



Office for Democratic Institutions and Human Rights

TURKMENISTAN

ASSESSMENT OF THE ELECTION LEGISLATION



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I. INTRODUCTION

This assessment reviews and comments on the election legislation of Turkmenistan in view of the OSCE commitments¹ and other international standards for democratic elections. The legal framework includes, in addition to the relevant provisions of the Constitution:

- The Law on the Central Commission for Elections and Referenda (LCEC),
- The Law on the guarantees of electoral rights of the people of Turkmenistan,
- The Law on the Election of the President of the Republic (herein “the PEL”),
- The Law on the Elections of Deputies to the *Mejlis* of Turkmenistan (MEL),
- The Law on the Elections of the *Velayat Halk Maslahaty* (VEL),
- The Law on the Elections of the Members of *Gengeshes* (GEL)
- The Law on the Elections of City and *Etrap Halk Maslahatys* (EEL)
- The Law on the Elections of *Halk Vekilleri* (HEL)

This assessment is based on unofficial English translations of the above mentioned laws.²

Terminology

<i>Halk Maslahaty</i> of Turkmenistan	People’s Council of Turkmenistan - National supreme representative body
<i>Mejlis/Majlis</i>	National Parliament
<i>Velayat</i>	Region
<i>Etrap</i>	District
<i>Khyakim</i>	Governor (Region or District)
<i>Gengesh</i>	Elected representative body at village/local level

Abbreviations

PCT	People’s Council of Turkmenistan (<i>Halk Maslahaty</i>)
CEC	Central Commission for Elections and Referenda
GEL	Law on <i>Gengesh</i> Election
MEL	Law on <i>Mejlis</i> Election
PEL	Law on Presidential Election
EEL	Law on Elections of City and <i>Etrap Halk Maslahatys</i>
VEL	Law on <i>Velayat/Regional People’s Councils</i> Election
HEL	Law on <i>Halk Vekilleri</i> Election

¹ For a complete overview, please see “OSCE Human Dimension Commitments” vol. 1 and 2, available at: http://www.osce.org/odihr/item_11_16238.html and http://www.osce.org/odihr/item_11_16237.html

² This assessment does not warrant the accuracy of the translations reviewed, including the numbering of articles, paragraphs, and sub-paragraphs. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

The laws governing the six types of election (PEL, MEL, HEL, VEL, EEL and GEL) have been formulated according to a similar pattern. Typically, the six laws would contain identical or almost identical provisions on a number of issues, including voting rights, registration of candidates, election commissions, voter lists, campaigning, voting procedures, complaints and appeals, etc. Consequently, the assessment of the provisions on the above mentioned questions generally apply to all six laws.

II. SUMMARY

While the election laws of Turkmenistan recognize a number of important basic principles pertaining to the conduct of elections, such as the universal, direct and equal right to elect by secret ballot, the election legislation overall does not constitute a basic framework for democratic elections. A number of crucial aspects of the election process are regulated inadequately or not at all in the legislation. The simplicity of the legislation suggests that it could hardly cope with the complex issues and difficult decisions which arise in genuinely contested elections.

Amending the current legislation alone cannot guarantee an electoral process in line with OSCE commitments and other international standards. This also requires a commensurate level of political will to implement the law in good faith and to develop a pluralistic environment to underscore a genuine democratic election process.

Overall, serious shortcomings include the following:

- The laws and Constitution create a political environment that is inherently constrained and static; they impose rigorous and potentially insurmountable problems for independent candidates or anyone outside the existing political establishment, particularly for those seeking nomination as candidates for President; they inhibit the evolution of political plurality;
- These obstacles are crucially important given the broad powers and influence entrusted to the President under the Constitution, at national, regional and local levels;
- The election laws fail to establish an election administration that is pluralistic, free from the control of government authorities, transparent and genuinely independent;
- The election laws do not provide sufficient details for rules to ensure the fair allocation of state resources to candidates during the campaign;
- The lacunae and lack of detail in the election laws create a significant risk of arbitrary conduct on the part of those responsible for organising the elections. In particular, the laws would require elaboration, clarification, and substantial changes in some articles to provide completely satisfactory procedures for voting, counting of ballots, and tabulation of results;
- The laws do not provide a satisfactory process for filing complaints and appeals.

The current legal framework requires substantial improvement in order to meet OSCE commitments and other international standards for democratic elections. Accordingly, recommendations are being offered in this assessment with the objective of assisting Turkmenistan in the development of a sound legal framework for genuine democratic elections.

General recommendations

Detailed recommendations are formulated in the different sections of this assessment. The main points of these recommendations are the following:

- All aspects of the election process require far more detailed regulation. The laws should be drafted to anticipate and address the complex issues arising in genuinely contested elections.
- Provisions depriving individuals of the right to vote when in pre-trial detention, or being kept in detention by sentence of the court regardless of the nature of the crime, are contrary to international standards and should be amended.
- The requirements for nomination of candidates, particularly candidates for President, are far too restrictive and require review. Approval of presidential candidates by the People's Council of Turkmenistan - *Halk Maslahaty* - (PCT) should not be required.
- Legislation that guarantees the existence of political parties or public organisations independent from the State should be introduced, and in the meantime the nomination of candidates by meetings of citizens should be subject only to the minimum necessary requirements.
- Measures should be introduced to guarantee the autonomy of electoral commissions at all levels and prevent interference by the State in their work.
- A timetable for announcing elections should be clearly established.
- Candidates should be permitted to organise their own meetings with voters and should not be dependent on the co-operation of electoral commissions and local state agencies for the organisation of any campaign events.
- The law should accommodate possibilities for contestants to organise campaign events without involvement of Election Commissions and local authorities.
- Candidates in presidential and *Mejlis* elections should be permitted to have far more proxies or representatives than the present limit of three, sufficient to ensure that they may effectively monitor and challenge the activities of electoral commissions at all levels.
- Detailed regulation is required in respect of campaign finance.
- Detailed regulation is required in respect of access to the media for the purposes of election campaigning and provision should be made to ensure impartial reporting by state-owned broadcast media.

- Specific rules are needed on the registration of domestic observers and their rights and duties.
- Consideration should be given to reducing the maximum number of voters in an electoral precinct (currently 3,000).
- Negative voting (voting by crossing off names on the ballot paper) should be abolished.
- Detailed rules should be introduced to regulate the use of mobile ballot boxes.
- Certified copies of election result protocols should be available immediately to candidates, their representatives, accredited observers and journalists.
- In order to enhance the transparency of the tabulation process, in particular for *Mejlis* and presidential elections, result protocols of district and regional electoral commissions and the Central Commission should include a breakdown of all results from the subordinate commissions, so as to allow tracing of results from precinct to national level.
- Detailed rules should be introduced dealing with the procedures for challenging the decisions of electoral commissions to superior commissions and to the courts.

III. BACKGROUND

Currently, Turkmenistan continues to be a one-party state. Although this is not stipulated in any legal act, only one party, the Democratic Party of Turkmenistan (DPT), is registered. The DPT is the successor to the Soviet-era Communist Party.

The previous President of Turkmenistan, Saparmurat Niyazov, died in December 2006. Elections for his successor took place on 11 February 2007. These were the first nominally contested presidential election in Turkmenistan, although all six candidates were fielded by the DPT. 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. The next presidential election is due in February 2012.

The present *Mejlis* was elected on 19 December 2004. All of the 131 candidates for the 50 seats expressed their support for the President. The next parliamentary elections were due to take place in 2009. However, on 25 October 2005, the People's Council of Turkmenistan (PCT) adopted a Resolution on, among others, holding early elections to the *Mejlis* on 14 December 2008, together with elections of people's representatives ('*halk vekilleri*'). The 66 *Halk Vekilleri* (one per district) sit among the 2,507 members of the PCT.

The last elections to the *Gengeshes* took place on 23 July 2006. The district and city people's councils were last elected on 3 December 2006. The regional people's councils were last elected on 9 December 2007. The next elections should take place in 2009 (districts), 2010 (cities) and 2011 (regions).

IV. OVERVIEW OF THE LEGAL FRAMEWORK

A. CONSTITUTIONAL SYSTEM

The 1992 Constitution establishes a strong presidential system of government with dominant powers residing in the office of the presidency, with almost no emphasis on separation of powers. The President is elected for a term of five years and enjoys far-reaching powers as the head of state and head of the executive branch. Potential candidates for president must overcome extraordinary obstacles in order to secure nomination (see below, candidacy rights).

National government is exercised under the President by a Cabinet of Ministers, appointed by the President.

The PCT is the “highest representative organ of popular power” which exercises “supreme state power and control”.³ Since its inception its powers and size have been very considerably expanded. It now comprises 2,507 members. These include members of the executive branch of government at national, regional and local levels (including the President and the Cabinet of Ministers), all the deputies of the national parliament (*Mejlis*), the Chairman of the Supreme Court, representatives of Elders and heads of parties, youth organisations and trade unions and 66 people’s representatives (*‘halk vekilleri’*) directly elected to the PCT, one from each district (*‘etrap’*). The PCT is not a standing body. It can be convoked by the Chairperson of the Khalk Maslakhaty or the President of Turkmenistan “when necessary,” but not less frequently than once a year upon proposal of the Chairperson of the Khalk Maslakhaty, the President of Turkmenistan, *Mejlis* or one-third of the established number of members of the Khalk Maslakhaty.⁴

The Constitution endows the PCT with the power to dissolve the *Mejlis* without specifying any particular circumstances in which the power may be exercised.⁵ The PCT has no direct legislative powers of its own, but it is the only authority to adopt a Constitution and constitutional amendments.⁶

The national parliament (*Mejlis*) is a standing unicameral legislature with 50 deputies elected for five years (membership will be increased to 65, starting with the forthcoming elections scheduled for December 2008).⁷ The deputies are elected from single mandate constituencies.⁸ The *Mejlis* enjoys comprehensive legislative powers although its legislative functions on most issues may be transferred to the President.⁹

Turkmenistan is divided into five regions (*‘velayats’*). In addition, the capital, Ashgabat, has equivalent status to the *velayats*. Each *velayat* contains a number of districts (*‘etraps’*). Regional/district executive power is exercised by a governor (*‘khyakim’*). The

³ Article 45 of the Constitution.

⁴ Article 50 of the Constitution.

⁵ Article 63 of the Constitution.

⁶ Article 48.1 of the Constitution.

⁷ Article 62 of the Constitution.

⁸ Article 1 of the MEL.

⁹ Article 65 of the Constitution.

Governor is the representative of and answerable to the President, but is also elected by the regional/district people's councils.¹⁰

The '*gengesh*' is an elected local government body at the lowest level. The *gengesh* elects a leader ('*archin*') to direct its work. The *archin* is accountable to the *gengesh* but, like the *khyakim*, is directly responsible to the President. The *gengesh* is elected for a term of three years. Following the expiry of this term, the *archin* remains in office until the new *gengesh* elects his or her replacement. The *gengesh* comprises five to eleven members, each elected from a single mandate district.¹¹

The judicial branch is headed by the Supreme Court. There is no constitutional court or ombudsperson in Turkmenistan. All judges are appointed by the president for a term of five years.¹² Candidates for chair of the Supreme Court and High Commercial Court must be approved by the *Mejlis*.¹³

B. ELECTION LEGISLATION

There is no comprehensive election code. Specific laws deal with specific elections. A Law on Guarantees of Electoral Rights was adopted in 1999. This sets out, albeit briefly, some important principles relating to elections, such as the universal, direct and equal right to elect by secret ballot. Provision as to the formation and powers of the Central Electoral Commission is also made in a separate law (the Law on the Central Commission for Holding Elections and Referenda).

C. ELECTORAL SYSTEMS

In order to succeed in the presidential election, a candidate must obtain at least 50 per cent of the vote.¹⁴ If no candidate obtains such a majority, the two leading candidates face a run-off in a second round vote.¹⁵ In the event of a second round, the successful candidate who obtains a plurality of votes is considered elected.

Halk vekilleri, members of the *Mejlis*, of the *Velayat Halk Maslahaty*, of the *City/Etrap Halk Maslahaty* and of the *gengeshes* are elected in single member constituencies, with a repeat election between the two leading candidates which is organised if no candidate obtains the majority of votes.

D. COMMITMENT TO INTERNATIONAL ELECTION STANDARDS

The legislation contains an explicit commitment to international norms in the conduct of elections, including reference to the constituent documents of the OSCE. The latter include the Copenhagen Document.¹⁶ The Law on Guarantees of Electoral Rights of the People of Turkmenistan provides:

¹⁰ Article 79 of the Constitution.

¹¹ Articles 1, 10 of the GEL.

¹² Article 100 of the Constitution.

¹³ Article 66 of the Constitution.

¹⁴ Article 42(2) of the PEL.

¹⁵ Article 47(1) of the PEL.

¹⁶ Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, July 1990.

“Turkmenistan, being a full-fledged subject of the world community and strictly following the principles and norms vested in the UN Charter, constituent documents of OSCE and other universally recognized international organizations, shall, when organising and holding the elections, adhere to the provisions of international treaties, conventions, agreements to which it is a party, and provide observance/enforce thereof”.¹⁷

In addition, Turkmenistan has acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1997.

V. CALLING ELECTIONS

As regards the calling of elections, election laws need to define two separate dates. The first is the latest date on which the election must be held by reference to the expiry of the term of the body being replaced. The second is the latest date on which the date of the election must be announced, i.e. the date on which the election is called. Neither the MEL nor the PEL appear to stipulate these two dates. It would seem that elections for the *Mejlis* and President must take place at least two months before the expiry of the term of their respective terms. However, there appears to be no separate rule as to when the election date must be announced. The PEL also fails to stipulate the maximum period between the premature termination of powers of the President and the holding of elections for his or her successor. These rules are essential for the proper continuity of power and to ensure that the deadlines for the various stages of the pre-election process are complied with.

► *The OSCE/ODIHR recommends that the timetable for announcing elections be clearly set out.*

VI. VOTING RIGHTS

Article 2.3 of the PEL deny the voting rights of “persons being kept by sentence of the court in institutions of confinement and those in respect of whom preventive punishment measure of holding in custody was applied”.¹⁸ Article 87 of the Constitution is even clearer in establishing a principle according to which the right to vote is also denied to “individuals who, in the manner established by the law of criminal procedure, are subject to a restraining order and are in custody”. Under this provision, the right to vote is denied, not only on the basis of any conviction, regardless of the nature of the underlying crime, but also to individuals who are placed into pre-trial detention at the preliminary investigative stage, i.e. individuals who have not yet been found guilty by a court and therefore should still be presumed as innocent.

The denial of suffrage to individuals in pre-trial detention is not only contrary to Paragraph 24 of the 1990 Copenhagen Document, it also violates the principle of presumption of innocence according to which the accused is presumed to be innocent until it has been declared guilty by a court, enshrined in the Universal Declaration of

¹⁷ Article 11.

¹⁸ This provision is also stated in article 2.3 of the MEL.

Human Rights.¹⁹ Furthermore, the denial of suffrage due to a conviction for *any* crime whatsoever is a disproportionate sanction which is contrary to Paragraph 24 of the 1990 Copenhagen Document.

► *The denial of suffrage should occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed. The OSCE/ODIHR recommends that Article 87 of the Constitution, article 2.3 of the PEL, and similar provisions in the other laws be amended so that denial of suffrage can occur only where a person has been convicted of committing a crime of such a serious nature that forfeiture of political rights is indeed proportionate to the crime committed.*²⁰ *The forfeiture should be for an established period of time, likewise proportionate, and restoration of political rights should occur automatically after the expiration of this period of time.*

► *Furthermore, the OSCE/ODIHR recommends that authorities introduce provisions on voting procedures at places of detention designed for those who are in pre-trial detention, and those who, although convicted, have retained their political rights.*

VII. CANDIDACY RIGHTS

It is a universal human rights principle that every citizen has the right, on a non-discriminatory basis and without unreasonable restrictions to: (1) take part in the conduct of public affairs, directly or through freely chosen representatives; (2) vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; and (3) have access, on general terms of equality, to public service in his or her country.²¹

A. PRESIDENTIAL SELECTION PROCESS

The *Halk Maslahaty* of Turkmenistan (“the People’s Council” or “PCT”), due to both constitutional and PEL provisions, controls most of the presidential selection process. The PCT:

- (1) determines the election dates;²²
- (2) determines when a president cannot “perform his duties”, which could necessitate an early election;²³
- (3) chooses the presidential candidates, by a two-thirds vote²⁴, who will be voted on by citizens on election day;

¹⁹ Article 11: “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defense.”

²⁰ Further, the law should specifically list those crimes that are considered to be so serious that forfeiture of a human right – suffrage – is required.

²¹ See, e.g., Article 25 of the ICCPR.

²² Article 6 of the PEL.

²³ Article 6 of the PEL states no objective criteria for the determination of this inability to perform duties, and specifies no processes for reaching such a determination. It would appear that the PCT has broad discretion in determining the fact of inability to perform duties. Article 6 of the PEL is based on Article 50 of the Constitution.

²⁴ Article 30.5 of the PEL provides that the vote in the PCT can be “open or secret”, but does not provide any guidance on what circumstances dictate when the vote will be open or secret.

- (4) has the right, anytime before election day, to revoke the selection of any of the presidential candidates it has chosen²⁵; and
- (5) makes the final decision on recognition of the new president²⁶.

Within this legal framework, the ability of citizens to effectively influence the choice of their president may be quite limited. The rules on nominating candidates for president are extraordinarily stringent. They are bound to have an extremely constraining and static effect on politics in Turkmenistan. It is almost inconceivable that a real challenger to the existing political order would have any possibility of securing nomination to contest the presidential elections conducted under the existing rules. Given the extraordinary power and influence wielded by the President, this alone represents a profound departure from Turkmenistan's commitments to hold genuinely democratic elections.

Candidacy is further limited by Article 30 of the Constitution of Turkmenistan, which provides that "Only citizens of Turkmenistan in accordance with their abilities and professional preparation have equal rights of access to governmental service", and Article 29 of the PEL, which provides that candidates must be citizens "working in state structure, public organization or in any sector of national economy and having gained high prestige and recognized deserving to be elected".²⁷ This is a rule which by itself significantly reduces the prospects of any independent individual emerging as a presidential candidate, not least because "high prestige" is inherently a subjective quality whose meaning is open to arbitrary interpretation. These requirements are not consistent with OSCE commitments and international standards.²⁸ OSCE states commit to ensure the suffrage rights of their citizens "without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".²⁹

► *The OSCE/ODIHR recommends that these legal provisions be amended so that all citizens have the right to be candidates consistent with OSCE commitments and international standards.*

Article 29 of the PEL further requires that a citizen be "permanently residing for the previous 15 years in Turkmenistan" in order to be nominated as a candidate by the PCT. However, this article does not specify how this durational requirement is calculated. The method of calculation should be clearly stated in the article. This provision should also be amended to state what types of physical presence within the borders of Turkmenistan constitute "residency" and under what circumstances "residency" continues for periods of temporary absence from Turkmenistan.

► *The OSCE/ODIHR recommends that the 15-year residency requirement for a candidate be clarified in Article 29.*

²⁵ Article 32 of the PEL.

²⁶ Article 45 of the PEL.

²⁷ These requirements, coupled with nomination by a select 2,507 persons, result in a situation where "the few choose from among the few".

²⁸ See Paragraph 13.7 of the OSCE 1989 Vienna Document; Paragraphs 5.9, 7.3, and 7.5 of the OSCE 1990 Copenhagen Document; Articles 2, 21, and 23 of the Universal Declaration of Human Rights; Articles 2 and 26 of the ICCPR.

²⁹ Paragraph 13.7 of the OSCE 1989 Vienna Document.

The legal framework does not provide a mechanism for an independent candidate to seek the office of president. Although an individual without political party affiliation may be nominated by the PCT, the fact remains that such a person is not an independent candidate and is only on the ballot due to the nomination of the PCT by a two-thirds vote. An independent candidate is a candidate who is able to obtain candidacy and be placed on the ballot without requiring the nomination of a political party or organ of the State. The legal framework of Turkmenistan permits only candidates who have been nominated by a state organization – the PCT. Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides that citizens have the right “to seek political or public office, individually or as representatives of political parties or organisations, without discrimination”.

► *The OSCE/ODIHR recommends that the legal framework be amended to allow the candidacy of self-nominated independent candidates without the requirement of being nominated by a State institution.*

Article 32 of the PEL provides that the PCT “shall have right, anytime before the election, to reverse its decision of nomination of a candidate”. This violates the rights of voters as well as nominated candidates. There is no legitimate justification for the PCT to have the power to revoke a nomination.

► *The OSCE/ODIHR recommends that Article 32 of the PEL be amended by deleting this revocation provision.*

Article 9.2 of the PEL permits the cancellation of candidate nomination by “respective election committee” for violation of any of the provisions of the PEL. The sanction of cancellation of candidacy is disproportionate and could potentially be based on forthright campaign rhetoric.³⁰ In addition to potential abuse by the “respective election committee”, this provision is contrary to the legal presumption of innocence that remains until one has been adjudicated in a court of law as violating the law.

► *The OSCE/ODIHR recommends that the possibility to cancel a candidate’s nomination be limited to the situation where the candidate does not possess the legal requirements for candidacy (e.g., citizenship or age), and that Article 9.2 be accordingly amended.*

Article 32.2 of the PEL permits a candidate to withdraw from candidacy at any time by filing a written application with the CEC. In order to ensure that ballots are correctly printed and voters are properly informed before elections, Article 32.2 should be amended to state a deadline for candidate withdrawal that allows for the timely printing of ballots. Further, Article 32.2 should require the CEC to make an expeditious decision on the candidate withdrawal statement so that there is no uncertainty as to the candidate’s status or how the ballot should be printed. This provision is particularly problematic in view of provisions on repeat voting (article 47.3 of the PEL), which provides that “In the event of drop out by any reason of one of the candidates, repeated voting shall be held for one remaining candidate. He shall be considered elected if winning more than half of votes of the electors who participated in voting.”

³⁰ Article 9.1 of the PEL prohibits “discrediting” one’s opponent.

► *The OSCE/ODIHR recommends that Article 32.2 and article 47.3 be accordingly amended.*

Furthermore, article 48.2 of the PEL requires a repeat (new) election if no candidate receives the requisite number of votes in a second round of voting. Article 48.2 also provides that, in the case of a repeat election, “the candidates who were not elected in general elections shall not have right to stand for in repeated elections”. There is no legitimate basis for the prohibition on candidacy in repeat elections. It would appear to be premised on the concept that a “weak” candidate, as shown by the failure to win in the earlier election, forfeits the passive suffrage right. This principle, if carried to its logical extreme, would prevent the candidacy of all unsuccessful candidates in all future elections.

► *The OSCE/ODIHR recommends this Article 48.2 prohibition be deleted from the law.*

As noted above, some of the difficulties related to the legal framework for presidential elections derive from the Constitution. If Turkmenistan is to meet its international commitments in this area, amendments to the Constitution appear unavoidable. The Constitution has recently undergone a number of amendments.

B. NOMINATIONS OF CANDIDATES FOR MEJLIS ELECTIONS

For the *Mejlis* elections, candidate nominations (article 28) emanate either from political parties and public associations or from meetings of citizens. In the absence of any opposition political parties or public organisations independent from the State (which for genuine pluralistic and democratic elections must be addressed), the nomination of candidates by meetings of citizens should be subject only to the absolute minimum necessary requirements.

Under current legislation, such meetings cannot be held unless the organisers have made a written request to the district (constituency) electoral commission (DEC) at least three days prior to the meeting. The law is silent on how, if at all, the DEC may respond to such a request or indeed whether the DEC can purport to prohibit the meeting or impose conditions. The meeting itself requires the participation of at least 200 voters residing within the electoral district. Moreover, all voters participating are subject to registration whereby their name, address and date of birth are indicated in the list. The need for such restrictions is not clear and in practice they are likely to impede the nomination of genuinely independent candidates.

► *The OSCE/ODIHR recommends the introduction of legislation that guarantees the existence of political parties or public organisations independent from the State, and in the meantime the nomination of candidates by meetings of citizens should be subject only to the minimum necessary requirements.*

C. NOMINATIONS OF CANDIDATES FOR HALK VEKILLERI, VELAYAT, CITY/ETRAP AND GENGESHES ELECTIONS

Candidate nominations (articles 28-30 of HEL, article 26 GEL, article 26 EEL and article 28 VEL) also must emanate either from political parties, public associations or meetings of citizens. The considerations mentioned above on the nomination of candidates to the

Mejlis apply to candidates to *halk vekilleri*, for *Velayat* Councils, City and *Etrap* Councils and *Gengeshes*.

VIII. ELECTION ADMINISTRATION

A. ELECTION COMMISSIONS

The administrative responsibility for organising elections and referenda in Turkmenistan lies with the Central Commission for Holding Elections and Referenda and its subordinate electoral commissions. The Central Commission is a 15-member standing body whose members are nominated by the President, regional/district people's councils and other public bodies and appointed by the PCT. They should have experience of organising elections but otherwise require no specific qualifications.³¹ Members of the electoral commissions of the five regions and the city of Ashgabat are appointed by the superior commission (the Central Commission) on the recommendation of the regional/district people's councils.³² Similar rules apply to the district (constituency) electoral commissions and the 1,600 precinct electoral commissions.

Article 7.3 of the PEL (and similar provisions of the MEL, HEL, VEL, EEL and GEL) expressly counsels that "representatives of state authorities shall be able to be nominated for membership in the election committees". Also, Articles 14.1, 18.2, and 20 insert the *Halk Maslahaty* into the process of forming the election administration. In addition, Articles 16 and 18 allow for membership to be changed "in case of need" and Article 22.5 allows members to be removed from the commission., There is thus no inclusive process for appointment of a pluralistic election administration. Nor are there any provisions to protect the independence of a commission member, who can easily be removed from a commission.

Consequently, the laws do not establish an election administration that is pluralistic, free from the control of government authorities, and genuinely impartial, in line with international standards.³³ Several provisions in the PEL undermine the establishment of an election administration free of government domination.

► *The OSCE/ODIHR recommends that the laws be amended to provide for election commissions that are independent from government and that are sufficiently inclusive and pluralistic to ensure broad confidence in their work.*

Articles 31.5 and 35.3 of the PEL prohibit a candidate for the presidential office and the candidate's proxies from being a member of an election commission. These prohibitions are too narrow and should be expanded to include all persons who would have an apparent conflict of interest in serving on an election commission. Illustrative, but not

³¹ CEC Law, article 3.

³² Article 15 of the MEL.

³³ See United Nations Human Rights Committee (UNHRC) General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service, para.20; ODIHR Legal Review Guidelines, VI. Emerging democracies, without a strong tradition of accountability for government administration, often prefer to achieve impartiality through the formation of independent election commissions. See, for example, CIS Electoral Convention, 11(1), 19(2)(j);

exhaustive of this category, would be elected state and local officials, appointed state and local government officials, and close family members of excluded persons.

► *The OSCE/ODIHR recommends that the incompatibilities be expanded to include all categories of persons who would have an apparent conflict of interest. This would also require the amendment of provisions that allow representatives of state authorities to be members of election commissions.*

Article 8 of the PEL requires that payment of all election expenses be incurred from the state budget and “financing of elections on account of other sources shall be forbidden.” This prohibition is broad and could be applied to prohibit the donation of election materials from other legitimate sources, such as domestic contributors, and even the possibility of international technical assistance. Article 8 might also be applied to prohibit a candidate from spending the candidate’s own resources on the campaign.

► *The OSCE/ODIHR recommends that article 8 be amended so as not to prohibit donation of election materials from legitimate sources, or candidates covering costs of their campaign activities.*

Article 5 of the Law on the Central Commission for Elections and Referenda provides that “When necessary, resolutions of the Central Election Commission shall be made public through mass media or brought to the public knowledge by some other means.” The effect of this provision is unclear. In any case, it should not be understood as giving the CEC any margin of discretion as regards the publication of its decisions.

► *The OSCE/ODIHR recommends that the Law on the Central Commission for Elections and Referenda clearly states that all decisions and resolutions of the CEC must immediately be made public.*

B. PRECINCTS

The number of voters in a precinct can range from 20 to 3,000.³⁴ A precinct with 3,000 voters may be manageable if voting proceeds very smoothly. However, the legislation needs to be drafted on the assumption that in genuinely contested elections, problems are inevitable on election day and that they may be serious and numerous.

► *In those circumstances, 3,000 voters is probably too many for a precinct election commission to deal with and consideration should be given to reducing the maximum size of precincts.*

C. VOTER LISTS

Responsibility for the compilation of voter lists lies with the precinct electoral commissions. Voter lists seem to be drawn up on an *ad hoc* basis for each election, on the basis of data provided by bodies of local executive power. The laws fail to foresee a system that would allow to check voter lists for possible multiple entries.

³⁴ See e.g. article 12 of the MEL.

► *The OSCE/ODIHR recommends that the law foresees a possibility to check voter lists for possible multiple entries, and establishes a procedure for the resolution of multiple entries. In the longer term, it is recommended to establish a permanent voter register.*

Voter lists must be made available for public scrutiny at least 10 days before the election.³⁵ This allows little time for voters to access the voter lists, apply for any corrections to be made and to challenge, if necessary, any failure to amend the list to a superior commission or to a court. Given that precinct electoral commissions are formed at least 40 days before the election,³⁶ the deadline for publishing voter lists should be brought forward to allow voters more time to make any necessary corrections and bring any necessary challenges or appeals.

► *The OSCE/ODIHR recommends that the timeframe for voter registration be reconsidered.*

The laws allow a person whose name has been omitted from the voters list to apply to the precinct election commission for inclusion. It would appear that a person can request to be added to the list on election day, as the laws provide that a decision on a request must be made “not later than in two days period, and on the eve and the day of election immediately...”.³⁷ It is not desirable that any such corrections are made on polling day itself because this places unnecessary pressure on the precinct electoral commission. It may also allow too little time for voters to pursue appeals or court challenges to a refusal to amend the voter list. Furthermore, if voters *are* to be permitted to challenge the voter list on election day, there should be no possibility for a precinct electoral commission (PEC) to close the polling station before the official time for the end of voting, as is presently envisaged.³⁸ If polling stations close early, voters who are relying on their right to add their names to the voter list on polling day may be deprived of their right to vote.

► *The OSCE/ODIHR recommends that if the laws maintain a possibility for voters to be added on the lists on election day, PECs should not have a possibility to close polling stations before the end of voting time. It is further recommended that any addition to the lists on election day should be contingent on a Court decision based on documented evidence.*

IX. CAMPAIGN

A. LIMITATIONS TO FREEDOM OF EXPRESSION

Article 36.1 of the PEL states that “Political parties, public associations, groups of citizens of Turkmenistan shall be given right to freely campaign/agitate for the candidates after their nomination”. Article 36.2 states that “All citizens, political parties, public associations of Turkmenistan shall be guaranteed a possibility of free and comprehensive discussion of political, business and personal merits of the candidate for

³⁵ See e.g. article 28 of the PEL, Article 27 of the HEL, Article 25 of the GEL, Article 25 of the EEL, Article 27 of the VEL.

³⁶ Article 19 of the MEL, article 20 of the PEL.

³⁷ Article 28 PEL, Article 27 VEL, Article 25 of the EEL, Article 25 GEL, Article 27 MEL, Article 27 of the HEL.

³⁸ See e.g. article 37(2) of the PEL or article 38 of the MEL.

the office of the President of Turkmenistan, as well as the right to agitate for or against the candidate at meetings, in press, on television and radio”.³⁹

These provisions could be applied to limit the speech and associational rights of non-citizens during the period of the pre-election campaign. Such an application would conflict with fundamental human rights protected by the global and regional international conventions recognized in OSCE commitments.⁴⁰ The rights of freedom of expression and association, according to international human rights doctrine, belong to all persons within the jurisdiction of a state and apply even outside of officially sanctioned campaign periods. Even if non-citizens (stateless and alien residents) do not have the right to vote, they do have the right to freely express their opinion, associate and participate in political discussions. OSCE states have committed to “ensure human rights and fundamental freedoms to everyone within their territory and subject to their jurisdiction”,⁴¹ which includes non-citizens. These provisions could also be applied to limit the rights of citizens if citizens attempted to exercise their rights outside of the officially sanctioned campaign period described in these articles.⁴²

► *The OSCE/ODIHR recommends that Article 36 of the PEL and equivalent provisions in the other laws be amended to ensure that it is not interpreted or applied to limit the rights of free expression, speech, assembly, or association.*

Article 34.5 of the PEL prevents the institution of criminal proceedings, arrest, or detention of a candidate without the consent of the PCT. Similarly, article 35 of the MEL prevents the institution of criminal proceedings, arrest, or detention of a candidate without the consent of the CEC.⁴³ Neither the PCT nor election commissions should have the authority to make a pre-trial determination, which is judicial in nature, as to whether existing facts justify interference with a candidate’s campaign through arrest, detention, or institution of criminal proceedings. Decisions on arrest, detention, or institution of criminal proceedings should be left to judicial authorities.

► *The OSCE/ODIHR recommends that Article 34.5 of the PEL and similar relevant provisions in the other election laws be abrogated.*

The six laws⁴⁴ establish legal liability for a person who disseminates “defaming/discrediting information” about a nominated candidate.⁴⁵ This limitation on free expression and speech prevents a robust and vigorous campaign, which is critical to election campaigning in a democracy. The notions of defaming/discrediting being open to interpretation, the implementation of this rule could also be used to deprive individuals from their right to stand as candidates.

³⁹ Similar provisions can be found in article 37 of the MEL.

⁴⁰ See Paragraph 5.21 of the OSCE 1990 Copenhagen Document; Paragraphs 10 and 11 of the OSCE 1992 Prague Document; and the Human Dimension section of the Charter of Paris of 1990.

⁴¹ Paragraph 13.7 of the OSCE 1989 Vienna Document.

⁴² Similarly, under Article 34.1 of the PEL, the campaign speech rights of candidates appear to be limited until official registration.

⁴³ Similarly, article 35 of the HEL, article 31 of the GEL, article 31 of the EEL and article 33 of the VEL prevent the institution of criminal proceedings, arrest, or detention of a candidate without the consent of the CEC, respective territorial or regional election commission.

⁴⁴ Article 9 of the PEL, GEL, EEL, VEL, HEL and MEL.

⁴⁵ Should the contender be the current president, then Article 58 of the Constitution, which requires the protection of the president’s honour and dignity, would also be applicable.

► *The OSCE/ODIHR recommends that these provisions be reformulated in order to comply with international norms that protect the right of free speech and political expression.*

B. EQUAL OPPORTUNITIES FOR CANDIDATES

The Law of Turkmenistan on the Guarantees of Electoral Rights of the People of Turkmenistan states the general principle that elections shall be held on the basis of “equal opportunities” for candidates. Provisions of the six laws⁴⁶ require that candidates be given access to state resources. The six laws require “equal opportunities for all candidates in the course of the election campaign”⁴⁷ and that the CEC ensures “equal conditions for participation of the contenders”.⁴⁸ However, neither law specifies as to how this is to be accomplished. Without more concrete language providing guidance as to how “equality” is to be achieved, it is difficult to ensure that this “equality” principle is enforced during a campaign.

C. CAMPAIGN FINANCE

The laws provide that the cost of preparing and holding elections shall be covered by the State.⁴⁹ However, there is no provision at all on campaign finance. Provisions which provide for expenditure of state funds for the election administration do not expressly provide for any funding of candidate campaigns. Nor do the provisions on equal opportunities reference campaign finance as included in the rights to equal opportunity. Thus, campaign financing would appear to be completely unregulated in the law.

There are no rules addressing such issues as how the costs incurred by candidates in the course of their campaigns are to be met, including the cost of political advertising, the extent to which candidates may meet their campaign costs from their own resources, restrictions on the size of campaign funds and restrictions on donations to campaign funds.

In most countries the cost of election campaigns is very significant, even where the State meets the cost of some activities (e.g. transport for the candidate and broadcasts in the state-owned media). Regulating campaign finance is a perennial and universal concern for those who draft election laws. It is an issue which needs to be addressed in Turkmenistan. It is difficult to see how the costs of an autonomously conducted election campaign (i.e. a campaign not organised by the State) could be met by the State. Even if they were, the size of campaign funds and restrictions on the way they are formed, used and accounted for would still need to be addressed in law.

Candidates must have sufficient resources for conveying their political messages to voters. Paragraph 7.6 of the OSCE 1990 Copenhagen Document requires that candidates have the necessary legal guarantees “to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

⁴⁶ See, e.g., Articles 34.1 and 34.2 of the PEL, article 35 of the HEL, article 31 of the GEL, article 31 of the EEL, article 33 of the VEL.

⁴⁷ See, e.g. article 1 of the PEL and MEL.

⁴⁸ See, e.g. article 15 of the PEL, article 16 of the GEL, article 14 of the MEL.

⁴⁹ Article 8 in all six laws.

► *The OSCE/ODIHR recommends that the laws be revised to provide specific guidelines for the public finance of candidates in the election. The basic principle behind funding election campaigns is to create equal opportunity so that all contestants can compete effectively in the election process.*

The laws should also require periodic pre-election and post-election reporting of campaign contributions and expenditures. This should include disclosure of all contributions received, the source of those contributions, and the amount and type (cash or in-kind) of the contributions; and disclosure of expenditures made by an electoral contestant, the identity of the recipient of the expenditure, and the amount expended. Campaign finance regulation is not effective without clearly designating the agency responsible for this oversight role, and effective and proportionate sanctions for those who transgress the legal regulations.

► *The OSCE/ODIHR recommends that the election legislation include these requirements and accountability mechanisms.*

Candidates and parties are not permitted to organise their own meetings with voters. Thus, for example, under the MEL, “Meetings with voters shall be organised by the district electoral commissions together with the respective bodies of local executive power and local self-government”.⁵⁰ This represents an undue bureaucratic control of campaign activities. Candidates must be free to organise campaign meetings when and where they wish, subject only to the availability of premises. Election campaign gatherings provide an important example of candidates, their supporters and indeed their opponents enjoying freedom of association. The right to associate with other citizens is guaranteed by the Constitution of Turkmenistan,⁵¹ by the ICCPR and other international instruments and is not dependent on the permission or intervention of electoral commissions or state bodies. Their function must be to *facilitate* such gatherings on strictly equal terms for all candidates.

► *The OSCE/ODIHR recommends that the election legislation be amended accordingly.*

D. MEDIA

The election legislation contains few provisions governing the media, whether private or publicly owned, in their coverage of elections and the promotion of a candidate’s campaign. The law should stipulate in explicit terms that access to the broadcast media must be provided on equal terms to all candidates. It should identify mechanisms for ensuring that this principle is addressed in practice. For instance, the law should clearly indicate those elections for which registered candidates may issue campaign broadcasts on radio or television, the conditions on which such broadcasts are prepared and the allocation of broadcast times. The rules need to distinguish between national and local elections and between different forms of media.⁵²

The laws should be amended to state the rules that are to be applied in order to accomplish the goal of “equal” access to broadcast media. These rules should be clearly

⁵⁰ Article 37 of the MEL. Similar provisions can be found in article 35 of the VEL, article 33 of the EEL article 36 of the PEL, article 37 of the HEL and article 33 of the GEL.

⁵¹ Articles 27-28.

⁵² See article 33 of the GEL, which refers in unqualified terms to the right to campaign “in the mass media”.

stated, and capable of objective application. Additionally, the rules should take into account the desirability of having slots at different times during the election campaign. Each media outlet should be required to distribute candidate slots fairly throughout the campaign so that candidates can communicate their messages “equally” throughout the course of the entire campaign period.⁵³ The timing of these access slots should also be fair, balanced and non-discriminatory.

► *The OSCE/ODIHR recommends that the laws be amended and that the amount of broadcast time distributed on an equal basis be sufficient to enable all candidates to compete effectively in the election.*

On the separate issue of coverage of the election in news broadcasts and current affairs programmes, the law should also make clear that, at least on state-owned broadcast media, all such coverage must be strictly impartial. State owned or controlled media must refrain from campaigning for or against any candidate and must be completely impartial in the news coverage and treatment of candidates.

► *The OSCE/ODIHR recommends that the laws be amended to include this requirement and provide for sanctions for any violation.*

The laws⁵⁴ prohibit candidates from using their “official position for conduct of election campaign”. However, the article is vague as it provides no guidance or objective criteria for determining when it is violated.

► *The OSCE/ODIHR recommends that these provisions be elaborated so that they can be enforced in an effective manner.*

X. VOTING AND COUNTING PROCEDURES

Each law on specific types of election contains some appropriate provisions on the organisation of the voting process and the counting of results, e.g., rules designed to facilitate the secrecy of the ballot. However, there are various important aspects of these processes which are not regulated adequately or at all.

A. VOTING

The laws do not establish fixed voting hours and require the CEC to “fix the time of voting on the day of elections”.⁵⁵ It is common for electoral legislation to state the hours of voting to ensure that voters have sufficient time to vote and reinforce voter turnout with fixed voting hours that are commonly known and can be relied on.

► *The OSCE/ODIHR recommends that the hours for voting be expressly stated in the laws.*

⁵³ The law does not appear to distinguish between state and privately owned media.

⁵⁴ Article 34.3 of the PEL, 31 of the GEL, 31 of the EEL, 35 of the MEL, 35 of the HEL, and 33 of the VEL.

⁵⁵ See for example articles 15.6 and 37.1 of the PEL.

Provisions to ensure strict accountability for the production, transportation, issuing and cancellation of ballot papers are generally lacking. The absence of such provisions undermines the integrity of the voting process.

► *The OSCE/ODIHR recommends that this aspect of the election process be adequately developed in the legislation. The election laws should also include a rule allowing voters who have accidentally spoiled their ballot papers to be issued with a replacement, subject to appropriate safeguards.*

The election legislation permits the polling station election commission “to announce voting finished anytime if all electors on the register have voted at the polling station and proceed with counting of votes”.⁵⁶ However, it also permits a request for inclusion in the voters list to be made on election day.⁵⁷ Thus, it would be possible to request inclusion on the voters list at any time before the hour for closing set by the CEC. Further, starting the counting of ballots at different times in polling stations throughout the country reduces transparency and impedes possibilities for observers to assess the counting process.

► *Notwithstanding considerations expressed above on the adding voters to the lists on election day, the OSCE/ODIHR recommends that the laws be amended to require that a polling station remain open until the hour for closing of polling, regardless of whether all voters listed on the voters list have voted.*

Article 33 of the PEL provides that ballots shall be printed “in the official/state language”. Thus, it would appear that the ballot can be printed in only one language. Conversely, article 34 of the MEL, article 34 of the HEL, article 32 of the VEL, article 30 of the EEL and article 30 of the GEL provide that “Ballot papers shall be printed in the state language and also in any other language used by the majority of the population of the electoral district”. The rationale of having different rules for the Presidential election and the other elections is unclear and should be reconsidered.

► *The OSCE/ODIHR recommends that consideration be given to requiring the printing of ballots for presidential elections in both the state and any other language that is used by a significant number of voters in the geographical area covered by the polling station.*

Article 33 of the PEL and article 34 of the MEL require the delivery of ballots to polling stations no later than three days before election day. This deadline apply also to other election contests, as set in article 34 of the HEL, article 32 of the VEL, article 30 of the EEL and article 30 of the GEL. However, neither the PEL and the MEL, nor the HEL, VEL, EEL and GEL define who can observe the printing of ballot papers or be present when the ballot papers are delivered to respective polling station election commissions. The printing and delivery of ballots, as well as the destruction of defective ballots and printing plates, should be open to the same level of transparency as other parts of the election process.

► *Accordingly, the OSCE/ODIHR recommends that the laws be amended to establish deadlines for the delivery of ballot papers for Halk Vekilleri, Gengesh, City/Etrap and*

⁵⁶ See for example article 37.2 of the PEL, article 38 of the MEL

⁵⁷ Article 28 of the PEL, article 27 of the MEL, article 27 of the HEL, article 25 of the GEL, article 25 of the EEL, article 27 of the VEL

Velayat elections, and to explicitly allow the printing and delivery of ballot papers to election commissions, as well as the destruction of defective ballots and printing plates, be open to observers and representatives of the media. Further, the law should require that a proper record of the total number of ballots issued to precinct election commissions should be kept not only at the district election commission but also at the precinct election commission. The number of received ballots must be counted and checked against this record prior to the opening of the polling station and entered into the protocol. Copies of all these protocols should be provided to the CEC and available to the observers.

The laws regulate the voting process,⁵⁸ but do not define who may be present in the polling station during the voting. This failure to define who may be present may result in the presence of state or local government officials and other persons who, by the nature of their positions, should not get involved with the voter process due to real or perceived influence and intimidation of voters.

► *The OSCE/ODIHR recommends that the laws be amended to clearly state who may, at any time during elections, be present in the polling station. Access to a polling station should be strictly limited to a person who has a legitimate reason for being in the polling station for reasons clearly stated in the law. It is also recommended that, where the presence of police are deemed necessary by the polling station commission to address a threat to voters or the commission, the police should leave the polling station premises immediately after the situation has been properly addressed.*

Provisions on the organisation of voting require that a voter, before voting, present a passport or “other identification document”. They do not specify what documents are acceptable for identification purposes or whether the identification document must contain a photograph of the voter.

► *The OSCE/ODIHR recommends that these provisions be amended to specify what documents are acceptable for establishing the identity of a voter.*

These provisions also foresee that “the fact of issuance of ballot paper shall be ticked off in the electoral register”. Requiring a voter to sign the register at the issuance of the ballot serves as a better security measure than the election commission member making a “tick” on the list.

► *Consideration should be given to amending the laws to require the voter to sign the register when receiving a ballot.*

The provisions of the laws on the conduct of voting⁵⁹ require *negative voting*. The voter must cross out the names of all the candidates he/she votes against rather than indicating the candidate of his or her choice. Negative voting increases the chances of spoiled ballots because of the increased opportunity to make errors, by not marking off all the names except one or by marking them off in an incorrect fashion. Furthermore, negative voting requires time-consuming calculations in order to determine the number of votes

⁵⁸ Articles 38 and 39 of the PEL and of the MEL, articles 39 and 40 of the HEL, articles 37 and 38 of the VEL, articles 35 and 36 of the EEL and articles 35 and 36 of the GEL.

⁵⁹ Article 39 of the PEL, article 40 of the MEL, article 40 of the HEL, article 36 of the GEL, article 36 of the EEL, article 38 of the VEL.

for and the number of votes against each candidate – also increasing the risk of error during the count.

► *This practice, inherited from the Soviet period, has been eliminated in many former Soviet republics for good reason and should be eliminated in Turkmenistan too.*

Negative voting also raises a concern as to secrecy of the vote. Where there is only one candidate on the ballot, voters will not need to mark the ballot paper at all to vote for that candidate. In such cases, a voter can walk straight through the voting booth, or room for voting, to the ballot box; indeed, they have no reason to pause on the way. Those voters who stop to mark the ballot paper in any way will be clearly voting against the only candidate on the ballot. It will thus be clear to all persons present how the voter is voting and the secrecy of the ballot will be violated.

► *The OSCE/ODIHR recommends that the act of casting a ballot be as simple as possible and the voter's choice should be made by making a single mark against the preferred candidate. For the above reasons, the laws should be amended to establish a positive voting system and procedures for marking ballot papers that requires the voter to vote "for" a candidate instead of "against" one or more candidates.*

B. EARLY VOTING

The laws provide a special voting paper – “form for accounting of the opinion of the voters who are absent on polling day”.⁶⁰ This is, apparently, how a voter votes during the early voting process should the ballots not yet be printed. However, the laws have no specific article regulating the content of this form. Thus, the form developed by the CEC could contain more or less information concerning candidates than is stated in the provisions on ballot papers.⁶¹

► *The OSCE/ODIHR recommends that the PEL specify what information is on the “form for accounting of the opinion of the elector”. Security is also of concern since the form may not have the same security measures as the ballot and may be more easily duplicated and subject to fraudulent uses. This is particularly true since voters will use these forms for early voting and outside of ordinary polling conditions.*

Article 40.1 of the PEL⁶² provides: “The elector who is unable to be available at place of residence on the day of elections (departure for a business trip, vacation, referral to health institution) shall have right to forward in advance his declaration of will in respect of the standing presidential candidates to the election committee of the precinct”. Under 40.2 of the PEL, this right arises “from the moment of presentation of electoral register for general familiarization”. If the ballots are not available at the polling station, then the voter is provided a special voting paper – “form for accounting of the opinion of the elector”, which is discussed above. Article 40 is problematic for several reasons:

⁶⁰ Articles 15.7, 21.6, 40, and 41.3 of the PEL, articles 14, 20, 41 and 42 of the MEL; articles 14, 16, 18, 20, 41 and 42 of the HEL, articles 16, 20, 37 and 38 of the GEL, articles 14, 18, 37 and 38 of the EEL, articles 14, 18, 39 and 40 of the VEL.

⁶¹ Article 33 of the PEL, article 34 of the MEL, article 34 of the HEL, article 32 of the VEL, article 30 of the EEL and article 30 of the GEL.

⁶² Similar provisions can be found in article 41 of the MEL, article 41 of the HEL, article 37 of the GEL, article 37 of the EEL and article 39 of the VEL.

First, provisions on early voting provide no details specifying during what hours or in the presence of which polling station election commission members is this early voting process administered. Secondly, it does not appear that candidates have the right to have observers present for the early voting process. Finally, the early voting process can increase the opportunity for electoral fraud. It places a greater burden on election administration and can significantly hinder observation efforts.

► *The OSCE/ODIHR recommends that the provisions on early voting in the election laws be amended to limit the potential for early voting to a prior request based on justified reasons, and be substantially more developed in order to ensure that the early voting process is fully secure, transparent and accountable.*

C. MOBILE BALLOT BOX

The legislation permits mobile voting for voters who cannot attend a regular polling station “by reason of medical condition or other reasons”.⁶³ Mobile voting, although acceptable as a method for ensuring the voting rights of persons who cannot attend due to age, health, or infirmity, must be carefully regulated in order to minimize the possibility of electoral fraud. The relevant provisions of the laws do not provide any safeguards and are open to abuse.

► *The OSCE/ODIHR recommends that Article provisions on mobile ballot boxes be amended to include the following safeguards for mobile voting:*

- *Mobile voting should be used only in cases where it is physically impossible for the voter to travel to the polling station to vote.*
- *A request for mobile voting must be submitted by the voter, and acted upon by the polling station committee, within a deadline established by law.*
- *This deadline should not be one or a few days before election day, but should be sufficiently prior to election day to permit observers to plan in advance to observe mobile voting.*
- *The number of ballot papers taken out for mobile use and the number later returned should be formally recorded in all protocols.*
- *The number of ballot papers taken out should accord with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.*
- *The number of persons who have used the mobile box should be recorded in polling station and successive protocols. This makes it possible to identify particular areas where the proportion of votes cast using mobile boxes is unusually high, which may indicate fraud.*
- *At least two members of the polling station committee should administer mobile voting jointly within the geographical territory covered by a polling station and ideally members should not be from the same political party or governmental institution.*

A balance must be maintained between facilitating the voting rights of citizens and ensuring the integrity of elections. The above safeguards would create such a balance.

⁶³ Article 38.5 of the PEL, article 35 of the GEL, article 35 of the EEL, article 39 of the MEL, article 39 of the HEL, article 37 of the VEL.

D. COUNTING

There is a need to formulate more elaborate rules to guide members of the electoral commission during the counting process, for instance, as to what amounts to a spoiled or invalid ballot paper and how disputes over such issues are to be resolved and recorded.

There is a significant lack of transparency in the procedures for counting and processing the election results. The appropriate use of protocols and the immediate publication of tabulated results would do much to address this defect. Measures likely to enhance the transparency and integrity of the election process and promote public confidence in the election results include:

- A signed and sealed copy of the precinct results should be posted in a public place immediately after the conclusion of the count at the precinct. The same rule should apply at all superior levels of electoral commission.
- Certified copies of the protocols should also be made available to domestic and international observers, candidate proxies and representatives and other interested parties immediately after the members of the electoral commission have signed and sealed their own copies of the protocol.
- Moreover, each superior electoral commission should publish a breakdown of the detailed results from each of the electoral commissions at the level below. Candidates' proxies or representatives, observers and other interested parties would thereby be able to check that the results contained in the protocol obtained from the inferior commission had been correctly recorded by the superior commission and election results in national elections could thus be traced from precinct level to national level.

Provisions on filling in result protocols⁶⁴ do not require that the results protocols be completed in ink, but only require that the protocol be signed and sent to the immediate superior election commission.

► *The OSCE/ODIHR recommends that these provisions be amended to require completion of the results protocols in ink. This would prevent erasure and changing of protocols completed with pencil.*

The same provisions fail to establish a requirement for the results protocols to be publicly posted or given to observers.

► *The OSCE/ODIHR recommends that these provisions be amended to require that the official results protocols be publicly posted at the polling station, all superior election commissions, and provided to observers at all levels of election administration.*

Provisions on the publication of results for national elections⁶⁵ require the CEC to publish in the press information on the election results no later than ten days after they are established.⁶⁶ These articles require improvement in several areas. First, publication

⁶⁴ Articles 41.5 and 42.5 of the PEL, articles 42.5 and 43.5 of the MEL, articles 42 and 43 of the HEL, articles 40 and 41 of the VEL, articles 38 and 39 of the EEL, articles 38 and 39 of the GEL.

⁶⁵ Article 44 of the PEL, article 45 of the MEL, article 45 of the HEL.

⁶⁶ Similar provisions of the VEL, EEL and GEL do not specify how and through which means the publication of results should be done.

should not be limited to the press, but should also include broadcast media. Secondly, the CEC should be required to announce and publish in broadcast media preliminary results as they become available. Finally, the information on all results, both preliminary and final, should be in the form of tables with all relevant details broken down to the level of the polling station, which will enable all interested parties to audit the outcome of the elections from polling stations, through intermediate levels, to the CEC level. The tables should include the number of voters in each polling station who used the mobile ballot box and other alternative voting procedures in order to identify particular areas where the proportion of votes cast using mobile or other alternative voting procedures is unusually high, which may indicate fraud.⁶⁷

► *The OSCE/ODIHR recommends that Article 44 of the PEL and 45 of the MEL be amended accordingly.*

Article 42.3 of the PEL establishes that “Elections in precinct or district shall be admitted void if less than half of the electors put on the register took part in voting.” This provision is problematic for it creates a possibility of disregarding the votes of some voters, and consequently of disenfranchising them for the mere reason that in the polling station where they are registered to vote, less than half of the voters cast their ballot. This is in contradiction with the principle of universality as agreed by the OSCE participating States in paragraph 5 of the Copenhagen Document.⁶⁸ This provision also creates possibilities of abuse and of selective invalidation of polling stations.

► *The OSCE/ODIHR recommends that Article 42.3 of the PEL be abrogated.*

Article 43 of the MEL, article 43 of the HEL, article 41.4 of the VEL, article 39 of the EEL and article 39.4 of the GEL establish that the election is invalid “if less than half of the voters on the voter list participated in it”. This provision does not specify at which level this turnout requirement applies. However, considering that these articles regulate the establishment of results for the electoral district, it should be understood that the turnout requirement applies at the level of the constituency. This practice is not recommended for turnout requirements have the potential to create cycles of failed elections and can undermine voters’ confidence in the worth of voting.

► *The OSCE/ODIHR recommends that turnout requirements be removed from the election laws.*

Article 42.4 of the PEL provides that “The district election committee shall be able to admit the elections in the precinct or district void due to violations of this Law committed in the course of elections or counting of votes.” These provisions are problematic for several reasons. Firstly, the invalidation can be based on any type of violation of law, regardless of the nature and gravity of the violation. Secondly, the legislation does not provide any procedure regulating a request for invalidation or the degree of proof necessary to sustain a request for invalidation. Thirdly, the law does not seem to provide a possibility for a repeat voting in the specific precincts or districts where the election has been invalidated; only the entire national contest can be repeated,

⁶⁷ The same information for early voting should be included if the early voting process is retained in the law.

⁶⁸ Final Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, July 1990.

upon a decision of the PCT if “the elections were admitted void” (article 48.1). In the latter case however, the law does not seem to offer a precise definition of the modalities for the invalidation of the whole presidential election. It also seems to leave the decision to repeat the election to the entire discretion of the PCT.

► *The OSCE/ODIHR recommends that Article 42.4 of the PEL be amended to establish a procedure for invalidation of election results that is detailed, equitable, transparent, can be applied objectively, and provides possibilities for a repeat voting in specific precincts and districts, especially in cases when the cumulative effect of the precincts or district invalidated could affect the outcome of the election. Additionally, circumstances and procedures under which the entire presidential election is deemed void and is consequently repeated must be substantially clarified.*

Article 43 of the MEL, article 43 of the HEL, article 41.3 of the VEL, article 39 of the EEL and article 39 of the GEL establish a possibility for intermediate election commissions (district, city or territorial election commissions depending on the elections) to “declare the election invalid due to violations of this Law committed during the elections or the vote count”. These provisions raise the same concerns as article 42.4 of the PEL. In addition, these laws do not seem to offer possibilities of invalidating and re-running specific precincts, but only entire constituencies.

► *The OSCE/ODIHR recommends that these provisions be amended to establish a procedure for invalidation of election results that is detailed, equitable, and transparent, that can be applied objectively, and provides possibilities for invalidation and repeat voting in specific precincts, especially in cases when the cumulative effect of the precincts invalidated could affect the outcome of the election.*

Provisions on repeat voting⁶⁹ requires repeat (second round) voting between the top two vote receiving candidates if no candidate secures a majority of the votes in the first round of voting. They also provide that, if due to withdrawal of candidacy only one candidate remains, then repeat voting will be held for the one remaining candidate. However, the provisions do not specify what will be the form of the ballot if there is only one candidate remaining. Nor do they determine how a voter is to mark a single candidate ballot, how single candidate ballots are to be counted, and how the results are determined.

► *The OSCE/ODIHR recommends that these provisions be clarified to address these issues.*

None of the election laws contain a provision for a recount of votes. The possibility to have a recount of votes is common in election legislation as it permits the correction of obvious counting errors without requiring resort to judicial action in courts.

► *The OSCE/ODIHR recommends that the laws be amended to provide a fair procedure for requesting and conducting a recount of votes where the result of the recount could affect the determination of the winning candidate.*

⁶⁹ Article 47 of the PEL, MEL and HEL, article 41 of the GEL, article 41 of the EEL and article of the 43 VEL.

XI. TRANSPARENCY

The Law makes relatively general provisions in respect of the crucial issue of the transparency of the election process. International and domestic observers and journalists (“representatives of the mass media”) are entitled to be present at sessions of election commissions, when the ballot boxes are sealed prior to voting, during voting and the counting of the ballot papers, and during the determination of the votes.⁷⁰ However, there are no provisions on the rights and duties of such persons when observing these processes. Domestic observers are entitled to monitor elections of regional people’s councils, city/district people’s councils and *gengesh* elections but international observers are not,⁷¹ although the OSCE participating States committed to “also endeavour to facilitate similar access for election proceedings held below the national level”.⁷²

► *The OSCE/ODIHR recommends that the laws be amended to expand the observation rights of observers, as an election is a process that includes activities before and after polling. Observers must have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other electoral documents, at all levels, during the entirety of the election processes, including processes before and after election day. Further, observers should receive appropriate credentials a sufficient period of time prior to elections to enable them to organize their activities effectively. Observers should be given unimpeded access to all levels of election administration, effective access to other public offices with relevance to the election process, and the ability to meet with all political formations, the media, civil society, and voters.*

There are no rules in either the specific election laws or the Law on Guarantees of Electoral Rights on domestic observers, such as on who may act as domestic observers, criteria for their registration, and their rights and obligations. Such rules are needed to give substance to the institution of domestic election observation.

Further consideration should also be given to the question of candidates’ proxies. Candidates are entitled to appoint just three proxies. This may be sufficient for *gengesh* elections⁷³ but it is plainly insufficient for elections at the national level. Subject to their ability to find sufficient volunteers, candidates should be entitled to deploy sufficient proxies or representatives to monitor and if necessary challenge the actions of electoral commissions and other participants in the election process at all levels. What would be an adequate number to meet these needs is open to debate but three is manifestly inadequate for *Mejlis* and presidential elections. Consideration should also be given to allowing all candidates to nominate non-voting members to electoral commissions as a means of enhancing transparency.

► *The OSCE/ODIHR recommends that the laws be amended accordingly.*

⁷⁰ Article 22 of the MEL, article 23 of the PEL, article 22 of the HEL.

⁷¹ Article 22 of the VEL, article 20 of the EEL and article 20 of the GEL.

⁷² See par.8 of the Copenhagen Document.

⁷³ Article 32 of the GEL.

XII. LEGAL PROTECTION

The decisions and actions of electoral commissions may be appealed to a superior electoral commission or a court. Such appeals may be brought by candidates, their proxies or by voters.⁷⁴ This is all the election legislation has to say about a crucially important aspect of the election framework. None of the relevant provisions provide any deadlines, procedures, or substantive requirements for complaints and decisions on complaints. The issue is not addressed further in the Law on Guarantees of Electoral Rights. It is also of concern that provisions on appealing decisions of election commissions⁷⁵ allows for an appeal to be lodged with either a superior election commission or a court. These provisions create the possibility of inconsistency in decisions.

Provisions on election-related complaints and appeals should be amended to state clear procedures for a uniform complaint process that defines the roles of each level of election commission and each level of courts. The procedures should also include deadlines within which complaints must be submitted and decided and the outcome communicated to the complainant. This process should identify which bodies act as fact finding bodies of first instance and which bodies act as appellate review bodies. This process should include the possibility for voters, candidates, political parties, and proxies to file a complaint against a broad range of violations, including against the inactivity of election commissions or against inappropriate actions by government officials. Complainants must have the right to present evidence in support of the complaint, receive a fair and public hearing by an impartial tribunal in transparent proceedings, and be provided an effective and speedy remedy.⁷⁶ The laws should also clearly state that the CEC and other election commissions must officially rule on complaints, in public session, expeditiously, and within deadlines established by the law. Complainants should also be notified, in writing, of the decision reached on the complaint. The complainants should also be informed of their rights to appeal, including where the appeal should be filed and what documentation is required to file the appeal.

► *The OSCE/ODIHR recommends that the laws be amended to provide a complaint and appeal process that addresses, at a minimum, the above matters.*

XIII. CONCLUSION

The current election legislation requires broad improvement to establish a legal framework for democratic elections that is in line with OSCE commitments and international standards. To this end, the concerns and issues discussed in this assessment should be addressed quickly and comprehensively.

⁷⁴ See for example, article 24 of the MEL, article 25 of the PEL.

⁷⁵ Article 25 of the PEL, article 22 of the GEL, article 22 of the EEL, article 24 of the MEL, article 24 of the HEL, article 24 of the VEL.

⁷⁶ See Articles 8 and 10 of the Universal Declaration of Human Rights; Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 through 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 through 21 of the OSCE 1991 Moscow Document.

This assessment is offered by the OSCE/ODIHR with the objective of assisting the authorities in Turkmenistan in their endeavours to improve the legal framework for elections, meet OSCE commitments and international standards, and apply best practices for the administration of a genuine democratic election process. The OSCE/ODIHR stands ready to assist the authorities of Turkmenistan in their efforts in this regard.