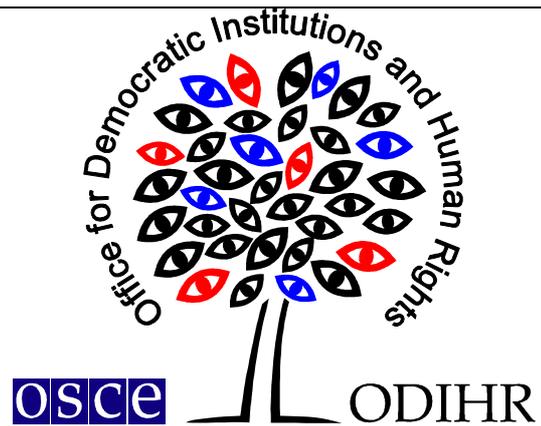


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Opinion
on Constitutional Reform Proposals
submitted on 22 May 2008 by the Constitutional
Commission on Improvement of the Constitution of
Turkmenistan

based on an unofficial account of the proposals
as published in the national newspaper “Neutral Turkmenistan” on 23 May

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1. INTRODUCTION

1. *On 18 April 2008, the Constitutional Commission on Improvement of the Constitution (hereafter, “the Constitutional Commission”) was set up by a resolution of the Halk Maslahaty signed by the President, acting in the capacity of Chairperson of the Halk Maslahaty. The primary task of this new Commission is to propose amendments to the Constitution. At its second session on 22 May, the Constitutional Commission put forward a series of constitutional reform proposals which were published on the following day in the national newspaper “Neutral Turkmenistan”.*
2. *In May 2008, an official request for comments on the constitutional reform proposals was extended to the ODIHR and the OSCE High Commissioner on National Minorities, and it was subsequently agreed between the Office of the High Commissioner and the ODIHR that comments pertaining to national minorities issues would be prepared by the Office of the High Commissioner and incorporated to the ODIHR comments.*
3. *The following comments are a response to the above mentioned request. The comments are shared with the Ministry of Foreign Affairs exclusively at this point in time. Subsequently, consideration may be given to publishing these comments with the consent of the State authorities.*

2. SCOPE OF REVIEW

4. *The proposals put forward by the Constitutional Commission are rather general in their scope, and not all of their implications can be precisely anticipated. Therefore, these comments do not equate to a review, rather they have been drafted to serve as general considerations drawing upon the constitutional practice of other OSCE participating*

States and highlighting the international standards the constitutional framework must comply with. Furthermore, given the time constraints and the magnitude of the task of reviewing these proposals in the light of the full text of the Constitution, the scope of these comments is limited to some, but not all, of the issues addressed by the proposals submitted by the Constitutional Commission. They are without prejudice to any further comments that the OSCE ODIHR may be requested to submit in the future on the same or other matters.

3. EXECUTIVE SUMMARY

5. The proposals submitted by the Constitutional Commission are primarily concerned with two sets of issues: on the one hand, the abolition of the *Halk Maslahaty* as the “standing supreme representative body (...) vested with the powers of supreme state authority and government” (article 45 of the Constitution) and its replacement with a consultative assembly, which may or may not keep the same denomination; on the other hand, a review of the entire text of the Constitution in the light of Turkmenistan’s state obligations under international law. These stated objectives are both extremely ambitious and are welcome, as is the overarching proposal to “reinforce the principle of separation of powers”.
6. Clearly, the abolition of the *Halk Maslahaty* in its current form has many implications in terms of distribution of powers between the President and the *Mejlis*, and not all of them are addressed in the set of proposals submitted by the Constitutional Commission (for instance, as regards the procedure for amending the Constitution). For as much as can be inferred from the proposals examined in these comments, and mindful of the lacunae stated above, the directions given to the reform can generally be assessed positively. The consolidation of the *Mejlis* as a legislature as well as the rationalization of the system of government as stemming from the transformation of the *Halk Maslahaty* in a consultative assembly are two hallmarks of the reform that are welcome. However, the success of the reform will eventually depend first on how the proposals are reflected in the text of the amendments and second how the revised constitution may eventually have an impact on the constitutional practice and the political reality.
7. The recommendations and suggestions made hereafter are based on international democratic standards for as much as they can be inferred from the state practice and international human rights instruments. Furthermore, because of the time constraints,

these recommendations and suggestions have been prepared without the benefit of a thorough inquiry into the detail of the Turkmen legal system. With this note of caution, these recommendations and suggestions can be summarized as follows:

- a. It is recommended that the Constitution includes unambiguous provisions ascertaining that international conventional and customary law is given precedence over national law, constitutes integral part of Turkmenistan's legal system, and that a clear mechanism for ensuring the uniform application of treaties and other international norms is in place;
- b. It is recommended that serious consideration be given to including in the Constitution a clause ensuring that provisions of international human rights treaties and other instruments ratified or acceded by Turkmenistan have direct effect (*self-executing*) in domestic law;
- c. It is recommended that consideration be given to improving the wording of a number of provisions included in Section II of the Constitution, particularly those regarding human rights limitations, pre-trial rights and the principle of equality before the law;
- d. It is recommended that the proposal to reform the *Halk Maslahaty* be considered not only on its own merits, but also in terms of its relationship with the other elements of the reform and most importantly against the background of its bearing upon the balance of powers between the President and the *Mejlis*, on the one hand, and between the central and local levels, on the other hand; the justifications for the reform could be stated for instance in an Explanatory memorandum attached to the draft amendments;
- e. It is recommended that whatever new role is assigned to the *Halk Maslahaty*, it be clearly defined in the Constitution as its mode of designation, taking into account the logic inherent in the nature of the institution (an upper chamber or a mere consultative assembly) and its implications with regard to *inter alia* the procedures for enacting legislation and amending the Constitution;
- f. It is recommended that all powers currently vested in the *Halk Maslahaty*, including "other powers under the Constitution" as referred to under

paragraph 12 of Article 48 be distributed in such as manner as to reinforce the principle of separation of powers;

- g. It is recommended that limits be placed on the president's power to dissolve the *Mejlis* at any time and on any ground and instead, and that this power can only be exercised in case of serious political crisis and not through referendum;
- h. It is recommended that the power of the *Halk Malishaty* to express a vote of non-confidence in the President – understood as an impeachment procedure - be transferred to the *Mejlis* and that its exercise be restricted to grounds of serious crimes and misdemeanors;
- i. It is recommended that the presidential veto rights cannot be used as a power to amend bills submitted to his signature;
- j. It is recommended that parliamentary rules of procedures be governed by an internal act of the legislature, instead of a law;
- k. It is recommended that the scope of legislative powers versus regulatory powers be better defined in the Constitution;
- l. It is recommended to reconsider the provision allowing for a transfer of legislative powers from the *Mejlis* to the President and instead, ensure that these powers remain in the hands of the legislature (an exception can be considered in case of a state of emergency, but under strict conditions);
- m. It is recommended that constitutional provisions referring to the responsibility of the President for the enforcement of the Constitution and other laws be reconsidered in the light of the *Mejlis*' power to review the constitutionality of laws and sublaws.
- n. It is recommended that the principles of the independence and impartiality of the Central Election Commission be reflected in the Constitution through appropriate procedures for the appointment and dismissal of their members;
- o. It is suggested that the Constitutional Commission consider amendments to the Constitution that could serve as the starting point for an overall reform of the prosecutor's office;
- p. It is recommended that strengthened mechanisms for ensuring the review of the constitutionality of law and other acts be established within the *Mejlis*, in particular through the setting up of a Constitutional Law Committee; it is

suggested that any judge before whom an exception of unconstitutionality has been raised by a defendant or a plaintiff be allowed to address that Committee. In the long run, the possibility of establishing a separate constitutional court or council should be considered in order to secure the highest standards for the protection of human rights and ensure uniformity in the application and interpretation of international human rights treaties and other instruments.

- q. In the light of its potential impact on the balance of powers, it is suggested to give further consideration to the proposal to extend the presidential terms of office from five to seven years.

4. ANALYSIS AND RECOMMENDATIONS

8. One of the proposals of the Constitutional Commission calls for the “*emergence of a highly developed State, civil society and mentally and physically capable individuals*”. In any country, the constitution both is part and result of a historical process, embedded in traditions that make it unique. Experience often shows that any comprehensive constitutional reform may for its success require a different foundation from that which the society can now provide (such as an active civil society). Against this background, ensuring compliance of a constitution with international standards cannot be seen in purely technical terms, relying exclusively on local and foreign expert advice. Instead, such an endeavor needs to be seen as a process requiring both time and “collective wisdom”. Encouraging and facilitating citizen engagement in the political process is therefore essential and, as such, goes beyond the mere inclusion of “legal guarantees” in the text of a constitution.

4.1 Ensuring Compliance of the Constitution with International Standards

9. The Constitutional Commission proposes that “*the text of the Constitution [be] scrutinized in light of international standards*” and that “*each constitutional provision [...] be viewed taking into account international conventions, treaties and agreements signed by Turkmenistan*”.
10. This proposal is certainly welcome. Across the OSCE region, there are not many precedents of countries who undertook to review their Constitution’s compliance with

their international obligations in a systematic manner. One may point to a similar undertaking in Finland, which was initiated in June 2007 and is still underway¹. Other countries have certainly seized the opportunity of a constitutional reform to bring their constitution in conformity with recently ratified international treaties or conventions, however these processes have been rather ad hoc and limited to specific issues, and the main thrust of the reform was not the approximation of the Constitution with international obligations entered into by the country in question. It is therefore quite remarkable that Turkmenistan embarks on such a comprehensive, all-encompassing and challenging exercise.

11. The proposal of the Constitutional Commission is focused on the question of the compliance of constitutional provisions with international standards, however, underlying this question is the broader issue of the relationship between international law and national law in Turkmenistan.

Relationship between international law and national law

12. As regards the technical aspects involved in the kind of approximation exercise called upon by the Constitutional Commission, it may be worth first looking into the overarching issue of the relationship between international law and national law as addressed in Turkmenistan's legal system. What is being proposed by the Constitutional Commission is an ad hoc exercise. However laudable it may be at this point in time, it can only be anticipated that it will need to be repeated in the future whenever new international obligations are entered into by Turkmenistan. Therefore, the Commission's recommendation could be advantageously combined with a proposal to add clarifications in the text of the Constitution with regard to the key issue of the relationship between international law and national law. In particular, it might be worth establishing in the Constitution a mechanism that would ensure that international norms are given precedence over national law.

13. This is not a theoretical issue, but a practical one, primarily as a result of the increasing adoption of treaties whose scope is not inter-state relations but the relations of states with

¹ A request for expert comments was extended by the Ministry of Justice of Finland to the Venice Commission of the Council of Europe. The experts designated by the Venice Commission were asked to prepare a comprehensive "evaluation" of the extant Constitution of Finland. An opinion was eventually released in April 2008 ([http://www.venice.coe.int/docs/2008/CDL-AD\(2008\)010-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)010-e.pdf)).

their own citizens. These treaties have a quasi-legislative character, but their efficacy depends essentially on the incorporation of their provisions in national law.

Definition of “generally recognized rules of international law”

14. Article 6 of the extant Constitution states that “*Turkmenistan as a full-fledged subject of the international community recognizes the precedence of generally recognized rules of international law*”. The terms “*generally recognized rules of international law*” are not specific to Turkmenistan. They can be found in the Constitutions of Austria (Article 9.1²), Italy (Article 10³), Germany (Article 25⁴) and the Russian Federation (article 15.4⁵), to name just a few. These generic terms are understood as referring to customary international law and general principles of law as listed in the Statute of the International Court of Justice⁶. The phrase was inserted in the latter Statute in order to provide a solution in cases where treaties and custom provided no guidance. There is little agreement about the meaning of the phrase “general principle of law”⁷. The difficulty of proving that a principle is common to most or all legal systems is great, generating uncertainties. In the countries having a clause in their constitution referring to “*generally recognized rules of international law*”, the meaning of these rules had eventually to be clarified by court decisions⁸.

15. Furthermore, there are significant differences in the rules for the application of customary international law and general principles as compared with treaties. A procedure by which a legislature would have to transform customary international law and general principles of law into national law would be impracticable, simply because it would require a regular review of all changes of norms and principles of international law, a task which

² “The generally recognized rules of international law are regarded as integral parts of Federal law”.

³ “Italian laws conform to the generally recognized tenets of international law”.

⁴ “The general rules of international law shall be an integral part of federal law”.

⁵ “The universally recognized norms of international law [shall be a component of the [Russian Federation’s] legal system”.

⁶ Statute of the International Court of Justice, Article 38.1

⁷ The Statute of the International Court of Justice refers to “the general principles of law recognized by civilized nations” (article 38.1 c/).

⁸ In Austria, for instance, the Supreme Court held in 1950 that a rule of international law does not have to be recognized by all states in order to be considered a “*generally recognized rule of international law*” under Article 9 of the Constitution. The stress was laid both on the fact that Austria had accepted the rules concerned and the consent of the states to these rules. In other decisions, the Supreme Court indicated that the notion of “generally recognized rules” in the Austrian Constitution is not to be construed as referring to the rules generally recognized at the time of the adoption of the Constitution: older rules may be abandoned and new rules introduced under this clause. This may require the Supreme Court to conduct an exhaustive survey of the views held in other countries.

no body can master for legislative purposes. Customs and general principles are also less clear than treaties and have decreased in their significance as a source of international law. As a consequence, in both countries adhering to the monist doctrine or the dualist doctrine, the general view is that international custom and general principles of law do not require incorporation into the domestic law. This however leaves unanswered the whole issue of defining these customs and principles with accuracy and certainty.

16. A recent investigation of constitutions and state practice in Germany, Italy, Austria, Greece, France, Portugal, Switzerland, Liechtenstein, the Netherlands, Belgium and Spain demonstrates that national courts play a decisive role in seeking harmonization between obligations of international customary law and internal law, but national jurisprudence in this regard may have no more in common than the two central principles of *pacta sunt servanda* and good faith (on the part of states in performing their international obligations). There is otherwise considerable diversity with regard to an analysis of what national courts consider customary international law or general principles in many other areas.
17. In the Constitution of Turkmenistan, these uncertainties are compounded by the context in which the terms “*generally recognized rules of international law*” are used. The paragraph in which these terms appear refers to foreign policy issues, asserting in this regard the primacy of the “*principles of permanent positive neutrality, non-intervention in other countries’ internal affairs, repudiation of the use of force or participation in military blocs and alliances, and promotion of peaceful, amicable and mutually advantageous relations with other countries of the region and countries of the whole world*”⁹. Clearly, the stress is on international legal obligations producing their effects between states themselves as opposed to treaties whose scope is the relations of states with their own citizens. Therefore, Article 6 as a whole appears ambiguous in that it is not clear whether its scope is limited to laying the foundations of Turkmenistan’s foreign policy (dealing with inter-state relationships exclusively) or if it is concerned with the

⁹ To a large extent, the language used in Article 6 reproduces that of a series of UNGA Resolutions adopted in the early sixties that culminate in the adoption in 1970 of the *UN Declaration on Principles of International Law Friendly Relations and Co-operation Amongst States in accordance with the Charter of the United Nations*⁹. This Declaration placed an emphasis on a range of rights inherent in the sovereignty of the state and that need to be viewed in the historical context of the so-called doctrine of “peaceful coexistence” among states at a time when legal instruments were drawn up with a view to reassessing some of the fundamental assumptions of international law.

issue of the relationship between international law and national law and its far-reaching impact on the relation of the state with its citizens.

18. Furthermore, generally recognized rules of international law cannot be regarded as encompassing conventional international law. A clarification can indeed be found in the Law “On the Procedure for the Conclusion, Execution and Denunciation of International Treaties of Turkmenistan” of 15 June 1995, which refers to both rules of international law and international treaties, however it is essential that this clarification be made at the constitutional level. That clarification being absent, it cannot be excluded that the 1995 Law could be regarded as conflicting with the Constitution. This may create uncertainties for national courts and the public administration.

19. In the light of the above, it is recommended (1) that the relationship between international law and national law be expressly regulated in the Constitution through a revised wording of the first part of Article 6 (which could form a separate paragraph) or a new Article in Section I and (2) that the first part of Article 6 includes an express reference to international treaties and agreements as is for instance the case in Article 15.4 of the Constitution of the Russian Federation¹⁰.

Hierarchy of Norms and Related Issues

20. The relationship between international law and national law is one of the most variable and complex issues that arises in the context of the application of international law. When they are considered on the domestic plane, international legal obligations may produce different consequences. Here countries differ greatly with regard to the hierarchy or normative rank that their individual legal systems assign to international obligations. Typically, as discussed above, states will draw distinctions between obligations arising under treaty and those arising through customary law. Rarely, states consider international obligations superior to their domestic laws (as in the case of Germany) but in many more cases international obligations are considered on a par with, and part of, a state's body of domestic law. In the great majority of states, these obligations have a higher rank than ordinary laws, but below the Constitution¹¹. In several states treaties and

¹⁰ It reads: “*The universally recognized norms of international law and international treaties and agreements of the Russian Federation shall be a component part of its legal system*”.

¹¹ See for instance Article 55 of the French Constitution: “[T]reaties or agreements duly ratified or approved shall, upon their publications, have an authority superior to that of laws...”

other international instruments are part of domestic law with the same rank as ordinary legislation.

21. Leaving aside the uncertainties and ambiguities discussed in the previous Section, Article 6 of the Turkmen Constitution seems to indicate that Turkmenistan adheres to the monist view in that it gives primacy to international law over the national law (in stark contrast to the strictly “dualist” tradition of the former socialist countries, which required a special national legislative act before treaty obligations could be implemented). This is confirmed by the above-mentioned 1995 law, which provides in its Article 3 that “*if an international treaty of Turkmenistan establishes other rules than those stipulated in the legislation of Turkmenistan, the rules of the international treaty shall apply*”. However, the latter clause as well as Article 6 of the Constitution can not be construed as giving priority to customary and conventional international law over the Constitution itself. In support of this view, reference can also be made to Article 20 of the 1995 Law, which provides that “*in cases when for the purpose of implementation of international treaty of Turkmenistan it is necessary to adopt laws of Turkmenistan, acts of the President or resolutions of the Mejlis, interested ministries and agencies upon having agreed with the Ministry of Justice and Ministry of Foreign Affairs shall submit in an established manner to the Cabinet of Ministers proposals to adopt such normative acts or proposals to introduce amendments and additions to the legislation in Turkmenistan*”.

22. This approach is in line with the constitutions and state practice of a majority of states. However, certain clarifications could be considered in order to avoid inconsistencies. First, Article 6 would need to be revised so as to replace the terms “recognizes precedence” with an indication that the generally recognized rules of international law as well as international treaties and agreements constitute integral part of Turkmenistan’s legal system¹².

23. Second, it is important that the operation of the rule according to which international law prevails over ordinary laws, but not over the constitution itself, be clarified. This in practice depends on who has the authority to give effect to the latter rule. This may be reserved to the legislature, a political body, excluding any review by the courts. In other cases, where constitutional courts exist or where courts have the power of judicial review of legislative action, the situation is often different. There are also countries in which the

¹² This is actually the formulation used in Article 15.4 of the Constitution of the Russian Federation.

authoritative interpretation of the meaning of international treaties is a privilege of the executive branch, to secure the control of the government over foreign affairs. Article 15 of the above-mentioned 1995 Law is not clear as to the type of measures to be considered and when these measures would need to be made.

In the context of Turkmenistan, given the absence of a constitutional court and the new power conferred upon the *Mejlis* to review the constitutionality of ordinary legislation and all subordinate acts, it may be worth revisiting the whole issue when other aspects of the reform, particularly those regarding the legislature's treaty powers and the constitutional review, have been addressed. New rules may need to be established and the 1995 Law may have to be revised¹³ in the light of the constitutional reform. Whatever option is selected, there needs to be a clear mechanism to ensure a uniform application of treaties and other international norms. It can only be noted how decisive the role of constitutional courts is in this regard.

24. Finally, serious consideration should be given to introducing a new provision ensuring the international human rights treaties and other instruments ratified or accepted by Turkmenistan have direct effect in domestic law.

A source of inspiration could be Article 17 of the 1993 Constitution of the Russian Federation, which provides that “*the right and freedom of the human being and citizen shall be recognized and guaranteed in the Russian Federation in conformity with the generally principles and norms of international law and in accordance with this Constitution*”. The main benefit of this addition would be to clarify the meaning ascribed to the terms “generally recognized rules of international law” as far as international human rights law is concerned. Another possible source of inspiration could be Article 90 of the Constitution of Turkey (as amended on 22 May 2004), which provides that “*In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on*

¹³ In the absence of a full translation of this Law, it is not possible to assess the extent to which it may require amendments. There are many practical issues that would need to be addressed in such a piece of legislation (as is the case of the 1995 Russian Federal Law on International Treaties, which replaced the 1978 Law on the Procedure for the Conclusion, Execution and Denunciation of International Treaties of the former Soviet Union. Among the issues that require attention are the following: (1) whether the Constitution always takes precedence over a contrary treaty (under Article 22 of the 1995 Russian Law, an international treaty contravening the Constitution may be ratified only after making the appropriate amendments to the Constitution); (2) how to ensure the conformity with the Constitution of international treaties which have not entered into force (but have already been signed or even ratified or accepted).

the same matter, the provisions of international agreements shall prevail". The inclusion of such a provision would amount to bringing to the constitutional level Article 3 of the 1995 Law, the wording of which is almost identical, but with a focus on human rights obligations under international law. This would have the advantage of clarity in that it would result in provisions of human rights treaties and conventions being "self-executing", thereby creating rights and obligations for individuals that are enforceable in the courts without legislative implementation of the treaty. This approach could be extended to bilateral treaties.

Should it be considered more appropriate to have this matter addressed in ordinary laws, the terms "as prescribed by law" should be added under Article 6.

Compliance with international Human Rights Standards

25. The proposal of the Constitutional commission to review the compliance of the Constitution with international standards has particular relevance to Section II of the Constitution, which deals with "Basic Rights, Freedoms and Duties of Human Being and Citizen". This is certainly in the area of human rights and fundamental freedoms that the primacy of international law over national law may have the more far-reaching implications. Hereafter are no more than preliminary comments primarily on rights and freedoms laid down in Section II. These comments do not aim to be exhaustive and would require further elaboration,. Given the time constraints, the lines of reasoning behind the recommendations or suggestions made hereafter are not extensively articulated.

Mandatory publication of legal acts pertaining to constitutional rights and freedoms

26. Article 5 stipulates that "*legal acts relating to the rights and liberties of citizens that have not been made general public knowledge are invalid from the date of their adoption*". This provision seems unnecessary and may result in ambiguities as to its exact meaning.

It may be sufficient to lay down the principle of mandatory publication of all legal acts. This principle should apply to laws and sub-laws alike.

Equality between men and women

27. Article 18 provides for equality between men and women in their exercise of "civil rights". It is not clear whether the word "civil" is intended as a limitation to the scope of application of the principle of equality, excluding "political" rights.

If so, in light of Article 3 of the ICCPR¹⁴, which refers to both civil and political rights, it is not justified and should be removed.

Principle of Equality

28. It may be worth considering merging Article 8 and Article 17 so that the Constitution provides for the equality of rights between citizens and non-citizens unless otherwise stipulated under it.

As Article 17 currently stands, it carries with it an ambiguity as to whether non-citizens and citizens are equal before the law.

Furthermore, in Article 17, the words “attitude to religion” may not necessarily be understood as referring to religions specifically. It may be worth replacing these words with “religions”.

Abolition of Death Penalty

29. The Constitutional Commission proposes that the provision on life imprisonment as the highest criminal punishment be removed from the text of the Constitution and instead, moved to the level of criminal ordinary legislation.

If this proposal was to be construed as implying that the principle of the abolition of the death penalty - as currently enshrined in Article 20 of the Constitution - was not to be addressed any longer in the Constitution, but in ordinary laws instead, it should be reconsidered.

The issue of the death penalty should be considered as a constitutional matter *par excellence*. Having the principle of its abolition addressed in ordinary laws would expose it to the risk of frequent reopening the debate.

Rights and Duties

30. The first paragraph of Article 37 establishes a direct link between the exercise of the rights afforded under the constitution and the fulfillment of duties “as a citizen and human being” “to society and state”. This provision is incompatible with the rule of law. While anyone committing a crime may be sentenced to prison, he shall not be deprived of all of his rights as a further consequence of his behaviour. It would not be acceptable that

¹⁴ International Covenant on Civil and Political Rights - General Assembly resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976. Ratified by Turkmenistan in August 1996.

in such a case, the person in question may for instance be subject to torture on the ground of non-fulfillment of his duties.

It is therefore recommended that this provision be either removed or reformulated so as to preclude such an understanding as described above.

Pre-Trial Rights

31. Article 21, paragraph 2 deals amongst others with the issues of arrest and detention.

It may be worth considering supplementing this paragraph with an explicit reference to other key pre-trial rights such as the right to know the reasons for arrest, the rights for legal counsel, the right to a prompt appearance before a judge to challenge the lawfulness of arrest and detention. These are key issues that should preferably be addressed at the constitutional level.

The last sentence of Article 21 provides for the possibility “in urgent cases that are clearly stipulated in the law” of detaining citizens “for some time”.

Further qualifications could be usefully added here so as to further define the framework within which the law shall operate. In this regard, although it does obviously not apply to Turkmenistan, Article 5, paragraph 1 of the European Convention of Human Rights could serve as a starting point for further delineating the scope of a power, which, without further and unambiguous clarifications, may be regarded as exceeding what is permissible under international human rights law.

Human rights Limitations

32. Restricting human rights in order to protect certain so-called general public interests is permissible under international human rights law. However, certain conditions for doing so must be met. The review of limitation clauses under international human rights protection systems refers to a three-phase test to examine whether any interference by the State is in compliance with the requirements set out in these clauses. The requirements are the following: (1) the interference must be prescribed by law; (2) it must be necessary in a democratic society in order to achieve a number of listed objectives; (3) it must be proportionate to these objectives. The legitimate goals that can be pursued when imposing restrictions are public safety, public order, protection of health or morals, national security, territorial integrity, protection of the rights and freedoms of others¹⁵.

¹⁵ There is only one significant difference common to all those instruments: “national security” does not appear under limitations clauses related to the freedom of religion and belief.

Those goals are to be found under limitations clauses for all fundamental freedoms in regional and international human rights instruments with only minor differences in the wording.¹⁶

33. The Constitution of Turkmenistan fails to address these fundamental issues in a manner compliant with the latter instruments.

What may be advisable is to have a general limitation clause, which would group together all of its components that are otherwise scattered throughout Section II of the Constitution. In particular, Article 19 and Article 21, paragraph 1 could be merged in a single Article since the aspects they address are closely interrelated and must be held together.

34. Furthermore, nothing justifies that the freedom of association be given a different treatment under the Constitution. Although the current wording of Article 28 concerning the freedom of association is in general compliant with the relevant international standards¹⁷, it poses problems as to the inclusion of the terms “*campaign against the constitutional rights and freedoms of citizens*” among the legitimate grounds for denying registration or prohibiting a political party or a public association.

This ground as such is too vague to allow persons who can be affected by the law to foresee with a reasonable degree of accuracy the consequences of their actions. The emphasis should rather be on the existence of a threat of, or the use of violence, not exclusively on the expression of opinions, however shocking or offending the latter might be in the eyes of many or those in power.

Human Rights under a State of Emergency

35. It may be worth including under Article 44 of the Constitution a reference to the rights and freedoms that cannot be derogated from in times of war, martial and state of emergency.

¹⁶ Regarding the first test, it is required that there is a basis in domestic law for the restriction, that the law is accessible and that it is foreseeable. It further requires that those affected by the law are clearly identified, that the circumstances in which the restriction is made are defined as precisely as possible and that there is also precision related to the procedures to be followed.

¹⁷ The prohibition of the dissemination of all ideas based upon racial or ethnic superiority or hatred is compatible with the right to freedom of opinion and expression. The citizen's exercise of this right carries special duties and responsibilities, specified in article 29, paragraph 2, of the Universal Declaration, among which the obligation not to disseminate ideas based on racial or ethnic hatred is of particular importance. Furthermore, article 20 of the International Covenant on Civil and Political Rights states that “*any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.*”

Article 44 of the Constitution defers to the law for the definition of the stage of emergency and provision of the rules governing the powers to declare emergency as well as the changes in the distribution of powers among organs of the State or shifts in the competences of such organs¹⁸. This constitutional arrangement is commonplace in the constitutions of most OSCE countries, however the same Article falls short of listing or referring to the rights and freedoms that are regarded as non-derogable under Article 4, ICCPR.¹⁹

4.2. Reform of the *Halk Maslahaty*

36. The proposal to reform the *Halk Maslahaty* is welcome. Nonetheless, the option, which will eventually be selected, will need to be considered not only on its own merits, but also in terms of its relationship with the other elements of the reform and most importantly against the background of its bearing upon the balance of powers at the central and local levels. In that sense, this proposal as well as its implications as listed under it can only be seen as closely connected to the broad and still unspecified proposal of the Constitutional Commission to reinforce the separation of powers.

37. The sub-proposals that are listed under the call for a reform of the *Halk Maslahaty* suggest that the favored option is that of a thorough restructuring of this body as opposed to its dissolution. It seems that another option would be that it be transformed into a “Council of Elders”, but this proposal does not further indicate how this transformation would operate and what would then be the attributes of such a Council. The Constitutional Commission however suggests that the latter option could be combined or reconciled with its other proposals, in which case the newly established *Halk Malaslahaty* would simply change name. The comments thereafter will thus be limited to examining the option that seems the most likely to be eventually retained, namely that of a considerably reshuffled *Halk Maslahaty*, be it called “council of Elders” or not.

38. As it currently stands, the *Halk Maslahaty* is quite unique in both its composition and scope of powers. Under the reform envisaged, the *Halk Maslahaty* would be no more

¹⁸ The only explicit reference in the Constitution to the state of emergency can be found in Article 55.12, which bestows the President with the power to impose a state of emergency and indicates that the matter shall otherwise be regulated by law.

¹⁹ The List of Non-Derogable Rights and Freedoms under Article 4, ICCPR can be found at the following link: <http://www.legislationline.org/legislation.php?tid=55&lid=4504&less=false>

than a second debating chamber, which makes recommendations having no legal force and effect. The types of business that would be conferred upon it would still be broad enough to cover domestic and foreign policy affairs, political, economic, social and cultural issues. In their spirit, the proposed arrangements resemble experiments made in countries with strong parliamentary traditions. In the United Kingdom for instance, the establishment of a second debating chamber was first proposed ten years ago. Drawing up on an Australian precedent (the so-called “Main Committee”, which was created in 1994), the idea was to have a second or parallel chamber within the House of Commons in which members could consider non-controversial legislation and having a general debate on a subject or government policy without a vote and without reaching a formal decision about it. This was also seen as opportunities for members to raise constituency issues or other matters relating to government administration or policy and to obtain a response from government ministers. The main benefit was that it would then free up the main chamber to have longer debates on controversial issues, those requiring official decisions, and enable more effective scrutiny of the government. However, in the case of the Constitutional commission’s proposal, the *Halk Maslahaty* would be a separate body with its own members elected by the local *Halk Maslahatys*. Alternatively, it may be argued that the proposed arrangements would bring the *Halk Maslahaty* close to the model of the French Economic and Social Council, a body established under the Constitution and taking part in the legislative process as a consultative body, but only on social and economic issues. This Council operates as an assembly, but its 231 members are, however, not elected, but mostly appointed by socio-economic groups.²⁰

39. If the intention is to establish a truly bicameral parliamentary system, there may be different lines of reasoning behind such a move. In countries with a bicameral parliamentary system, a second chamber or upper house of parliament often plays a

²⁰ More than two-thirds of the council members (163 out of 231) are designated directly by the organization to which they belong: trade unions representing salaried staff from both the private and public sectors (69 members); socioeconomic groups representing private enterprises, industry, trade, arts and crafts, agriculture and professionals (65 members); co-operatives and mutual benefit societies (19 members); family associations (10 members). Sixty-eight members are appointed by the government. Seventeen members are designated by the appropriate advisory bodies to represent state-owned companies, community groups and French expatriates. Nine members are designated in conjunction with those trade associations deemed most representative of overseas territories. Two members are appointed by decree to represent savings and housing. Forty qualified individuals specialised in economic, social, scientific and cultural affairs are designated by decree at a meeting of the Council of Ministers. More information available from the following link: http://www.conseil-economique-et-social.fr/ces_dat2/som-en.htm

significant role with regard to representing the diversity of the country's population. Most obviously, in federal systems a country's territorial diversity is reflected in the representation of the component states or provinces and their interests in a second chamber, which may have the special task to review how legislation impacts on the country's different regions and localities. This territorial function is not confined to federal systems, and may include special representation for citizens abroad in a second chamber, as in France. In all countries with a two-chamber parliament the selection mechanism for the second chamber can also be used to ensure greater representation for different communities and social groups, whether through a different electoral system from the first chamber, or through the procedures for appointment (where appointed members are present). In this way the social representativeness of parliament as a whole can be enhanced, including representation for groups such as the disabled, the socially excluded and small minorities of all kinds. In the present case, the only rationale given in support of the reform is that the *Halk Maslahaty's* "complex structure impedes smooth legislative process". The reasoning may need to be strengthened in the light of the above-mentioned criteria.

40. As to the powers to be conferred upon a second chamber, the experience and practice of other OSCE countries show that the purpose of an upper chamber may be to allow for a more thorough scrutiny of bills, and to expose them to a different range of opinions – whether this be a matter of state and regional perspectives, as in a federal system, a different balance of party strength, or a wider range of experience or expertise. A typical consequence of this exposure is to produce further compromises in proposed legislation and, hopefully, wider public acceptability as a result. Since democracy depends on consent, the public acceptability of legislation is an important criterion for its effectiveness. This should not be seen though as a declaration in favour of bicameral parliamentary systems, but rather as a brief inventory of the requirements for making such a system meaningful. There are no standards by which one system could be assessed to be more democratic than another. As indicated above, criteria other than democratic standards dictate such a choice.

A good practice would be that the motives behind the reform be clearly stated in an Explanatory memorandum, as was recently the case in Kyrgyzstan when a choice was made to restore a unicameral structure. In this country, the existence of a second chamber

had been assessed as not effective, and a unicameral structure was overall deemed more expedient.²¹

41. In the light of the above considerations and having regard to the different sub-proposals made in respect of the *Halk Maslahaty*, the following recommendations are submitted for consideration by the Constitutional Commission.

- If the *Halk Maslahaty* is to be kept, whatever new role to be assigned to it, there ought to be a significant reduction of the number of members (perhaps 200 or 250 would be a reasonable figure²²), as proposed by the Constitutional Commission;
- If the option of an upper chamber is retained,
 - the *Halk Maslahaty's* mode of election or designation would need to be clearly and entirely specified in the Constitution;
 - a significant number or all of its members should be elected by the local *Halk Maslahatys*;
 - it should be granted a significant role in the legislative process (for instance, it should directly and decisively participate in the process of the adoption of laws and may have the right to initiate legislation) as well as in amending the Constitution; and
 - in terms of separation of powers, it would then be essential that local *Halk Maslahatys* be independent of the executive and that, as suggested by the Constitutional Commission, their “functions (...) be extended and better defined”.
- If it is to become a mere consultative body, it may still be worth providing further clarifications as to the exact scope of its functions. The benefit of such an assembly would certainly be heightened if it were not only to provide recommendations on policy issues, but also to prepare opinions on draft laws either upon request of the *Mejlis* or the Cabinet of Ministers or at its own initiative on subject matters that may be limited by enumeration in the Constitution or in a separate law regulating its functioning and powers.

²¹ See Opinion n. 229/2002 of the Venice Commission of the Council of Europe: [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)033-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)033-e.pdf).

²² There are obvious no standards regulating this matter, but useful guidance can be found in: Lijphart, Arend. *Patterns of Democracy: government forms and performance in thirty-six countries*. New Haven, Conn.: Yale University Press, 1999. This study indicates that generally the size of legislative bodies tends to be a cube root of population.

- Finally, the transfer of powers to both the President and the *Mejlis*, which the reform of the *Halk Maslahaty* entails, would need to be consistent with another proposal of the Constitutional Commission, namely the need to reinforce the principle of separation of powers. In this regard, of particular importance are all other powers conferred upon the *Halk Maslahaty* by virtue of Article 48.12. Whether these other powers are granted to the President or the *Mejlis* may considerably affect the balance of powers.

4.3 Balance of Powers between the Executive and Legislative Branches of Power

42. The Constitutional Commission proposes to reinforce the principle of separation of powers. How this proposal may be reflected in amendments to the Constitution can not be anticipated in the absence of more specific proposals. The Constitution of Turkmenistan clearly provides for a presidential system of government. In a presidential system of government, the central principle is that the legislative and executive branches of government must be separate. This means the separate election of president, who is elected to office for a fixed term, and only removable for gross misdemeanor by impeachment and dismissal. In such a system, the president does not propose laws, but may have the power to veto acts of the legislature and, in turn, a qualified majority of legislators may act to override the veto. Members of the government are appointed and revoked by the president and accountable to him/her only. Finally, presidential systems frequently require legislative approval of presidential nominations to the cabinet as well as other key governmental posts. In the light of these key characteristics, the following points may require further consideration.

43. A key aspect, which needs to be carefully pondered when assessing the delicate balancing between executive and legislative powers, is whether the executive is granted the power to dissolve the legislature and if so, whether this power is or not qualified. In a presidential system, it is essential that the presidential power to dissolve the *Mejlis* be not unqualified and discretionary.

- According to Article 63.2, the *Mejlis* may be dissolved on the basis of a decision of the *Halk Maslahaty*. If the latter's power was to be transferred to the President, it would be detrimental to the balance of powers.

An option would be to limit that power to the instance described under item 4 of that same article, adding that such dissolution can only be sought after a reasonable period of time (six months or a year) has elapsed since the convening of the legislature. In any case, the presidential discretion needs to be restrained so that the parliament is not under threat of being dissolved at any time and on any ground. The dissolution of the parliament should only be considered in case of a serious political crisis. In this regard, state practice of other countries may prove enlightening.

- The use of referendum for the purpose of dissolving the Parliament (as provided for in Article 63.1) is disputable and should be reconsidered.

An overview of the constitutional practice of OSCE countries, including presidential republics, tends to confirm that the use of referendum for this purpose is quite unique. Practical considerations may be invoked against it. The organization of a referendum requires time and is costly, and may thus result in paralyzing the government business and unduly prolonging a political deadlock. The benefit of direct democracy would need here to be weighed against that of efficiency, but also that of the balance of powers between the executive and legislative branches of powers. With the *Halk Maslahaty* transformed in a consultative assembly, its power to decide the organization of a referendum would be transferred to the President under the reform envisaged. It ensues that the President would have full discretion in this regard, while such decisions are currently conferred upon the *Halk Maslahaty* as a whole.²³

44. The power of the *Halk Maslahaty* to express a vote of non-confidence in the President as provided for in Article 59 – understood as an impeachment procedure – should be transferred to the Mejlis. This matter is not addressed in the proposals submitted by the Constitutional Commission. The grounds for such a procedure should be limited to serious crimes and misdemeanors only.

45. The central element of a presidential system being the separation of powers between the executive and legislative branches of government, it is crucial that all legislative powers be vested in the legislature. In this regard, the following observations can be made:

- Presidential veto rights should not be turned into a power to amend bills submitted to his signature.

²³ According to Article 55.8, the Presidential powers are currently limited to calling a referendum on the basis of a decision of the *Halk Maslahaty*.

If the terms “objections” in Article 55.6 was to be construed as “amendments” to the original parliamentary text, it may considerably expand presidential powers since only a two-thirds majority of the legislature would then be able to reject the amended text.

- The scope of legislative powers versus regulatory powers would need to be further delineated.

In particular, it should be clear that the presidential powers under Article 56 amount to a delegated responsibility. This matter needs to be addressed at the constitutional level, although it may be further regulated in ordinary laws.

- According to Article 65, the *Mejlis* may transfer its lawmaking power to the President on any matter except matters of criminal and administrative law or those relating to “legal proceedings”.

This provision may need to be reconsidered as it entails an alteration in the distribution of functions and powers among the executive and the legislative branches of powers that can only adversely affect the balance of powers.

Only in the event of war, danger of war or other public emergency can be justifiable such an extended transfer of legislative power, but such transfer is then subject to certain conditions, in particular that the Parliament is unable to meet and to perform its functions and/or that the measures taken be submitted to the Parliament for approval or disapproval at the beginning of the first possible assembly of the Parliament. Article 65 includes such a safeguard but there are no conditions as to the circumstances in which such transfer may be effected. Article 55, paragraph 12 endows the President with the power to impose a state of emergency, but this seems unrelated to Article 65 and therefore, it may be worth reconsidering the latter provision.

46. It is crucial that issues that fundamentally affect the overall balance of powers are addressed in the Constitution, not at the level of ordinary legislation. In particular, the powers vested in the president and the *Mejlis* need to be entirely regulated in the Constitution.

Therefore, it may be worth removing references to the law in paragraphs 13 of Article 55 and paragraphs 8 of Article 66.

47. According to the Constitution, the procedures regulating the activities of the *Mejlis* are governed by law (Article 72). Considering that laws may be vetoed by the President, this equates with granting to the President the power to influence the manner in which the legislature regulates its own activities.

This contravenes the principle of separation of powers. It is recommended that parliamentary rules of procedures be governed by an internal act of the legislature, instead of a law.

48. According to the Constitution, the President “acts as guarantor of Turkmenistan’s national independence, neutrality status and territorial integrity, and of observance of the Constitution and international agreements” (Article 52) and is responsible for the enforcement of the “Constitution and other laws” (article 55.1).

These provisions may need to be reconciled with the proposal of the Constitutional Commission to grant to the *Mejlis* the power to review the constitutionality of laws and sublaws.

This presidential function may be no more than symbolic and have no practical implication, but it is essential that the Constitution does not give rise to any possible misunderstandings. Clarity should also be sought as to the enforcement of international treaties.

49. The Constitutional Commission proposes that the power previously conferred upon the *Halk Maslahaty* to establish the Central Election Commission and appoints all of its members be transferred to the President. The administration of democratic elections requires that election commissions/bodies are independent and impartial²⁴. This is a critical area as the election administration makes and implements important decisions that can influence the outcome of the elections. The practice of OSCE participating States shows that the procedures for the formation of election commissions/bodies as well as the methods of selecting and appointing their members greatly differ across the OSCE region. However, they are all guided by the ultimate need to ensure that election commissions/bodies are established as independent bodies that carry out their duties in an impartial manner. To this end, among the formulae applied for the appointment of members of the central election commission are the following : appointment by the

²⁴ Paragraph 10 of the Human Rights Committee’s Comments on Article 25, ICCPR provided that “*An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant*”. (See:<http://www.legislationline.org/legislation.php?tid=57&lid=4282&less=false>).

President, the Parliament and the High Council of Justice (Albania²⁵, Moldova²⁶); appointment by the Parliament among candidates proposed by the President (Georgia²⁷, Kazakhstan²⁸, Ukraine²⁹); by the President and the Parliament (Kyrgyzstan³⁰); appointment by the Parliament alone (Montenegro³¹); by the two chambers of the Parliament and the President (Russian Federation³²). The procedures applied to the termination of the members' mandate are *mutatis mutandis* the same. These provisions are commonly supplemented with specific provisions designed to foster the independence and impartiality of members, including provisions protecting members from arbitrary removal and providing immunity in connection with the performance of legal duties.

It is therefore recommended to give serious consideration to the options cited above to determine which best fits the specifics of the Turkmen institutional system, having regard to the requirement of independence and impartiality of the Central Election Commission.

50. The Constitutional Commission proposes that the Prosecutor-General be accountable to the President only. Under the current Constitution, the Prosecutor-General reports to both the President and the *Halk Maslahaty*. Under Articles 108 and 109, the prosecutor's office has a broad power of general supervision over observance and application of the laws and other legal acts as well as a role in investigation of cases before the courts. Article 110 provides that all prosecutors – not only the prosecutor-general – are appointed and can be dismissed by the President. Whereas a discussion of the functions and powers of the prosecution service in Turkmenistan exceeds the scope of these comments, it may be noted that this presidential power can only be regarded as

²⁵ Article 154 of the Constitution (See: <http://www.legislationline.org/legislation.php?tid=57&lid=3566&less=false>).

²⁶ Article 16.2 of the Electoral Code (See: <http://www.legislationline.org/legislation.php?tid=57&lid=974&less=false>)

²⁷ Article 27.1 of the 2006 Organic Law – Unified Election Code (See: <http://www.legislationline.org/legislation.php?tid=57&lid=6363&less=false>).

²⁸ Article 11.2 of the Constitutional Law on Elections (See: <http://www.legislationline.org/legislation.php?tid=57&lid=7530&less=false>).

²⁹ Article 85 of the Constitution (See: <http://www.legislationline.org/upload/legislations/8f/b3/6b843faeedcd0d8d3da4ecb77698.htm>)

³⁰ Articles 46.2 6/ and 58.17 of the Constitution; half of the members are appointed by the President as is the chairman but with the consent of the Parliament, the other half being appointed by the Parliament (See: <http://www.legislationline.org/upload/legislations/4d/07/a61762ed3aed45f05228ad0985a5.htm>)

³¹ Article 29 of the Law on Councillors and Representatives (See: <http://www.legislationline.org/legislation.php?tid=57&lid=6364&less=false>)

³² Article 21.4 of the Federal Law on “Basic Guarantees of Electoral Rights of Citizens of the Russian Federation to Participate in a Referendum” (to be read in conjunction with Article 13 of the Federal Law on the Election of the President) (See: <http://www.legislationline.org/legislation.php?tid=57&lid=579&less=false>)

detrimental to the separation of powers. The proposal submitted by the Constitutional Commission is a mere adjustment to the new situation resulting from the abolition of the *Halk Maslahaty* as the “supreme state authority”.

In the light of its proposal to reinforce the separation of powers, the Constitutional Commission may consider amendments to the Constitution that could serve as the starting point for an overall reform of the prosecutor’s office³³.

4.4 Constitutional Review

51. The constitutional Commission proposes that the *Mejlis* be given the powers to review the constitutionality of law and by-laws and to monitor the enforcement of legislation by the government. This proposal is understood as an expansion of the powers granted to the *Mejlis* under Article 66.7 of the current Constitution. As it currently stands, this Article limits the scope of the *Mejlis*’ constitutionality control to “regulations approved by bodies of state authority and government”.
52. There are two basic methods of securing constitutional supremacy: judicial control and political control over the constitutionality of state actions. The constitutional Commission’s proposal confirms the preference embodied in the current text of the Constitution for a system of political control exercised by the legislature. Obviously, the choice of method of achieving constitutional justice depends on the legal culture of each country as well as on the history of the state in question.
53. Within the OSCE region, a great majority of countries have special constitutional jurisdictions, but a few delegate constitutional judicial authority to their Supreme court (for instance, Canada and the United States). Fewer countries have such authority conferred upon ordinary courts and a special constitutional committee³⁴. However, even among those countries that have separate constitutional courts, the differences outweigh the similarities. Arguments in favor of a separate constitutional court are numerous and some are quite common, if not yet universal: such a court is often seen as necessary as guardian of the constitution and a means of ensuring a uniform interpretation; it is also

³³ Across the OSCE region, there is no uniform standard as to the position of the prosecution service. In Europe, Recommendation (2000) 19 of the Committee of Ministers of the Council of Europe explicitly provides for the possibility of a prosecution service as part of the executive or as part of the judicial power. Many countries that inherited the Soviet system of *Prokuratura* have undergone an overhaul of their prosecution service, opting for instance for an independent prosecution service in the framework of judicial power with general power of supervision.

³⁴ This is the case in Denmark, Iceland, Finland, Norway and Finland.

seen as a necessity because of the expertise needed for controlling the constitutionality of legislation and promoting a clear and indisputable authority in interpretation matters. Conversely, opponents of a constitutional court see such a court as contravening democratic values – since its members are not elected - and problematic in terms of separation of powers – weakening the power of the parliament and operating as a “negative legislator”. There are also concerns with regard to the risk of politicization of such a court, which explains why it is often kept separate from the judiciary.

54. In the light of these arguments, the choice of Turkmenistan not to have a constitutional court is certainly not disputable, and the proposal of the Constitutional Commission to expand the powers of the *Mejlis* under Article 66.7 is consistent with the approach chosen. However, this proposal might not be sufficient to address the full range of issues involved in the development of a concentrated system of constitutionality control. The concept of constitutional oversight needs to be defined as a system requiring special techniques for securing uniform interpretation of the constitution.

In this regard, consideration may be given to setting up a Constitutional Law Committee which primary task would be to review the constitutionality of all laws and sub-laws. Furthermore, because of the growing importance of international human rights law and the ensuing strain on national courts faced with the task of ensuring constitutionally protected rights, it may be reasonable to allow any judge before whom an exception of unconstitutionality has been raised by a defendant or a plaintiff to address the Constitutional law Committee. In the long run, though, consideration should be given to engaging in the debate on the possibility of establishing a separate constitutional court. The benefits of a specialized court dealing with constitutional matters are numerous. They play a significant role in securing the highest standards for the protection of human rights and ensuring uniformity in the application and interpretation of international human rights treaties and other instruments.

4.5. Presidential Terms of Office

55. The Constitutional Commission envisages an extension of the presidential terms of office from five to seven years. A recurrent argument in support of such proposal is that longer terms give the President longer to plan and introduce policies and that it is an element of political stability. There are no international standards on this matter. The opportunity of such a proposal can only be assessed by reference to political parameters. That said, the best possible guidance is that in theory, presidential elections should not be so infrequent

that they fail to reflect the opinions of the electorate, nor be so frequent that they are likely to produce excessive discontinuities in the process of government.

56. The practice as observed in a great majority of countries across the OSCE region (and beyond) shows that four to five-year long presidential terms predominate.³⁵ In parliamentary republics, the president, or the head of state, tends to have no significant powers, therefore the duration of his/her mandate is of less importance than it is in a presidential republic or even a semi-presidential republic. What can be roughly observed is that where president's term in the office is seven years, either the president (or the head of state) is a ceremonial figure, or presidential power is balanced by popularly elected head of government.

57. In the light of the above and given the characteristics of the political system in Turkmenistan (those of a presidential republic), it is suggested to give further consideration to the proposal to extend the presidential terms of office from five to seven years taking into account its potential impact on the balance of powers.

[END OF TEXT]

³⁵ Two five-year terms in Albania (Parliamentary republic), Azerbaijan (Presidential republic), Bulgaria (Presidential republic), Croatia (Parliamentary republic), Germany (Parliamentary republic), Greece (Parliamentary republic), Ireland (Parliamentary republic), Poland (Parliamentary republic), Romania (Semi-presidential republic); two consecutive five-year terms in Armenia (Presidential republic), Austria (Parliamentary republic), Czech Republic (Parliamentary republic), Estonia (Parliamentary republic), Finland (Semi-presidential republic), Georgia (Semi-presidential republic), Portugal (Parliamentary republic); unlimited five-year terms in France (Semi-presidential republic); unlimited four-year terms in Spain (Parliamentary democracy in a form of a constitutional monarchy); two four-year terms in the United States (Presidential republic); two consecutive four-year term in the Russian Federation (Semi-presidential republic); two seven-year terms in Ireland; unlimited seven-year terms in Italy (Parliamentary republic); two consecutive seven-year terms in Kazakhstan (Presidential republic).