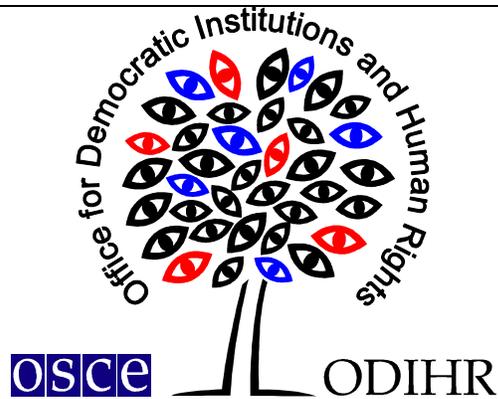


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COMMENTS ON THE LAW OF TURKMENISTAN ON PUBLIC ASSOCIATIONS

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

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1. INTRODUCTION

1. *In February 2010, the Centre in Ashgabat of the Organization for Security and Co-operation in Europe (OSCE) submitted to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) a request for comments on the Law of Turkmenistan on Public Associations (hereinafter, the “Law on Public Associations” or “the Law”), enacted in 2003, with subsequent amendments.¹ These Comments are provided in response to that request.*

2. SCOPE OF REVIEW

2. These Comments have been prepared taking into account Turkmenistan’s international commitments,² including its commitments as a participating State of the OSCE,³ focusing in particular on freedom of association and relevant international standards on freedom of association. While efforts have been made to include relevant provisions of the Constitution of Turkmenistan (with latest amendments from 26 September 2008)⁴ and select domestic laws and regulations which may affect freedom of association within the purview of the Comments, the scope remains as defined in paragraph 3 below.
3. The Comments cover the Law on Public Associations, but do not constitute a full and comprehensive review of the entire body of legislation governing the issue of freedom of association in Turkmenistan.

¹ The latest amendments to the Law on Public Associations were passed on 2 July 2009.

² Turkmenistan is a party to the following international human rights instruments: the Convention on the Rights of the Child (CRC) (acceded on 20 September 1993) and its two Optional Protocols (acceded in 2005); International Convention on the Elimination of All Forms of Racial Discrimination (CERD) (acceded on 29 September 1994); International Covenant on Economic, Social and Cultural Rights (ICESCR) (acceded on 1 May 1997); International Covenant on Civil and Political Rights (ICCPR) (acceded on 1 May 1997) and its two Optional Protocols (acceded in 1997 and 2000); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (acceded on 1 May 1997), Freedom of Association and Protection of the Right to Organise Convention (ratified on 15 May 1997), the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (acceded on 25 June 1999), and others. See UN Treaty Collection, Multilateral Treaties deposited with the Secretary-General, Chapter IV: Human Rights, Participation Status, <<http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>>.

³ Turkmenistan is a participating State to the OSCE and is accordingly bound by OSCE commitments. For a compilation of relevant OSCE Commitments, see OSCE ODIHR, OSCE Human Dimension Commitments, Volume 1: Thematic Compilation (2d. ed. 2005), available at: <www.osce.org/publications/odihr/2005/09/16237_440_en.pdf>. For specific OSCE commitments on the freedom of association, see footnote 5 below.

⁴ The most relevant Constitutional provision on freedom of association is Art. 30 of the Constitution of Turkmenistan, which provides that:

“Citizens have the right to set up political parties and other public associations to conduct their activities within the framework of the Constitution and other laws.

Political parties and other public organizations may not be created or allowed to operate if they aim to forcibly change the constitutional system, admit of violence in their activities, or campaign against the constitutional rights and freedoms of citizens, engage in propaganda of war or racial, ethnic, social and religious enmity, or infringe on people’s health and morality; it is likewise forbidden to create paramilitary organizations and political parties based on ethnic or religious criteria.”

4. The Comments are based on an unofficial English translation of the text of the Law of Turkmenistan on Public Associations, provided to ODIHR by the OSCE Centre in Ashgabat, and attached hereto under Annex A. Errors from translation may result.
5. In view of the above, the OSCE ODIHR would like to make mention that these Comments are without prejudice to any written or oral recommendations and comments to the Law on Public Associations and related legislation that the OSCE ODIHR may wish to make in the future.

3. EXECUTIVE SUMMARY

6. In order to ensure the compliance of the Law on Public Associations with international standards, it is recommended as follows:

Key Recommendations:

- A. As concerns the rights of citizens of Turkmenistan, non-citizens and legal entities:
 - to ensure that foreign citizens and stateless persons are afforded freedom of association guarantees similar to those enjoyed by the citizens of Turkmenistan [paras 13-15, 17-18]
 - to expressly allow citizens of Turkmenistan to join international public associations [paras 16-17]
 - to effectively provide legal entities with the right to establish public associations [para 19].
- B. As regards the minimum membership/participation requirements:
 - to lower the minimum membership/participation thresholds set by Art. 15 par. 2 with respect to international and national public associations [paras 21-23].
- C. As concerns the registration of public associations and their reporting obligations:
 - to remove from the text of the Law the provisions of Art. 17 par. 3 prohibiting the activities of unregistered public associations in Turkmenistan and prescribing liability for any person acting on behalf of an unregistered public association [paras 24-27]
 - to simplify and streamline the procedure for registering changes and amendments to a public association's charter [paras 29-31]
 - to simplify and reduce the onerous reporting obligations set by Art. 22 [paras 37-40].
- D. With respect to state supervision and control of public associations' activities:
 - to provide safeguards against arbitrary and abusive interferences by control bodies with the freedom of association and the right to privacy [para 41]

- to expressly guarantee that the supervision and oversight powers of the various state bodies shall not be exercised discriminatorily or arbitrarily, or otherwise be employed to stifle or restrict the legitimate exercise of freedom of association [para 44]
- to provide public associations with legal remedies against unjustified and abusive controls [para 44].

E. As regards the termination and liquidation of public associations:

- to expressly provide that a forceful liquidation or termination of a public association can be ordered only by a court of law [para 48]
- to provide in the text of the Law a series of alternative sanctions of varying severity that could be imposed on public associations, with liquidation and termination being the harshest sanction applicable only as an exception, for particularly serious violations of law [paras 49-50]
- to provide explicitly in the Law that the transfer of the property of a liquidated/terminated public association shall be decided by judicial bodies, following a fair process in which all parties concerned were duly heard [para 51].

Additional Recommendations:

- to include explicit provisions allowing the activities of associations in the process of registration [para 28]
- to introduce a general principle of irrevokability of registration, with an exception for cases of dissolution or liquidation through court order [para 30]
- to reconsider the provision allowing refusal of registration of public associations in cases when a founder has a conviction for an especially grave crime [para 34]
- to allow public associations to have international contacts and correspondence without any intervention or undue interference from state authorities [para 35]
- to consider removing from Art. 22 the obligation that public associations comply “with generally accepted principles and norms of international law” [para 36]
- to remove from Art. 28 the provision allowing the Ministry of Justice to nullify the registration of a public association if it has “switched mainly to business activities, or if the achievement of its goals specified in the founding charter becomes unfeasible” [paras 42-43]
- to remove from the text of the Law the provision allowing the Ministry of Justice to suspend public associations for non-compliance with the provisions of their charters [para 45]
- to set a specific time-frame for the state body to examine public associations’ petition for the resumption of activities [para 46]
- to prescribe that state authorities must take decisions on suspension in written and reasoned form, and that those decisions shall be appealable before a court of law [para 47].

4. ANALYSIS AND RECOMMENDATIONS

A. International Standards on Freedom of Association

7. The freedom of association is embodied in OSCE commitments⁵ and guaranteed by major international human rights instruments, such as the International Covenant on Civil and Political Rights⁶ (hereinafter, the “ICCPR”) and the European Convention on Human Rights⁷ (hereinafter, the “ECHR”). Most of these international instruments are directly applicable in Turkmenistan,⁸ and have supremacy over any provisions contained in domestic legislation which may come into conflict therewith.⁹ While some of the referenced instruments do not have direct binding force in Turkmenistan, such as the judgments of the European Court of Human Rights (ECtHR) based on the ECHR, they give valuable reference points as to possible interpretation of binding international instruments¹⁰ and may provide the context for understanding commitments regarding freedom of association that are binding for the overwhelming majority of the OSCE participating States. ECtHR judgments can also be considered highly persuasive since they emanate from the longest-functioning international court with expertise and jurisdiction exclusively in the area of human rights, and also given that the ECHR human rights protection system often serves as a model for the rest of the world, a fact expressly appreciated by the UN High Commissioner for Human Rights.¹¹
8. The freedom of association, besides being of fundamental value in and of itself, is also essential for the effective exercise of other rights and freedoms, such as the freedom of expression¹² which serves to ensure that individuals may voice

⁵ See, in particular, the OSCE Concluding Document of the Vienna Meeting (1989); the OSCE Copenhagen Document (1990), in particular sections (7.6), (9.3), (10.3) and (32.6); and the OSCE Paris Document (1990).

⁶ See Art. 22 of the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entry into force 23 March 1976, in accordance with Article 49).

⁷ See Art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on 4 November 1950.

⁸ For a list of international treaties that Turkmenistan has signed up to, see footnote 2 *supra*.

⁹ Art. 6 of the Constitution of Turkmenistan recognizes the precedence of generally recognized norms of international law over domestic legislation in case of conflict. Furthermore, Art. 2 par. 3 of the Law on Public Associations provides that “Should an international treaty ratified by Turkmenistan establish different rules than those contained in this Law, then the rules established by the international treaty shall apply”.

¹⁰ This is so because the wording of Art. 11 ECHR is virtually identical to that of Art. 22 ICCPR.

¹¹ See the speech given by Mrs. Louise Arbour, former UN High Commissioner for Human Rights, on the occasion of the opening of the 2008 judicial year of the European Court of Human Rights, 25 January 2008, available at: http://www.echr.coe.int/NR/rdonlyres/D5B2847D-640D-4A09-A70A-7A1BE66563BB/0/ANNUAL_REPORT_2008.pdf (page 43). The highly persuasive authority of ECtHR judgments is furthermore evinced by the fact that its legal reasoning is often cited also by international courts and tribunals which are not bound to follow it, such as the International Criminal Tribunal for the Former Yugoslavia (ICTY; see, e.g., *Prosecutor v. Gojko Janković*, Case no. IT-96-23/2-PT, Decision on Referral of Case under Rule 11 *bis*, 22 July 2005, § 62), the Court of Justice of the European Communities (ECJ; see, e.g., Case C-112/00 *Schmidberger* [2003] ECR I-5659, § 71) and the Inter-American Court of Human Rights (IACtHR; see, e.g., *Case of Herrera Ulloa v. Costa Rica*, Series C no. 107, § 122 (2 July 2004)).

¹² Freedom of expression is similarly prescribed in OSCE instruments (the OSCE Helsinki Document (1975); the OSCE Vienna Document (1989), in particular sections (34)-(36); the OSCE Copenhagen

their opinions and raise issues of public concern in order to contribute to their resolution. The exercise of this freedom is considered as a pivotal element of the OSCE's comprehensive concept of security.

9. Broadly speaking, the freedom of association constitutes the right to choose whether or not to form and join associations. This freedom gives people the right to join together for the pursuance of common interests.¹³ The UN Human Rights Committee has stated that “the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people”.¹⁴ The concept of freedom of association covers political parties, unions, and non-governmental organizations of various kinds.
10. With the coming into force of international treaties and the development of OSCE Commitments in this regard, many instruments, statements and case-law of international bodies have developed, further outlining the manner in which these freedoms ought to be exercised and the extent to which State authorities may impose limitations thereon.
11. In terms of permissible limitations, the freedom of association under Art. 22 ICCPR may be subjected only to such restrictions “which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”.¹⁵ This limitations clause was further detailed and explained by the UN Human Rights Committee through its body of views and comments based on Art. 22 ICCPR. Furthermore, the UN Commission on Human Rights has endorsed the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, which serve as interpretative principles for all the limitation clauses under the ICCPR.¹⁶ These principles and standards developed by the UN, along with relevant OSCE instruments and, to a lesser extent, ECtHR case-law, have been used as references in preparing these Comments.

B. General Comments

12. It ought to be mentioned from the outset that the Law of Turkmenistan on Public Associations reflects many international standards on freedom of association.

Document (1990), section (9.1)) and guaranteed by international treaties (Art. 19 ICCPR and Art. 10 ECHR).

¹³ Johann Bair, “The International Covenant on Civil and Political Rights and its (First) Optional Protocol. A Short Commentary Based on Views, General Comments and Concluding Observations by the Human Rights Committee” (Peter Lang Publishers, 2005), page 98.

¹⁴ See the UN Human Rights Committee Concluding Comments on Belarus (1997) UN doc. CCPR/C/79/Add. 86, paragraph 19.

¹⁵ Art. 22 par. 2 ICCPR.

¹⁶ *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, circulated as an official document of the 41st session of the UN Commission on Human Rights (28 September 1984) E/CN.4/1985/4, available at: <http://www.unhcr.org/refworld/docid/4672bc122.html>

Nevertheless, there is still room for improvement with regard to a number of provisions of the Law and these Comments will seek to highlight those provisions and outline how they may be enhanced. In order to keep the Comments as short as possible, the focus is on areas that are a source of concern, rather than on the positive features of the Law. It is the hope of OSCE ODIHR that these Comments will assist the authorities of Turkmenistan in any planned future amendments to the Law on Public Associations or in any decision to undertake requisite reforms.

4.1. Scope of the Law and the position of non-citizens and legal entities

13. The Law on Public Associations is too narrow in its scope in so far as it guarantees freedom of association only to the citizens of Turkmenistan. This is made clear in the Preamble of the Law and in Articles 1, 3 and 15, which refer specifically to “citizens of Turkmenistan”.¹⁷ Since the Law on Public Associations does not apply to political parties,¹⁸ the reasons for excluding non-citizens from the scope of this Law’s freedom of association guarantees remain unclear and, ultimately, in breach of international standards.
14. It must be recalled that while some human rights may be confined to citizens (such as the right to vote and to stand for election), human rights are in principle to be enjoyed by all persons, irrespective of their nationality. International treaties ratified by Turkmenistan – which override conflicting domestic legislation¹⁹ – prescribe freedom of association as a fundamental human right that must be secured in general to all individuals within the jurisdiction of the State.²⁰ Under international law, freedom of association must generally be guaranteed without discrimination between aliens and citizens, and should be enjoyed by all persons irrespective of nationality or statelessness.²¹ The Compliance Committee under the UN Aarhus Convention has explicitly stated, with direct reference to Turkmenistan’s Law on Public Associations, that “the exclusion of foreign citizens and persons without citizenship from the possibility to found and participate in an NGO might constitute a disadvantageous discrimination against them”, in violation of Art. 3 par. 9 of the Aarhus Convention.²² The Constitution of Turkmenistan also provides that “[f]oreign citizens and stateless persons enjoy the rights and liberties of citizens of Turkmenistan”.²³ It is

¹⁷ The wording of Art. 30 of the Constitution of Turkmenistan similarly guarantees only to citizens the right to freedom of association, but this is counterbalanced by Art. 8 of the Constitution which provides that “[f]oreign citizens and stateless persons enjoy the rights and liberties of citizens of Turkmenistan”.

¹⁸ As expressly provided in Art. 3 par. 1 of the Law on Public Associations.

¹⁹ See Art. 6 of the Constitution of Turkmenistan and Art. 2 par. 3 of the Law on Public Associations.

²⁰ See Art. 2 par. 1 ICCPR and Art. 22 ICCPR, considered in conjunction. See also Art. 5 CERD, and the CERD General Recommendation XXX on Discrimination Against Non Citizens (adopted on 1 October 2002), paragraphs 1-3.

²¹ See the General Comment 15(27) under Art. 40 par. 4 of the ICCPR on the Position of Aliens under the Covenant (9 April 1986).

²² See the UN Economic and Social Council, Document ECE/MP.PP/C.1/2005/2/Add.5 of 14 March 2005, *Findings and Recommendations with regard to compliance by Turkmenistan with the obligations under the Aarhus Convention in the case of Act on Public Associations* (adopted by the Aarhus Convention’s Compliance Committee on 18 February 2005), paragraph 16.

²³ Art. 8 of the Constitution of Turkmenistan. See also the Law of Turkmenistan on the Legal Status of Foreign Citizens in Turkmenistan, which similarly provides that foreign citizens shall enjoy the same

therefore strongly recommended to extend the guarantees provided by the Law also to foreign nationals and stateless persons, who should generally be afforded freedom of association guarantees equal to those enjoyed by citizens.

15. Under Art. 5 par. 7 of the Law, “[f]oreign citizens, stateless persons permanently living in Turkmenistan, and legal entities – public associations – of Turkmenistan and other countries may participate in international public associations”. On its face, this provision appears discriminatory for two reasons. Firstly, it allows non-citizens to join only international public associations – and not also national or local associations – operating in Turkmenistan. As stated above, non-citizens should generally be allowed to join associations on par with nationals of the state.
16. Secondly, Art. 5 par. 7 is also discriminatory in so far as it allows only non-citizens to join international public associations, thus implicitly denying to citizens of Turkmenistan the right to join international public associations. It is true that Art. 5 par. 7 provides that “legal entities – public associations – of Turkmenistan [...] may participate in international public associations”, which may be read as allowing citizens of Turkmenistan to participate in international public associations indirectly, via their membership in the said public associations of Turkmenistan. However, under international law the right to freedom of association is a fundamental *individual* right, which should be exercisable by everyone singularly, and not only through membership in a public association. In other words, every citizen of Turkmenistan alone and by himself or herself should be able to join an international public association if he or she so wishes.
17. For these reasons, the restrictions imposed by Art. 5 par. 7 are unjustified. To ensure compliance with international standards, it is recommended that this article be amended so as to allow non-citizens to freely join public associations registered in Turkmenistan, and also so as to allow the participation of citizens of Turkmenistan in international public associations.
18. Art. 15 par. 1 of the Law, which prescribes that public associations can be established at the initiative of no fewer than five founders “who shall be citizens of Turkmenistan”, is similarly discriminatory against non-citizens. The same paragraph further provides that foreign nationals can be founders of public associations alongside citizens of Turkmenistan “[i]n cases provided for by this Law”; the law, however, does not specify any such cases, thereby rendering this provision superfluous.²⁴ Particularly since this Law does not apply to political parties, there appears to be no valid justification for not allowing non-citizens to be [co-]founders of public associations. It is therefore recommended to amend Art. 15 par. 1 so as to allow also non-citizens to be founders of public associations in Turkmenistan.

rights and freedoms as the citizens of Turkmenistan unless otherwise provided by law (Art. 3), and that foreign citizens and stateless persons have the right to join public associations, if that is provided for in their charters (Articles 15 and 32), and in line with the provisions of the Law on Public Associations.

²⁴ That provision also correlates oddly with Art. 5 par. 7 of the Law, which provides that foreign citizens may *participate in* (which is not the same as establish) international public associations.

19. The scope of the Law is also under-inclusive in so far as it fails to afford legal entities (juridical persons) the right to establish public associations. While Art. 15 par. 1 provides that “[i]n cases provided for by this Law, founders can include [...] legal entities – public associations – established both in Turkmenistan and in other countries”, this provision is rendered ineffective by the Law’s failure to further – and expressly – prescribe those “cases”.²⁵ Legal entities may benefit tremendously from the right to associate and establish public associations in order to pursue common not-for-profit activities, and the domestic legislation of many States expressly allows them to do so.²⁶ The exclusion of such opportunity weakens civil society, without there being a compelling reason to justify such an omission. While the rights of juridical persons may not be co-extensive with the rights of individuals, this does not mean that they should be denied such rights altogether. It is therefore recommended to effectively prescribe the right of legal entities to establish public associations.

4.2. Territorial limitations on the activities of public associations

20. Art. 13 par. 4 defines local public associations as “those whose activities, according to their charter purposes, cover the territory of a *velayat*, *city*, *etrap*, settlement or village”. While this provision is not problematic *per se*, it should not be interpreted as confining the activities of a local public association to that particular territory. In other words, just because a public association is local (as opposed to national or international), it should still be allowed to carry out activities in other territories, without the need to undergo repeated registration. Legislators may wish to consider adding an express provision to guarantee that public associations may operate in territories other than the one in which they are registered.

4.3. Minimum membership requirements

21. Art. 15 par. 2 sets minimum membership requirements for international and national public associations, which must have a minimum of 50 and 500 members or participants, respectively. These thresholds are arguably too high and may have the effect of stifling the exercise of freedom of association.
22. International standards provide that only such restrictions may be placed on the exercise of the right to freedom of association, “which are prescribed by law and which are *necessary in a democratic society* in the interests of national security or public safety, public order (*ordre public*), the protection of public health or

²⁵ The Law only provides elsewhere that “Legal entities – public associations of Turkmenistan – may *participate* in national public associations” (Art. 5 par. 8, emphasis added).

²⁶ See, for instance, Art. 4 of the Law on Non-Profit Organizations of Albania (of 7 May 2001, with subsequent amendments); Art. 4 of the Law on Associations of Croatia (of 11 October 2001, with subsequent amendments); Art. 2 of the Act on the Right of Association of Hungary (of 11 January 1989, with subsequent amendments); Articles 7 and 11 of the Law on Public Associations of Moldova (of 17 May 1996, with subsequent amendments); Art. 6 of the Federal Law on Public Associations of the Russian Federation (of 19 May 1995, with subsequent amendments); and others.

morals or the protection of the rights and freedoms of others”.²⁷ For a limitation to be considered “necessary”, it should be based on a legitimate ground, respond to a pressing public or social need, pursue a legitimate aim and be proportionate to that aim.²⁸ Furthermore, a State must use no more restrictive means than are required for the achievement of the purpose of the limitation.²⁹

23. While States do enjoy a certain margin of appreciation in regulating the exercise of freedom of association, state action limiting this freedom needs to correspond to the above principles. It is hard to imagine a reasonable justification as to why an international public association should not have less than 50 members, or why a national public association with fewer than 500 members or participants should not be allowed to be founded and operate. Without valid justification, a high minimum membership requirement can violate the proportionality principle inherent in Art. 22 par. 2 ICCPR and described in the preceding paragraph. It is therefore recommended to lower the membership/participation thresholds set by Art. 15 par. 2. A comparative analysis of other States’ domestic legislation shows that in most of the cases, ten or fewer individuals (and even a smaller number of legal entities) are required to form a public association,³⁰ with no higher thresholds set for associations which operate on the national or international level.

4.4. Mandatory registration of public associations

24. Art. 17 prescribes the system of mandatory registration of public associations in Turkmenistan. It provides, *inter alia*, that “[u]nregistered public associations shall not engage in activities in Turkmenistan” and that “[a]ny person acting on behalf of an unregistered public association shall be liable in accordance with the laws of Turkmenistan”,³¹ which presumably means liability under Art. 204/1 of the Code of Administrative Offences.³² This restriction and prohibition violates international standards and is recommended to be repealed.
25. International standards recognize that freedom of association includes also the right to associate informally, and that no one can be required to join an

²⁷ See Art. 22 par. 2 ICCPR (emphasis added).

²⁸ See paragraph 10 of the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, endorsed by the UN Commission on Human Rights (see footnote 16 *supra*).

²⁹ *Ibidem*, paragraph 11.

³⁰ For instance, an association can be established by **two persons** in France (Art. 1 of the Law on Associations), Moldova (Art. 1 of the Law on Public Associations), Armenia (Art. 9 of the Law on Public Organizations), and Estonia (Art. 5 of the Non-Profit Associations Act); by **three persons** in Lithuania (Art. 5 of the Law on Associations) and the Russian Federation (Art. 18 of the Federal Law on Public Associations); by **three natural persons or two legal entities** in Azerbaijan (Art. 1 of Chapter II of the Law on Non-Profit Entities and Charitable Activities); by **five natural persons or two legal entities** in Albania (Art. 10 of the Law on Non-Profit Organizations of Albania); by **ten persons** in Hungary (Art. 3 of the Act on the Right of Association) and Kazakhstan (Art. 10 of the Law on Social Associations and Art. 19 of the Law on Non-Profit Organizations).

³¹ See Art. 17 par. 3 of the Law.

³² Art. 204/1 of the Code of Administrative Offences of Turkmenistan prescribes liability, *inter alia*, for evading registration of a public association and for participation in a non-registered public association.

association.³³ Acquisition of legal status should not be a prerequisite for the exercise of the right to association. The fact that non-governmental organizations *may* be formed as legal entities does not mean that individuals can be *required* to form legal entities in order to exercise their freedom of association. In many countries, associations only need to register in order to become eligible to receive certain government grants, benefits, tax exemptions or the like.

26. Furthermore, while a State may legitimately introduce classifications with respect to associations – and condition certain privileges (such as state contracts or access to tax preferences) on legal personality status – that should in no way result in the banning of informal associations on the sole ground of their not having legal personality.³⁴
27. The provisions of Art. 17 par. 3 prohibiting the activities of unregistered public associations in Turkmenistan and prescribing liability for any person acting on behalf of an unregistered public association contravene the above-referenced international standards.³⁵ To ensure compliance with international law and good practice, it is strongly recommended that these provisions be removed from the text of the Law.
28. Furthermore, it is recommended to explicitly allow the activities of associations in the process of registration. Legislators may also consider the introduction of a specific regulation of the activities of associations in the process of registration to the effect that the actions of their founders could create rights and obligations for the association after its official registration.
29. Art. 17 par. 9 provides that “[c]hanges and amendments to founding charters of public associations as well as factual changes subject to registration shall be registered in accordance with the existing procedures and within a time period specified for the initial registration of public associations and shall become effective at the time of registration”. This means that for any change or

³³ The most explicit recognition of this principle can be found in Recommendation CM/Rec(2007)14 of the Council of Europe Committee of Ministers to member states on the legal status of non-governmental organisations in Europe (adopted on 10 October 2007), which states that “*NGOs can be either informal bodies or organisations or ones which have legal personality*”. Though not legally binding on Turkmenistan, this Recommendation can still provide a valuable source of guidance in so far as it may facilitate the interpretation of the provisions of international instruments. For international (UN) instruments which are directly binding on Turkmenistan and from which this principle could be inferred by analogy, consider Art. 3 par. 4 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the “Aarhus Convention”), and Art. 7 of the Freedom of Association and Protection of the Right to Organise Convention.

³⁴ See *Chassagnou and Others v. France*, ECtHR judgment of 29 April 1999, paragraph 100. See also *The United Communist Party of Turkey and Others v. Turkey*, ECtHR judgment of 30 January 1998, paragraph 33.

³⁵ See also the *Findings and Recommendations* adopted on 18 February 2005 by the Aarhus Convention’s Compliance Committee, stating that “the combination of a prohibition of non-registered associations with overly difficult registration procedures and requirements existing under the Turkmen Act on Public Associations does appear to present a genuine obstacle to the full exercise of the rights of the public”, in violation of Art. 3 par. 4 of the Aarhus Convention (UN Economic and Social Council, Document ECE/MP.PP/C.1/2005/2/Add.5 of 14 March 2005, paragraph 21).

amendment to its founding charter, a public association must effectively undergo re-registration. Since this concerns public associations that are already properly registered with the State, requiring them to undergo the same initial registration procedure for even minor changes to founding charters may amount to an excessive encroachment on the freedom of association, as well as to an undue administrative burden – both for the associations themselves, and for the state bodies in charge of registration. It is therefore recommended to simplify and streamline the procedure to register changes and amendments to a public association’s charter. Considering that public associations are obliged “to report annually to the Ministry of Justice of Turkmenistan on their continued activities, indicating the actual address of the association’s governing body, its name, and the details of its executive officers”,³⁶ one option would be to allow public associations to notify any changes and amendments to their charters through such annual reports, rather than through the regular registration procedure. In general, public associations should be allowed to simply notify the authorities with respect to minor changes, and only major changes (such as the name of the association, its main goals, or form of association) should be subject to registration.

30. Overall, it is advisable that the Law draw a distinction between registration, on the one hand, and notification of minor changes, on the other. Public associations can legitimately be required to notify the Ministry of Justice of specific changes, but this should not happen through the procedure of registration, and should by no means amount to a *de facto* re-registration of the association. For this purpose, the Law may include a general principle that registration is irrevokable, with the exception of cases when the association is liquidated and/or dissolved by a court order.
31. These remarks on the system of registration of public associations apply with equal weight to the “Final provisions” from Art. 33 of the Law, according to which “[c]harters and other constitutional documents of public associations established before this Law came into force shall be amended in conformity with this Law”. Considered in conjunction with Art. 17 par. 9, which requires that all changes and amendments to charters be made through the regular registration procedure, this in effect obliges the re-registration of public associations whose charters are not fully compliant with this Law (even if that non-compliance relates to minor discrepancies). Such retroactive legal provisions should be applied with particular care and should not be used to refuse the [re-] registration of public associations which had already been operating faultlessly in the past, unless particularly weighty and compelling reasons would prove that necessary. The [re-]registration, if indeed necessary, should be implemented as a mere formality and without unnecessarily inconveniencing the already functioning public associations. Ideally, the law should prescribe automatic registration for all existing and previously-registered public associations, and set a time-frame within which associations should bring their constituent documents in line with the new provisions of the law.

³⁶ See Art. 22 of the Law.

32. In general, it should be borne in mind that under established international standards, public associations should not be subjected to difficult registration procedures. Considering that “the free functioning of non-governmental organizations is essential for protection of human rights and dissemination of information in regard to human rights among the people”, the UN Human Rights Committee has recommended that laws, regulations and administrative practices relating to their registration and activities should facilitate, rather than obstruct, their establishment and free operation.³⁷

4.5. Refusal of registration

33. Art. 18 par. 1 of the Law provides that a public association may be refused registration if, among other reasons, its charter “contravenes the Constitution of Turkmenistan, Articles 4, 5, 16, 17 of this Law, *or other laws of Turkmenistan*” (emphasis added). The phrase “or other laws of Turkmenistan” allows a very broad interpretation and may be considered too vague to conform to the requirements of foreseeability which are inherent in the very concept of law.³⁸ To ensure legal certainty and prevent arbitrary decision-making, this provision should be applied in a non-arbitrary manner and in strict compliance with the standard of what is „necessary in a democratic society”.³⁹
34. Art. 18 par. 1 furthermore provides that a public association’s registration may be refused if “a founder has a conviction for an especially grave crime”. This provision is problematic since it appears to impose a collective punishment on the association as a whole for acts which only one of the founders had committed, and which may bear no relationship whatsoever to the activities of the association. The provision is also troublesome in so far as it can be seen as imposing yet another punishment, for the same offense, upon a person who had already served a criminal sentence for that particular crime. It is therefore recommended to reconsider this restriction.

4.6. Rights and obligations of public associations

35. Art. 21 provides that “[p]ublic associations may cooperate with international public organizations, maintain international contacts and correspondence, and enter into relevant agreements *with the involvement of the Ministry of Foreign*

³⁷ See the UN Human Rights Committee Concluding Comments on Belarus (1997) UN doc. CCPR/C/79/Add. 86, paragraph 19.

³⁸ Of note, the ECtHR has recently held that a similar provision from Ukraine’s *Association of Citizens Act*, providing that “[t]he registration of an association may be refused if its articles of association or other documents submitted for the registration contravene the legislation of Ukraine”, allowed for a “particularly broad interpretation” and was “too vague to be sufficiently ‘foreseeable’ for the persons concerned”. See *Koretsky v. Ukraine*, ECtHR Judgment of 3 April 2008, paragraph 48.

³⁹ See paragraphs 10 and 11 of the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, endorsed by the UN Commission on Human Rights. Of note, these remarks apply also to Art. 30 and 31 of the Law, which contain similarly vague provisions prescribing public associations’ liability “for non-compliance with effective legislation” (Art. 30) and allowing suspension of public associations for non-compliance “with other laws of Turkmenistan” (Art. 31).

Affairs of Turkmenistan” (emphasis added). The involvement of the Ministry of Foreign Affairs in all the international contacts and correspondence of a public association may amount to an unreasonable interference with that organization’s activities, and may also violate the right to privacy.⁴⁰ Furthermore, it may breach Turkmenistan’s commitment under the OSCE Copenhagen Document to “allow members of such groups and organizations to have unhindered access to and communication with similar bodies within and outside their countries and with international organizations, to engage in exchanges, contacts and co-operation with such groups and organizations”.⁴¹ It is therefore recommended that this provision be removed from the text of the Law, so that public associations could have international contacts and correspondence without any intervention or undue interference from state authorities.

36. Under Art. 22, public associations are obliged to comply not only with the laws of Turkmenistan and with their Charters and other constituent documents, but also “with generally accepted principles and norms of international law applicable to their activities”. However, the principles of international law bind primarily states and international public law organisations, and only in some limited cases they can be directly applicable to persons and associations (for instance, in case of commission of “core” crimes, or arguably severe violations of certain fundamental rights). From the text of the Law, it is difficult to understand which “generally accepted principles and norms of international law” could in fact be applicable to the activities of public associations. Unless this provision can be meaningfully elaborated, it is recommended to remove it from the list of laws and norms that public associations should abide by.
37. Art. 22 furthermore sets a series of quite onerous reporting obligations. Accordingly, public associations must “report annually to the Ministry of Justice of Turkmenistan on their continued activities, indicating the actual address of the association’s governing body, its name, and the details of its executive officers”; provide copies of various documents upon request; inform the Ministry of Justice in advance about dates of scheduled events (and even provide access to them); and update the Ministry of Justice immediately on any factual changes subject to registration. These burdensome reporting obligations – which, if breached, can lead to the suspension or even liquidation of the association⁴² – create an environment of excessive state monitoring over the activities of public associations, which is hardly conducive to an effective enjoyment of freedom of association. Lest this fundamental freedom is rendered illusory, it is strongly recommended to reconsider and ease these reporting obligations.
38. The duty “to notify the Ministry of Justice in advance about dates of scheduled events and to give the Ministry of Justice representatives access to such

⁴⁰ The right to private life is guaranteed by Art. 25 of the Constitution of Turkmenistan as well as by Art. 17 ICCPR. The UN Human Rights Committee has stated that laws must be adopted to clearly set out conditions for legitimate interferences with privacy and to provide for safeguards against unlawful interferences (Concluding Comments on the Russian Federation (1995) UN doc. CCPR/C/79/Add. 54).

⁴¹ See section (10.4) of the OSCE Copenhagen Document (1990).

⁴² See Art. 31 of the Law.

events”,⁴³ besides being a disproportionate reporting requirement, also encroaches upon the right to privacy of the founders and members of public associations.⁴⁴

39. The fact that public associations must furthermore “assist representatives of the Ministry of Justice in obtaining information concerning the association with regard to its compliance with its charter goals and the laws of Turkmenistan”,⁴⁵ besides being another excessive requirement, may also violate the prohibition against self-incrimination in criminal proceedings.⁴⁶
40. For all these reasons, it is strongly recommended to amend Art. 22 so as to simplify and reduce public associations’ reporting requirements. It should be recalled that any interference into the exercise of the right to freedom of association must not exceed what is “necessary in a democratic society”, i.e. it must be based on a justified ground, respond to a pressing public or social need, pursue a legitimate aim and be proportionate to that aim.⁴⁷ The reporting obligations currently set forth in Art. 22 of the Law arguably exceed what can be considered “necessary in a democratic society” and may violate international law.

4.7. Supervision and oversight over public associations’ activities

41. Art. 28 provides various state authorities with control and oversight powers over activities of public associations to check compliance with their charters. While it is understood that state bodies should be able to exercise some sort of control over public associations’ activities, such control should not be unreasonable, overly intrusive or disruptive of lawful activities. The fact that the Ministry of Justice of Turkmenistan can “send their representatives to events held by public associations” is particularly worrisome in this respect, as it may amount to undue interference in the internal affairs of public associations, and may easily – and seriously – interfere with the right to freedom of association and with the right to private life of members of the association. As has already been mentioned, in order to be justified, any such interference should be “necessary”, proportionate and non-arbitrary. For that reason, Art. 28 of the Law, besides vesting considerable control and monitoring powers to the various bodies listed therein, should also provide safeguards against arbitrary and abusive interferences with the right to privacy, as required under pertinent international standards.⁴⁸

⁴³ Art. 22 of the Law.

⁴⁴ The right to private life is guaranteed by Art. 25 of the Constitution of Turkmenistan and Art. 17 ICCPR. See footnote 38 for more details.

⁴⁵ Art. 22 of the Law.

⁴⁶ The prohibition against self-incrimination is enshrined in Art. 45 of the Constitution of Turkmenistan as well as in Art. 14 ICCPR.

⁴⁷ See Art. 22 par. 2 ICCPR and paragraph 10 of the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, endorsed by the UN Commission on Human Rights.

⁴⁸ With respect to state monitoring and surveillance, the UN Human Rights Committee has stated that laws must be adopted to clearly set out conditions for legitimate interferences with privacy and to provide for safeguards against unlawful interferences (Concluding Comments on the Russian

42. Under Art. 28 par. 2, the Ministry of Justice shall nullify the registration of a public association if it has “switched mainly to business activities, or if the achievement of its goals specified in the founding charter becomes unfeasible”. This provision may be open to arbitrary interpretation and leaves room for broad – and unfettered – executive discretion. As regards business activities, it should be noted that other provisions of the Law expressly allow public associations to engage in business activities;⁴⁹ to allow the Ministry to determine when a public association has “switched *mainly* to business activities” – and thereupon to nullify its registration – is arguably too wide a discretion to be entrusted to an executive agency. It is therefore recommended to remove this provision from the text of the Law. One alternative solution could be to provide that public associations can engage in limited business activities, only insofar as that is necessary for the pursuit of their goals.
43. As regards the Ministry’s power to nullify registration when achieving charter goals “becomes unfeasible”, it should be noted that some of the goals which a public association may set down in its charter can be, by their very nature, aspirational and not necessarily achievable swiftly. Allowing the Ministry of Justice to nullify registration on such ambiguous grounds means to allow the executive too much discretion in interfering with the fundamental right of freedom of association. This is particularly so since by nullifying the registration of a public association the Ministry of Justice would in effect outlaw that public association, given that unregistered public associations cannot engage in activities and that any person acting on behalf of an unregistered public association is liable in accordance with the laws of Turkmenistan.⁵⁰ It is therefore recommended that Art. 28 par. 2 be removed from the text of the Law.
44. The list of state bodies which under Art. 28 may supervise and oversee the activities of public associations is rather extensive. It includes the Ministry of Justice and its departments in *velayats*, the Prosecutor General and subordinate prosecutors, financial and tax authorities, “the authorized state body” to which the Ministry of Justice must report on particular projects and programs of foreign aid and grants, plus ecological, fire safety, sanitary and epidemiological and “other bodies of state supervision and control”. This extensive list of control bodies raises concerns of potential abuse of such powers and of arbitrary or discriminatory treatment of some public associations. To prevent this, it is recommended to add a provision which would expressly guarantee that the “supervision and oversight” powers of the various state bodies shall not be exercised discriminatorily or arbitrarily, or otherwise be employed to stifle or

Federation (1995) UN doc. CCPR/C/79/Add. 54), and that wire-tapping and surveillance, whether electronic or otherwise, must be prohibited if there is no independent monitoring (judicial supervision) of such practices (Concluding Comments on Poland (1999) UN doc. CCPR/C/79/Add. 110). The ECtHR has held that the mere existence of legislation allowing surreptitious state activity (i.e. various forms of state control or surveillance) may involve “for all those to whom the legislation could be applied, a menace of surveillance” which may amount to an interference with the right to privacy. See *Klass v. FRG*, ECtHR Judgment of 6 September 1978, paragraph 41.

⁴⁹ See Art. 24, 25 and in particular Art. 27 of the Law.

⁵⁰ See Art. 17 par. 3 of the Law, and Art. 204/1 of the Code of Administrative Offences of Turkmenistan.

restrict the legitimate exercise of freedom of association.⁵¹ To further support this guarantee, the Law should provide public associations with legal remedies against unjustified and abusive controls.⁵²

4.8. Suspension of public associations

45. Art. 31 details the circumstances in which the Ministry of Justice may suspend public associations, which includes cases of “non-compliance” by public associations with the provisions of their charters. Such a ground for suspension can hardly be justified. While it is certainly legitimate for state authorities to suspend public associations for violating the Constitution or other, specifically referenced, laws of Turkmenistan, a public association should not be suspended for undertaking actions which are perfectly lawful but may go beyond what was originally stated in its charter. This ground for suspension should therefore be taken out from the text of the law.
46. Art. 31 par. 2, which prescribes how a suspended organization can resume its activities, should set a specific time-frame for the state body to examine the association’s petition to that effect. This would help prevent undue delays in the resumption of a public association’s activities, and ensure that a suspension does not last more than is strictly necessary.
47. Considering that the suspension is decided by an executive authority (the Ministry of Justice) rather than a judicial body, and also in view of the fact that there is no limit as to the duration of a suspension, it is also recommended that the Law provide additional guarantees against arbitrary suspensions. Such additional guarantees should include an obligation for state authorities to take decisions on suspension in written and reasoned form, and that those decisions be appealable before a court of law.⁵³

4.9. Termination and liquidation of public associations

48. Art. 32 par. 1 provides that public associations can be liquidated or terminated “following [...] cancellation of their registration by the Ministry of Justice”. This provision raises concerns in so far as it apparently allows for an executive body to effect, largely unchecked, a serious and seemingly definitive restriction on freedom of association. It is recommended to amend Art. 32 so that it provides more explicitly that mandatory liquidation or termination of a public association can be ordered only by a court of law.

⁵¹ Such a provision could be added either in Art. 28 or in Art. 29 of the Law.

⁵² The right to an effective remedy is proclaimed in Art. 8 of the Universal Declaration of Human Rights (adopted by the UN General Assembly on 10 December 1948) and guaranteed by Art. 2 par. 3 ICCPR. Furthermore, Art. 43 of the Constitution of Turkmenistan provides that “Citizens have the right to appeal to the court against the actions of state bodies and public organizations, and of officials”.

⁵³ As required by the right to an effective remedy, prescribed in Art. 8 of the Universal Declaration of Human Rights, Art. 2 par. 3 ICCPR and Art. 43 of the Constitution of Turkmenistan.

49. It is also recommended that the Law provide a series of alternative sanctions of varying severity that could be imposed on public associations – such as oral and written warnings, [progressive] fines, loss of eligibility for public funding or tax exemptions, individual liability of particular members of the association – in addition to the harsher sanctions of suspension and termination and liquidation, already provided by the Law. In each particular case only such a sanction should be imposed that is sufficiently severe to serve as a deterrent, while at the same time being fair, reasonable and proportionate to the misconduct or violation in question.
50. In this context, the liquidation and termination of public associations should be a last resort measure to be applied as an exception, only for the commission of particularly serious violations of law and when “necessary in a democratic society”. To liquidate or terminate a public association for minor omissions such as a failure to report some factual changes subject to registration, as is currently contemplated by Art. 32 par. 2, may violate the principle of proportionality enshrined in international law.⁵⁴
51. Art. 32 also provides that in the event of liquidation of a public association, unless that association’s charter prescribes the persons who may take over its property, the Ministry of Justice, “at its discretion”, shall transfer the public association’s property to a similar public association or to a charitable organization or the state. This once again raises concerns of potential abuse in so far as it allows an executive body to seriously interfere with the exercise of the right to property,⁵⁵ through decisions which are unconstrained and apparently cannot be appealed against. Decisions which affect fundamental rights and freedoms to such an extent (namely, termination or liquidation of public associations, discussed above; and [re-]distribution of their property) should be taken by judicial bodies, following a fair process in which all parties concerned have been duly heard. It is strongly recommended to amend Art. 32 so as to provide for such procedural guarantees.

[END OF TEXT]

⁵⁴ See Art. 22 par. 2 ICCPR and paragraph 10 of the *Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights*, endorsed by the UN Commission on Human Rights. See also the UN Human Rights Committee View CCPR/C/88/D/1274/2004 (Communication 1274/2004 submitted by Viktor Korneenko *et al.* against Belarus), paragraph 7.7. Consider also the ECtHR’s dictum from a recent case against Azerbaijan, holding that “a mere failure to respect certain legal requirements on internal management of non-governmental organisations cannot be considered such serious misconduct as to warrant outright dissolution. [...] Greater flexibility in choosing a more proportionate sanction could be achieved by introducing into the domestic law less radical alternative sanctions, such as a fine or withdrawal of tax benefits” (*Tebieti Mühafize Cemiyeti and Israfilov v. Azerbaijan*, ECtHR Judgment of 8 October 2009, paragraph 82).

⁵⁵ The right to property is recognized in Art. 17 of the Universal Declaration of Human Rights and Art. 9 of the Constitution of Turkmenistan.

THE LAW OF TURKMENISTAN ON PUBLIC ASSOCIATIONS

(Mejlis Gazette of Turkmenistan, 2003, #4, p. 35)

(as amended by the law of Turkmenistan of July 2, 2009)

This Law, according to the constitution of Turkmenistan, shall promote the realization of the right of citizens to establish public associations and shall determine the legal and organizational basis for formation, activities, reorganization and liquidation of public associations and shall regulate public relations emerging in this sphere.

Chapter 1. GENERAL PROVISIONS

Article 1. Definition of a public association

A public association shall be a voluntary self-governed non-commercial entity established at the initiative of citizens who have joined on the basis of their common interests to realize common purposes reflected in the charter of a public association.

Citizens shall establish public associations by their own choice and shall have the right to join such associations provided they abide by their charters.

Article 2. Legislation of Turkmenistan on Public Associations

The legislation of Turkmenistan on public associations is based on the Constitution of Turkmenistan, generally accepted principles and norms of international law, and consists of this Law and other legal regulations of Turkmenistan.

The peculiarities connected with the establishment, activities, reorganization and liquidation of certain types of public associations shall be governed by special laws adopted pursuant to this Law. Before special laws are adopted activities of such public associations as well as activities of public associations that are not subject to special laws shall be governed by this Law.

Should an international treaty ratified by Turkmenistan establish different rules than those contained in this Law, then the rules established by the international treaty shall apply.

Article 3. Scope of this Law

This Law shall apply to public associations established at the initiative of citizens, except religious organizations, non-profit unions (associations) established by commercial organizations, and political parties, trade unions and other social formations the establishment and activities of which shall be determined by special laws.

This Law shall also apply to structural subdivisions – organizations, divisions (branch offices) and representations offices of foreign public associations established in Turkmenistan.

Article 4. Restrictions on establishment and activities of public associations

Prohibition shall be imposed on the establishment and activities of public associations that pursue a violent change in the constitutional system of Turkmenistan, aim to undermine national security, engage in violence, attack constitutional rights and liberties of citizens, call for war, racial, national, social, and religious hatred, threaten public health and morals, and create militarized units.

Article 5. Founders, members and participants of public associations

Unless otherwise established by this Law and by special laws on certain types of public associations, all Turkmenistan citizens of legal age may be founders, members or participants (if the Charter does not provide for membership) of public associations.

Citizens of Turkmenistan who are 14 years old may be members of youth public associations.

Citizens of Turkmenistan who are 8 years old may be members and participants of children's public associations.

Conditions and procedures of membership acquisition and loss, including age-related resignation from membership in public associations shall be determined by the charters of respective public associations.

It shall be prohibited to request that a citizen's membership in any public association be indicated in official documents. Affiliation or non-affiliation with any public association shall not be used as a ground for restricting any citizen's rights and liberties, or for granting them any state-sponsored benefits or advantages, except cases provided by the legislation of Turkmenistan.

State bodies may not be founders, members and participants of public associations.

Foreign citizens, stateless persons permanently living in Turkmenistan, and legal entities – public associations – of Turkmenistan and other countries may participate in international public associations.

Legal entities – public associations of Turkmenistan – may participate in national public associations.

Chapter II. LEGAL STRUCTURES OF PUBLIC ASSOCIATIONS

Article 6. Legal structures of public associations

Public associations in Turkmenistan may take one of the following legal structures:

- public organization
- public movement
- public foundation
- public initiative group

Article 7. Public organization

A public organization shall be a membership-based public association established by citizens for the purpose of joint activities to protect their common interests and achieve the charter purposes.

The highest governing body of a public organization shall be a general assembly (conference) or a general meeting of its members. The body responsible for day-to-day management of a public organization shall be an elected collegial body accountable to the general assembly (conference) or the general meeting.

Article 8. Public movement

A public movement shall be a mass movement consisting of participants, but without members, that pursues social, political, and other public benefit purposes supported by the participants of the public movement.

The highest governing body of a public movement shall be a general assembly (conference) or a general meeting. The body responsible for day-to-day management of a public organization shall be an elected collegial body accountable to the general assembly (conference) or the general meeting.

Article 9. Public foundation

A public foundation shall be a type of non-profit foundation; it shall be a public non-membership association established for the purpose of accumulating assets through voluntary contributions and other revenues, which shall not be prohibited by the legislation of Turkmenistan, and using such assets for public benefit purposes.

Founders and managers of a public foundation's assets shall have no right to use such assets for their own benefit.

The governing body of a public foundation shall be formed by its founders and/or participants, or by a resolution of the founders adopted in the form of recommendations or personal appointments, or through elections by participants at a general assembly (conference) or a general meeting.

Article 10. Public Initiative Group

A public initiative group shall be a public non-membership association established for the purpose of jointly addressing various social problems that citizens may face in

their community of residence, at their workplace or the place of study. Such association shall work toward meeting the needs of an unlimited range of people whose interests are linked to the achievement of charter purposes and the implementation of programs of the public initiative group at the location of its establishment.

A public initiative group shall be formed at the initiative of citizens interested in solving the said problems, and shall operate as a self-governing entity pursuant to the charter adopted by the founders' meeting. A public initiative group shall not have any superior bodies or organizations it is accountable to.

Article 11. Unions (alliances) of public associations

Public associations, regardless of their organizational and legal form, shall have the right to establish unions (alliances) based on founding contracts and/or charters adopted by unions (alliances), thus establishing new public associations. The legal capacity of unions (alliances) as legal persons shall arise at the time of their state registration.

The establishment, activities, reorganization and liquidation of unions (alliances) shall be subject to procedures set forth in this Law.

Article 12. Principles of establishment and activities of public associations

Public associations, regardless of their legal structures, shall be equal before the law. Activities of public associations shall be based on the principles of voluntariness, equality of rights, self-governance and legality. Public associations shall be free to determine their internal structure, purposes, forms and methods of their activities.

Activities of public associations shall be open and the information regarding their constitutional and program documents shall be accessible to the general public.

Article 13. Place of activities of public associations

International, national and local public associations may be established and may operate in Turkmenistan.

A public association established in Turkmenistan shall be considered international if, according to its Charter, at least one of its structural subdivisions, such as organization, division (branch office) or representative office, is established and operates in a foreign country.

National public associations shall be those whose activities, according to their charter purposes, cover the entire territory of Turkmenistan or most of its velayats.

Local public associations shall be those whose activities, according to their charter purposes, cover the territory of a velayat, city, etrap, settlement or village.

Article 14. State and Public Associations

There shall be no interference of state bodies and their officials in public associations' activities, nor shall there be any interference of public associations in the activities of state bodies and their officials, except in cases set out in this Law.

The State shall ensure the observance of the rights and legitimate interests of public associations, support their activities, and legally regulate the provision of tax-related and other benefits or privileges to them. State support may take the form of target financing of certain programs implemented by public associations for public benefit based on request of public associations (state grants); contracts of any type, including contracts for work and service contracts; and commissioning of social services to implement various state programs, awarded to an unlimited range of public associations on a competitive basis.

Issues affecting the interests of public associations, in cases specified in the legislation of Turkmenistan, shall be dealt with by state bodies with the participation of relevant public associations, or with their approval.

Staff members of public associations shall be covered by labor and social insurance laws of Turkmenistan.

Chapter III. ESTABLISHMENT OF PUBLIC ASSOCIATIONS

Article 15. Establishment of Public Associations

Public associations shall be established at the initiative of no fewer than five founders who shall be citizens of Turkmenistan. In cases provided for by this Law, founders can include, alongside citizens of Turkmenistan, foreign nationals and legal entities – public associations – established both in Turkmenistan and in other countries. International public associations shall engage in activities in accordance with the legislation of Turkmenistan.

International and national public associations may be established with a minimum of 50 and 500 members or participants respectively.

The decision to establish a public association, to approve its Charter and to form its governing and supervisory bodies shall be made by the general assembly (conference) or the general meeting.

The legal capacity of a public association shall arise at the time of its state registration with the Ministry of Justice and making an entry in the Unified State Register of Legal Entities.

Article 16. Charter of a public association

The organization and structure of a public association are governed by its charter.

The charter shall reflect:

- the name, purposes, and tasks of the public association, and its legal structure;

- territory of activities, structure of the public association, and its governing and supervisory bodies;
- conditions and procedures of membership acquisition and loss (for a association where the Charter provides for membership), rights and responsibilities of members;
- competence and procedures for establishment of governing bodies of the public association, and their term in office;
- location of the permanent governing body;
- procedures for scheduling meetings and for decision-making by the governing body;
- sources of monetary income and other assets of the public association, the rights of the public association and its structural subdivisions with regard to asset management;
- procedures for changing and amending of the charter of the public association;
- procedures for reorganization and liquidation of the public association, and for distribution of its property remaining after liquidation.

For public foundations, in addition to the data indicated in the first part of this article, the charter shall establish:

- minimum size and type of donations;
- instructions on use of amounts.

The Charter of a public association may also contain other provisions related to its activities, if these provisions do not contravene the legislation of Turkmenistan.

Article 17. State registration of public associations

Public associations, regardless of their type, shall be registered with the Ministry of Justice of Turkmenistan in accordance with the procedures set forth in the Civil Code of Saparmurat Turkmenbashi and other laws of Turkmenistan.

Public associations shall be included in the Unified State Register of Legal Entities in accordance with the procedures established by the laws of Turkmenistan.

Unregistered public associations shall not engage in activities in Turkmenistan. Any person acting on behalf of an unregistered public association shall be liable in accordance with the laws of Turkmenistan.

To be registered, a public association shall submit the following documents:

- application request signed by all founders and members of the governing body of the public association, indicating their names, surnames and patronymics;

- two copies of public association's founding charter;
- minutes of the founding assembly or the general meeting containing information on the creation of a public association, adoption of its founding charter and establishment of its governing and supervisory bodies;
- information about the founders;
- receipt for payment of the registration fee;
- confirmation of legal address.

International public associations shall provide, in addition to the documents listed in part four of this article, documents proving the existence of their structural division, branch (affiliate) or representative office abroad.

In order to register a structural subdivision on the territory of Turkmenistan, a foreign public association shall submit, inter alia, notarized copies of its constitutional documents.

Registration documents shall be submitted within one month from the date of the founding assembly or general meeting.

Public associations shall be registered within one month from the submission of an application containing all the documents listed in this article.

Changes and amendments to founding charters of public associations as well as factual changes subject to registration shall be registered in accordance with the existing procedures and within a time period specified for the initial registration of public associations and shall become effective at the time of registration.

Registration fees for state registration of a public association and subsequent changes and amendments to its founding charter shall be collected according to the procedures and at the rates specified in the laws of Turkmenistan.

Youth and children's public associations may be registered provided that at least one citizen of legal age is elected to the governing body.

The Ministry of Justice of Turkmenistan maintains the Register of public associations and issues registration certificates.

Article 18. Refusal of registration of a public association

A public association may be refused registration on the following grounds:

- the charter of a public association contravenes the Constitution of Turkmenistan, articles 4, 5, 16, 17 of this Law, or other laws of Turkmenistan;
- another public association by the same name is already registered in the territory where this association plans to engage in activities;

- the application does not contain all the required founding documents or the documents are not properly executed;
- the documents filed with the application are found to contain deliberately false information;
- the name of the public association offends public morals, ethnic or religious feelings;
- a founder has a conviction for an especially grave crime.

If the registration is refused, applicants shall be notified in writing, stating the reasons for the refusal of registration.

A refusal to register a public association shall not prevent subsequent submission of documents for registration, provided that all previous grounds for refusal are removed.

The repeated application shall be considered and a decision shall be made in compliance with this Law.

Article 19. Appeal of a refusal to register a public association

A refusal to register a public association may be appealed in court following an established procedure.

Article 20. Symbols of public associations

Public associations can have flags, emblems, pennants, and other symbols. Their symbols should not be identical to the state symbols of Turkmenistan or the symbols of other states and international organizations. Symbols of public associations shall not serve to promote goals indicated in article 4 of this Law. Symbols of a public association shall be subject to registration under a procedure established by the legislation of Turkmenistan.

Chapter IV. RIGHTS AND OBLIGATIONS OF PUBLIC ASSOCIATIONS

Article 21. Rights of Public Associations

In order to realize the charter purposes, public associations shall have the right:

- to distribute information regarding their activities;
- to participate in decision-making of state bodies to the extent and in accordance with this Law and other laws of Turkmenistan;
- to hold meetings, rallies, demonstrations, and marches in compliance with the procedure established by the laws of Turkmenistan;
- to represent and protect the rights and legitimate interests of their members and participants, and other citizens before state bodies and public associations;

- to launch initiatives on issues of public significance, and to submit proposals to state bodies;
- to participate in election campaigns (if participation in elections is expressly provided for in the Charter).

Public associations may cooperate with international public organizations, maintain international contacts and correspondence, and enter into relevant agreements with the involvement of the Ministry of Foreign Affairs of Turkmenistan.

Laws regulating certain types of public associations may also provide for additional rights.

Article 22. Obligations of public associations

Public associations shall have the following obligations:

- to comply with the laws of Turkmenistan, including licensing requirements, should the association engage in activities subject to licensing, with generally accepted principles and norms of international law applicable to their activities, and with provisions of their Charters and other constitutional documents.
- to report annually to the Ministry of Justice of Turkmenistan on their continued activities, indicating the actual address of the association's governing body, its name, and the details of its executive officers to the extent required for the Single Stage Register, before such data are forwarded to the relevant state body.
- to provide, at the request of the Ministry of Justice of Turkmenistan, copies of decisions made by the governing body and officers of the association, as well as annual and quarterly activities reports at the same level of detail as required by the Tax Authorities.
- to notify the Ministry of Justice in advance about dates of scheduled events and to give the Ministry of Justice Representatives access to such events.
- to assist representatives of the Ministry of Justice in obtaining information concerning the association with regard to its compliance with its charter goals and the laws of Turkmenistan
- to update the Ministry of Justice immediately on any factual changes subject to registration.

Public associations shall register with the Ministry of Justice any projects or programs involving foreign technical assistance or other types of foreign aid.

Article 23. Reports of Public Associations

Public associations shall maintain their accounting records and submit statistical reports as required by the laws of Turkmenistan.

Chapter V. PROPERTY OF PUBLIC ASSOCIATIONS, MANAGEMENT OF PROPERTY OF PUBLIC ASSOCIATIONS

Article 24. Property of Public Associations

Public association may own buildings, installations and facilities, housing, vehicles, equipment, implements, cultural, educational and recreational assets, money, stock and securities, and other property necessary for their charter activities.

Public associations can also own institutions, publishing houses, and mass media outlets established or purchased with the association's own funds and used for the charter purposes.

For reasons of national and public security or in accordance with international treaties ratified by Turkmenistan, public associations may be prohibited by law from owning certain types of property.

The property of public associations shall be protected by law.

Article 25. Financing of Public Associations

Basic sources of financing of public associations may be:

- admission and membership dues;
- voluntary contributions and donations;
- target financing and contributions from legal entities, including funding from foreign non-profit and state-supported organizations (in the form of grants), as established by the laws of Turkmenistan;
- proceeds from lectures, exhibitions, lotteries, auctions, sports events, and other events, where provided for by the Charter;
- income generated by business and civil law transactions;
- other receipts, which are not forbidden by the laws of Turkmenistan.

Public associations whose Charters provide for participation in elections can not receive financial or other material assistance from foreign governments, organizations or individuals to support election campaigns.

Article 26. Subjects of the right of ownership in Public Associations

Public associations are the owners of their property. Each individual member may not claim any share of his or her organization's property.

Where structural subdivisions (branches) of the public association act under the charter of the public association, the association itself is the owner of the property.

Structural subdivisions (branches) of the public association may possess and use any property assigned to them by the owner.

A union (alliance) of autonomous local public organizations, as long as it has a legal entity status, shall own any property generated or purchased specifically for this union (alliance). Local organizations – autonomous members of a union (alliance) - shall own their respective property.

Permanent governing bodies established by the charters of public movements and of public foundations shall exercise the ownership rights over the property donated to, or purchased by such public movements and public foundations on behalf of such movements and foundations.

Public initiative groups shall own their property after they acquire legal entity status through registration. Public initiative groups may be the owners of property that they generate or legally acquire.

Article 27. Business Activities of public associations

Public associations may engage in business activities provided for by their charters, so that any income generated by such activities shall be used for purposes stated in the Charter. Public associations shall engage in business activities in compliance with the Civil Code of Saparmurat Turkmenbashi and other laws of Turkmenistan.

Public associations may establish enterprises and acquire property necessary for business activities. Enterprises established by public associations shall make payments to respective governmental budgets at the rates and under procedures established by the laws of Turkmenistan.

Income generated by business activities of public associations may not be redistributed among members or participants of such associations and shall be used only for the achievement of charter purposes. Public associations may use such income for charitable purposes, even if it is not specified in their charters.

Article 28. Supervision and oversight over the activities of public associations

The Ministry of Justice of Turkmenistan and its departments in velayats supervise public associations' compliance with their charters. These authorities shall have the right to request constitutional documents from governing bodies of public associations; send their representatives to events held by public associations; receive explanations from public associations' members and other citizens on matters of compliance with the charter; issue written warnings to public associations in case of non-compliance with the laws of Turkmenistan or with the association's charter purposes.

The Ministry of Justice of Turkmenistan nullifies registration if a public association switched mainly to business activities, or if the achievement of its goals specified in the founding charter becomes unfeasible.

Should a public association receive more than two written warnings or instructions to correct violations within one year, or should it fail to submit to the Ministry of Justice updated data subject to registration during the year, the Ministry may take the case to court requesting liquidation of the public association in question.

The Prosecutor General of Turkmenistan and the prosecutors subordinate to him shall oversee compliance with the legislation of Turkmenistan on public associations.

Financial and tax authorities shall exercise control over public associations' sources of income, amounts received, and payment of taxes as established by the laws of Turkmenistan.

The Ministry of Justice of Turkmenistan, in compliance with the procedures established by the legislation of Turkmenistan, shall submit to the authorized state body information regarding projects and programs of foreign technical, financial, humanitarian aid and grants if their amount exceeds the established threshold amount for activities of a public association that receives this aid.

Supervision and control over public associations' compliance with existing norms and standards may be exercised by ecological, fire safety, sanitary and epidemiological, and other bodies of state supervision and control.

Chapter VI. LIABILITY FOR NON-COMPLIANCE WITH THE LAWS OF TURKMENISTAN ON PUBLIC ASSOCIATIONS

Article 29. Liability for non-compliance with the laws of Turkmenistan on public associations

State bodies and officials responsible for causing damage to public associations as a result of non-compliance with this Law or other laws applicable to specific types of public associations shall be liable under the laws of Turkmenistan.

Article 30. Liability of public associations for non-compliance with the laws of Turkmenistan

Public associations shall be liable under this Law and other laws of Turkmenistan for non-compliance with effective legislation.

Article 31. Suspension of public associations

The Ministry of Justice may suspend public associations, including through court action, as provided by this Law and other laws of Turkmenistan, in case of non-compliance with the Constitution, with other laws of Turkmenistan, and with provisions of their Charters.

After the public association corrects the violations that caused its suspension, it can submit a petition to the state body that suspended the public association asking to be allowed to resume its activities. Should a suspended public association fail to correct the violations within the specified timeframe, the Ministry of Justice shall request the court to liquidate the public association.

Article 32. Termination and liquidation of public associations

Public associations shall be liquidated or terminated under conditions specified in their charters following a decision of their general assembly (conference) or general meeting, a court decision, or cancellation of their registration by the Ministry of Justice of Turkmenistan.

Public associations may be liquidated by court decision in the following cases:

- failure to comply with article 4 of this Law;
- violations, by their actions, of the rights and liberties of citizens;
- repeated or serious non-compliance with laws of Turkmenistan or other legal regulations or systematic engagement in activities inconsistent with the associations' charter purposes;
- failure to report, during the year, factual changes subject to registration and entry in the Unified State Register of Legal Entities;
- untrue information in the application for registration.

The Ministry of Justice of Turkmenistan shall file an application with the court to liquidate a public association on grounds provided by this article.

A court decision on the liquidation of a public association imposes a prohibition on its activities.

Liquidation of a public association is carried out in accordance with the laws of Turkmenistan.

In the event of liquidation current affairs shall be completed, the remaining property shall be evaluated in terms of money, claims of creditors shall be satisfied and the remaining property shall be distributed to authorized persons.

The charter may determine persons authorized to accept the property. If the charter does not determine such persons the Ministry of Justice shall, at its discretion, transfer the property to one or more public associations that pursue the same or similar purposes as the public association that has been liquidated. In absence of such organizations, property can be transferred to a charitable organization or to the state.

Information on the liquidation of a public association shall be published. Distribution of property is permitted only after 3 months have passed from the date of publication.

Liquidation shall be carried out by an authorized body of the public organization.

The decision to liquidate a public association shall be forwarded to the body responsible for maintaining the Unified State Register of Legal Entities to remove the public association from the Register.

Chapter VII. FINAL PROVISIONS

Article 33. Final provisions

Charters and other constitutional documents of public associations established before this Law came into force shall be amended in conformity with this Law.

The law of Turkmenistan “On Public Associations in Turkmenistan” of 12 November, 1991, shall be invalidated as of the date this Law comes into effect.

[signed]

President of Turkmenistan

Saparmurat Niyazov

21 October 2003, Ashgabat.

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