



Office for Democratic Institutions and Human Rights

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PARLIAMENTARY ELECTIONS IN TURKMENISTAN 12 DECEMBER 1999

REPORT OF THE ODIHR NEEDS ASSESSMENT MISSION 8-11 November 1999

INTRODUCTION

The ODIHR sent a Needs Assessment Mission (NAM) to Turkmenistan between 8-11 November 1999, in connection with the parliamentary elections scheduled for 12 December 1999. This standard ODIHR mission was tasked with appraising the pre-election situation in Turkmenistan in the light of the OSCE Commitments and relevant Turkmen legislation. The NAM assessed the legal and administrative framework, and the overall environment in which the upcoming elections will take place (basic freedoms, the procedures for the registration of candidates, pre-election campaign activities).

The Mission also tried to identify possible windows of opportunity for future co-operation and technical assistance projects. However, the Mission made clear that the visit was NOT related to the ongoing discussions over the Memorandum of Understanding and kept all official discussions on the subject of elections.

The NAM was headed by Mr. Rumen Maleev (Election Expert from Bulgaria), and further consisted of Ms. Elsa Fenet (ODIHR Election Adviser), Mr. Joseph Middleton (Legal Expert) and Ms. Raphaele Mathey (ODIHR Regional Election Project Co-ordinator in Central Asia). Ambassador Paul Ullmann, Head of the OSCE Centre in Ashgabad, and his staff joined the NAM in a number of meetings.

The NAM wishes to thank the Ministry of Foreign Affairs of Turkmenistan for their assistance and co-operation and for timely arranging a comprehensive programme. A list of meetings is annexed to this report.

The ODIHR is particularly grateful to the OSCE Centre in Ashgabad for providing extensive support to the NAM, including in organising meetings with bilateral Embassies and civil society representatives.

EXECUTIVE SUMMARY

Based on the information collected during the visit, the NAM concludes that minimal conditions for democratic elections, including basic freedom of expression, freedom of association, political pluralism and free media do not exist in Turkmenistan.

The ODIHR forwarded to the Turkmen authorities a comprehensive review of the election legislation, concluding that significant changes had to be introduced for it to meet OSCE Commitments. The NAM found that the ODIHR concerns on the legal framework have not been addressed, neither in the law nor in the publications produced by the Central Election Commission.

Turkmenistan remains a one-party state and the legal and administrative provisions for the upcoming elections do not allow for any real alternative candidates to run. The state administration is involved in all parts of the election process, including the procedures for nominating candidates supported by initiative groups of voters. The forthcoming elections will not be competitive.

The legal framework governing the nomination and work of the election commissions at all levels cannot guarantee an independent and impartial administration of the election. In addition, the provisions on media and campaign activities cannot ensure a level playing field to potential independent candidates.

The Turkmen authorities stressed to the NAM that the upcoming elections will meet international standards, while recognising at the same time that the country is not ready to sustain multi-party elections nor a free media environment.

The NAM was informed that international observers would not be invited by the Turkmen authorities but would be welcome if they came anyway.

The NAM concludes that the legal framework and pre-election period does not meet minimum OSCE election-related commitments. The NAM recommends that no observation mission, neither a full sized mission nor a limited assessment mission, be deployed to Turkmenistan for the forthcoming parliamentary elections.

FUNDAMENTAL FREEDOMS AND HUMAN RIGHTS

General Overview

Numerous violations of human rights were reported to the NAM. An environment of intimidation exists that does not allow for a democratic election process. Freedom of expression, association and assembly are restricted in the name of stability or state security. Stability is often seen as opposed to political competition rather than seeing democracy as a support to stability.

There is no freedom of expression and a strict control on the media is applied by the executive resulting in a practice of imposed or even self-censorship. Freedom of association is limited through denial of registration to Non-Governmental Organizations that might seem critical of state authorities and their policy; and political parties other than the Democratic Party of Turkmenistan (DPT - successor to the Communist Party), are not allowed, thus violating paragraphs 7.6 and 10.3 of the Copenhagen Document. Freedom of assembly seems very restricted by provisions, which stipulate that public demonstrations are only permitted with the prior consent of the authorities (see further on meeting of voters). It is understood that there have been no recent public demonstrations in Turkmenistan. Freedom of movement is also lacking as the soviet Propiska registration system is still in force, thus seriously limiting the capacity of citizens to freely choose their place of residence, as well as general internal and external travel restrictions.

In general the human rights situation raises serious concerns. Religious groups, human rights activists and other opponents to the government suffer from harassment, arbitrary detention, torture and are sometimes deprived of property and education, planted with falsifications. This creates a situation of widespread intimidation that substantially affects the pre-election environment and prevents any kind of genuine contest of the election.

The Absolute Powers of the President

The upcoming elections should be viewed in the context of the increasing powers and personality cult of the incumbent President. Officials and state newspaper articles are openly advocating for the next step towards the so-called *Golden Age*, where President Niyazov is expected to be officially nominated “Great Leader of the Turkmen people” for life, with powers to appoint and dismiss officials, parliamentarians and even the President, or to make him President for life.

Some suggest that President Niyazov will convene a session of the People’s Council (*Halk Maslahaty*) in late December including the newly elected Members of Parliament, as well as all major state officials, to amend the Constitution accordingly. While such statements are not presented as official state policy, the complete control on the media and public speeches suggest that such rumours have at least the tacit approval of the President. The possibility of extended and reinforced Presidential powers should be taken quite seriously.

LEGAL FRAMEWORK

Political Structure

The 1992 Constitution establishes a strong presidential system of government. The parliament (Mejlis) is a unicameral legislature with 50 deputies elected for five years from single mandate constituencies. All but one seat of the present Mejlis were elected unopposed in 1994. The People’s Council (*Halk Maslahaty*) is the ‘supreme legislative body’. It has no direct legislative powers but is empowered to determine fundamental constitutional and policy issues (see above). It includes 50 elected

representatives (last elected in April 1998), the members of the Mejlis and the President.

The President heads the executive branch. The incumbent, President Niyazov, was elected unopposed in 1990. He was re-elected in 1992 and had his term extended to 2002 by a referendum in 1994. There are now suggestions of prolonging his term and further extending his powers (see above). There is no constitutional court or ombudsman in Turkmenistan. All judges are appointed by the President for a term of five years. The President may also nominate members of the Central Electoral Commission (CEC).

Turkmenistan is divided into five regions ('velayats'; the capital, Ashgabad, has equivalent status) and some 50 districts ('etrap'). Each velayat, etrap and town is governed by a 'khiakim', all of whom are appointed directly by the President.

These provisions suggest that the President is constitutionally endowed with exceptionally strong powers over the formation and operation of all branches of state power, both centrally and at regional levels. This raises serious questions about the constitutionally enshrined principle of the separation of powers, particularly regarding the conduct and administration of elections.

Legal Framework Governing the Upcoming Elections

The present legislation governing elections to the Mejlis comprises the Constitution, the 1994 Law on Elections of Deputies of the Mejlis and the 1999 Law on the Central Commission for Elections and the Conduct of Referendums (CEC). There is also a 1999 Law on Guarantees of Electoral Rights. This sets out certain general statements of principle rather than establishing any firm justiciable rights. However, Art. 11 incorporates Turkmenistan's international commitments in a domestic legislative act. It provides:

'As a fully-fledged subject of the world community and strongly following the principles and norms consolidated in the UN Charter and founding documents of the OSCE and other generally recognised international organisations, Turkmenistan shall abide by the provisions of international treaties, conventions, and agreements in which it is a participant and ensure compliance with them in the organisation and conduct of elections.'

The legislative framework for elections to the Mejlis was the subject of detailed review in the spring of 1999. This work was done under a British Know-How Fund project carried out in close co-operation with the Turkmen authorities. The Constitution expressly provides that political *parties* may nominate candidates for the Mejlis. However, in preparing their recommendations the experts did not seek to challenge an express indication by the Turkmen authorities that only one party (the Democratic Party of Turkmenistan) would be permitted to participate in the 1999 elections. A comprehensive series of recommendations for improving the legislation, which were designed to bring the law into conformity with OSCE commitments, was prepared accordingly and presented to the Turkmen authorities.

A number of minor amendments to the Mejlis election law were adopted in accordance with these recommendations in April and May 1999. Not one of the key recommendations was implemented then or subsequently.

Following the April and May amendments and the ODIHR visit to Turkmenistan in May 1999, a comprehensive commentary of the legal framework for elections including specific recommendations for improvement was forwarded to the Turkmen authorities by the ODIHR on 30 June 1999.¹ This report largely followed the Know-How Fund recommendations and concluded that the legal framework does not meet minimum OSCE commitments. Both reports emphasized the shortcomings of the law connected with the provisions for political party registration, candidate nomination procedures, campaign finance and campaign activities, as well as media access. These and numerous other facets of the Law, including key provisions on the secrecy of the vote and security of the ballot, were the subject of strong recommendations by the ODIHR. The ODIHR has received no response to this report and the Turkmen authorities indicated to the NAM that none will be provided.

No amendments have been made to the Mejlis election law since June. However, the CEC has issued a number of documents providing authoritative guidance.² Unfortunately, none of the guidance issued by the CEC addresses any of the key recommendations or concerns highlighted in the ODIHR report. In addition, the NAM received contradictory assessments concerning the status and legal force of such regulations, most officials stating that these publications were not binding.

In its approach to assessing the present legal framework the NAM did not expect the authorities of Turkmenistan to achieve immediate and comprehensive compliance with OSCE commitments under the Copenhagen Document. Rather, the mission sought to identify a positive trend, to establish whether some appreciable steps, however modest, had been taken towards meeting those commitments. It will be clear from the above that no such trend is readily identifiable. Moreover, given the complete lack of response to the ODIHR recommendations it is difficult to identify any desire on the part of the Turkmen authorities to maintain a dialogue on electoral reform.

The mission was assured that, notwithstanding the absence of any alternative political parties or any semblance of free mass media, the legislation already provides a broad basis for democratic elections. Several interlocutors representing Turkmen authorities indicated that there are no significant defects in the present legislation and that improvements prior to the upcoming elections were neither possible nor necessary. Given the present content of the election regulations and the response given to recent recommendations, such assertions appear to be far from appropriate. On the contrary, it is difficult to avoid the conclusion that as regards legislation and regulations, the

¹ 'Preliminary Comments and Recommendations for Changes to the Law of Turkmenistan on Elections of Deputies of the Mejlis of Turkmenistan', OSCE/ODIHR, 30 June 1999

² The chairman of the CEC kindly provided the mission with a full set of documents, comprising the election Law, the Law on the CEC, the Law on Guarantees of Citizens' Electoral Rights, and a series of CEC pamphlets: 'On Candidates for Deputy of the Mejlis of Turkmenistan'; 'To the Voter: On Elections of Deputies of the Mejlis of Turkmenistan'; 'On the Work of District Electoral Commissions for Elections of Deputies of the Mejlis of Turkmenistan'; 'On Certain Questions of the Work of Precinct Election Commissions for Elections of Deputies of the Mejlis of Turkmenistan'.

OSCE commitments have not been met in any fundamental respect, as detailed hereunder.

POLITICAL ENVIRONMENT AND PLURALISM

An election in a democracy presupposes that voters make a choice between various candidates. The legal framework of Turkmenistan does not allow voters to be presented with genuine alternative candidates.

Nomination Procedures by Collective Organisations

There is only one legal registered party in Turkmenistan, the Democratic Party of Turkmenistan (DPT). The party's leader is the incumbent President, and its structures seem closely linked to the executive bodies and state administration, if not superimposed on or integrated into it. This party, fully loyal to the incumbent's policy, is regarded as functioning as the former Communist Party, assisting the state and providing all political initiatives. It claims one million members countrywide and is represented in all regions. Most of the important figures of the country belong to this party. The incumbent parliament is largely dominated by DPT members or affiliates (more than 70%).

There are no opposition parties and no registered opposition non-governmental organisations openly active in public life and political issues. Most registered "Independent candidates" are either part of the incumbent Parliament, civil servants, members of state enterprises or affiliated to one of the state-sponsored organisations (Trade Union and workers' associations or Womens/Youth/War Veterans organisations). These organisations, also allowed to nominate candidates, come under a single umbrella group called *Galkynysh* chaired by the President. This organisation works as a forum of all registered institutions and associations. This institution headed by the President has as its main goal the promoting and controlling activities of these associations.

In addition, the NAM was informed by representatives from the ruling party that successful candidates from the above organisations would be invited to join the DPT after the election. This co-option strategy does not give any opportunity for the development of alternative political thinking or the creation of a multiparty system. It is therefore difficult to see how any candidates could represent diverging views from those expressed by mainstream official candidates.

Nomination of Candidates by Citizens' Groups

At the individual level, the intention of the authorities to hold multi-candidate (or *alternativnost*) elections can also be questioned. In the absence of alternative political parties the key ODIHR recommendations concerned the nomination and registration of candidates. The Mejlis election law imposes stringent requirements on the nomination of candidates by meetings of citizens. Candidate nomination procedures for initiative groups of citizens are controlled at all levels by the executive authorities, election commissions and Democratic Party representatives.

Control by State Authorities

Provisions regulating the nomination and revocation of candidates (art. 30-31-32-33 of the election law) presented by initiative groups severely limit free access to basic election rights. The multiple requirements for the nomination of candidates by citizens' initiative groups appear as barrier against independent candidates, as well as giving the opportunity to the executives bodies to fully control every step of the procedure.

A minimum group of 200 citizens may create an initiative group under the following conditions:

- A written statement including all of the information about the holding of a constituent meeting is communicated to the District Electoral Commission.
- The list of participating members (including biographical data, addresses and signatures of all members) is submitted to the District Electoral Commission.
- The constituent meeting comprises of the 200 declared participants. The absence of one participant invalidates the meeting.
- All decisions concerning nomination/revocation of candidates, as well as the organisation of meetings by initiatives groups should be approved by the same quorum of 200 persons.

Given these requirements, it is fair to assume that citizens who may wish to sign petitions and take part in the creation of an initiative group may be deterred by the fact that executive bodies will not only be aware of their political/civic activities, but will also receive their detailed personal data; allowing for possible arbitrary interference or direct pressure on themselves or their family. This possible intimidation contravenes OSCE commitments and is not conducive of a democratic process.

Interference of Election Commissions in Nomination Procedures

District election commissions are entitled to initiate and call for citizens to constitute an initiative group of citizens (article 30 of the election law). In addition, district commissions are required to ensure that their members are available to deal with nomination applications throughout the nomination period. For instance, paragraph 9 of the Section "Organization of the nomination of deputies to the Mejlis of Turkmenistan" from the CEC publication on the work of District Election Commissions stipulates:

".. CEC registers the statement for holding the meeting (organized by initiative group of citizens), takes control over its convocation, and a representative of CEC attends the meeting".

Thus, the rules and regulations further strengthen the control of the election administration over the nomination process. These provisions therefore contradict the basic principle of impartiality of election administering bodies, and may allow in some cases politically motivated manipulation, citizens intimidation and undue interference in candidate nomination procedures

Extra-legal Requirements

Extra legal requirements for candidates constitute the basis for preventing candidates from running in the election. While such requirements were introduced in an amendment to the election law in April 1999, this provision was subsequently repealed in May 1999. However, the NAM found that these extra-legal requirements were re-introduced in the CEC guidance published in the summer 1999.

Indeed, guidance issued by the CEC to the district commissions instructs them to pay special attention to the moral qualities of candidates and suggests that they must have a high level of political and legal culture. A CEC brochure on candidates states that they must be ‘pure in their thoughts and unfailingly loyal to their Motherland, people and President’³. This highly subjective requirement does not guarantee the right of citizens to seek public office without discrimination or arbitrary application of the law and therefore contravenes the OSCE commitments.

INDEPENDENCE OF THE ELECTION ADMINISTRATION

Composition and Independence of Election Commissions

The ODIHR recommendations emphasized that in a country with a single-party system and without free press and media, it was of decisive importance for the election legislation to strengthen the independence and neutrality of the election administration. Unfortunately, the law still allows representatives of state bodies to be nominated to electoral commissions and expressly permits such representatives to attend voting and counting, whether or not they are members of electoral commissions.

The independence and impartiality, at least for the Central Commission on Elections and Referenda (CEC), is proclaimed in article 2 of the CEC law. However, the rules governing the nomination of election commission members at all levels, and the inclusion on these commissions of representatives of the state bodies, leaves little hope for real independence and impartiality of the election administration. The fact that a Deputy Minister was appointed as member of CEC clearly illustrates the problem. Moreover, the former Head of the CEC was released from his duties by a decision of the Mejlis of 21 May, because of his Ministerial position; he was nonetheless re-appointed as a regular member of the CEC by decision of the Mejlis from May 26. The current Head of the CEC did not share the NAMs concern that the presence of members of the government on the commissions could undermine the -perceived or effective- independence of the election administration.

The law provides that the CEC is a 15-member standing body elected by the Mejlis, on proposals from the President. Members of the electoral commissions of each *velayat* and the city of Ashgabad are appointed by the superior commission (the CEC) on the recommendation of the corresponding *khiakim*. The same rule applies to the 50 district and precinct commissions. This involvement of the executive powers at all levels in the nomination procedures of the election commissions casts serious doubts

³ The April amendments to the Mejlis election Law included a specific addition the Law imposing such requirements. That amendment was repealed in May.

about their structural independence from state authorities and their ability to function with impartiality.

Functioning of the Election Administration

During its visit, the NAM received various pieces of information, which cast doubts as to whether the CEC is in practice the functioning institution administering the election. Indeed, the NAM was told that the latest meeting of the Commission had been held on November 2 (apparently for confirmation of the composition of polling station commissions) and that the next meeting was planned only for November 19 (when the three-day term for appeals against rejection of registration of candidates expires - article 31, par. 4). In addition, the NAM was informed that the CEC does not have any staff. This seemed rather surprising, given that the CEC does not seem to meet on a very regular basis. The NAM was able to confirm this information during a subsequent visit to the CEC premises, where no indications of a regular working institution were to be seen (names of staff members, schedules for meetings, working hours or others).

Following the NAMs request for all decisions and regulations adopted by the CEC, four guidance booklets were submitted to the ODIHR, in Russian:

1. On candidates to Mejlis of Turkmenistan (memorandum);
2. To the voter on the election of deputies to Mejlis of Turkmenistan (memorandum);
3. On the work of District Election Commissions on election of deputies to Mejlis of Turkmenistan;
4. About some aspects of the work of PEC on election of deputies to Mejlis of Turkmenistan.

These publications indicated printing dates from June and July, which would again indicate that most preparations for the elections are not undertaken by the CEC in the close pre-election period. In addition and as mentioned above, the NAM found that there is no uniform understanding among the Turkmen officials concerning the powers and competencies of CEC, in particular the obligatory nature of these publications.

The first two documents represent a compilation of official positions and texts from or references to the Constitution and the Election Law, presumably for the purpose of voter and candidate information. The NAM however received no particular information concerning the distribution of these documents (12 000 and 15 000 copies, printed in July and August respectively).

A large portion of the third and fourth publications is made of a compilation of articles from the election laws. A careful reading of these documents indicates that the CEC's rules and regulations unfortunately do not address the shortcomings of the law, as recommended by the ODIHR. These publications, supposed to be used as guides for the work of lower level election commissions, do not elaborate on the law regarding the polling station commission activities or voter registration. No additional information is incorporated to increase the uniform and transparent application of the procedures for early voting and the use of the mobile box, which are sensitive areas of

the election process in terms of secrecy, security of the ballot and monitoring possibilities.

Finally, the CEC did not seem to have been involved in or consulted on the review process of the election law, and the CEC Chairman stated to the NAM that he was not aware of the ODIHR preliminary comments and recommendations on the election law.

CONCLUSION

The NAM considers that the pre-election process in the Republic of Turkmenistan does not meet minimal OSCE commitments for democratic elections. The ODIHR considers that the legal framework is flawed and that the rules and regulations produced by the CEC do not address the shortcomings of the law.

In addition, the preparations for these elections indicate that there will be no plurality of candidatures and that the bodies in charge of administering the election process are neither effective nor independent institutions.

The NAM recommends that no observation mission, neither a full sized mission nor a limited assessment mission, be deployed to Turkmenistan for the forthcoming parliamentary elections. The ODIHR stands ready to identify one expert to assist the OSCE Centre to report on this political event in Turkmenistan.

NEEDS ASSESSMENT MISSION;
TURKMENISTAN 8-11 NOVEMBER 1999.
LIST OF MEETINGS.

Monday 8/11/99

- **Deputy Minister of Foreign Affairs:** Mr. Kepbanov.
- **Democratic Party of Turkmenistan (DPT):**
 - Mr. O. Mussaiev, First Secretary of the DPT.
 - Mr. A. N. Grishin, First Secretary of Political Council of DPT
 - Mr. K. O. Ovezov, Secretary of Political Council of DPT, Chairman of the Commission on economical affairs of the Parliament.
 - Mr. A.O. Burynov, Secretary of Political Council of DPT, Chairman of the Turkmen Confederation of Trade Unions.
- **Head of the National Human Right Center,** Mr. V. Kadirov.
- **Chairman of the CEC,** Mr. M. Kariev.

Tuesday 9/11/99

- **Meeting with representatives of local NGO**

Wednesday 10/11/99

- **Meetings with representatives of local NGOs**
 - **Meeting with representatives of the Diplomatic Community:**
 - Ambassador F. Wilson, UK
 - Ambassador S. Mann, USA
 - Ambassador H. Keilholtz, Germany
 - Representative of the French Embassy.
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The meeting with the Chairman of Parliament, Mr Muradov was cancelled.

Meetings with representatives of the local NGOs had been organised by the OSCE Center in Ashgabad. For further security reasons the names of representatives of non-registered organisations cannot be published.