

ODIHR Submission of Information about an OSCE participating State or Partner for Co-operation under consideration in the Universal Periodic Review Process

Participating/Partner State: Turkmenistan

UPR Session and Date of Review: 30th Session, May 2018

Background

Turkmenistan has been a participating State in the former Conference for Security and Co-operation in Europe (CSCE) and the present Organization for Security and Co-operation in Europe (OSCE) since 1992 and has thus undertaken and has recently reaffirmed a wide range of political commitments in the “human dimension” of security as outlined in relevant OSCE documents.¹

The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has been mandated by OSCE participating States, including Turkmenistan, to assist them in implementing their human dimension commitments. ODIHR assistance includes election observation and assessment activities as well as monitoring and providing assessments, advice and recommendations relating to implementation of commitments in the fields of human rights, democracy, tolerance and non-discrimination, and the situation of Roma and Sinti in the OSCE area.

The present submission provides publicly available country-specific information that may assist participants in the Universal Periodic Review process in assessing the situation in Turkmenistan and its implementation of past recommendations, as well as to formulate new recommendations that may be relevant to enhancing the enjoyment of human rights and fundamental freedoms in Turkmenistan.

Overview of this Submission

This submission contains a brief overview of election related activities undertaken by ODIHR in Turkmenistan in the past 4 years.

There are also short references to data on Turkmenistan in the area of tolerance and non-discrimination.

Finally, there is a short overview of ODIHR assessments and activities in the area of legislation, women’s political participation, rule of law and human rights defenders.

Election-related activities

ODIHR deployed an Election Assessment Mission (EAM) to observe the 2 February 2017 presidential election. The EAM assessed this election for its compliance with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. The EAM focused on the legal framework related to

¹ Compendium of OSCE Human Dimension Commitments, vol 1 and 2; Astana Commemorative Declaration, 2010.

elections and fundamental freedoms and its implementation, the work of the election administration and the media environment.

The final report concludes that “the presidential election took place in a strictly controlled political environment. The predominant position of the incumbent and the lack of genuine opposition and meaningful pluralism limited voters’ choice. The lack of clear regulations for key aspects of the process had a negative impact on the administration of the election, especially at lower levels. The campaign outside of the events organized by Central Election Commission for Election and Referenda (CEC) was absent and the rigidly restrained media gave the incumbent a clear advantage.”²

Final report includes 27 recommendations to further improve the electoral process related to both legislation and implementation. The report recommends, in particular, recommends a comprehensive review of election legislation to bring it in accordance with OSCE commitments and other international obligations and standards for democratic elections in a public and transparent legislative process. It is further recommends that, in order to ensure a clear separation between the state and political parties, the role the CEC and local administrations in the campaign be limited. Other recommendations include establishing measures to prevent serious electoral malpractices like proxy voting, multiple voting and ballot box stuffing, introducing temporary special legislative measures to promote women’s political participation, and establishing a framework for campaign finance regulation in line with established international good practice.

There was no follow up visit undertaken following this election; however, in April 2015 ODIHR led a two-day workshop focused on recommendations provided in the final report on the 2013 parliamentary elections. The workshop followed a presentation of the final report in 2014, which led to an agreement between the ODIHR and the government of Turkmenistan to continue the co-operation in addressing the recommendations provided in the report.

Next parliamentary elections are anticipated to take place by December 2018. ODIHR stands ready to deploy a Needs Assessment Mission ahead of these elections upon official invitation from the authorities.

Legislation reviewed by ODIHR

Upon request by authorities of a participating State, and OSCE field operation or another OSCE institution, ODIHR reviews draft or enacted legislation of OSCE participating States on topics relating to the human dimension of security for its conformity with OSCE commitments and other international standards. The legal reviews and opinions, often produced in co-operation with the Venice Commission of the Council of Europe, are available at www.legislationline.org.

Basic information about the constitutional system and legislation of Turkmenistan is available on www.legislationline.org.

In July 2016, ODIHR issued comments on the draft Constitution of Turkmenistan. No other legal reviews on Turkmenistan’s legislation or draft legislation (on matters other than

² The Final report was published on 10 May 2017 and is available at <http://www.osce.org/odihr/316586>.

elections) were issued by ODIHR between 1 January 2013 and 25 September 2017. ODIHR's main recommendations regarding the draft Constitution are summarized below.

ODIHR Comments on the Draft Constitution of Turkmenistan (21 July 2016)

These comments were requested by the OSCE Centre in Ashgabat. They focused on the Draft Constitution of Turkmenistan adopted by a Constitutional Commission on Improvement of the Constitution of Turkmenistan and submitted for nation-wide discussion.

ODIHR noted a number of positive features of the draft Constitution, such as some new provisions pertaining to fair trial guarantees. At the same time, it emphasized that the practical implementation of all provisions would 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. ODIHR reiterated a number of key recommendations it made in 2008, namely (i) the need for a clear hierarchy of norms and for clarifications on the status of international treaties in the Turkmen legal order, (ii) the inclusion of adequate mechanisms to review the constitutionality of laws and other decisions or acts, (iii) the establishment of institutional mechanisms to ensure the separation of powers, (iv) the introduction of new provisions to counter-balance the quite extensive presidential powers, and (v) the need to reform the prosecution service, by removing its general supervisory powers and confining its powers to the field of criminal prosecution. It also stressed the need to enhance the constitutional provisions on the judiciary in order to guarantee the independence and impartiality of judges and of the judiciary as a whole. ODIHR's main recommendations included the following:

On the hierarchy of legal norms:

- state more explicitly the principle of hierarchy of norms, including a clearer and consolidated provision specifying: (i) that the Constitution is a fundamental law that prevails over any other laws and legal acts; (ii) the clear hierarchical priority for international treaties that have been ratified by Turkmenistan over general laws and other legal norms adopted by the President and other executive bodies; (iii) that the laws passed by the Mejlis should prevail over any other legal norms (except the Constitution), including decrees, regulations and orders issued by the President and the Cabinet of Ministers; (iv) the hierarchical relationship between legal norms issued by the Cabinet of Ministers and legal acts issued of the President and between legal acts that are issued by local state and self-government bodies and central legal acts
- consider establishing a separate constitutional review body, that would be independent from the executive and legislative branches, in order to secure a uniform interpretation of the Constitution and compliance with the principle of hierarchy of norms
- explicitly provide that provisions of international treaties ratified by Turkmenistan are part of the national legal order, have direct effect and may be invoked before domestic courts
- specify which organs or persons have the right to initiate laws, the material scope of laws as opposed to other normative acts, the legislative procedure, and the publication in an official journal, while adding that legislation should be formulated and adopted as the result of an open and inclusive process reflecting the will of the people

On the office of the President:

- retain the presidential term of office of five years, instead of seven years, and introduce express limitations to re-election
- specify that the President is bound by the Constitution and by law
- narrowly prescribe those cases in which the President may declare a state of emergency, while specifying the respective competences of institutions during such times, and including a mechanism for regular review of the continued necessity and proportionality of the state of emergency and adopted measures
- remove the reference to the “motion of non-confidence” and consider another mechanism to engage the legal responsibility (impeachment) of the President in case of grave violations of the Constitution or the law, involving a lower parliamentary threshold to initiate the procedure as well as a court or other independent body to ensure compliance with fair trial standards
- introduce institutional mechanisms to ensure the separation of powers, particularly provisions to counter-balance the quite extensive presidential powers

On the Mejlis and its powers:

- ensure that the Mejlis has the power to approve and/or control executive decisions to impose a state of public emergency and other acts undertaken by the executive during such times
- circumscribe more strictly the conditions and modalities of the transfer of legislative powers to the President, while providing that such a transfer shall always be temporary in nature
- remove the right of the Mejlis to deprive a deputy of his/her mandate, while specifying that deputies shall act in the interest of the people
- provide that deputies shall not be held liable for opinions expressed and votes cast in the discharge of parliamentary duties (functional immunity/non-liability), while circumscribing more strictly the scope of parliamentary inviolability and detailing clear, objective and impartial criteria and procedures for lifting immunity
- consider introducing provisions permitting the use of temporary special measures to promote the participation of women in political and public life

On the judiciary:

- specify the selection criteria or broad principles regulating the appointment procedure for judges, as well as the basic elements, grounds and procedures for suspension, dismissal or resignation of judges, while adding the right for individual judges to appeal against the involuntary termination of their mandate to an independent body
- consider the establishment of an independent judicial council or similar body, which would in particular exercise decisive influence over judicial appointments and thus limit the powers of the executive in that respect
- specify that judges shall be impartial and that they shall enjoy functional immunity for acts performed in the exercise of their judicial functions, with the exception of intentional crimes
- explicitly state that judges are permanently appointed until retirement, unless they are exceptionally removed for reasons of incapacity or behavior that renders them unfit to discharge their duties, in which case they should be able to appeal such decision before a court

- elaborate the constitutional provisions regarding the Supreme Court's competence and key principles regulating its status, composition and appointment modalities, roles and responsibilities, while ensuring its independence

On the prosecution service:

- consider reforming the prosecution service, by removing its general supervisory powers and confining its powers to the field of criminal prosecution
- specify that prosecutors are bound by the Constitution and laws
- explicitly refer to the principle of prosecutorial independence or autonomy from external influence and interference, while also specifying the basic rules on the appointment or election of the Prosecutor General, eligibility criteria and incompatibilities, rules pertaining to functional immunity and accountability as well as the duration and termination of mandate
- reconsider and specify in greater detail the procedures and modalities for the appointment and dismissal of the Commissioner for Human Rights of Turkmenistan, to ensure his/her independence from the executive, legislative and judicial branches, while supplementing the Draft Constitution with a new Chapter specifying the institution's role, functions, powers, functional immunity, funding and lines of accountability

On the Commission for Elections:

- consider amending the appointment modalities for the Central Commission for Elections and Referenda to ensure greater independence and impartiality for such a body

On human rights and fundamental freedoms:

- supplement the Draft Constitution by expressly referring to the protection of the freedom of the press and media (including an express prohibition of censorship), the right to freedom of thought and conscience, the right to form and join trade unions and the right to strike
- replace the reference to "citizens" by the term "everyone" throughout the Draft Constitution, except in Article 45 (right to participate in public affairs) and Article 46 (right to vote and to be elected, and access to public service)
- remove the link between the exercise of rights and the fulfillment of duties
- include under a single provision the elements of the three-pronged test (i.e., legality, necessity and proportionality), which circumscribe the nature of possible restrictions to human rights and fundamental freedoms
- specify that certain human rights and fundamental freedoms are absolute and non-derogable under any circumstances, even in a state of emergency or under martial law
- include some form of judicial control of arrests authorized by a prosecutor
- specify that an arrest should be carried out according to the procedure precisely specified by law, while specifying key safeguards such as the obligation to inform the arrested individual of any charges and reasons for the arrest, the possibility for any arrested person to appeal to court to decide, without delay, on the lawfulness of the detention or order the release if unlawful, and the obligation for the authorities to bring persons alleged to have committed a criminal offence promptly before a judge or similar official

- specify how long, at a maximum, an individual may be deprived of his/her liberty before being brought before a judicial authority, while guaranteeing prompt access to a lawyer, the right of a person to have the fact of his detention notified to a third party of his/her choice, the right to request a medical examination and the right to be tried within a reasonable time
- include the right of each individual to give and receive religious education in the language of their choice, and the right to cultural expression in the field of religion, with specific reference to the rights of members of registered and unregistered religious groups to freely exercise their religion and culture, while ensuring that religious organizations are not precluded from taking part in public affairs
- specify an exception to the compulsory character of military service (with the possibility of an alternative to military service, of a non-combatant or civilian nature) where such service cannot be reconciled with an individual's religion or beliefs
- remove the complete ban on political parties with religious or ethnic attributes as well as the reference to "opposing the constitutional rights and freedoms of citizens" and to "morals" as legitimate grounds for prohibiting the establishment or activities of a political party or a public association
- change the restriction of individuals' voting rights due to prior criminal convictions so that such limitations only apply to prisoners serving sentences for serious crimes;
- delete the restriction on the right to vote of persons "recognized by the court as legally incapable"
- remove the residency restrictions to stand for presidential and parliamentary elections;
- specifically mention the right for independent candidates to run for elections, regardless of their political affiliation or lack thereof
- expressly include reference to additional discriminatory grounds, including "other opinion", "national or social origin" (instead of "origin"), "birth", "descent", "ethnic origin", "age", "nationality", "health status", "marital and family status", "beliefs" (since the provision currently only refers to religion), disability, "gender", "sexual orientation" and "gender identity"
- ensure adequate protection of the right of persons belonging to national minorities, with special references to their rights to (i) maintain and develop their cultural, linguistic or religious identity, (ii) use their native language in relations with the public administration, (iii) to disseminate, have access to, and exchange information and ideas in their native language, (iv) to learn and to be instructed in the minority language, (v) to set up and to manage their own private educational and training establishments, and (vi) to participate in public affairs; and
- include the right of everyone to leave Turkmenistan and of Turkmen citizens to return to their country

Tolerance and non-discrimination issues, including incidents of and responses to hate crime

OSCE participating States have made a number of commitments to promote tolerance and non-discrimination and specifically to combat hate crime, and ODIHR supports states in their implementation of those commitments. In this context, ODIHR reports at <http://hatecrime.osce.org/> to highlight the prevalence of hate crimes and good practices that participating States and civil society have adopted to tackle them. ODIHR's data on hate crime is launched online each year on 16 November, covering information from the past calendar year. ODIHR also helps participating States design and draft legislation that effectively addresses hate crimes; provides training that builds the capacity of participating

States' criminal justice systems and the law-enforcement officials, prosecutors and judges that staff them; raises awareness of hate crimes among governmental officials, civil society and international organizations; and supports the efforts of civil society to monitor and report hate crimes.

Information concerning Turkmenistan in the most recent (2015) edition of the annual hate crimes reporting³ includes the following:

- **Overview of officially reported data**

Turkmenistan has never submitted information on hate crimes to ODIHR. Turkmenistan's Criminal Code⁴ contains general and specific penalty-enhancement provisions and a substantive offence.

The official country information for the year of 2015 on hate crimes is not available.

- **Overview of incidents reported to ODIHR by civil society**

Bias Motivation	Attacks Against People		Attacks Against Property
	Violent Attacks	Threats	
Racism and xenophobia	0	0	0
Anti-Semitism	0	0	0
Bias against Muslims	0	0	0
Bias against Christians and members of other religions	5	0	0
Total	5	0	0
Grand Total	5		

The following civil society organizations reported information on incidents to ODIHR reports

Bias against Christians and members of other religions

- Jehovah's Witnesses – Turkmenistan reported five physical assaults

Roma and Sinti issues

N/A

Country-specific ODIHR monitoring, assessment, co-operation and assistance activities (other than elections)

Women's Political Participation

A seminar on Women in Politics, organized by ODIHR and the OSCE Centre in Ashgabat took place on 29 April 2015 in Ashgabat, Turkmenistan. The event aimed at facilitating an exchange of experiences in advancing women's political participation among key national stakeholders in Turkmenistan. The participants discussed several topics during the seminar,

³ Available at <http://hatecrime.osce.org/turkmenistan>.

⁴ Available at <http://www.legislationline.org/topics/country/51/topic/4/subtopic/79>.

such as good practices and strategies for enhancing participation of women in political life from the OSCE region, the role of political parties in promoting women's political participation and the role of civil society and media in advocating for increased women's political participation. The seminar aimed to support promotion and implementation of OSCE gender equality commitments, including 2004 OSCE Action Plan for the Promotion of Gender Equality and OSCE MC Decision 7/09 on Women's Participation in Political and Public Life.

Rule of Law

ODIHR conducted a number of activities over the past years to assist the Turkmen authorities in strengthening the rule of law through judicial reform. In particular, ODIHR conducted expert conferences with a view to providing recommendations and policy advice for criminal justice reform.

During the reporting period, ODIHR assisted Turkmenistan in further reforming its criminal justice system in compliance with international norms and OSCE commitments.

In the context of completed and ongoing criminal justice reforms taking place throughout Central Asia, ODIHR organized the Sixth Expert Forum on Criminal Justice for Central Asia on 16-18 November 2016 in Tashkent, Uzbekistan. The organization of the Forum was done in co-operation with OSCE Field Operations in Central Asia and the United Nations Office on Drugs and Crime (UNODC). The events were organized with the aim of providing a regional platform for exchange of good practices and discussion on international standards and OSCE commitments in the area of criminal justice reform. Representatives of the judiciary and bar association from Turkmenistan participated.

Criminalization or arbitrary and abusive application of legislation related to human rights defenders

In Turkmenistan, the Radio Liberty correspondent Saparmamed Nepeskuliev was sentenced in August 2015 to three years in prison for drug possession, following his journalistic reporting on government corruption and shortages in public services. In a December 2015 decision, the UN Working Group on Arbitrary Detention found that Nepeskuliev had been arbitrarily deprived of his liberty for peacefully exercising his right to freedom of expression. The Working Group called for his release and compensation.⁵

Other assessments and recommendations contained in ODIHR reports on thematic human issues

N/A

⁵ See, UN Working Group on Arbitrary Detention, Opinion No. 40/2015, UN Doc. A/HRC/WGAD/2015/40 (21 March 2016), available at: <http://www.ohchr.org/EN/issues/Detention/Pages/Opinionsadoptedin2015.aspx>.