another State by the investigating bodies and court of that State or a body conducting criminal proceedings on their behalf is permitted if the international agreement ratified by Turkmenistan makes provision to that effect (Code of Criminal Procedure, art. 4). The law of criminal procedure as it relates to foreign nationals and stateless persons is applied in accordance with the provisions of the Code (Code of Criminal Procedure, art. 5).

165. Pursuant to article 8 of the Criminal Code, citizens of Turkmenistan and stateless persons permanently residing in Turkmenistan are liable under the criminal law of Turkmenistan for crimes committed outside Turkmenistan if the act is punishable under the criminal law of the State in whose territory it was committed and if they have not been convicted in the other State. Punishment exceeding the maximum punishment provided for under the law in force in the place where the crime was committed may not be imposed.

166. Foreign nationals and stateless persons who are not permanently residing in Turkmenistan are liable under the criminal law of Turkmenistan for crimes committed outside Turkmenistan if the crime was directed against Turkmenistan or its citizens and also in the cases provided for under international agreements to which Turkmenistan is a party if they have not been convicted in another State and criminal proceedings have been instituted against them in Turkmenistan.

167. The question of the criminal liability of diplomatic representatives of foreign States and other persons who invoke immunity when they have committed a crime in Turkmenistan is resolved on the basis of the norms of international law and the international agreements to which Turkmenistan is a party.

168. If, in the course of a pretrial criminal investigation, a foreign national is arrested and remanded in custody, the law enforcement authorities of Turkmenistan, acting in accordance with the Convention on Consular Relations, to which Turkmenistan has been a party since 1996, or with bilateral agreements concluded by Turkmenistan with Azerbaijan, Georgia, Kazakhstan, the Russian Federation, Ukraine, the People's Republic of China, Romania, Turkey, the Islamic Republic of Iran or Uzbekistan, promptly inform the diplomatic representatives of the above-mentioned States through official channels of the person's detention and the reasons for the arrest and assist them in establishing contact with the detainee.

169. Citizens of Turkmenistan who have committed a crime in the territory of another State are not subject to extradition to that State. Foreign nationals and stateless persons who have committed a crime outside Turkmenistan and are present in the territory of Turkmenistan may be extradited to another State for criminal prosecution or to serve a sentence in accordance with the international treaties to which Turkmenistan is a party and agreements, conventions and other international legal documents to which Turkmenistan has acceded (Criminal Code, art. 9).

## Article 8

170. In accordance with article 9 of the Criminal Code, foreign nationals and stateless persons who have committed a crime outside Turkmenistan and are present in the territory of Turkmenistan may be extradited to another State for criminal prosecution or to serve a sentence in accordance with the international treaties to which Turkmenistan is a party and agreements, conventions and other international legal instruments to which Turkmenistan has acceded.

171. Pursuant to the Code of Criminal Procedure, the Procurator-General considers and decides on requests for the extradition of a foreign national accused or convicted of a crime in the territory of Turkmenistan. When several States request the extradition of the same person, the Procurator-General decides which request should be granted. The Code and the international agreement between Turkmenistan and the State concerned define the conditions and procedure for extradition.

172. When a foreign national whose extradition has been requested is serving a sentence for another offence committed in the territory of Turkmenistan, extradition may be postponed until the sentence has been served, an act of amnesty or clemency has been issued or the person has been released for any legal reason. When a foreign national is prosecuted, extradition may be postponed until the judgement is delivered or the sentence served, or if criminal liability and punishment have been waived for whatever reason. If the postponement of extradition may result in expiry of the statutory period for criminal prosecution or be prejudicial to the elucidation of the crime, the person whose extradition has been requested may be temporarily extradited by mutual consent (Code of Criminal Procedure, art. 552).

173. The extradition to another State is not carried out or is refused if:

- The person whose extradition is requested by another State is a citizen of Turkmenistan
- The person whose extradition is requested has been granted refugee status
- Turkmen law does not define as an offence the act on which the extradition request is based
- The person concerned has already been convicted of the same offence in an enforceable court sentence, or the case has been dismissed

- The case cannot be instituted or a sentence enforced under Turkmen law because of expiry of the statutory period or for other legal reasons

174. With regard to extent of criminal liability, the extradited person may not be charged with a punishable criminal offence or handed over to a third State for another offence unrelated to the extradition without the approval of the extraditing State. These rules do not cover offences committed after the extradition of the person concerned.

175. An international agreement between Turkmenistan and another State or a written bilateral agreement between the Procurator-General and the competent body or official of that State constitutes the basis for the extradition of a person sentenced by a court or judge in Turkmenistan to deprivation of liberty to serve the sentence in the State of which he is a national and for the extradition of a citizen of Turkmenistan sentenced by the court of another State to deprivation of liberty to serve the sentence in Turkmenistan.

176. The conditions and procedures for the extradition of a convicted offender to serve a sentence in the State of which he is a national are set out in article 559 of the Code of Criminal Procedure. A person convicted in Turkmenistan, members of his family or, with his consent, the competent body of the State concerned may request, at any time while the sentence is being served, that he be extradited to serve a sentence of deprivation of liberty in the State of which he is a national.

177. The person referred to in article 559, paragraph 1, may not be extradited by decision of the Procurator-General until a judgement becomes enforceable. The procurator mandated by the Procurator-General notifies the court which delivered the judgement of the extradition of the person concerned to the State of which he is a national.

178. The extradition of a person sentenced to deprivation of liberty by a judge or court in Turkmenistan to serve the sentence in the State of which he is a national may be refused if:

- None of the acts for which the person was convicted in Turkmenistan is deemed to be a crime under the legislation of the State of which the person is a national
- The sentence cannot be enforced in the other State because of expiry of the statutory period or other reasons set out in the legislation of that State
- No guarantees of the enforcement of the judgement in civil proceedings are received from the convicted person or the other State
- No agreement is reached on the extradition of the convicted offender in conditions prescribed by an international agreement
- The convicted offender has permanent residence in Turkmenistan

179. If another State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requests the extradition of an offender and there is no treaty with that State, the question is resolved through diplomatic channels on the basis of article 8, paragraph 2, of the Convention.

## **Article 9**

180. On 18 September 1996, Turkmenistan ratified the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Minsk, 22 January 1993).

181. Turkmenistan has signed the following agreements on legal assistance:

- The Agreement between Turkmenistan and Georgia on the Mutual Provision of Legal Assistance in Civil, Family and Criminal Cases of 20 March 1996 (ratified on 18 September 1996)

- The Agreement between Turkmenistan and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 27 November 1996 (ratified on 20 December 1996)
- The Agreement between Turkmenistan and the Republic of Armenia on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 29 November 2000 (ratified on 7 July 2001)

182. Within the framework of the above agreements, citizens of either Contracting Party and other persons permanently residing in their respective territories enjoy the same legal protection of their personal and property rights in the territory of the other Contracting Party as the citizens of that Contracting Party.

183. Citizens from either Contracting Party and other persons residing in their respective territories have the right freely and without impediment to refer civil, family and criminal matters to the courts, procuratorial bodies, internal affairs agencies, institutions of justice and other institutions of the other Contracting Party, to appear before these institutions, lodge petitions, file lawsuits and perform other procedural acts on the same footing as citizens of the other Contracting Party.

184. Under the provisions of these agreements, the institutions of justice of the Contracting Parties are competent to examine issues relating to legal assistance in civil, family and criminal matters.

185. The agreements also stipulate the extent of the legal assistance provided through procedural, investigative and other actions envisaged by the law of the requested Contracting Party, namely:

- Preparing and forwarding documents and providing originals or certified copies of relevant documents and files, including bank, financial, legal and commercial documents
- Conducting searches, seizures and requisitions of objects and documents and sequestration of property, and forwarding and delivering of material evidence
- Conducting examinations and inspections
- Organizing expert assessments
- Interrogating parties to proceedings, victims, accused persons, witnesses and experts
- Searching for persons accused of committing crimes and also missing persons, and extraditing persons with a view to criminal prosecution or enforcing a judgement
- Launching criminal prosecutions
- Forwarding court documents
- Recognizing and enforcing judicial decisions in civil and family cases, judgements in civil proceedings, writs of execution and service of documents

186. Questions concerning legal assistance in criminal matters are covered in chapter 52 of the Code of Criminal Procedure. Article 542 of the Code states that judicial assistance may be provided to the investigating bodies and courts of other States with which Turkmenistan has concluded an international judicial assistance agreement, or on the basis of reciprocity, through the procedural action envisaged in the Code, as well as through other procedures for which provision is made in other laws and in international agreements entered into by Turkmenistan; the expenditure incurred in providing judicial assistance is borne by the agency to which the request is addressed in the territory of its State unless otherwise provided in international agreements with Turkmenistan.

187. Procedural documents compiled in the territory of the requesting State in accordance with its legislation and bearing the State seal are accepted as valid without any restriction unless otherwise provided in an international agreement with Turkmenistan (Code of Criminal Procedure, art. 543).

188. In accordance with article 545 of the Code of Criminal Procedure, instructions to take investigative or judicial action must indicate:

- The name of the body issuing the instructions
- The name and address of the body to which the instructions are being sent
- The name of the case and the nature of the instructions
- Information concerning the persons in respect of whom the instructions are being issued, their date and place of birth, citizenship, occupation, place of residence or temporary residence and, in the case of legal persons, their name and address
- An account of the circumstances to be elucidated as well as a list of the documents and the material and other evidence requested
- Information about the circumstances in which the offence was committed and its nature, the text of the relevant article of the Code of Criminal Procedure of Turkmenistan and, if necessary, information about the injury caused by the act in question
- Other information needed in order to comply with the instructions

189. The content of requests to institute criminal prosecution and extradite the offender is defined in article 550 of the Code of Criminal Procedure and in norms of international law. An extradition request must indicate:

- The name and address of the requesting body.
- The surname, first name and patronymic of the person concerning whom an extradition request has been submitted, date and place of birth, data on citizenship, place of residence or temporary residence and other personal data, as well as, if possible, a description of physical appearance, a photograph and other material to help with identification.
- An explanation of the specific circumstances and the legal nature of the offence committed by the person concerning whom an extradition request has been submitted, including information on the extent of the harm which he has caused and the provision of the law which sets out punishment for the offence, with obligatory reference to the penalty imposed.
- Information on the time and place of the enforceable judgement or the order to institute criminal proceedings, with certified copies of the relevant documents.
- A request for extradition for the purpose of prosecution must include a certified copy of the detention order. A request for extradition for the enforcement of a judgement must include a certified copy of the judgement and an official document on the unserved term. In addition, in such cases a document must be included certifying the nationality of the person subject to extradition (article 550, paragraph 2 of the Code of Criminal Procedure).

190. Instruments used in the commission of the offence as well as articles bearing traces of the offence or acquired in an unlawful manner are to be handed over when a person is extradited to another State. These articles are handed over upon request even if the person in question cannot be extradited because he has died or for other reasons. The articles may be kept temporarily if they are needed for criminal proceedings in another case. In order to

protect the legitimate rights of third parties, such articles are handed over only when the relevant agency of the other State guarantees their return at the end of the proceedings (Code of Criminal Procedure, art. 557).

## Articles 10–12

191. As part of the powers vested in them by the Constitution and the Office of the Procurator Act, the offices of the procurator monitor the strict and uniform implementation of laws and presidential acts by State administrative bodies, the armed forces command, local authorities, participants in productive economic and commercial activities, organizations, institutions, voluntary associations, officials and citizens.

192. The aim of monitoring implementation of the law, including provisions against torture, is to ensure the rule of law and strengthen legality by protecting social, economic, political and other civil rights and freedoms.

193. The offices of the procurator monitor the enforcement of the law by the bodies conducting initial inquiries and pretrial investigations, including statutory procedures for handling allegations and reports of crimes, investigative activities and inquiries, and the legality of decisions taken.

194. In monitoring the enforcement of the law by the bodies conducting initial inquiries and pretrial investigations, the procurator:

- Verifies the legality of the handling of allegations and reports of the commission or preparation of crimes and, in order to review the case, requires bodies conducting the initial inquiry and pretrial investigating authorities to provide documents, files and other information on the crimes committed, the course of the initial inquiry and the pretrial investigation, the identification of persons who committed the crimes and the files of the criminal investigation
- Countermands unlawful and unjustified orders by investigators and persons conducting an initial inquiry and unlawful instructions issued by the supervisors of the investigation divisions and the bodies conducting the initial inquiry
- Gives written instructions on the investigation of crimes and operational measures, the choice, modification or annulment of preventive measures, the nature of the crimes, the conduct of specific investigative actions and the search for persons who have committed a crime
- Entrusts the bodies responsible for the initial inquiry with carrying out specific investigative actions in cases before the procurator or the investigator of the procurator's office
- Takes part in initial inquiries and pretrial investigations and, where necessary, personally conducts a full-scale separate investigation of or inquiry into a given case
- Approves remand in custody and other actions taken in accordance with the law of criminal procedure by bodies conducting an initial inquiry or a pretrial investigation and which restrict the constitutional rights of citizens
- Prolongs the period of inquiry and detention in cases provided for under the law of criminal procedure
- Returns criminal cases to the bodies conducting the initial inquiry and the pretrial investigation with instructions to continue the investigation
- Withdraws any case from the bodies conducting an initial inquiry and refers it to the investigator, and refers any case from one pretrial investigation body to another and

from one investigator to another in order to ensure that the investigation is complete and objective

- Removes from a case any person conducting the initial inquiry or any investigator who has permitted a violation of the law during the investigation
- Institutes criminal proceedings in accordance with the law or refuses to institute such proceedings, and dismisses or suspends criminal proceedings; confirms an indictment and refers a criminal case to a court
- Examines challenges filed against persons conducting the initial inquiry and investigators and complaints concerning their actions and decisions

195. Monitoring of penal institutions focuses on:

- The legality of a person's placement in a remand centre, pretrial detention facility, correctional institution or other penal institution for enforcing punishments or other coercive measures ordered by a court
- Compliance by the above-mentioned institutions with the procedures and conditions for the detention of persons set out in penal legislation, and respect for the rights of detainees

In monitoring the enforcement of the law, the procurator has the right to:

- Visit at any time remand centres, pretrial detention facilities, correctional institutions and other penal institutions for enforcing punishments or other coercive measures ordered by a court
- Question detainees, persons in custody, convicted offenders and persons subject to coercive measures ordered by a court
- Have knowledge of documents on the basis of which these persons have been placed in detention, remanded in custody, convicted or subject to coercive measures
- Verify the legality of orders, instructions and decisions of administrative bodies and contest them if they are in violation of the law; demand explanations from officials
- Annul unlawful penalties imposed on persons held in detention, and immediately release the persons concerned from the holding centre, disciplinary unit or punishment cell

196. The procurator must order the immediate release of any person held without legal justification in a place of detention or a facility for the enforcement of coercive measures or unlawfully held in a remand centre or pretrial detention facility. A procurator's order concerning the enforcement of statutory procedures and conditions for persons placed in detention, remanded in custody or sentenced to deprivation of liberty or other punitive measures, as well as persons concerning whom coercive measures have been taken, must be implemented by the relevant administration and by the bodies responsible for enforcing court judgements with regard to persons sentenced to a punishment not involving deprivation of liberty.

197. In order to combat offences more directly, the procuratorial authorities investigate crimes and prosecute the offenders. Pursuant to article 224 of the Code of Criminal Procedure, the investigative agencies of the procurator's office conduct a preliminary investigation of violations of article 197 of the Code of Criminal Procedure (unlawful deprivation of liberty) and offences committed by State officials.

## Article 13

198. In accordance with the Constitution, citizens are guaranteed judicial protection of honour and dignity and of the individual and political human and civil rights and freedoms set out in the Constitution and the law. Pursuant to article 43 of the Constitution, citizens may challenge in a court of law the decisions and actions of State bodies, public associations and officials.

199. The Act on challenging in a court of law the actions of State bodies, public associations, local government bodies and officials that violate constitutional civil rights and freedoms allows citizens to challenge in court the actions or decisions of the bodies and officials in question and sets out the procedure for considering such grievances.

200. Under article 1 of the Act, any citizen whose constitutional rights or freedoms have been violated or impaired by actions or decisions of the bodies and officials in question may file a complaint in a court of law. Foreign nationals and stateless persons have the right to file such a complaint in accordance with the statutory procedure, unless domestic law or international agreements provide otherwise.

201. In addition, pursuant to the Complaints by Citizens and Procedure for their Consideration Act, citizens have the right, in conformity with the Constitution and the law, to make written and oral suggestions to State, public and other bodies, enterprises, organizations and establishments of any type of ownership for the purpose of improving their activities, and to submit statements and complaints.

202. Applications from citizens are considered no more than one month from the date of receipt. Applications which do not require additional verification are considered without delay, no more than 15 days from the date of receipt. In cases where such consideration necessitates special verification or the examination of a large amount of material, the person in charge of the body, enterprise, organization or administration or his deputy sets the time limit for its processing and informs the applicant accordingly. The total period for the processing of an application may not exceed 45 days (Complaints by Citizens and Procedure for their Consideration Act, art. 12).

203. Article 24 of the Code of Civil Procedure stipulates that citizens have the right to submit complaints to the courts alleging that their rights have been violated by wrongful acts by officials, and it sets out the procedure for the submission and consideration of complaints, court decisions on complaints and the enforcement of court decisions on redress of grievance.

204. Article 111 of the Code of Criminal Procedure defines the procedure for filing complaints concerning the actions of bodies conducting initial inquiries and the investigators. The complaint must be promptly submitted to the procurator, who must take a decision within three days of receipt and inform the complainant thereof (Code of Criminal Procedure, art. 112).

205. The person who conducted the initial inquiry, the investigator, the procurator or the judge whose actions and decisions are the subject of the complaint, as well as the official who approved the decision in question, may not be entrusted with considering the complaint (Code of Criminal Procedure, art. 115).

206. Article 439 of the Code of Criminal Procedure specifies the deadlines for challenging or appealing against judgements:

- Complaints and appeals against court judgements must be submitted within 10 days of the announcement of the judgement and, for a convict remanded in custody, within 10 days of receiving a copy of the judgement

- A case may not be retrieved from the court before the deadline for lodging an appeal against a judgement
- A complaint or appeal lodged after the deadline will not be considered and will be returned to the complainant or appellant
- Additional cassational appeals or complaints and written rebuttals thereof must be filed with the relevant court of cassation prior to the hearing of the case

207. Article 440 of the Code specifies the procedure for restoring the deadline for lodging complaints and appeals. If a person who is entitled to file a cassational complaint or appeal can show good cause for missing the deadline to challenge or appeal a judgement, he may petition the court that handed down the judgement to restore the missed deadline. The matter is decided in an administrative session of the court, which has the right to summon and examine the petitioner. A refusal by a court to restore a missed deadline may be challenged or appealed to a higher court, which has the right to restore the missed deadline and examine the complaint or appeal.

208. Chapter 12 of the Code of Criminal Procedure provides for ensuring the security of persons participating in criminal proceedings. Pursuant to article 107 of the Code, the person conducting the initial inquiry, the investigator, the procurator, the judge, the defence counsel and members of their family enjoy the protection of the State, which ensures that measures are taken in accordance with the law to protect them from attacks on their lives or other violence in connection with the criminal proceedings, court files, the initial inquiry or the preliminary investigation.

209. Under article 108 of the Code, the body conducting the criminal proceedings must take measures to ensure the protection of victims, suspects, accused persons, defendants, investigators, experts, specialists and other persons participating in the case as well as members of their family if they have made an oral or written request to that effect, or it must provide for such protection at its own initiative, concerning which a decree is issued. If necessary, the investigator, the procurator or the judge, by means of a reasoned decision, or the court, by means of a ruling, may issue instructions to the interior affairs agencies to ensure the protection of those persons and their property.

210. In order to protect participants in legal proceedings and members of their family, the judge or presiding justice may hold hearings in camera. To protect the defendant and the counsels for the defence, the presiding justice may prohibit audio-visual devices and other means of recording the questioning and may remove those persons from the courtroom.

211. If necessary, the court may also take other measures to protect participants in criminal proceedings and other persons specified by law (Code of Criminal Procedure, art. 109). In accordance with articles 206–212 and 214 of the Code, the body conducting the initial inquiry, the investigator and the procurator must institute criminal proceedings if evidence of a crime has come to light and must take all measures prescribed by law to establish that a crime has been committed, ascertain the guilty parties and ensure that they are punished.

212. If there are sufficient grounds for so doing, the judge or court institutes criminal proceedings and refers the case to the procurator for investigation. Grounds for instituting criminal proceedings are:

- Allegations and reports from citizens
- Communications from administrations, enterprises, organizations, voluntary associations and officials
- Communications in the media

- Confessions

Criminal proceedings may only be instituted when there are sufficient indications that a crime has been committed and also in the case of the direct detection, by the person conducting the initial inquiry, the investigator, the procurator, the judge or the court, of evidence of a crime.

213. Allegations and reports from citizens about crimes may be written or oral. A written allegation must be written by the person from whom it originates. Oral allegations or reports of a crime presented during an investigation or in the course of a court hearing are included in the record of the investigation or in the court record. The record must indicate the family name, given name, patronymic, year and place of birth, place of residence and occupation of the person making the allegation or reporting the crime, the source of his knowledge of the crime and the details of his identity papers. If the person making an allegation or reporting a crime did not present identity papers, other measures must be taken to establish his identity. If the person making an allegation or reporting a crime has reached the age of 16 years, he must be warned that a knowingly false allegation entails criminal liability, which he acknowledges by signing the record. A person making an allegation or reporting a crime must indicate in the record first-hand how he had knowledge of the circumstances of the crime. The person making the accusation or reporting the crime and the officer receiving the accusation must sign the record. The procedure indicated in paragraphs 1, 2, 4 and 5 of this article also covers the case of a crime committed by the person making the statement (i.e. confession). An allegation or report that is unsigned, bears a forged signature or is signed by a fictitious person may not serve as a ground for instituting criminal proceedings.

214. Reports from enterprises, organizations, administrations, voluntary associations or officials must take the form of an official letter, certified telegram, radio telegram, telex, electronic document or other accepted form of communication. The report may include corroborating documents.

215. Media reports are reports in the press, on radio or television, in documentary films or in unpublished correspondence sent to the media and concerning the commission or preparation of a crime. Media bodies which have published, or ordered published, reports on crimes, and the authors of these reports must submit to the head of the body conducting the initial inquiry, the investigator, the procurator, the judge or the court, at their request, any documents in their possession which corroborate the report of a crime.

## **Article 14**

216. In accordance with the law of criminal procedure, a person who is acquitted in a court of law or an accused person or suspect concerning whom the prosecuting authorities have ordered the discontinuation of criminal proceedings because of findings that obviate the need for criminal prosecution is deemed to be innocent and may not be subjected to any restrictions on his constitutional rights and freedoms.

217. The court and the criminal prosecution authorities must take all measures prescribed by law to rehabilitate such persons. Pursuant to article 35 of the Code of Criminal Procedure, a defendant who has not been found guilty in judicial proceedings must be publicly and promptly declared innocent by the court concerned. An acquitted defendant and also a suspect or accused person concerning whom the judge, the court or the criminal prosecuting authority has issued a decision to dismiss the case because the person was not involved in the criminal act or his involvement could not be proved is deemed to be innocent and may not be subjected to any restriction of his housing, property, occupational

or other rights. Disputes with regard to the restoration of the infringed rights of a person found to be innocent are resolved through civil proceedings.

218. The law protects the rights of the victim. The State guarantees the victim judicial remedies and restitution for material and moral harm suffered (Constitution, arts. 43 and 44).

219. In accordance with article 39 of the Code of Criminal Procedure, articles 3 and 118 of the Code of Civil Procedure and other legislation, restitution must always be made for the material harm inflicted on a person during the commission of a crime.

220. Under article 86 of the Code of Criminal Procedure, a victim is deemed to be any person upon whom moral, physical or material harm was unlawfully inflicted without justification.

221. Pursuant to article 36 of the Code of Criminal Procedure, where criminal proceedings are discontinued because no crime has been committed, because the act in question is not a crime or because the person concerned was not involved in the commission of a crime, the body conducting the initial inquiry, the investigator, the procurator or, in the event of an acquittal, the judge or the court must inform the victim of the procedure whereby his rights can be restored and compensation obtained for the harm suffered as a result of unlawful criminal prosecution and detention and must take all measures prescribed by law to indemnify the victim for such harm.

222. The State must indemnify persons who have suffered harm stemming from unlawful detention, remand in custody, placement in a special medical facility, conviction or the use of coercive measures of a medical nature ordered by a court. On the basis of an order by the prosecuting authority or a court ruling, everyone has the right to demand compensation for harm suffered as a result of the above-mentioned unlawful acts of the prosecuting authority.

223. In the event of the death of the person who suffered the harm, the right to compensation is transferred to his heirs, and the part of the pension and assistance whose payment was discontinued is transferred to the members of the family entitled to State support in connection with loss of breadwinner.

224. Under article 1041 of the Code of Civil Procedure, in the event of the death of the victim, the perpetrator of the harm must make restitution by paying compensation in the form of financial support to persons whose financial support had been paid by the deceased. This obligation remains in force for as long as the victim would have had to pay such support; it may be replaced upon agreement by the payment of a lump sum if there are important reasons for so doing.

225. In accordance with article 1027 of the Code of Civil Procedure, a person who causes harm to another by illegal deliberate or careless acts must pay compensation.

226. Indemnification may include reinstatement in a previous job, the payment of average monthly salary for the period that the victim was absent from work, compensation for pain and suffering, and restitution of housing rights.

227. Harm caused to rehabilitated citizens as a result of unlawful conviction, unlawful criminal prosecution, unlawful remand in custody, unlawful preventive measures such as remand in custody or travel restraints, or imposition of unlawful administrative penalties such as detention or punitive deduction of earnings must be compensated by the State, irrespective of the guilt of the officials of bodies conducting the initial inquiry or the pretrial investigations, the procurator's office or the courts. If the harm was caused intentionally or as a result of gross negligence, these persons share liability with the State (Code of Civil Procedure, art. 1040, para. 3).

228. When a decision is taken on a full or partial rehabilitation of a person, the body conducting the criminal proceedings must recognize that person's right to compensation for harm suffered. A copy of the acquittal or of the order to dismiss the case or to annul or modify other unlawful decisions is presented to the person concerned or sent to him by mail. The person concerned also receives information on the procedure for obtaining compensation (Code of Criminal Procedure, art. 38).

229. Regardless of which body conducting the criminal proceedings takes the decision on rehabilitating a person, the body which caused the harm is required to present him with an official apology. Applications for financial compensation for unjustified and unlawful moral harm are submitted under civil proceedings. If the person concerned was subjected to unlawful criminal prosecution, and information on the institution of criminal proceedings, detention, remand in custody, suspension from duties, coercive placement in a medical establishment, conviction or other actions taken in his regard subsequently found to be unlawful were published in the press or broadcast on radio or television or in other media, the body which conducted the legal proceedings in an unlawful manner is required to make an announcement to that effect in the relevant media within one month at the request of the person concerned or, if he is deceased, the members of his family. At the request of the person found to be innocent, the body which conducted the criminal proceedings is required to inform the person's place of work or training and place of residence in writing within 15 days that its unlawful decision has been rescinded (Code of Criminal Procedure, art. 40).

230. Evidence of unlawful conviction or unlawful criminal prosecution may be furnished by an acquittal, an order by a body conducting an initial inquiry, an investigator or a procurator or by a decision in an administrative session of a court, a court of cassation or a judicial oversight body to discontinue criminal proceedings because no crime has been committed, because the act in question is not a crime, or because it cannot be proved that the person concerned took part in the commission of a crime.

231. If a citizen suffers moral harm (physical and mental suffering) through actions that violate his personal non-material rights or infringe upon other intangible benefits enjoyed by citizens, as well as in other cases prescribed by law, a court may require the wrongdoer to pay financial compensation for the harm suffered.

232. Civil cases are heard in accordance with the provisions of the Code of Civil Procedure.

233. Foreign nationals and stateless persons have the right to petition the courts and to avail themselves of their civil procedural rights on the same footing as Turkmen citizens (Code of Civil Procedure, arts. 439 and 440).

234. Pursuant to article 14, paragraph 3, of the Code of Criminal Procedure, where there are sufficient grounds to indicate that the victim, witness or other parties to proceedings or members of their families or next of kin are threatened with murder, violence, destruction of or damage to property or any other dangerous unlawful actions, the body conducting the criminal proceedings must take steps within the scope of its competence to protect the lives, health, honour, dignity and property of such persons.

## **Article 15**

235. Under article 45 of the Constitution, no one may be forced to give evidence or testimony against himself or his close relatives. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force.

236. A person is presumed innocent until proven guilty of an offence in a manner prescribed by the Code of Criminal Procedure and in accordance with an enforceable

sentence handed down by a court. If guilt cannot be clearly established, or if uncertainty arises during the application of criminal law or the law of criminal procedure, the accused person enjoys the benefit of the doubt. No one is required to prove their own innocence. In the absence of other evidence, confessions alone may not serve as proof of guilt. A guilty verdict may not be based on suppositions. It must be substantiated by a sufficient accumulation of credible evidence. Evidence collected by unlawful means or of unknown origin may not be considered or used in the administration of justice (Code of Criminal Procedure, art. 18).

237. Everyone is entitled to freedom and personal inviolability. No one may be arrested on the basis of a suspicion of commission of a crime, detained or otherwise deprived of liberty except in accordance with the Code of Criminal Procedure. An arrested person must be immediately informed of the reasons for detention and the nature of the offences of which he is suspected or accused. The court and the procurator must immediately release any person who has been unlawfully arrested, detained, placed in a medical establishment or held beyond the period specified by law or by a sentence. No participant in criminal proceedings may be subjected to violence or cruel or degrading treatment. No one may be forced to participate in procedural actions likely to endanger a person's life or health. Procedural acts which infringe personal inviolability may be carried out against the will of a person or his legal representative only in the cases and manner provided for by the Code of Criminal Procedure. A person who is remanded in custody as a preventive measure or held on suspicion of committing a crime must be detained in conditions which do not endanger his life or health. Harm caused to a person as a result of illegal deprivation of liberty, detention in conditions dangerous to life or health, or cruel treatment is subject to compensation in accordance with the Code.

238. The Criminal Code provides for a punishment of deprivation of liberty for up to 3 years for any procurator, investigator or person conducting an inquiry who uses threats, blackmail or other illegal acts to coerce a suspect, accused person, victim or witness into giving evidence or an expert into giving an opinion. When such an act is accompanied by violence or abuse, it is punishable by deprivation of liberty for 3 to 8 years (Criminal Code, art. 197).

239. The court, procurator, investigator or person conducting the initial inquiry must take all steps prescribed by law to ensure that the circumstances of a case are thoroughly, fully and objectively investigated and to identify all facts that either incriminate or exonerate the accused person as well as mitigating and aggravating circumstances.

240. Factual data are deemed inadmissible as evidence if they were obtained through violations of the law of criminal procedure which, by depriving participants in a trial of their legally guaranteed rights, restricting those rights or otherwise infringing the rules of criminal procedure during the investigation or the court hearing, affected or could affect the credibility of such data. This may involve:

- The use or threat of force, as well as deceit or other unlawful actions
- The deception of a person participating in the criminal proceedings as to his rights and obligations through failure to explain those rights and obligations, to explain them in full or to explain them properly
- The conducting of criminal proceedings by a person not empowered to do so
- The participation in the proceedings of a disqualified person
- A serious violation of procedure
- The use of information obtained from an unknown source or from a source which cannot be determined in the court hearing

- The use of methods in violation of contemporary scientific expertise to substantiate evidence

241. The body conducting the proceedings decides on its own initiative or at the request of one of the parties whether factual data used as evidence is inadmissible or whether they can be used to a limited degree.

242. Testimony given by a suspect, an accused person, a victim or a witness as well as opinions of experts, material evidence, records of investigative and court actions and other documents may not be used as a basis for an indictment if they were not included in the file of the case.

243. Evidence obtained in violation of the law is deemed to have no legal force and may not be used as a basis for an indictment or to substantiate evidence.

244. Factual data obtained by means of the violations set out in article 125, paragraph 1, of the Code of Criminal Procedure may be used as evidence of the existence of such violations and the guilt of the persons allowing their use.

245. In accordance with article 132, paragraph 2, of the Code of Criminal Procedure, the State prosecutor must give reasons substantiating the presence of criminal liability and the guilt of the defendant.

246. A confession by an accused person or defendant may serve as a basis for an indictment only if it is substantiated by the body of evidence in the case (Code of Criminal Procedure, art. 128, para. 4).

247. Article 108 of the Constitution recognizes the right to professional legal assistance at all stages of legal proceedings; such assistance is provided to citizens and organizations by lawyers and by other individuals and organizations.

248. The right of defence of suspects, accused persons, defendants, convicted offenders and acquitted persons is guaranteed. They may avail themselves of that right on their own behalf or with the help of a lawyer or a legal representative as prescribed by the Code. The person conducting the initial inquiry, the investigator, the procurator and the court are required to ensure that suspects, accused persons, defendants, convicted offenders and acquitted persons have the possibility of defending themselves in accordance with the rules established by law and that their personal and property rights are protected (Code of Criminal Procedure, art. 24).

249. Pursuant to article 25, paragraph 1, of the Code of Criminal Procedure, no one may be obliged to testify against himself or his close relatives. Evidence obtained through psychological or physical pressure or other unlawful methods has no legal force.

250. No evidence may be established as fact by a person conducting an initial inquiry, an investigator, a procurator, a judge or a court until it has been verified (Code of Criminal Procedure, art. 136, para. 2).

251. Article 197 of the Code of the Criminal Code provides for a punishment of deprivation of liberty for up to 3 years for any procurator, investigator or person conducting an inquiry who uses threats, blackmail or other illegal acts to coerce a suspect, accused person, victim or witness into giving evidence or an expert into giving an opinion. When such an act is accompanied by violence or abuse, it is punishable by deprivation of liberty for 3 to 8 years.

## Article 16

252. Having acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Turkmenistan has undertaken to prohibit and criminalize acts of torture. This position is reflected in national legislation, including in laws, regulations and instructions, as well as in law enforcement and educational practice.

253. Causing physical or mental suffering through systematic beatings or other violent means, if carried out by torture, is punishable by deprivation of liberty for 3 to 7 years (Criminal Code, art. 113, para. 2 (e)).

254. The following articles of the Code of Criminal Procedure define other forms of cruel, inhuman or degrading treatment or punishment: article 126 (abduction); article 129 (unlawful deprivation of liberty); article 130 (hostage-taking); article 131 (forced medical treatment of a person known to be healthy); and article 182 (exceeding of authority).

255. Under article 112 (battery) of the Criminal Code, beatings or other violent acts causing physical pain but not resulting in a temporary health problem or in a minor ongoing loss of the ability to work are punishable by a fine of 5 to 10 average monthly salaries or correctional labour for up to 1 year.

256. Under article 145 of the Criminal Code, any direct or indirect violation or restriction of human or civil rights and freedoms on account of gender, race, ethnic background, language, origin, material circumstances, profession, place of residence, attitude towards religion, beliefs or membership in voluntary associations is punishable.

257. Training on issues relating to national and international legal protection of human rights and freedoms is regularly conducted for members of the judiciary and practising jurists (prosecutors and lawyers) in cooperation with international organizations (the Organization for Security and Co-operation in Europe (OSCE), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the European Union TACIS programme, the Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) and the embassy of the United Kingdom in Turkmenistan) and with the participation of international experts.

258. The ministries of foreign affairs, justice, culture and broadcasting, and education, the State Statistics Committee, the Academy of Sciences, the National Institute for Democracy and Human Rights in the Office of the President, higher institutions of learning and voluntary organizations in Turkmenistan, with backing from United Nations agencies, the Organization for Economic Cooperation and Development (OECD), the International Organization for Migration (IOM) and a number of other international organizations in Turkmenistan, publish collections of international texts and national legislation on human rights and freedoms, hold joint seminars, round tables, conferences and presentations in the capital and all the provinces for the staff of State entities working in the human rights domain on questions of reforming the prison system and the system of juvenile justice, amending relevant legislation and implementing international standards. The National Institute for Democracy and Human Rights periodically puts out a magazine entitled "Democracy and Law" in three languages (Turkmen, Russian and English). In collaboration with a number of ministries and departments and with the support of the offices of United Nations agencies in Turkmenistan, it has published 18 compilations, including "International Decisions on Human Rights", "Human Rights and Justice in Turkmenistan", "Women's Rights in Turkmenistan", "Refugee Rights in Turkmenistan", "Rights and Duties of Foreigners in Turkmenistan" and "Protection of Individual Rights and Freedoms in Turkmenistan".

259. Various handbooks, including "International human rights standards for law enforcement agencies", "Instruments to combat torture" and a human rights manual for

prison staff, available in Russian and Turkmen, were published in Turkmenistan between 1999 and 2003 with the help of the United Nations Development Programme (UNDP) and the Swiss Agency for Cooperation and Development.

260. One of the fundamental aspects of the long-term workplan of the Interdepartmental Commission on compliance with Turkmenistan's international human rights obligations is the monitoring of national human rights legislation and the preparation of proposals for the implementation of international human rights norms and institutional reforms. The Commission is currently elaborating proposals on the need for a reform of the prison system and the system of juvenile justice and amendments to legislation on voluntary and religious organizations. In the context of ongoing initiatives, work on the initial version of the bill on the penal enforcement code, which takes international standards into account, has been completed with the assistance of the embassy of the United Kingdom in Turkmenistan and the GTZ project on support of legal and judicial reform in Central Asian countries.

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