



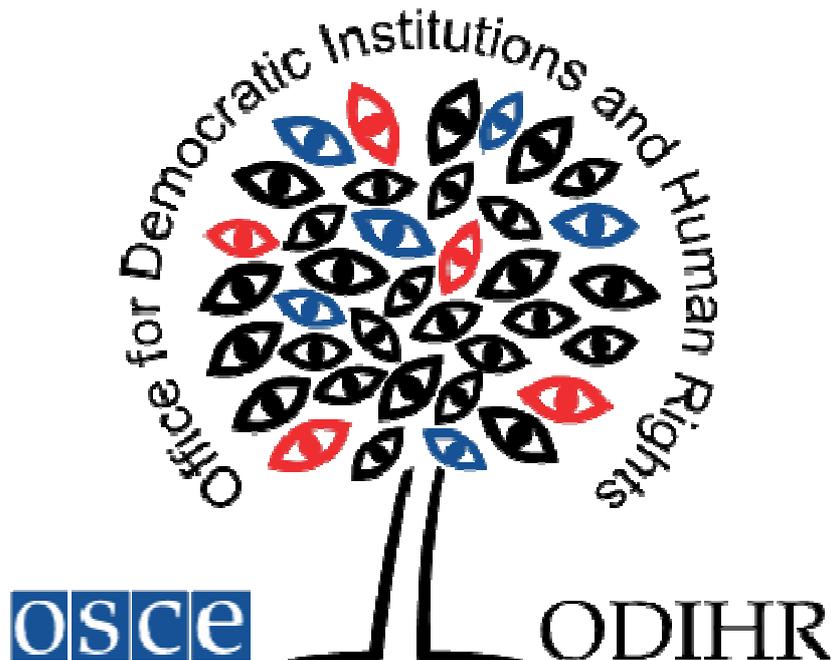
Office for Democratic Institutions and Human Rights

TURKMENISTAN

PRESIDENTIAL ELECTION 12 FEBRUARY 2017

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

5-8 December 2016



Warsaw
30 December 2016

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**TURKMENISTAN
PRESIDENTIAL ELECTION
12 February 2017**

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

In anticipation of an invitation from the authorities of Turkmenistan to observe the 12 February 2017 presidential election, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) from 5 to 8 December. The NAM included Lusine Badalyan, OSCE/ODIHR Senior Election Adviser, and Vladimir Misev, 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 officials of state institutions and the election administration, as well as with representatives of one of political parties, public associations, media and the international community. A list of meetings is included as an annex to this report.

On 8 December 2016, the Ministry of Foreign Affairs (MFA) of Turkmenistan invited the OSCE/ODIHR to observe the 12 February presidential election. 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 presidential election will be held on 12 February 2017. Turkmenistan is a presidential republic. The incumbent President, Gurbanguly Berdimuhamedov, is completing his second term in the office. Previous OSCE/ODIHR reports noted that the insufficient separation of powers between different branches of government, as well as the need to increase respect of basic fundamental freedoms impeded the holding of elections in line with the OSCE commitments and international standards and obligations. The lack of political pluralism has been criticized by a number of international organizations, including OSCE.

The presidential election is regulated by the 2016 Constitution and the 2013 Election Code, most recently amended in 2016. The 2016 Constitution removed the 70-year age limit for presidential candidates and extended the term from five to seven years. The 2013 Election Code was amended twice after its adoption, most recently in November 2016. Changes in the Election Code, among others, excluded the possibility for public associations to nominate presidential candidates and established permanent status of the election commissions at all levels for a period of five years. Previous OSCE/ODIHR reports recommended inclusive and transparent reform of the legal framework to align it with OSCE commitments and other international obligations and standards for democratic elections.

The election is administered by a four-tier structure. The Central Election Commission (CEC) has overall responsibility for the conduct of the election and its 15 members were appointed by the president in October 2014. According to the CEC, women comprise some 30 per cent of the election

commission members. The legislation requires publication of the CEC decisions but sets no specific deadlines.

Citizens over 18 years of age by election day have the right to vote. Citizens recognized as partially or totally incapacitated by a court decision, as well as those serving a prison sentence regardless of the length of sentence or the gravity of the offence, are deprived of voting rights, at odds with OSCE commitments and other international obligations and standards. There is no centralized voter register and the legislation lacks provisions to prevent multiple voter registration. Voter lists are compiled ahead of each election Precinct Election Commissions (PECs) based on the information provided by local authorities.

Citizens eligible to vote, over the age of 40, without a criminal record and with 15 years consecutive residence in the country, may run for presidency. Candidates can be nominated by political parties or group of voters and are registered by the CEC. According to the OSCE/ODIHR NAM interlocutors, in addition to the expected candidature of the incumbent president, two groups of voters have started activities for nomination of candidates.

The legislation provides that the election campaign is conducted on a free and equitable basis. It starts once a candidate is registered and ends 24 hours before election day. Election commissions, along with the respective local executive bodies, are to facilitate candidates' meetings with voters and are responsible for the content of the campaign print material, which can be seen as undue interference of the state in the campaign. The costs of preparing and holding elections are covered by the state and the legislation does not contain any provisions on campaign financing or reporting.

The Constitution guarantees the freedom of expression. News and information services are state controlled and monopolized and the access to information is limited. There are no private or independent electronic media. The overall media landscape has been criticized by the OSCE Representative on Freedom of the Media on a number of occasions, expressing concerns regarding the physical attacks on and imprisonment of journalists. The Election Code regulates coverage of electoral contestants on equitable basis and does not allow for purchasing media coverage. The OSCE/ODIHR NAM was informed that the media does not plan to organize public debates between candidates.

The Election Code provides for citizen and international observers. During previous elections the OSCE/ODIHR noted that its observers were accompanied to most meetings by state or local officials throughout the observation period, including on election day and recommended that further measures were needed to allow genuine election observation. OSCE/ODIHR NAM was informed about the intention of some public associations to observe the forthcoming election.

Election-related complaints can be submitted to the election administration or courts. A complainant has the discretion of filing a complaint with either of these institutions, or simultaneously with both. Complaints should be considered within three days and complaints lodged on election day or the preceding day should be reviewed immediately.

All of the OSCE/ODIHR NAM interlocutors emphasized the need for an OSCE/ODIHR election observation activity for the election. Considerate of the continued declared interest of the authorities of Turkmenistan to maintain a dialogue with the OSCE/ODIHR on electoral reform, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM). The EAM would further review issues noted in the report, including legal framework related to elections and the fundamental freedoms and its implementation, the work of election administration, and the media environment. The EAM will also visit some regions of the country. In line with standard OSCE/ODIHR methodology, a final report would be published approximately eight weeks after the

elections containing concrete recommendations for assisting Turkmenistan in its stated intention of hold elections in line with OSCE commitments and other international obligations and standards for democratic elections.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Turkmenistan is a presidential republic. The incumbent President, Gurbanguly Berdimuhamedov, is completing his second term and, according to the OSCE/ODIHR Needs Assessment Mission (NAM) interlocutors, intends to run for the forthcoming election.

The principle of separation of powers between the executive, legislative and judiciary is enshrined in the Constitution, but the president is granted extensive powers, including the right to form and preside over the Cabinet of Ministers, to appoint and dismiss governors of regions, heads of cities and districts, all judges of the Supreme Court and of other courts, as well as the members of the Central Commission for Elections and Referenda (CEC). Previous OSCE/ODIHR reports noted that the insufficient separation of powers between different branches of government, as well as the need to increase respect of basic fundamental freedoms impeded the holding of elections in line with the OSCE commitments and other international obligations and standards.¹

The lack of political pluralism has been criticized by a number of international organizations, such as United Nations (UN) and OSCE. After the dissolution of the Soviet Union until 2012 the only political party in the country was the Democratic Party of Turkmenistan.² Following the adoption of the 2012 Law on Political Parties, two political parties were established – the Party of Industrialists and Entrepreneurs in August 2012, originating from the state-supported Union of Industrialists and Entrepreneurs, and the Agrarian Party in September 2014. In addition to the registered political parties, several public associations and groups of citizens are represented in the current parliament with the Democratic Party of Turkmenistan having majority of the seats. The OSCE/ODIHR NAM interlocutors informed that the forthcoming election is considered as an important landmark in the country's history since three political parties would have the possibility to nominate their candidates.

Turkmenistan is party to more than 120 international conventions and agreements, which include fundamental international human rights instruments. In the 2013 Universal Periodic Review (UPR), the United Nations (UN) highlighted a number of key recommendations, including the urgent need to reform legislation to ensure the full enjoyment of the rights to freedom of expression, to freedom of assembly and to freedom of association.³ The authorities recently adopted several pieces of legislation to address these recommendations, but their implementation remains to be assessed.⁴

The OSCE/ODIHR has previously deployed an Election Assessment Mission (EAM) for the 2013 parliamentary elections, Election Expert Teams (EET) for the 12 February 2012 presidential election and 5 December 2010 local elections, and Election Support Teams (EST) for the 14 December 2008 parliamentary elections and the 11 February 2007 presidential election.

¹ See [all previous OSCE/ODIHR reports on Turkmenistan](#).

² The party was established as successor of the former Communist Party of Turkmenistan and led by the former president Saparmurat Niyazov until his death in 2006 when the current president Gurbanguly Berdimuhamedov took over the party leadership. In August 2013, the president suspended his party membership as well as his party leadership.

³ See [all UN UPR reports from the Second cycle of review](#).

⁴ In July 2016 the [UN Human Rights Committee sent a list of questions for clarification related to the Second cycle of review](#) and implementation of some of the adopted legislation.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The presidential election is regulated by the 2016 Constitution and the 2013 Election Code, most recently amended in 2016. Other election-related legislation includes the 2015 Law on Organization and Conduct of Assemblies, Rallies, Demonstrations and other Mass Events, and the 2012 Law on Mass Media.⁵

The newly adopted Constitution changed eligibility criteria for presidential candidates, including by removing the 70-year age limit for presidential candidates, and extended the term from five to seven years. The 2016 OSCE/ODIHR Comments on the Draft Constitution concluded that while the draft “contains a number of positive features, notably some new provisions pertaining to fair trial guarantees, the practical implementation of all provisions will greatly depend upon the adoption of implementing legislation and the existence of proper enforcement mechanisms, including judicial review and access to independent and impartial courts.”⁶ In addition to the overall criticism related to restrictions on fundamental freedoms and the broad competences of the president, the review notes concerns about the independence and method of appointment of the members of the CEC by the president, the lengthy duration of the presidential term and the lack of limitations for re-election.

The Election Code was amended twice after its adoption, in August 2014 and most recently in November 2016. Changes in the Election Code, among others, excluded the possibility for public associations to nominate presidential candidates and established a permanent status of the election commissions at all levels for a five-year period.

The OSCE/ODIHR EAM report on the 2013 parliamentary elections concluded that “in general, the legal framework complies with a number of OSCE commitments and other international obligations; however it lacks clarity and fails to sufficiently regulate important aspects of the electoral process, impacting on the quality and credibility of the elections.” The report noted unclear or insufficiently detailed provisions regarding formation of election commissions, compilation of voter lists, conduct of the campaign, voting, counting and tabulation of results, early and homebound voting, adjudication of election disputes, storage, archiving and destruction of the sensitive election material, and publication of results broken down at polling station level. The OSCE/ODIHR previously recommended that the legal framework be amended to address OSCE/ODIHR recommendations and to bring it closer in line with OSCE commitments and other international obligations and standards for democratic elections, and that the reform be undertaken in an inclusive and transparent manner. Most of the previous OSCE/ODIHR recommendations remain unaddressed.

Election-related complaints can be submitted to the election administration or courts. A complainant has the discretion of filing a complaint with either of these institutions, or simultaneously with both. Complaints should be considered within three days and complaints lodged on election day or the preceding day should be reviewed immediately.

The president is elected for a seven-year term without a limitation to the number of terms. To be elected, a candidate needs to win at least half of all votes cast. If no candidate succeeds, a second round is held within two weeks between the two leading candidates. If only two candidates contest the first round and no candidate receives more than half of votes cast, a repeat election is held within three months.

⁵ Following last presidential election in 2012 several new laws were adopted, related to civil and political rights such as the 2016 Law on Ombudsperson, the 2015 Law on State Guarantees for Respecting the Equal Rights between Women and Men and the 2014 Law on Legal Regulation of the Internet Development and Internet Services (Internet Law).

⁶ See [OSCE/ODIHR Comments on the Draft Constitution of Turkmenistan](#).

C. ELECTION ADMINISTRATION

The presidential election is administered by a four-tier structure: the CEC, 6 Regional Election Commissions (RECs), 69 District Election Commissions (DECs) and 2,578 Precinct Election Commissions (PECs). A total of 39 polling stations for out-of-country voting will be established at diplomatic representations.

The CEC has overall responsibility for the conduct of the election. It is a permanent body of 15 members last appointed by the president in October 2014 for a five-year term. Members are proposed by political parties and public associations, and the chairperson is confirmed by the parliament (*Mejlis*). According to the CEC its sessions are open for observers. The legislation requires publication of the CEC decisions but sets no specific deadlines. CEC decisions can be appealed to the Supreme Court, and decisions of election commissions can be revoked by a higher-level election commission.

Members of RECs, DECs and PECs are appointed by the respective higher-level commission on the basis of nominations by political parties and public associations. 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 convene the meeting. RECs and DECs are permanent bodies last formed in 2016 that consist of from 9 to 13 and 11 to 13 members, respectively. PECs are also permanent bodies last formed in 2014 comprised of between 5 and 15 members, depending on the number of voters in each precinct. According to the CEC, women comprise some 30 per cent of the election commission members.

Up to 2,000 voters can be registered per polling station. Voting is conducted on election day from 07:00 to 19:00. Early voting starts 10 days before election day. Homebound voting is permitted on election day with prior application. Voters temporary residing abroad have possibility to vote at the diplomatic representations. According to the CEC, during previous elections some two per cent of voters used the possibility of early or homebound voting.

D. VOTER REGISTRATION

Citizens over 18 years of age by election day have the right to vote. Citizens recognized as partially or totally incapacitated by a court decision, as well as those serving a prison sentence regardless of the length of sentence or the gravity of the offence, are deprived of voting rights, at odds with OSCE commitments and other international obligations and standards.⁷ The OSCE/ODIHR has previously recommended that the restriction on voting rights due to a criminal conviction be reconsidered to ensure that the principle of proportionality between the offense and the sanction is respected.

There is no centralized voter register and the legislation lacks provisions to prevent multiple voter registration. Voter lists are compiled ahead of each election and PECs are responsible for their preparation, based on the information provided by local authorities.

Voter lists are available for public scrutiny 15 days before election day. Voters can check their details by visiting PECs and appeal 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, which could allow for multiple

⁷ Turkmenistan has ratified the [2006 UN Convention on the Rights of Persons with Disabilities](#) (UN CRPD). Deprivation of the right to vote on the basis of mental disability is inconsistent with Articles 12 and 29 of the CRPD. [General Comment No. 25 to Article 25](#) of the [1966 International Covenant on Civil and Political Rights](#), states that grounds for deprivation of voting rights on the basis of criminal conviction should be objective and reasonable.

registrations. The OSCE/ODIHR NAM was informed that some 3.1 million voters are registered for the forthcoming election.

E. CANDIDATE REGISTRATION

Citizens eligible to vote, over the age of 40, without a criminal record and with 15 years consecutive residence in the country, may stand as candidates. The candidate nomination process lasts from 60 to 30 days before election day. Candidates can be nominated by political parties or group of voters.⁸ Candidates from political parties must be nominated at congresses, while nominations from groups of voters must be supported by the signatures of at least 10,000 voters, with at least 300 signatures collected in each of at least a third of the country's districts and cities. Voters may sign in support of only one candidate.

The CEC registers candidates from 50 to 25 days before the election day. The accuracy of supporting signatures is verified initially by the DEC's and later by the CEC. If it is established that more than two per cent of signatures are not proper, a candidate is refused registration. Denial of registration may be appealed to the Supreme Court within three days. The OSCE/ODIHR NAM was informed by the CEC that two groups of voters have started activities for nomination of candidates.

F. CAMPAIGN AND CAMPAIGN FINANCE

According to the legislation, election campaign is conducted on a free and equitable basis. Candidates can start their campaign activities from the moment they are registered and end 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 and are responsible for the content of the campaign print material, which can be seen as undue interference of the state in the campaign.⁹ Candidates can hold public events or campaign through the public media. The OSCE/ODIHR NAM interlocutors expected the campaign to focus on general social and economic topics.

The legislation does not contain any provisions on campaign financing or reporting. It only provides that the costs of preparing and holding elections are to be covered by the state. The OSCE/ODIHR NAM was informed that the CEC Revision Group, comprised of representatives of the CEC and other state bodies, is tasked to oversee election-related expenditures following the election process.

G. MEDIA

News and information services are strictly controlled and monopolized by the state, and access to information is limited. There are no private or independent electronic media. There are seven nationwide state television channels, including a music channel, and four state radio stations. In addition, some 40 newspapers are in circulation.

The Constitution guarantees the freedom of expression. The Law on Mass Media regulates overall media landscape. In 2014, the Internet law was adopted aiming to provide unrestricted internet access

⁸ Initiative groups of voters of at least 50 voters can be registered 70 days before election day.

⁹ See of [paragraph 7.7 of the 1990 OSCE Copenhagen Document](#) as the participating States commit to "ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution."

and increase the transparency of the work of public institutions.¹⁰ However, the OSCE Representative on Freedom of the Media (RFoM) expressed concerns that the law contains restrictive regulations, including disproportionate limitations on online content, such as making users liable for truthfulness of all information posted by them.¹¹ The overall media landscape has also been criticized by the OSCE RFoM on a number of occasions, most recently expressing concerns regarding the physical attacks on and imprisonment of journalists.¹² The 2013 changes to the 1997 Criminal Code kept some specific provisions on libel and insult to different institutions or persons in the Code but moved general clauses on libel and insult to the 2014 Code of Administrative Offences.

The Election Code regulates media coverage of electoral contestants and does not allow for purchasing media coverage. By law, during the campaign period candidates are entitled to free airtime from 19:00 to 23:00 of at least one hour divided equally among all candidates. The State Committee on Television, Radio Broadcasting and Cinematography established in 2011 is responsible for implementing the equitable coverage of the electoral contestants. The OSCE/ODIHR NAM was informed that the media does not plan for public debates between candidates.

H. ELECTION OBSERVATION

In accordance with OSCE commitments, the Election Code provides for citizen and international observers. Observers may be nominated by political parties, public associations and groups of citizens, all of which are registered by the CEC. By law, observers should have access to all stages of the election process and may attend election commission sessions at all levels. The OSCE/ODIHR EAM Final Report on the 2013 parliamentary elections notes that, while the Election Code “stipulates that international observers shall carry out their activities on their own and independently, in practice OSCE/ODIHR EAM observers were required to be accompanied to most meetings by the MFA officials or other local officials throughout the observation period, including on election day.” The recommendation provided that the authorities should undertake further measures to allow genuine non-partisan citizen election observation, as well as to facilitate independent observation by international observers to fully comply with paragraph 8 of the 1990 OSCE Copenhagen Document.

Public associations, such as the Women’s Union and the Youth Union, informed the OSCE/ODIHR NAM of their intention to observe the forthcoming election.¹³ The OSCE/ODIHR NAM interlocutors informed that observers from the Commonwealth of Independent States and Shanghai Cooperation Organization are invited.

IV. CONCLUSIONS AND RECOMMENDATIONS

All of the OSCE/ODIHR NAM interlocutors emphasized the need for an OSCE/ODIHR election observation activity for the presidential election. Considerate of the continued declared interest of the authorities of Turkmenistan to maintain a dialogue with the OSCE/ODIHR on electoral reform, the OSCE/ODIHR NAM recommends the deployment of an Election Assessment Mission (EAM). The EAM would further review issues noted in the report, including legal framework related to elections and the fundamental freedoms and its implementation, the work of election administration, and the

¹⁰ The law states that Internet access is obligatory for all educational and cultural institutions. It also requires government offices to establish websites providing basic information about their work and to respond to online requests.

¹¹ See [RFoM Press Release](#) from 9 January 2015.

¹² According to [RFoM Press Release](#) from 6 December 2016, several journalists working for the Turkmen Service of Radio Free Europe/Radio Liberty were subject to physical attacks or imprisonment.

¹³ In the past both organizations have worked under the same umbrella as the governing party.

media environment. The EAM will also visit some regions of the country. In line with standard OSCE/ODIHR methodology, a final report would be published approximately eight weeks after the elections containing concrete recommendations for assisting Turkmenistan in its stated intention to hold elections in line with OSCE commitments and other international obligations and standards for democratic elections.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Vepa Hadjiyev, First Deputy Minister
Maksat Bekiyev, Counsellor, Department of International Office

Ministry of Justice

Shirin Ahmedova, Head, Constitutional Reform Department
Shemshat Atamyradova, Chief expert, Department of International Relations

Mejlis

Gurbangul Bayramova, Deputy Speaker

Central Election Commission for Elections and Referenda

Gulmyrat Myradov, Chairperson
Allaberdi Ussayev, Deputy Chairperson
Amangeldi Gandymov, Secretary
Agadurdy Akmyradov, Chief Expert

Democratic Party of Turkmenistan

Kasym Babayev, Chairperson
Ahmet Nepesov, Deputy Chairperson

Turkmen State Information Agency

Jumageldi Hommatdurdyev, Deputy Chairperson

State Committee on TV, Radio Broadcasting and Cinematography

Maksat Altyyev, Chairperson

National Institute of Democracy and Human Rights under the President of Turkmenistan

Begench Soyunov, Deputy Director
Maral Muradova, Staff Member
Vepa Bayramov, Staff Member

Women's Union of Turkmenistan

Govher Bayramova, Chairperson

Youth Union of Turkmenistan

Soltangeldy Babayev, Chairperson

International Representations

Ambassador Margret Uebber, Embassy of Federal Republic of Germany
Lubomir Frebort, Charge d'Affaires, European Union
Richard Payne-Holmes, Second Secretary, Embassy of the United States of America
Murad Kakajykov, Bilateral and Public Relations Officer, British Embassy
Denys Pogribnyi, Counsellor, Embassy of Ukraine
Natasa Rasic, Human Dimension Officer, OSCE Centre in Ashgabat
Christoph Opfermann, Political Office, OSCE Centre in Ashgabat
Vitalie Vremis, United Nations Development Program