REPUBLIC OF TURKMENISTAN

PRESIDENTIAL ELECTION
12 FEBRUARY 2012

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

7-9 December 2011

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# TABLE OF CONTENTS

I. INTRODUCTION ................................................................................................................................. 1  
II. EXECUTIVE SUMMARY ................................................................................................................... 1  
III. FINDINGS ........................................................................................................................................ 3  
   A. BACKGROUND AND POLITICAL CONTEXT .............................................................................. 3  
   B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM................................................................. 4  
   C. ELECTION ADMINISTRATION ................................................................................................. 5  
   D. VOTER REGISTRATION ............................................................................................................. 6  
   E. CANDIDATE REGISTRATION ................................................................................................... 6  
   F. VOTING PROCEDURES ............................................................................................................ 7  
   G. THE CAMPAIGN AND THE MEDIA ....................................................................................... 7  
   H. INTERNATIONAL AND DOMESTIC OBSERVERS............................................................... 8  
IV. CONCLUSIONS AND RECOMMENDATIONS ............................................................................. 9  
ANNEX: LIST OF MEETINGS ............................................................................................................. 10
I. INTRODUCTION

In anticipation of an invitation from the authorities of Turkmenistan to observe the 12 February 2012 presidential election, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 7 to 9 December. The NAM included Beata Martin-Rozumilowicz, Head of the OSCE/ODIHR Election Department, Armin Rabitsch, OSCE/ODIHR Senior Election Adviser and Tamara Otashvili, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the election. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with representatives of the state authorities, election administration, Turkmenistan’s sole political party, public associations, and the international community. A list of meetings is included as an annex to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs of Turkmenistan and the OSCE Centre in Ashgabat for their assistance and co-operation in scheduling meetings for the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The 12 February 2012 presidential election will be the second in Turkmenistan’s history since its independence in 1991. In the last election, held in February 2007, the incumbent President Gurbanguly Berdimuhammedov was elected with 89 per cent of the vote. To date, the political space has been characterized by an absence of political parties other than the Democratic Party of Turkmenistan (DPT), an insufficient separation of powers between different branches of government, and a limited respect for basic human rights and fundamental freedoms.

A new presidential election law was adopted in 2011. While certain provisions of the amended law were introduced in an effort to bring legislation closer in line with international standards, a number of crucial aspects of the election process are still not regulated, or are regulated inadequately. This includes undue restrictions on the right to stand as a candidate, existing defamation provisions that limit the freedom of expression, and the lack of due process guarantees in the complaints and appeals framework to ensure effective legal redress.

Despite constitutional provisions, the current legislation does not account for the registration of political parties. Additionally, there is a 15-year consecutive residency requirement as well as an obligation to serve on a state body, public association, state enterprise or state organization in order to stand as a candidate; also these constitute undue restrictions on the right to stand for office. While the OSCE/ODIHR NAM interlocutors indicated that the election would be contested by more than one candidate, the OSCE/ODIHR NAM did not receive information
indicating that there have been significant changes in the circumstances that have precluded meaningful competition among alternative forces in elections since Turkmenistan gained its independence.

The newly amended election law has clarified the timetable for announcement of elections and has provided more detailed norms for home-bound voting and the tabulation process, particularly with regard to the posting and publication of polling station-level results protocols. Also, the new legislation no longer deprives those who are in pre-trial detention or suffering from mental illness of the right to vote.

The election administration operates at four levels: the Central Commission for Holding Elections and Referenda (CEC), 6 Regional Election Commissions, 125 District Election Commissions and 2,307 Precinct Election Commissions. Twenty-nine polling stations will be established at diplomatic representations abroad.

Voter lists are compiled ahead of each election, with no centralized voter register. PECs bear primary responsibility for the preparation of voter lists based on the information provided by local executive bodies. No mechanism is provided by law for checking the accuracy of entries.

Candidates may commence campaigning upon their registration by the CEC, from 45 to 25 days before election day. Candidates can be nominated by political parties or public associations at official congresses, or by groups of voters through a collection of support signatures. Supervision of the campaign falls to election commissions. Together with local executive bodies, they are to facilitate candidates’ meetings with voters.

The legal framework for the complaints and appeals process has been improved and deadlines have been clarified. The law now provides for further appeal to courts beyond electoral commissions. However, the law stipulates dual jurisdiction for the consideration of certain complaints, which could lead to misunderstandings.

There is no private or independent electronic media and publication of the first private newspaper was permitted only recently. The media landscape in Turkmenistan has been criticized by OSCE Representative on Freedom of the Media, which urged authorities to establish a legislative framework in line with international standards that would guarantee and safeguard media freedom.

The Law on the Election of the President of Turkmenistan introduced specific procedures for the accreditation of domestic and international observers, as well as setting out their rights and duties. The OSCE/ODIHR NAM was, however, not able to obtain the detailed guidelines for these procedures.

Given that fundamental freedoms continue to be limited, that the current situation limits choice between competing political alternatives, and that progress still remains to be made in bringing the legal framework in line with OSCE commitments for democratic elections, the OSCE/ODIHR NAM does not consider that the deployment of an election observation mission, even of a limited nature, would add value at this point in time.

Mindful of the declared interest of the authorities of Turkmenistan to maintain a dialogue with the OSCE/ODIHR on electoral reform, however, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM). This EAM would further review the
legal and administrative framework for elections and also visit some regions of the country to gain a more substantive understanding of its electoral processes. In line with standard OSCE/ODIHR methodology, a final report would be published approximately eight weeks after the elections, including concrete recommendations for assisting Turkmenistan in its stated intention of holding elections according to democratic standards, consistent with its OSCE commitments.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Following Turkmenistan’s independence in 1991, former President Saparmurat Niyazov, who had led Turkmenistan first as a Soviet republic and then as an independent country since 1985 and who had run unopposed in presidential elections in 1990 and 1992, was declared “president-for-life” in 1999 by the People’s Council of Turkmenistan (PCT). After his death in 2006, a presidential election took place on 11 February 2007. Mr. Gurbanguly Berdimuhamedov, who was appointed Acting President following President Niyazov’s death, was subsequently declared the winner with 89 per cent of the vote. While it was the first nominally contested election, all six candidates supported the general policy line of the current President. The absence of political parties other than the Democratic Party of Turkmenistan (DPT), the insufficient separation of powers between different branches of government, and the need for respect of basic fundamental freedoms all served to limit the holding of elections in line with democratic standards.

The DPT, founded by the former President, remains the only political party. Its main tasks are to promote the initiatives of the current President and to raise awareness amongst the population of the realization of the State programme of development. An overarching structure called the Turkmenistan National Revival Movement, Galkynysh ensured coordination between the DPT and the country’s main public associations: the Trade Union, the Women’s Union, the Youth Union, and the Veteran’s Union. In August 2007, President Berdimuhamedov was elected both as leader of the DPT and as leader of Galkynysh. Reportedly during its 15 December 2011 congress, Galkynysh nominated the incumbent as its presidential candidate. The same day, the President was reported to have signed a decree by which Galkynysh dissolved itself.

In 2010, President Berdimuhamedov stated that the government could potentially register a new political party within the framework of the current constitution and also spoke in favour of a multi-party political system in a televised speech. Despite there being no law with regard to political parties, state interlocutors stated that there are no legal barriers to creating new political parties, but emphasized that there was no perceived willingness emanating from the population to create a new political party. While the President has publicly expressed openness to political participation by opposition figures living outside Turkmenistan, no prominent political activists have returned to the country. Some interlocutors attributed the reluctance of citizens inside and outside the country to form new political parties or express alternative views to fear of state pressure or intimidation.

1 Reference was made to the ‘Law on Public Associations’. However, while the Constitution provides for the registration of political parties, no political party legislation exists and the ‘Law on Public Associations’ excludes the registration of political parties. Article 3 provides that this law “applies to public associations established at the initiative of citizens, except religious organizations...and political parties...the establishment and activities of which shall be determined by special laws”.
The United Nations Committee against Torture at its 46th session highlighted that while there have been some recent positive developments, it also underscored its deep concern “at the ineffective functioning of justice system, apparently caused in part by the lack of independence of the procuracy and judiciary” and highlighted “numerous and consistent allegations of serious acts of intimidation, reprisals and threats against human rights defenders [and] journalists….”2

Another UN treaty body has urged Turkmenistan to refrain from forcibly evicting and relocating a large number of people in context of a recent urban renewal project.3

The OSCE/ODIHR has previously deployed Election Support Teams (EST) for the 11 February 2007 presidential election, the 14 December 2008 parliamentary (Mejlis) elections, as well as an Election Expert Team (EET) for the 5 December 2010 local elections. In line with EST/EET operational modalities, the OSCE/ODIHR did not issue any public statements, but supported the OSCE Centre in Ashgabat in election-related reporting. Additionally, the OSCE/ODIHR published a legal assessment in 2008.4

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The Constitution and the ‘Law on the Election of President of Turkmenistan’ (PEL) constitute the primary legal framework for presidential elections. They are supplemented by the ‘Law on the Central Commission for Elections and Referenda’ (LCEC), and the ‘Law on Guarantees of the Electoral Rights of the People of Turkmenistan’. The Central Commission for Elections and Referenda (CEC) is also mandated to issue various resolutions on certain aspects of the electoral process. In addition, legislation contains an explicit commitment to international norms in the conduct of elections, including reference to the constituent documents of the OSCE. Article 6 of the Constitution provides that “Turkmenistan recognizes the priority of the universally accepted norms of international law” and that “if an international treaty (contract) of Turkmenistan establishes rules other than those stipulated by the laws of Turkmenistan, the rules of international treaty will apply.”5

The current Constitution was adopted on 18 May 1992 and has been amended on a number of occasions. Recent amendments were adopted by the PCT on 26 September 2008.6 The amendments focus on two institutional issues: (a) abolition of the legal authority of the PCT and the redistribution of its powers between the President and the Mejlis, and (b) bringing the provisions of the Constitution closer to meeting Turkmenistan’s international commitments.

4 All public reports of OSCE/ODIHR on Turkmenistan are available at http://www.osce.org/odihr/elections/turkmenistan.
5 The UN Committee Against Torture, in its session of 9 May – 3 June 2011, concluded that “the Committee recommends that the State party take the measures necessary to ensure the full applicability of the provisions of the Convention in its domestic legal order …. Furthermore, the State party should report back on progress made in this respect and on decisions of national courts or administrative authorities giving effect to the rights enshrined in the Convention”. See above footnote 2, paragraph 7.
Both the PEL and the LCEC were adopted on 21 May 2011 to reflect the 2008 constitutional amendments. While certain provisions were introduced in an effort to bring legislation closer in line with international standards, a number of crucial aspects of the election process are still not regulated, or are regulated inadequately. This includes inconsistencies with OSCE commitments such as undue restrictions on the right to stand as a candidate, limitations on freedom of expression, existing defamation provisions, and the lack of due process guarantees in the complaints and appeals framework to ensure effective legal redress.

In a positive development, the PEL has clarified the timetable for the announcement of elections. The PEL now establishes that a presidential election should be announced at least six months before the expiration of the president’s term. It also provides more detailed norms for home-bound voting and the tabulation process, particularly with regard to the posting and publication of polling station-level results protocols.

The legal framework for complaints and appeals has been improved. The new PEL establishes deadlines for filing and adjudicating complaints at all levels of the election administration as well as courts. However, the PEL stipulates dual jurisdiction for some complaints against election commissions or state bodies, in general. Voters, political parties, candidates and their proxies can submit complaints to either higher election commissions or the courts. The OSCE/ODIHR NAM’s interlocutors stated that no training had been organized for judges or the election administration for handling complaints and appeals.

The appointment and promotion of judges rests with the president, jeopardizing the independence of judiciary. The UN Committee against Torture concluded that “the State party should take measures to establish and ensure the independence and impartiality of the judiciary in the performance of duties in conformity with international standards, notably the Basic Principles on the Independence of the Judiciary.”

Under the Constitution, citizens have the right to form political parties and other associations. However, there is no law on political parties to regulate procedure for such new political parties. Interlocutors noted that absence of this law would not limit the registration of other parties given that they can be registered under the provisions of the Law on Public Associations. However, this law states that it is not applicable to the registration of political parties. The OSCE/ODIHR NAM was informed that a draft law regulating political party registration is envisaged.

According to the Constitution, the president is elected for a term of five years without a limitation in the number of terms served. To be elected president, a candidate needs to win at least half of all votes cast. If no candidate succeeds, a second round is conducted within two weeks.

C. ELECTION ADMINISTRATION

The election administration for the presidential election operates on four levels: the CEC, five Regional Election Commissions (RECs), District Election Commissions (DECs) in each of the

\[7\] See above footnote 3, paragraph 10.

\[8\] Article 3, Law on Public Associations. See footnote 1.

\[9\] If only two candidates contest the first round and no candidate receives more than 50 per cent of the cast votes, possible due to the invalid votes, a repeat election is to be conducted within three months.
125 territorial districts, and 2,307 Precinct Election Commissions (PECs). In addition, 29 polling stations for out of country voting will be established at diplomatic representations.

The CEC is responsible for the overall conduct of the election. It is a permanent body of 15 members appointed by the president for a five year term. Members could be proposed by political parties and civic organizations, but the chairperson must be confirmed by the Mejlis. The recent law on the CEC introduced some transparency by requiring the publication of information about CEC sessions. While decisions were previously published ‘when necessary’, all decisions must now be published; however, there is no specific timeframe envisaged.

Members of RECs, DECs and PECs are appointed by the respective higher-level commission on the basis of nominations by political parties and civic organizations. Nominations are made at regional meetings of these bodies. In addition, commission members can be nominated by groups of citizens in the event that at least 30 voters residing on the territory of the respective electoral district attend the meeting. RECs and DECs are permanent bodies and consist of 9 to 13 and 11 to 13 members, respectively. PECs, which conduct voting and counting, are temporary bodies comprised of between 5 and 15 members, depending on the number of voters in each precinct.

D. VOTER REGISTRATION

Citizens aged 18 years or older by election day enjoy the right to vote. In a positive development, the legislation no longer deprives those who are in pre-trial detention or suffering from mental illness of their right to vote. However, citizens serving a prison sentence remain automatically deprived of this right, irrespective of the gravity of the crime committed.

There is no centralized voter registry in Turkmenistan. Voter lists are compiled ahead of each election and PECs bears primary responsibility for the preparation of voter lists, based on the information provided by local executive bodies. The law does not provide for any mechanisms to check the accuracy of entries during this compilation stage. Door-to-door checks are used to update lists and to deliver voter invitations. According to the law, voters are able to check their details by visiting precincts and appealing against any mistakes in the voter list. In addition, a voter can be added to a supplementary voter list on election day without a court decision; this could potentially allow for multiple registrations.

All citizens enjoying active suffrage rights, who are residing on the territory of a respective electoral district at the moment the voter list is compiled, are to be included. For the previous elections, a total of 2,839,889 voters were registered nationwide.

E. CANDIDATE REGISTRATION

Citizens eligible to vote, between the ages of 40 and 70 and without a criminal record, may stand for the office of president. In addition, candidates are to have resided in Turkmenistan 15 years consecutively and to have served on a state body, public association, state enterprise or state

10 Turkmenistan has ratified the UN Convention on the Rights of Persons with Disabilities in 2010. See http://www.un.org/disabilities/countries.asp?navid=12&pid=166#T.
11 This practice is not fully in line with General Comment No. 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights, which states that grounds for deprivation of voting rights should be “objective and reasonable” (point 14).
12 The PEL extended the period when voter lists must be made available for public scrutiny from 10 to 15 days before the election.
organization. The candidate nomination process runs from 60 to 30 days before election day. Candidates can be nominated by registered political parties, public associations, and group of voters. Candidates from political parties and associations must be nominated at congresses, while nominations from group of voters must be supported by the signatures of at least 10,000 voters, with at least 300 signatures collected in each of one third of the 125 districts and cities. DECs verify the accuracy of signatures. If it is established that more than two per cent of signatures are not proper, a candidate is refused registration without the right to correct the errors.

The CEC registers candidates from 45 to 25 days in advance of election day. The law provides the CEC with the discretion to de-register candidates ‘if the PEL is breached’. Although there is a possibility to appeal, the current definition is very broad and it remains to be seen how it is applied.

F. VOTING PROCEDURES

The PEL does not determine the voting hours; rather it gives discretion to the CEC, which has decided that voting will take place from 08:00 to 20:00 on 12 February. Voters away from their place of residence on election day are given the opportunity to vote early. Early voting commences 10 days prior to election day (between 10:00 and 16:00) and is overseen by two members of the respective PEC.

In a positive change, polling stations are no longer permitted to close before the designated time if all registered voters have already voted, although the law still stipulates that ‘special polling stations’ do so. The legislation, however, leaves a number of aspects of the process under-regulated and at the discretion of the CEC. The legislation also does not provide voters who have accidentally spoiled their ballot to be issued with a replacement.

The PEL allows the CEC to declare an election invalid due to legal violations committed during the vote or count. While CEC decisions are subject to appeal in court, the law does not appear to allow for the possibility of invalidating and re-running specific precincts, only entire constituencies. Additionally, there are no legal provisions for recounts of votes to be held.

The PEL has reduced the number of registered voters in each polling station from 3,000 to 2,000. Negative voting has also been abolished. PECs now have to display results of voting at each precinct after the end of the count, which would mark an improvement if properly implemented.

G. THE CAMPAIGN AND THE MEDIA

Candidates can begin to campaign from the moment they are registered. The electoral campaign ends 24 hours before election day. Supervision of the lawful conduct of the campaign falls under the jurisdiction of election commissions. Election commissions, along with the respective local executive bodies, are to facilitate candidates’ meetings with voters. In addition, provisions establishing legal liability of a candidate for third parties disseminating ‘untruthful’ information remains excessive, inasmuch as this could result in the de-registration of the candidate.

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13 According to Article 50.1 of the PEL this only applies to polling station in military units, hospitals, pre-trial detention centres, sanatoriums and retirement houses.

14 Previously, voters had to cross out the names of all but their chosen candidate, rather than marking the candidate of their choice.
The PEL does not contain any provisions on campaign financing. It only provides that the cost of preparing and holding the election is to be covered by the state. A newly established CEC Revision Group is mandated to oversee campaign expenditures. However, the provisions do not specify any mechanisms for reporting and verifying the accuracy of reports.¹⁵

There are no private or independent electronic media in Turkmenistan. In 2010, the government allowed the publishing of the first private newspaper, Rysgal, by the Union of Industrialists and Entrepreneurs. Until recently, the work of media has been overseen by the Ministry of Culture and Broadcasting. However, as per Presidential Decree of 18 October 2011, media oversight has been shifted from the ministry; it is unclear which body is now responsible for this issue.

The media landscape in Turkmenistan has been criticized by the OSCE Representative on Freedom of the Media (RFoM). The RFoM noted that authorities should take steps to “provide greater access to the Internet and to establish a legislative framework in line with international standards that would guarantee and safeguard media freedom.” In addition, the RFoM stressed that “variety in print and broadcast media is essential for Turkmenistan’s society” and while “it is commendable that there is a non-government-owned newspaper…much more needs to be done to promote media pluralism and to ensure that the working environment for both national and foreign media corresponds to OSCE commitments.”¹⁶

By law, candidates are entitled to free airtime on state radio and television during the campaign period from 19:00 to 23:00, not to exceed one hour and divided equally among all candidates. The PEL also provides for the possibility of public discussions and roundtable discussions among all candidates. However, the OSCE/ODIHR NAM interlocutors stated that they did not anticipate public debates between candidates, opining that debates are not in line with cultural sensibilities.

The State News Agency has the responsibility to both inform voters about the election process and to convey the opinions and viewpoints of all candidates to the public. The use of the internet, although reportedly on the rise, remains very limited.¹⁷

H. INTERNATIONAL AND DOMESTIC OBSERVERS

Changes to the PEL introduced specific procedures for the registration of domestic and international observers and have delineated their rights and duties. Domestic observers have to be registered by the respective REC or DEC where they wish to observe, while international observers are to be invited by the Ministry of Foreign Affairs and accredited by the CEC. The OSCE/ODIHR NAM was informed that the CEC has issued detailed guidelines for both processes, but was not provided with copies of these documents.

Once registered, the legislation authorizes all categories of observer to attend sessions of electoral commissions at all levels. Observers may also be present at polling station at all times and observe the tabulation of results at district and central level.

¹⁵ Under Article 59.2 of the PEL, this group consists of employees of the CEC and other state bodies.
¹⁷ According to 2009 statistics, there are some 70,000 internet users in Turkmenistan. http://www.unhcr.org/refworld/publisher,RSF,,TKM,4a38f9842,0.html.
Associations such as the Trade Union, the Women’s Union, and the Youth Union informed the OSCE/ODIHR NAM of their intention to observe the forthcoming election as domestic observers. They have worked under the same umbrella as the DPT in their past activities.

IV. CONCLUSIONS AND RECOMMENDATIONS

Given that fundamental freedoms continue to be restricted, that the choice between competing political alternatives is limited, and that progress still remains to be made in bringing the legal framework in line with OSCE commitments for democratic elections, the OSCE/ODIHR NAM does not consider that the deployment of an election observation mission, even of a limited nature, would add value at this point in time.

Mindful of the declared interest of the authorities of Turkmenistan to maintain a dialogue with the OSCE/ODIHR on electoral reform, however, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM). This EAM would further review the legal and administrative framework for elections and also visit some regions of the country to gain a more substantive understanding of its electoral processes. In line with standard OSCE/ODIHR methodology, a final report would be published approximately eight weeks after the elections, including concrete recommendations for assisting Turkmenistan in its stated intention of holding elections according to democratic standards, consistent with its OSCE commitments.
ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs
Vepa Hadjiyev, First Deputy Minister

Ministry of Justice
Ballyev Begli Kurbanovich, Deputy Minister
Maral Kurbanova, Head of International Department

Ministry of Culture
Atageldi Shamuradov, Deputy Minister

Mejlis
Babayev Kasym Geldimuradovich, Deputy Speaker
Berdiyev Batyr Hodjayevich, Chairperson of the Committee on International and Inter-Parliamentary Relations

The Central Election Commission for Elections and Referenda
Orazmyrat Nyazlyew, Chairperson

Democratic Party of Turkmenistan
Babayev Kasym Geldimuradovich, Secretary General

Turkmen State Information Agency
Geldiyev Juma, Deputy Chairperson

Institute of State and Law
Nuryev Yagmur Mamedjikovich, Director
Mamedaliyeva Tazegul, Scientific Officer

National Institute of Democracy and Human Rights under the President of Turkmenistan
Yaz Kurbanazarova, Director

National Centre of Trade Unions of Turkmenistan
Murad O.Haitov, Inspector

Women’s Union of Turkmenistan

Youth Union of Turkmenistan
Amanbey Ashirov, Deputy Head
Kurban Kasimov, Head of Organizations Department

International Representations
Ambassador Sergei Belyaev, OSCE Centre in Ashgabat
Begona Pineiro-Costas, Human Dimension Officer, OSCE Centre in Ashgabat
Teodor Massey, Second Secretary, Embassy of the United States of America
Patrick Pascal, Deputy Head of Mission, Embassy of France
Ambassador Reiner Morell, Embassy of Federal Republic of Germany
Robert Rokicki, Political Counsellor, Embassy of the Republic of Poland
Aleksey Dyomin, Minister-Counsellor, Embassy of the Russian Federation
Shule Gultek, Embassy of the Republic of Turkey
Narine Sahakyan, Deputy Resident Representative, UNDP