



Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report -

Universal Periodic Review:

TURKMENISTAN

I. BACKGROUND INFORMATION

Turkmenistan acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter referred to jointly as the *1951 Convention*) in March 1998 and was also the first country in Central Asia to become a member of UNHCR's Executive Committee.¹ Turkmenistan adopted the National Law on Refugees in 1997. The revision of the law began in July 2008, and was completed by Parliament's adoption of a new Law on Refugees on 4 August 2012. The Law entered into force on 11 August 2012.

At the UNHCR Ministerial Conference held in Geneva in December 2011, the Government of Turkmenistan pledged to continue implementing practical measures aimed at protecting and supporting refugees.

Turkmenistan deposited the instrument of accession to the *1954 Convention relating to the Status of Stateless Persons* (hereinafter referred to as the *1954 Convention*) on 7 December 2011. On 29 August 2012, Turkmenistan also acceded to the *1961 Convention on the Reduction of Statelessness* (hereinafter referred to as the *1961 Convention*).

As of September 2012, Turkmenistan hosts 57 mandate refugees registered with UNHCR. The majority of these refugees originate from Afghanistan, Azerbaijan and Armenia. All of the recognized refugees live in urban areas. Out of the 57 refugees, 30 are female, 27 are male and most are between the ages of 18 and 59.

UNHCR established its office in Turkmenistan in 1995 to respond to an influx of refugees from Tajikistan, and operates under the 1998 Cooperation Agreement. Between 1995 and 2009, the UNHCR Office carried out all activities related to refugee status determination (RSD). The State Migration Service of Turkmenistan recognizes the UNHCR-issued refugee certificates that protect mandate refugees from *refoulement*.

¹ On 27 April 2011 Turkmenistan was elected by ECOSOC (Economic and Social Council of the United Nations) as a new member of the Executive Committee (ExCom) of the United Nations High Commissioner for Refugees (UNHCR).

Following extensive training, UNHCR transferred RSD responsibility to the State Migration Service in February 2009. Since then there has been no asylum-seeker registered with the State Migration Service. In early 2010, UNHCR became aware that all previously trained RSD officials had been reassigned and that the RSD unit did in fact no longer exist. On a regular basis, UNHCR provides Protection and targeted RSD trainings for relevant government agencies. In July 2012, three officials from the State Migration Service were enrolled in a 24 week RSD Distance Learning Program. UNHCR will continue its training of government officials in this field and will provide guidance and support regarding the national asylum procedure.

As a result of UNHCR-supported statelessness registration campaigns conducted in 2007 and 2011, approximately 12,000 persons were identified who lack valid documentation and a legal status, most of whom with undetermined citizenship. By the end of 2011, some 3,318 of these persons aged 18 and above were granted Turkmenistan citizenship. All of the individuals who were naturalized in 2011 had submitted citizenship applications in the 2007 registration drive.

During the 2011 registration drive, approximately 8,000 individuals with undetermined nationality (aged 18 and above) were registered. Of them, approximately 2,500 individuals (aged 18 and above) had been confirmed as stateless by the end of 2011. The citizenship applications of approximately 2,500 individuals have been filed as a result of the 2011 registration campaign and are pending with the Presidential Administration for clearance regarding their naturalization. The rest of the individuals (approximately 5,500 persons aged 18 and above) can be categorized currently as being of undetermined nationality, because confirmations of their non-citizenship from relevant embassies are pending. The majority of stateless persons in Turkmenistan are former citizens of the Soviet Union who relocated to Turkmenistan after the disintegration of the Soviet Union but were unable or unwilling to comply with nationality procedures.

II. ACHIEVEMENTS AND BEST PRACTICES

1. Refugees and Asylum-seekers

UNHCR welcomes the Turkmenistan Government's pledge to continue implementing practical measures aimed at the protection and support of refugees.

The Government of Turkmenistan should be commended for recognizing UNHCR-issued refugee certificates protecting refugees from *refoulement* and working with the UNHCR to train government officials from the State Migration Service in the field of refugee status determination.

2. Stateless persons

UNHCR welcomes the Parliament of Turkmenistan's adoption of a Regulation on the Accession to the *1954 Convention* on 4 August 2011. UNHCR also welcomes the deposit by Turkmenistan of its instrument of accession to the *1961 Convention* on 29 August 2012, by which Turkmenistan became the 46th State Party to this international statelessness instrument. These accessions make Turkmenistan the first country in

Central Asia to become party to the two Statelessness Conventions. UNHCR is ready to assist the Government of Turkmenistan with implementation of the *1954 and 1961 Conventions*, including through analysis of the compatibility of existing national legislation with the provisions of the Convention, as well as technical assistance in relation to any legislative amendments or administrative arrangements regarding stateless persons.

A UNHCR-Government of Turkmenistan Action Plan for Joint Activities for Reducing and Preventing Statelessness was approved by the Government in December 2010. The Action Plan includes a comprehensive campaign to identify and register persons with documentation problems, with the aim of providing such persons with a durable solution. To prevent further statelessness, the plan also envisages work to amend the existing citizenship legislation to bring it into line with international standards.

Registration and the issuance of documentation are key elements for preventing and reducing statelessness and for protecting stateless persons. A registration exercise conducted by the Government in 2004-2005 resulted in the naturalization of 10,158 Tajik refugees.

Under the framework of the Action Plan, the 2011 registration exercise aimed to identify all stateless persons as well as persons who are at risk of statelessness because they do not have valid identity or travel documents within the country. The registration was carried out between May and June of 2011 and resulted in the registration of approximately 8,000 undocumented persons aged 18 and above (underage children of these persons are included in the parents' files). The estimated total number of people registered in the two government registration drives in 2007 and 2011, is approximately 12,000. UNHCR and its IP Keik Okara were actively involved in the 2011 registration. It is hoped that identification and registration will help these people to obtain a legal status, including access to basic rights, such as medical care, education and the opportunity to travel.

In July 2011, the first group of stateless persons registered in the 2007 and 2011 registration drives (1,590 persons) were granted Turkmenistan citizenship. A second decree granting citizenship to 1,728 stateless persons was issued on 25 October 2011. The Government is encouraged to ensure that Turkmenistan citizenship or a secure legal status is granted to the rest of the undocumented population registered during the two registration campaigns.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: National Refugee Protection Framework

Turkmenistan adopted its first Refugee Law on 12 June 1997. On 9 June 2009, the Office officially submitted the recommendations aimed at bringing the law in line with international standards on refugees. However, UNHCR was not given access to revise the final draft of the law before its adoption. On 11 October 2011, the Parliament adopted minor changes to the law, mostly dealing with amendments related to the name of the government agency dealing with refugee issues. A new Refugee Law was adopted in

August 2012. Initial analysis of the law demonstrates that only a few of UNHCR's recommendations were incorporated into the new edition. Gaps include the lack of a clear framework for State agencies to take responsibility for asylum and refugee issues and the absence of provisions on how to properly consider gender-related claims, by instituting gender-sensitive RSD procedures. As indicated in UNHCR's Guidelines on gender-related persecution, "persons raising gender-related refugee claims, and survivors of torture or trauma in particular, require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared. They may continue to fear persons in authority, or they may fear rejection and/or reprisals from their family and/or community."² The guidelines set forth a number of measures to ensure that gender-related claims are properly considered in the refugee status determination process by ensuring that female claimants have access to individual interviews as well as female interviewers and interpreters.

Furthermore, Article 3(3) was amended to provide for the return of refugees in cases related to national security and public order, which undermines the principle of *non-refoulement* as set forth in Article 33 of the *1951 Convention*. The new law states that refugees in the country enjoy the same rights and freedoms as nationals of Turkmenistan, but with some exceptions, which are not specified. National legal norms regulating pertinent areas do not refer specifically to the rights of refugees.

Recommendations:

- Establish a clear framework for State agencies to take responsibility for asylum and refugee issues
- Revise the Refugee Law in order to include a rights and gender-based approach and to ensure conformity with international refugee and human rights standards, including explicit recognition of the principle of *non-refoulement* in accordance with Article 33 of the *1951 Convention*, the right to family unity and acknowledgement of gender-based persecution as a ground for refugee status.
- Promote gender-sensitive RSD procedures by ensuring the availability of female interviewers and interpreters, and by guaranteeing that female asylum-seekers are interviewed separately and confidentially.

Issue 2: Respect of the *non-refoulement* principle

UNHCR is not granted access to the international transit zones and border areas. Persons claiming to be in need of international protection in these locations should be allowed entry to the territory of the State and access to the national RSD procedures to ensure full respect of the principle of *non-refoulement*, as set forth in Article 33 of the 1951 Convention.

² UN High Commissioner for Refugees, Guidelines on International Protection No. 1: Gender-Related Persecution Within the Context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol Relating to the Status of Refugees, 7 May 2002, HCR/GIP/02/01, available at: <http://www.unhcr.org/refworld/docid/3d36f1c64.html>.

The competent authorities in Turkmenistan do not formally provide statistical information related to detained foreigners. Such information would permit UNHCR to determine whether there are persons of concern among detainees, to request access to them and to consider eventual interventions and assistance by UNHCR or its partners. Turkmenistan does not provide any statistical information on foreigners who have been expelled, returned, or otherwise refused entry at Turkmenistan's borders. Such data would assist UNHCR in understanding the scope of forcible returns from Turkmenistan and allow the Office to intervene accordingly and assist the Government in determining the international protection needs of apprehended persons.

The detention of asylum-seekers and refugees should only be used as a last resort, where necessary and justified. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable persons. If detained, asylum-seekers should be entitled to minimal procedural guarantees, including the possibility to contact and be contacted by the local UNHCR Office. Detention should in no way constitute an obstacle to the ability of asylum-seekers to pursue their application.

Recommendations:

- Establish an accessible asylum and referral procedure at all border points, international airports, and transit zones and guarantee the individual right of every person to seek asylum in Turkmenistan to uphold the principle of *non-refoulement* in accordance with Article 33 of the *1951 Convention*.
- Ensure that refugees and asylum-seekers are not penalized for illegal entry and stay in the country.
- Provide UNHCR with access to statistical data related to detained foreigners, and to foreigners who have been expelled, returned or otherwise refused entry at Turkmenistan's borders.
- Ensure that the detention of asylum-seekers is only used as a last resort, and where necessary, for as short a period as possible and that judicial safeguards are in place to prevent arbitrary and/or indefinite detention.

Issue 3: Naturalization of mandate refugees

On 29 December 2011, UNHCR was informed through a *Note Verbale* of the Government's decision to consider granting residence permit/citizenship to mandate refugees residing in the country. All mandate refugees are socially and economically integrated in society, though with limited access to employment and health insurance, some of them having established families with citizens of Turkmenistan. Furthermore, refugees have expressed their desire to stay in the country.

The 2012 Refugee Law contains a naturalization clause in article 11(11), providing the right to apply for Turkmen citizenship in a manner established by the law (after 7 years of permanent residence). Mandate refugees who have been residing in the country for over 7 years should then be granted citizenship or permanent residence in line with the Refugee Law and also according to the 1992 Citizenship Law.

Recommendation:

- Implement the Government’s decision to consider granting Turkmen citizenship or permanent residence to mandate refugees who have expressed their intention to remain in the country and have been residing in the country for over 7 years, also in accordance with the 2102 Refugee Law.

Issue 4: Limited employment opportunities

Employment opportunities for refugees are limited, not only due to the difficult economic situation, but also due to discrimination and stereotyping of refugees who are not considered as reliable. A residence registration system (widely referred to as “propiska”) is another serious obstacle for Mandate refugees to access the labour market. A propiska is needed for any employment with the Government or a private company and is issued based on the place of residence. The capital is a particularly difficult place to obtain a propiska even for nationals from outside of Ashgabat. All *prima facie* refugees had been granted Turkmenistan citizenship in 2005.

Recommendations:

- Facilitate access of Mandate refugees to the labour market by promoting awareness of the situation of refugees and their rights to reduce discrimination by potential employers and the society at large.
- Reduce administrative obstacles and facilitate Mandate refugees’ access to the residence registration system (*propiska*) or its equivalent, which is a requirement to access the labour market.

Issue 5: Freedom of movement and access to basic social services

In 2007, the Government abolished all internal land border checks; special permissions are no longer necessary to travel to border areas. This measure positively affected refugees, especially former *prima facie* refugees living in remote border areas, enabling them to travel to nearby towns for trade and medical treatment. However, the Government still does not issue mandate refugees travel and identity documents to refugees recognized under UNHCR, which creates many administrative difficulties for refugees and limits their access to social and economic benefits to which they are entitled to by law. This is particularly the case for refugees without valid national passports from their country of origin and for refugees from former Soviet republics.

Moreover, only nationals and holders of national medical insurance cards are entitled to reduced cost healthcare services. Mandate refugees are excluded from the state medical insurance programme and therefore are faced with considerable fees for health services.

Recommendations:

- Amend the respective legal provisions to facilitate the access of refugees to healthcare services available to Turkmen nationals.
- Issue travel and identity documents to refugees recognized under UNHCR’s mandate

Issue 6: Prevention of statelessness and protection of stateless persons

The Government of Turkmenistan started to work on the revision of its nationality legislation in 2008 and the work is still on-going. The introduction of safeguards within nationality legislation in line with international human rights standards is essential to avoid statelessness.

The 1992 Citizenship Law contains gaps that may lead to statelessness in individual cases, such as: the lack of a safeguard against statelessness for children born in Turkmenistan to foreign parents who are unable to transmit their nationality to the child; children born to stateless parents only acquire citizenship if their parents are permanent residents in Turkmenistan (Articles 12-15); difficulties citizens face in conferring Turkmenistan nationality if they reside abroad (if a child is born to one Turkmen parent and a foreign citizen permanently resident abroad, citizenship is only granted on the basis of a written agreement between parents) (Article 13(2)); the ability to renounce Turkmen nationality before obtaining assurances of having acquired another nationality (Article 22); and the absence of a simplified naturalization procedure for stateless persons (Article 22). The Citizenship Law does not contain any provisions which discriminate on the basis of gender.

Moreover, Turkmenistan has not yet established a formal statelessness determination procedure and, as a consequence, its ability to meet its obligations towards stateless persons, including women and girls, on its territory, pursuant to the *1954 Convention*, is diminished.

Recommendations:

- Review nationality legislation and procedures to ensure compliance with international standards aimed at the prevention and reduction of statelessness.
- Within a reasonable period of time, grant Turkmen citizenship or residence permits to those registered within the joint 2011 registration exercise.
- Establish a status determination procedure for stateless persons to ensure their protection, particularly stateless women and girls.
- Share with UNHCR statistics on the number of stateless persons and information about the processing of the applications for naturalization.

**Human Rights Unit
Division of International Protection
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ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies - Universal Periodic Review:

Turkmenistan

We would like to bring your attention to the following excerpts, taken directly from **Treaty Body Concluding Observations and Recommendations**, relating to issues of interest and concern to UNHCR with regards to Turkmenistan.

Human Rights Committee

CCPR/C/TKM/CO/1, 104th session

19 April 2012

11. While noting the adoption in December 2007 of a law to combat trafficking in persons, the Committee regrets reports of cases of human trafficking in the State party (art. 8).

The State party should strengthen its efforts to combat trafficking in human beings by ensuring that efforts are directed towards establishing and dealing with the root causes of trafficking. In this regard, the State party should ensure that all cases of human trafficking are effectively investigated, that perpetrators are prosecuted and punished with appropriate sanctions, and that the victims' human rights are fully respected and vindicated.

12. The Committee is concerned at reports that the State party restricts the exit and entry into the State party by certain individuals who are on the list of individuals under State surveillance. The Committee also regrets that the State party maintains the system of mandatory registration at the place of residence which is a prerequisite for residence, employment, acquisition of real estate and access to health services. The Committee is concerned that this system may interfere with the enjoyment of rights under article 12 of the Covenant (art. 12).

The State party should ensure that restrictions on the movement of individuals within the territory of the State party, as well as the right to exit, and any surveillance programmes for purposes of state security are compatible with the strict requirements of article 12. In this regard, the State party should ensure that the requirement that individuals register their place of residence is in full compliance with the provisions of article 12 of the Covenant

Committee on the Elimination of Racial Discrimination

CERD/C/TKM/CO/6-7, 80th session

13 April 2012

17. While noting that there are 20,000 stateless persons in Turkmenistan, the Committee remains concerned about the lack of information about measures to address statelessness

and about the outcomes of the registrations in 2007 and 2011 of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness (arts. 2 and 5).

The Committee recommends that the State party take urgent measures to address statelessness and provide statistics on the acquisition of Turkmen citizenship and information on the outcomes of the registrations of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness in its next report. (...)

18. The Committee notes the State party's information that it does not accept dual citizenship and that the agreement with the Russian Federation regarding dual citizenship has been terminated. The Committee is concerned that non-recognition of dual citizenship may lead to statelessness, with all its adverse consequences (arts. 2 and 5).

The Committee recommends that the State party take measures to ensure that the solution of the issues related to citizenship does not increase the number of stateless persons who would thereby be deprived of human rights and freedoms in practice.

Committee on Economic, Social and Cultural Rights

E/C.12/TKM/CO/1, 47th session

13 December 2011

17. The Committee is concerned about the lack of information provided by the State party about the extent of exploitation in prostitution of, and trafficking in women and girls. The Committee is furthermore concerned about reports that the State party has not taken sufficient prevention initiatives as well as measures to support victims, including medical, social and legal assistance.

The Committee recommends that the State party collect disaggregated data on the situation of trafficking in Turkmenistan. The Committee urges the State party to increase the provision of programmes aimed at providing counselling, shelter, legal assistance, and other rehabilitative services to victims of trafficking, and suggests that the State party consider enhancing its cooperation with civil society organizations in this regard. The Committee also urges the State party to ensure formal victim identification procedures, victim referral or victim sensitivity training for border guards and police officers.

Committee against Torture

CAT/C/TKM/CO/1, 46th session

15 June 2011

Refugees and asylum-seekers

23. The Committee welcomes the State party's decision to grant citizenship and permanent residency to thousands of Tajik refugees in 2005. The Committee is concerned that asylum-seekers' access to independent, qualified and free legal advice and representation is limited in Turkmenistan and that persons whose asylum claims are rejected in the first instance may not be able to lodge well-reasoned appeals. It is further concerned by the delay in adopting the amended Refugee Law and the lack of information

on asylum applications and refugees, as well as the number of expulsions. The Committee also regrets the lack of information about safeguards to ensure that persons are not returned to countries where they face real risk of torture and about any use of “diplomatic assurances” as a way to circumvent the absolute prohibition of non-refoulement established in article 3 of the Convention (art. 3).

The State party should take the necessary measures:

(a) To expedite the adoption of the amended Refugee Law and revise its current procedures and practices to bring them into line with international standards, in particular article 3 of the Convention;

(b) To ensure that no person is expelled, returned or extradited to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture, and to consider transferring the power to decide the matter from the President to the judiciary;

(c) To guarantee asylum-seekers, including those that may face detention, access to independent, qualified and free legal advice and representation, in order to ensure that the protection needs of refugees and other persons in need of international protection are duly recognized and refoulement is prevented;

(d) To establish and ensure the implementation of a standardized and accessible asylum and referral procedure at border points, including at international airport and transit zones;

(e) To establish a system for collecting and sharing statistical and other information on asylum-seekers, including those in detention, whose applications are pending with the authorities, as well as on persons extradited, expelled or returned by the State party and the countries to which they have been sent; and to provide the Committee with the relevant data.