



Comments by The Advocates for Human Rights on the Criminal Code, Administrative Code, and Criminal Procedural Code of Turkmenistan

22 December 2023

The Advocates for Human Rights (The Advocates) reviewed the Criminal Code, the Administrative Code, and the Criminal Procedural Code of Turkmenistan at the request of Progres Foundation.

The Advocates bases its comments on an unofficial translation of the Codes, as provided by Progres Foundation. Any quotations are derived from this unofficial translation. The commentary below is not intended to be an exhaustive analysis but a commentary based on the provisions we see as an urgent priority for reform. Our commentary is based on international legal standards and best practices including: CEDAW and its relevant General Recommendations, UN Handbook for Legislation on Violence against Women (2010), the UN Women Virtual Knowledge Centre to End Violence against Women and Girls (www.endvawnow.org), other relevant instruments, and recognized best practices and policies.

Overview of Comments and Recommendations

With this commentary, we aim to harmonize the current criminal and administrative codes with domestic and international legal binding standards. In the case of domestic legislation, this commentary allies with Article 29 of the Constitution of Turkmenistan, which ensures equality and punishes violation of equality based on gender;¹ the 2015 Law of Turkmenistan on Equality and Equal Opportunities for Men and Women, especially Article 22/2 which guarantees and ensures protection from physical or psychological violence in families;²

¹ <https://minjust.gov.tm/ru/hukuk/merkezi/hukuk/1>

² <https://minjust.gov.tm/ru/hukuk/merkezi/hukuk/304>

and finally, Article 3.2/8 of the Family Code of Turkmenistan, which orders the prevention of any form of violence against any member of the family.³

Turkmenistan can work toward fulfilling its obligation to comply with international standards by assessing and implementing provisions that prevent and protect individuals from domestic violence, as we set forth in this document and by “*preventing [gender-based violence against women] such acts or omissions by their own organs and agents, including through training and the adoption, implementation and monitoring of legal provisions, administrative regulations and codes of conduct, and for investigating, prosecuting and applying appropriate legal or disciplinary sanctions, as well as providing reparation, in all cases of gender-based violence against women, including those constituting international crimes, and in cases of failure, negligence or omission on the part of public authorities...*”⁴

The Advocates recommends that the government of Turkmenistan continue to monitor implementation of the laws, and revise and strengthen the various Codes to ensure that each provision embodies the principle that women have the right to be free from violence and provides an effective and accessible remedy for domestic violence and the threat thereof so women can be safe and offenders held accountable. With ongoing monitoring of and reform of this legislation, Turkmenistan will ensure the current gender-neutral laws and policies do not continue creating and perpetuating existing legal inequalities for victims, especially women and girls.

In addition, the government should ensure that offenders are held accountable for domestic violence. In countries where domestic violence laws have been in place for decades, effective domestic violence laws have evolved to include four primary components:

- **Administrative or civil law** provisions that allow the government to protect domestic violence victims (orders for protection, hotlines, shelters, and other victims' services)
- **Criminal law** provisions that allow the government to investigate and prosecute perpetrators of domestic violence (assault, terroristic threats, criminal sexual conduct, interference with an emergency call and other criminal laws), and

³ <https://minjust.gov.tm/ru/hukuk/merkezi/hukuk/539>

⁴ CEDAW, General Recommendation No.35 (2017), ¶23.

- **An infrastructure** to promote prevention of domestic violence (government offices to coordinate and award funding to the private sector)
- **Partnerships** to ensure an inter-agency, coordinated community response that reduces the burden on the victim and ensures the system works faster and better for victims, victims are protected and receive the services they need, and perpetrators are held accountable and cease their abusive behavior.

Each of the components- Protection, Prosecution, Prevention, and Partnerships- is important for a government to undertake when addressing domestic violence. However, governments must sometimes prioritize one component over another when resources are scarce. In that case, resources must be directed at protecting domestic violence victims. In addition, any prevention efforts must address the immediate need for the safety and security of domestic violence victims. In addition, monitoring, consistent funding, and trainings for systems actors led by providers who best understand victims' needs is essential to promoting effectiveness of the law.

In the process of revising and strengthening the law, The Advocates recommends that the drafters review the following important models for legislation on domestic violence:

- The U.N. Handbook for Model Legislation on Violence against Women (2012)
- UN Women Virtual Knowledge Centre to End Violence against Women and Girls, available at www.endvawnow.org (Legislation module)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Turkmenistan ratified on 1 May 1997.
- International Covenant on Civil and Political Rights (ICCPR), which Turkmenistan ratified on 1 May 1997.
- Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, (CAT), which Turkmenistan ratified on 25 June 1999.
- Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) (Istanbul Convention)
- The Advocates for Human Rights, Stop Violence against Women, www.stopvaw.org

As well as the following standards:

- United Nations CEDAW, General Recommendation No. 33 on women's access to justice (2015)
- United Nations CEDAW, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (2017)
- United Nations Human Rights Committee, General Comment No. 28 Article 3 (The equality of rights between men and women)
- UN Special Rapporteur on Violence against Women *Report on Shelters and Protection Orders* (2017)
- UN Special Rapporteur on Violence Against Women Report on *Framework for legislation on rape*. (2021)

Addition of a separate crime of domestic violence

Currently, neither the Criminal Code nor Administrative Code provide adequate protection for victim-survivors of domestic violence that comply with international legal standards and best practices. A separate domestic violence provision should be added to the criminal code, given the specific dynamics of domestic violence. Legislation should provide a clear definition of domestic violence which includes physical, sexual, emotional and/ or psychological, and patrimonial, property and/ or economic violence.⁵ The definition should apply to spouses and former spouses, parents and children, persons related by blood, persons who are presently residing together or who have resided together in the past, persons who have a child in common, a man and woman if the woman is pregnant and the man is alleged to be the father, and persons involved in a past or current intimate, significant, or romantic relationship.

The definition of domestic violence should center around physical harm, property damage against an intimate partner, bodily injury, and the fear of imminent danger for their own or for a third party's life or health, or if any of these arising out of the intimate partner relationship. Inclusion of psychological and economic violence in the definition of domestic violence has in some cases had the unintended consequence of creating opportunities for

⁵UN Women, *Handbook for Legislation on Violence against Women* (2012), 25 at [UNW_Legislation-Handbook pdf.pdf \(unwomen.org\)](https://www.unwomen.org/-/media/Handbook-for-Legislation-on-Violence-against-Women.pdf), accessed Dec. 22, 2023.

perpetrators to counter-claim psychological or economic abuse against those they have been violent towards. For example, an angry or disgruntled violent abuser may seek protection measures against his wife for using property owned by him. Law enforcement may arrest the victim for arguing with or verbally insulting the perpetrator. Or, a perpetrator may claim that physical violence is an appropriate response to an act he sees as economically disadvantageous to him. Claims of psychological and economic violence may also be very difficult to prove in legal proceedings. A more appropriate way to address forms of psychological and economic violence is to use a framework based on “coercive control.” Coercive control is a pattern of domination through intimidation, isolation, degradation, and deprivation, in addition to physical assault, that targets the victim’s agency, independence, and dignity in ways that hinder her ability to make decisions to escape the subjugation.⁶

Criminal laws should clarify that domestic assault is a distinct crime, including low-level assaults that involve low-level injuries such as bruises, cuts, scrapes and burns. Domestic violence is about power and control where, in an abusive relationship, the perpetrator uses the pattern of tactics described in the *Power and Control Wheel* to reinforce his use of physical violence.⁷ Laws and policies should make clear that law enforcement and prosecutors are obligated to pursue all cases of domestic violence, including assaults resulting in low-level injuries and threats of bodily harm. It is important to ensure that crimes involving domestic violence are not treated less seriously than other crimes. In fact, many jurisdictions increase criminal penalties for repeated domestic violence offenses, even if they involve low-level injury. The code should communicate to the public zero tolerance for all violence and treat domestic violence as a public safety crime.

Addition of a Civil Order for Protection

⁶ The Advocates for Human Rights, https://www.stopvaw.org/uploads/coercive_control_a_new_model_for_understanding_domestic_violence.pdf accessed Dec. 22, 2023.

⁷ Domestic Abuse Intervention Programs, “Understanding the Power and Control Wheel”, accessed Dec. 12, 2023, <https://www.theduluthmodel.org/wheels/understanding-power-control-wheel/>. Violent incidents are not isolated instances of a loss of control, or even cyclical expressions of anger and frustration. Rather, each instance is part of a larger pattern of behavior designed to exert and maintain power and control over the victim.

International standards and best practices recommend providing for a protective order that allows courts flexibility to ensure adequate remedies for victims and to ensure effective safeguards against further violence.⁸ The ideal legislation would provide for a civil or administrative remedy that includes both an emergency order for protection and a longer-term order that is issued after a full hearing. Laws should allow victims to apply for this protection independently, without an attorney or a government representative, to the courts or police without also filing a police report alleging criminal behavior on the part of the abuser. The decision to file for an order for protection should be left up to the victim's discretion, with the exception of child victims or vulnerable adults.

The law should direct authorities, either the courts or the police, to issue emergency order for protection if there is "an immediate and present danger of domestic abuse."⁹ Authorities should be available on call outside of business hours to issue such orders and ensure victims' safety can be protected even when courts are closed. Such an emergency order is often called an "*ex parte*" order for protection.¹⁰ Where an "*ex parte*" order for protection is issued, either the victim or offender may request a subsequent hearing. Where no emergency exists, a more permanent "order for protection" should be issued after a hearing, required only if requested or if certain relief—beyond a stay-away order—is requested by the victim.

The violation of a civil order for protection should always be a criminal offense. If the abuser repeatedly violates the restrictions, the criminal penalties should become more severe with each violation. These civil/ administrative orders should be separate and distinct from no contact orders that may be issued in criminal proceedings and should be issued only at the request of the victim.

Specific Comments on Existing Provisions of Turkmenistan's Criminal Code

In this section, we provide commentary on the select provisions of the Criminal Code that are applicable or impact the access to justice of individuals enduring domestic violence. The Advocates acknowledges the current legislation addresses some forms of violence, such as

⁸ US Department of Justice, *Family Violence: A Model State Code* (1994). 22.

⁹ Domestic Abuse Act, MN §518B.01 subd. 7.

¹⁰ US Department of Justice, *Family Violence: A Model State Code* (1994),22

bodily injuries, but emphasizes the importance of re-evaluating and reforming legislation in line with international standards to ensure victim safety and offender accountability.

Article 56. Circumstances mitigating liability

1. The following are recognized as mitigating circumstances

(i) the illegality or immorality of the actions of the victim, which were the reason for the commission of the crime

Commentary: Concepts such as “honor” and “immorality”¹¹ are subjective concepts that may potentially be used against the victims, which reduces accountability and causes further harm. International best practice standards recognize that laws should omit any provisions that allow reduced penalties or exculpate perpetrators in crimes involving honor.¹² It is very important that the language “the illegality or immorality of the actions of the victim, which were the reason for the commission of the crime” is **removed**. This language may potentially be used against victims, as perpetrators of domestic violence could use the concept of “moral” vaguely and claim that victims caused non-physical harm, such as moral damage. The term “moral” and the term “honor” may be used by perpetrators to justify violence based on some perceived insult or behavior from the victim, such as refusing to abide by gender stereotypes or using certain beauty services.

Article 102 Murder committed in a state of passion

Murder committed in a state of sudden strong emotional disturbance (affect) caused by violence, bullying or great insult on the part of the victim or other illegal or immoral actions (inaction) of the victim, as well as a long-term psychologically traumatic situation that arose in connection with systematic, illegal or immoral behavior [of the] victim, is punishable by imprisonment for a term of up to three years.

¹¹ Original languages of the Code: аморальность (RUS); ahlaksyz (TKM)

¹² UN Women, *UN Handbook for Legislation on Violence against Women (2012)*, Section 3.11.2, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, accessed Dec. 22, 2023.

Commentary: This current article presents an imminent risk to the rights and justice of individuals, especially those who are victims of gender-based violence and especially domestic violence. The low punishment for this crime provides a high risk of absence of justice and accountability to the victims and their families, and, therefore, impunity. Further, it incentivizes these kinds of practices, creating a sense of justification for perpetrators. The justifications of the conduct: “*violence, bullying or grave insult on the part of the victim or other illegal or immoral actions (inaction) of the victim, as well as a long-term psychologically traumatic situation that arose in connection with systematic, illegal or immoral behavior*” are particularly concerning. As with Article 56(1) above, the vagueness and subjectivity of “immoral behavior” could easily be used against a victim. For instance, a perpetrator may claim their actions were caused by the immoral actions of the victim who refused to abide by the societal dress code or traveled alone.

This provision, along with others that include concepts such as “immoral,” creates a legal entitlement that allows a perpetrator to decide whether a behavior of a woman could fit that category and, therefore, inflict violence as a “consequence of such.” In other words, concepts such as “immorality” open up the law for potential manipulation by the abuser to use against his victim. Furthermore, the inclusion of such actions in the criminal code in which a perpetrator will receive a lesser punishment creates a “an acts of a private actor empowered by the law” and still creates a legal obligation on states to exercise due diligence to investigate, prosecute, punish and provide reparations for violence against women committed by non-state, private actors.¹³

In sentencing, the law should also take into account the dynamics of domestic violence and victims’ use of self-defense and preemptive violence as a means of protecting themselves from further abuse. It is crucial that authorities, including the police, prosecutors, and judiciary, are trained in and mandated to conduct a predominant aggressor analysis. The International Association of Chiefs of Police (IACP) defines “predominant aggressor” as “the individual who poses the most serious, ongoing threat, which may not necessarily be the initial aggressor in a specific incident.”¹⁴ Reductions in sentencing should take into account circumstances that

¹³ CEDAW. General Recommendation No. 35, ¶ 24 (2)(b).

¹⁴ International Association of Chiefs of Police, *Intimate Partner Violence Response Policy and Training Content Guidelines* (2017), 6., [IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf \(theiacp.org\)](https://www.theiacp.org/sites/default/files/2017-06/IACP_Intimate_Partner_Violence_Response_Policy_and_Training_Guidelines_2017.pdf), accessed Dec. 22, 2023.

explain why the offense was committed, such as women victims of domestic violence who use preemptive force against their abuser to prevent further violence.

Further, it is required that “all [State] laws that constitute discrimination against women, including those which cause, promote or justify gender-based violence or perpetuate impunity for such acts, are to be repealed.”¹⁵ For those reasons, The Advocates recommends removing references to “immorality” and “of the victim” from the article.

Article 107: Intentional Infliction of Grievous Bodily Harm

Intentional infliction of serious bodily injury to a person, dangerous to life, or as a result of which the person lost sight, speech, hearing or any organ or caused the loss of functions of any organ, or expressed in permanent disfigurement of the person, as well as causing other harm health, life-threatening or causing a disorder associated with a persistent loss of general working capacity of at least one third or with a complete loss of professional working capacity, or resulting in termination of pregnancy, or mental illness is punishable by imprisonment for the term from three up to eight years..

Article 108: Intentional Infliction of Harm to Health of Moderate Severity

- 1. Intentional infliction of bodily injury or other harm to health, not life-threatening and not entailing the consequences provided for in article 107 of this Code, but causing long-term health disorder or significant permanent loss of general working capacity of less than one third is punishable by the penalty at a rate from twenty up to forty sizes of the established basic unit or compulsory works up to four hundred eighty hours or corrective works for the term up to two years or imprisonment for the term up to three years....*

Article 109. Intentional infliction of grievous bodily harm in a state of passion

Intentional infliction of grievous bodily harm, committed in a state of sudden strong emotional disturbance (affect) caused by violence, mockery or grave insult on the part of the victim, or other illegal or immoral actions (inaction) of the victim, as well as a long-term psychologically traumatic situation that arose in connection with systematic illegal or immoral behavior of the

¹⁵ CEDAW, General Recommendation No.35 (2017), 26 (a).

victim, shall be punished by a fine in the amount of twenty to thirty times the established base amount, or compulsory labor for up to four hundred eighty hours, or correctional labor for a term of up to two years, or imprisonment for a term of up to two years.

Article 111: Torture

- 1. Infliction of physical or mental suffering through systematic beatings or other violent means, if this did not entail the consequences provided for in Articles 107 and 108 of this Code , is punishable by corrective works for the term up to two years or imprisonment for the term up to two years...*
- 2. The same acts committed:*
 - a. In relation to a woman who is known to the perpetrator to be pregnant;*
 - b. In relation to a person or his/her relatives in connection with the fulfillment of his/her official or public duty;*
 - c. In relation to a minor or a person who was known to the perpetrator to be in a helpless state or in financial or other dependence on the perpetrator, as well as a person who was kidnapped or taken as a hostage;*
 - d. By two or more persons without prior agreement or by a group of persons by prior agreement;*
 - e. In relation to two or more persons;*
 - f. By torture;*
 - g. By hiring/ recruiting;*
 - h. On the basis of social, national, racial or religious hatred or enmity.**is punishable by imprisonment for the term from three up to seven years*

Article 114: Threat of Murder or Grievous Bodily Harm

Threat of murder or infliction of grievous bodily harm, if there was reason to fear that this threat would be carried out...

Commentary: The current provisions of Articles 107, 108, 109, 111, and 114 all establish a high bar for domestic violence victims. For victims to be protected under 107, 108, 109, and 114 provisions, they are required to endure injuries that leave traces on the body and that are documented. Such circumstances are not always typical in domestic violence, as perpetrators

commonly inflict injuries that do not create bodily **harm**¹⁶ (**including grievous**¹⁷), i.e. leave discernible injury, or use other tactics of power and control to exert domestic violence over the victim. For example, injuries caused by strangulation may not be visible externally, or authorities may not be trained in identifying the indicators when strangulation has occurred and overlook the bodily harm. Coercive control may leave no physical injury. While there may not be tangible evidence in those examples, the harm to the victim is the same. Also, injury-based provisions exclude long-term violence. In addition, injury-based provisions will exclude injuries for which the victim was unable to secure documentation, and multiple factors – such as documentation fees, distance to a forensic doctor, operating hours, and stigma – may all serve as barriers to the victim accessing the requisite evidence to prove injury.

The Advocates recommends altering the language of the various articles to lower the bar to more accurately reflect the dynamics of domestic violence. Changes should include removing “serious” and “grievous”¹⁸ wherever it appears and “significant”¹⁹ or “permanent”²⁰ when it refers to loss of working capacity in Articles 107 and 108. In Article 107 in particular, The Advocates recommends removing “serious,” “permanent,” and “persistent”²¹ so that the provision may be more applicable in instances of domestic violence. The Advocates recommends amending Article 109 in a way that reflects our commentary to Article 102 concerning immorality and sentence reductions.

The Advocates recommends assessing Article 111 through a gender lens by amending and/or supplementing this provision with behaviors that could constitute torture. CEDAW has established “Gender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices.”²² Likewise, behaviors that are systematically inflicted on individuals and that commonly are gendered with women and girls as the primary victims/survivors, such as

¹⁶ Original languages of the Code: телесные повреждения (RUS) or вред здоровью (RUS) or страдания (RUS); *syna zyýan ýetirmek* (TKM) or *saglyga zyýan ýetirmek* (TKM) or *ahlak taýdan ejir çekdirmek* (TKM)

¹⁷ Original languages of the Code: опасное для жизни (RUS) or тяжкий; *jany üçin howply* (TKM) or *agyr zyýan ýetiriji*

¹⁸ Original languages of the Code: тяжкий (RUS); *agyr zyýan ýetiriji* (TKM) meaning for both serious and grievous

¹⁹ Original languages of the Code: значительный (RUS); *ep-esli* (TKM)

²⁰ Original languages of the Code: неизлечимый (RUS); *düzedip bolmajak* (TKM)

²¹ Original languages of the Code: стойкий (RUS); *uzak wagtlaýyn* (TKM)

²² CEDAW, General Recommendation No. 35, ¶16.

“stalking,” which includes patterns of harassing or threatening behaviors and can create immense emotional harm to individuals can be considered torturous. When evaluating these potential conducts and their inclusion as potential crimes, it is essential to include the digital dynamics that surround this kind of behavior, as perpetrators in abusive relationships, including former partners, utilize digital technology to monitor, threaten, and commit violence, which can involve tracking devices and the unauthorized disclosure of personal and identifiable information.²³

Furthermore, the law should clearly state that in cases of domestic violence, medical or forensic evidence is not required for convictions.²⁴ The law should ensure that sentences for domestic violence-related crimes are commensurate with the seriousness of crimes of violence against women.²⁵

Finally, The Advocates recommends creating the separate, specific domestic violence law outlined in the first few pages of this commentary. Such a law should specify that penalties for crimes involving domestic violence are more severe than similar non-domestic violence-related crimes. This sends the important message that the state will treat a domestic violence crime as seriously, if not more seriously, than a crime against a stranger.²⁶

Article 132: Rape

- 1. Rape, that is, sexual intercourse with the use of physical violence or the threat of its use, as well as taking advantage of the helpless state of the victim...*

Commentary:

Article 132 currently defines rape as sexual intercourse with the use of physical violence, threat of violence, or taking advantage of the helpless state of the victim. The law, as it currently

²³ UN Secretary-General, *Report on Intensification of efforts to eliminate all forms of violence against women* (2022), ¶11, [A-77-302-SG-report-EVAWG-en.pdf \(unwomen.org\)](#).

²⁴ UN Women, Criminal penalties and procedures, Dec. 22, 2023, <https://endvawnow.org/en/articles/441-criminal-penalties-and-procedures.html?next=426>.

²⁵ UN Women, *UN Handbook for Legislation on Violence against Women* (2012), Section 3.11.1, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, accessed Dec. 22, 2023.

²⁶ UN Women, Criminal penalties and procedures, Dec. 22, 2023, <https://endvawnow.org/en/articles/441-criminal-penalties-and-procedures.html?next=426>.

stands, does not allow for criminalization in instances where the victim did not, or could not, consent to the acts. The law also contains a vague definition of sexual intercourse. Finally, the law does not allow for instances of marital rape.

According to both the *Framework for legislation on rape*, a model legislative rape framework created by the UN Special Rapporteur on violence against women, and CEDAW General Recommendation 35, best practices call for a definition of sexual crimes based on the lack of freely given consent and that takes into account coercive circumstances. This includes a definition of consent, instances in which consent may not be inferred, and the instances in which lack of consent may be presumed. This standard is set forth in several international instruments, including article 36 of the Istanbul Convention.

Often, laws that neglect the inclusion of consent require evidence that the perpetrator used coercion or that the victim fought back. Most rapes do not involve heavy physical force, and the majority of victims report that they were afraid of receiving serious injuries or of being killed and so offered little resistance to the attack. This may also explain why little force or weapons are needed to subdue victims in a rape attack. Moreover, sexual assault is a trauma that can cause the body to activate defensive strategies, such as freezing or appeasing the attacker. The freeze response is called “tonic-immobility” and is triggered by a flood of hormones that activate in response to a threat. There are many reasons why victims may not physically resist. When laws require proof of coercion or victim resistance, the burden of proof lands on the victim, who is then forced to relive the traumatic incidents and prove what is not reflective of the actual dynamics of rape. These laws also often neglect incidents in which there is limited physical evidence or threats of violence.

The Advocates recommends adding in “non-consensual” before “sexual intercourse” to ensure the Article is consent-based and is in line with international standards. Alternatively, the definition of rape could include when a perpetrator has sexual intercourse with a person who is not participating freely. The Advocates also recommends adding language stating that consent must be genuine, given of free will and not coercion, and may be withdrawn at any time. Consent may not be inferred by the silence of the victim or any non-resistance. In addition, the law should specifically criminalize sexual assault within a relationship (i.e., “marital rape”), either by: ensuring that rape provisions apply “regardless of the nature of the relationship” between the

perpetrator and complainant; or by stating “no marriage or other relationship shall constitute a defense to a charge of sexual assault under the legislation.”²⁷

Article 135: Forcing a person to have sexual intercourse

Forcing a person to have sexual intercourse, sodomy or to commit other acts of a sexual nature at the place of work or another place by means of blackmail, threats of destruction of property or using financial or other dependence.

Commentary:

Article 135, as it currently stands, remains vague in its definition of rape and fails to address lack of consent. Under the Framework for legislation on rape (model rape law) published by the UN Special Rapporteur on Violence against Women, the recommended best practices for drafting legislation on rape involves a definition of rape that includes “A person (the perpetrator) commits rape when they: (a) engage in non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by any bodily part or object; or (b) cause non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of another person (the victim) by a third person; or (c) cause the victim to engage in the non-consensual vaginal, anal or oral penetration of a sexual nature, however slight, of the body of the perpetrator or another person.”²⁸ As mentioned previously, it is best practice to ensure definitions of sexual crimes are based on the lack of freely given consent and take into account coercive circumstances.²⁹ This includes a definition of consent, instances in which consent may not be inferred, and instances in which lack of consent may be presumed.³⁰ This model of legislation has been cited in international regional standards such as the Istanbul Convention, which prescribes “Consent must be given voluntarily as the result of the person’s

²⁷ UN Women, *UN Handbook for Legislation on Violence against Women (2012)*, Section 3.4.3.1, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, accessed Dec. 22, 2023.

²⁸ UN Special Rapporteur on Violence against Women, *A framework for legislation on rape (model rape law)* (July 2021), [A framework for legislation on rape \(Model Rape Law\) : \(un.org\)](#), accessed Dec. 22, 2023, 7.

²⁹ UN Special Rapporteur on Violence against Women, *A framework for legislation on rape (model rape law)* (July 2021), [A framework for legislation on rape \(Model Rape Law\) : \(un.org\)](#), accessed Dec. 22, 2023, 7.

³⁰ UN Special Rapporteur on Violence against Women, *A framework for legislation on rape (model rape law)* (July 2021), [A framework for legislation on rape \(Model Rape Law\) : \(un.org\)](#), accessed Dec. 22, 2023, 7.

free will assessed in the context of the surrounding circumstances.”³¹ The Model Rape Law similarly states “Rape is an act of sexual nature committed without consent. Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent” and that “[c]onsent must be given voluntarily as the result of the person’s free will assessed in the context of the surrounding circumstances.”³² Expanding the definition of rape would provide prosecutors and judges more direction as they argue and determine cases involving sex crimes. The vagueness of the current legislation allows much to be interpreted, which can lead to inconsistencies in the application of the law and how perpetrators are sentenced.

The Advocates recommends modifying Article 135 of the Criminal Code to address consent, or lack thereof, along with a more specific definition of what constitutes rape based on the UN Special Rapporteur on Violence against Women’s 2021 framework for legislation on rape (Model Rape Law).³³

The Advocates recommends expanding upon the concept of committing other acts of sexual nature to include all forms of criminal sexual conduct. Such acts would include the intentional touching of the victim’s intimate parts by the defendant or another without their consent, particularly if the victim is under the age of consent, is mentally impaired, or if there is coercion. This may include the touching of the victim’s intimate parts, the touching of the clothing covering those parts of the victim, and the touching of the victim’s intimate parts by another’s intimate parts.³⁴

Specific Comments on Existing Provisions of Turkmenistan’s Administrative Code

In this section, we provide commentaries on the current provisions of the Administrative Code that are applicable or impact the access to justice of individuals enduring domestic

³¹ Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011, art. 36, available at <https://rm.coe.int/168046031c>.

³² UN Special Rapporteur on Violence against Women, *A framework for legislation on rape (model rape law)* (July 2021), [A framework for legislation on rape \(Model Rape Law\) : \(un.org\)](#), accessed Dec. 22, 2023, 6-7.

³³ UN Special Rapporteur on Violence against Women, *A framework for legislation on rape (model rape law)* (July 2021), [A framework for legislation on rape \(Model Rape Law\) : \(un.org\)](#), accessed Dec. 22, 2023, 6-7.

³⁴ MN Statute §609.341 subd. 11.

violence. The Advocates commends the current legislation but recognizes the benefits of re-evaluating and improving legislation to ensure victim safety.

Article 43: Warning

A warning as a type of administrative penalty is a measure of official reminder to individuals and legal entities about the inadmissibility of unlawful actions. A warning is issued in writing, but if the administrative offense committed is insignificant, as well as in cases provided for by this Code, it can also be issued orally.

Commentary:

Warnings contradict the message of zero tolerance for domestic violence and offer offenders a “second chance” instead of promoting accountability. This presents a significant risk of danger to victims. Instead, language on police powers should focus instead on a probable cause of arrest standard and pro-prosecution policy. A probable cause standard of arrest allows police to arrest and detain an offender if they determine that there is probable cause a crime has occurred even if they did not witness the offence. A pro-prosecution policy should be adopted in cases where there is probable cause that domestic violence occurred to ensure that the violence is treated seriously by police and prosecuting authorities.

Government officials should act immediately upon reports of domestic violence whether through criminal sanctions or through the issuance of preventive measures to hold the offender accountable and to keep the victim safe. The code should communicate a zero tolerance for violence message to the public. As such, The Advocates recommends clarifying this article does not apply to cases of domestic abuse, as it is inadequate in its attempt to deter further violence and will only communicate a message of impunity and tolerance for domestic violence.

Specific Comments on Existing Provisions of Turkmenistan’s Criminal Procedural Code

In this section, we provide commentaries on the current provisions of the Criminal Procedure Code that impact access to justice of individuals enduring domestic violence. We note the authority under the Criminal Procedural Code Article 213 subd. 3 stating, “[T]he prosecutor has the right to initiate a case of rape without a complaint from the victim if, due to her physical or

mental disabilities, she cannot defend her rights herself.” We also note that under the Criminal Procedural Code Article 213 subd. 4, a prosecutor may initiate a case of rape even in the absence of a complaint from the victim if there is “dependence on the accused or for other reasons [the victim] is unable to protect their rights and legitimate interests.” We urge the state to reform both of these provisions to mandate that prosecutors initiate a case of rape whenever there is probable cause that the crime of rape has occurred, irrespective of the victim’s physical or mental capabilities or dependence on the accused. We encourage the expansion of prosecutors’ *ex officio* authority to initiate and prosecute cases of domestic violence, as well.

Article 31: Circumstances excluding criminal prosecution

1. *In the following cases, a criminal case cannot be initiated, and the initiated case is subject to termination:*
 - 6) *for the reconciliation of the victim with the accused in cases initiated only on the basis of a complaint from the victim, except for the cases provided for in parts two, three and four of Article 213 of this Code.*
 - 7) *in the absence of a complaint from the victim, the case can be initiated only on his complaint, except for the cases provided for in part four of Article 213 of this Code, when the prosecutor is given the right to initiate cases even in the absence of a complaint from the victim*

Article 33: Grounds for termination of a criminal case

1.1 If the public prosecutor withdraws charges against the defendant for crimes of minor and medium gravity on the grounds specified in paragraphs one and two of part one of Article 31 of this Code, if the defendant is not involved in the commission of the act that he is accused of, and also if the victim refuses the accusation; and also in accordance with paragraph six of part one of Article 31 of this Code for the reconciliation of the victim with the accused.

Commentary:

Article 31 of the Criminal Procedural Code currently does not apply to Articles 107, 108, 109, 111, and 114 of the Criminal Code, all of which may be applicable in instances of domestic violence. Under these articles, prosecution of these crimes will only proceed upon complaint from the victim. Victims may have many valid reasons for not initiating a complaint, including stigma, a perception the justice system will be ineffective, socio-economic and cultural pressures, and fears of further harm from the perpetrator. Article 33 also relies on the cooperation of the victim in order to proceed with prosecution of a case. Many victims may choose to recant or refuse to provide testimony out of fear of the perpetrator or others. Data shows that victim recantation may occur in approximately 80 percent of criminal domestic violence cases.³⁵ Refraining from pursuing these cases, even without victim cooperation, would mean many cases would remain unprosecuted, decreasing the effectiveness of the laws and preventative measures.

Reconciliation of the parties should neither trigger termination of (Art. 31(1)(1) nor bar criminal proceedings (Art. 31(1)(6)) in violence against women cases. Reconciliation—and therefore a bar to or termination of prosecution – removes a domestic violence case from public view and objective judicial scrutiny, and it fails to communicate a zero-tolerance message for domestic violence. If a prosecutor should terminate a case of violence against women, the law or protocols should mandate that prosecutor explain to the victim the reasons why the case was dropped.

Instead, laws should call for a pro-prosecution policy in cases of violence against women where there is probable cause to believe a crime has happened.³⁶ Specifically, legislation should reinforce that law enforcement and prosecutors are obligated to pursue all cases of domestic violence, including assaults resulting in low-level injuries such as bruises, cuts, scrapes, and burns, regardless of whether the victim cooperates.³⁷ Many cases can be prosecuted without victim cooperation, using victim-absent prosecution or evidence-based prosecution. It is

³⁵ *National Domestic Violence Prosecution : Best Practices Guide* (revised 2020), 7, <https://ndaa.org/wp-content/uploads/NDAA-DV-White-Paper-FINAL-revised-June-23-2020-1.pdf>.

³⁶ UN Women, *UN Handbook for Legislation on Violence against Women* (2012), Section 3.8.3, <https://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>, accessed Dec. 22, 2023.

³⁷ U.N. Good practices in legislation on Violence against Women (2008), Section 7, 39 – 50, available at [http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAV%20\(final%2011.11.08\).pdf](http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/Report%20EGMGPLVAV%20(final%2011.11.08).pdf).

important to provide training to both law enforcement and prosecutors to ensure that the best practices are implemented to maximize the possibility of holding offenders accountable.

The Advocates recommends adding language into Articles 31 and 33 to ensure prosecution of cases is pursued, even in cases where victims recant or refuse to cooperate, using an evidence-based, victim-absent prosecution approach.

Article 86: Victim

1. *A victim in a criminal proceeding is a person who has been unreasonably and illegally caused moral, physical or property harm by a crime.*
2. *In cases of crimes provided for in Article 113, part one of Article 131 of the Criminal Code of Turkmenistan, the victim may contact the prosecutor or the internal affairs body. For these crimes, the victim himself or through his representative has the right to support the prosecution in court proceedings.*
3. *The inquirer, investigator, prosecute or judge makes a decision on recognition of the victim or on the refusal to do so, and the court makes a ruling.*
4. *A citizen recognized as a victim of a crime has the right:*
 - 1) *Give evidence in their native language or a language they speak and use the services of an interpreter;*
 - 2) *Know about the charges brought against the accused;*
 - 3) *Get acquainted with the protocols of investigative actions carried out with his participation and submit comments on them;*
 - 4) *Provide evidence;*
 - 5) *Submit petitions;*
 - 6) *From the moment the preliminary investigation is completed, familiarize yourself with all the materials of the case;*
 - 7) *Participate in court proceedings;*
 - 8) *File challenges;*
 - 9) *Demand compensation for damage caused to him;*
 - 10) *Have a representative and cancel his powers;*

- 11) Get acquainted with the minutes of the court session and submit comments on it;*
- 12) Appeal the actions and decisions of the inquiry officer, investigator, prosecutor, judge and court;*
5. *In cases of crimes that resulted in the death of the victim, his close relatives have the rights provided for in this article*

Commentary:

The Criminal Procedural Code should include a statement of the rights of victim-survivors.³⁸ It should promote victim safety, agency, and assistance and prevent the re-victimization of the victim. It should remove barriers that may prevent them from seeking safety, such as concerns about child custody, access to shelters, and legal aid.³⁹

The statement of rights should inform the victims of legal remedies (such as a preventive measure) and the support services, or help, offered by the state. These services should not be conditional on cooperation with authorities.

Support services should include transport to shelters, emergency services, and other support programs for victims and their families.

The Criminal Procedural Code should provide for economic assistance to victims. Economic independence is a necessity for victims to escape situations of violence as lack of finances is often a reason victims remain in abusive situations. Legislation should provide for both short-term and longer-term economic and employment assistance. Aid, including shelter, clothing, and food, should also be provided for the children of the victims. Legislation should include provisions which provide for restitution or compensation to the victims.

Article 108: Ensuring the safety of victims, suspects, accused, defendants, witnesses, experts, specialists and other persons participating in criminal proceedings.

³⁸ Council of Europe, *Combating violence against women: minimum standards for support services* (2008), [cover_en.cdr \(coe.int\)](https://www.coe.int/t/e/treaties/Convention+against+trafficking+human+beings/CAT+Guidelines+for+support+services.pdf).

³⁹ US Department of Justice, *Family Violence: A Model State Code* (1994), 13.

1. *The body of inquiry, investigator, prosecutor, court, if they have sufficient information that in connection with the criminal proceedings there is a real danger of committing in relation to victims, suspects, accused, defendants, witnesses, experts, specialists or other persons, those participating in the case, as well as their close relatives, threats of murder, use of force, violence, cruelty, destruction or damage to property or the use of other actions, committing acts prohibited by criminal law, are obliged to take all measures provided for by the legislation of Turkmenistan to protect their life and honor, dignity and protection of property, to ensure their safety, identify the perpetrators and bring them to justice.*

Article 147: Type of preventive measures

1. *Preventive measures are:*
 - 1) *Undertaking not to leave;*
 - 2) *Personal guarantee;*
 - 3) *Guarantee of the organization;*
 - 3) *Pledge/ bail;*
 - 4) *Detention (in custody);*

Commentary:

While the various protective measures of Articles 108 and 147 are a step toward providing some protection for victims, major gaps remain that leave them and their children vulnerable to intimidation, threats, and further risk during criminal proceedings. The state should strongly consider adopting provisions that allow for the issuance of a *Domestic Abuse No Contact Order*, independent and separate from a *civil order for protection*, and would greatly increase the security of the victims throughout criminal proceedings. The domestic abuse no contact order should direct the defendant not to contact the victim in any way, by telephone, email, social media, text messaging, in person, at the victim's place of employment, home, school, or in the community during the pendency of the criminal proceedings. No-contact orders should also include contact through a third party, such as a family member or friend. The law should make clear that the no-contact order should remain in effect until the criminal case is

concluded or further order of the court. Violations of a domestic abuse no contact order should be considered a new crime with commensurate penalties that reflect the seriousness of the crime, with repeated violations leading to enhanced sentences.

Article 258: Confrontation

- 1. The investigator conducts a confrontation between two previously interrogated persons, if there are significant contradictions in their testimony, to clarify the reasons for these contradictions.*
- 2. At a confrontation in cases provided for by this Code, a lawyer, teacher, doctor, translator and legal representative of the interrogated may be present.*
- 3. At the beginning of the confrontation, the investigator clarifies whether the persons between whom the confrontation is being conducted know each other, and what kind of relationship they have with each other.*
- 4. At a confrontation, the order in which persons testify about the circumstances to be clarified is determined by the investigator. After this, the investigator asks questions. Persons summoned to a confrontation, with the permission of the investigator, can ask questions to each other, which is noted in the protocol.*
- 5. When conducting a confrontation, the investigator may present material evidence and documents attached to the case*
- 6. The disclosure of evidence given by participants in the confrontation during previous interrogations is permitted after they have given evidence at the confrontation and entered it into the protocol.*
- 7. If a witness and a victim participate in a confrontation, they must be warned of liability for refusal to testify and for giving knowingly false testimony, which is noted in the protocol.*
- 8. The progress and results of the confrontation are reflected in the protocol drawn up in accordance with Article 117 of this Code.*
- 9. The investigator familiarizes the participants in the confrontation with the contents of the protocol. Interrogated persons have the right to demand amendments and additions to the protocol. The protocol is signed by the interrogated persons and the investigator. Each interrogated person signs his testimony and each page of the protocol separately.*

Commentary:

Confrontation used in domestic violence cases is dangerous, threatening to victims and an unreliable way to assess truth since offenders' controlling and coercive tactics, which are inherent in domestic violence, will likely frighten victims and affect their testimony. This practice can intimidate a victim whose abuser has used violence to control her behavior and is not likely to result in candid or truthful testimony. The Advocates recommends including an exception to this provision and requiring: a) authorities screen all cases for domestic violence prior to a confrontation procedure by accepting external evidence of or the victim's statement alone attesting to domestic violence, and b) omit, without exception, parties in domestic violence cases from the practice of confrontation.