

Testimony to Helsinki Commission, Commission for Security and Cooperation in Europe
Legal and Constitutional Aspects of Upcoming Parliamentary Elections in Turkmenistan
United States Congress

Anthony Clive Bowyer, Program Manager
International Foundation for Electoral Systems (IFES)

November 19, 2008

Mr. Chairman, members of the Commission, ladies and gentlemen, I am honored to be present today to speak about the upcoming elections in Turkmenistan and how we should regard the recent changes to the constitution and election law in light of accepted standards of democratic practice and Turkmenistan's international commitments. I work for the International Foundation for Electoral Systems (IFES), an organization with over twenty years of experience in international elections which has worked in over 100 countries worldwide, including the five republics of Central Asia. I have personally had the opportunity to evaluate election law and procedures first hand in many of the former Soviet republics, and as we know it is most important what happens in the period leading up to an election that determines how the election itself proceeds.

It is well known that Turkmenistan has not, in its relatively brief history of independence, held what could be called a competitive election. With only one registered political party, the Democratic Party of Turkmenistan, political pluralism has simply not existed. Moreover the February 2007 presidential election which formally brought current president Gurbanguly Berdymukhammedov to power was contested exclusively by candidates loyal to and approved by the Democratic Party.

On October 25, 2005 the People's Council of Turkmenistan (Halk Maslikhaty) adopted a resolution to hold early parliamentary elections, bringing the elections forward by nearly one year to December 14 2008. This was formalized in the constitutional changes adopted on September 26, 2008. Since President Gurbanguly Berdymukhammedov formally came to power he has shown signs of wanting to loosen the cult of personality that dominated the leadership of former president Saparmurat Niyazov. Some reforms in education and social policy, along with the physical dismantling of much of Niyazov's capital splendor, initially gave hope that political changes would follow suit.

While sweeping changes to liberalize society and boldly move the country towards democracy have not taken place, there have been efforts to take baby steps in the last two years towards creating more of a balance of power. In September the amended constitution was adopted by the 2500-member Halk Maslikhaty, which effectively eliminated that body as a state institution and made the Mejlis (the parliament of Turkmenistan) the unchallenged supreme legislative body. In addition the number of deputies serving in the Mejlis was nearly doubled, increasing from 65 to 125 and elected for five-year terms in single-mandate districts. This was to have the effect of dispersing power between the President and an expanded Mejlis, making the latter, in the words of President Berdymukhammedov, an example of a "more efficient use" for democratization of society and state.

Though the changes are perhaps viewed in a somewhat skeptical light, there are some positive elements to mention, such as a new article affirming that the economy is committed to market relations and that entrepreneurship and development of small and medium enterprise is encouraged by the state. Another

new article calls for environmental protection and the right of every person to enjoy nature and a healthy environment.

In a nod to the disputed line of succession that complicated the last presidential transition, a Deputy Chairman of the Cabinet of Ministers will be appointed to the position of Acting President by the State Security Council in the event the sitting President is not able to fulfill his duties. The Acting President can formally run for the office in the subsequent presidential election, which according to the previous constitution, the Chairman of the Parliament (Berdymukhammedov) should not have been allowed to do. Also noteworthy is that the Mejlis can call for a national referendum with at least two-thirds support of its members, as opposed to only one-fourth support required previously. Persons in pre-trial detention also have been restored the right to vote, whereas they were previously restricted from doing so (the same as convicted criminals are barred from voting). In a further boost to the new parliament, duties formerly in the domain of the People's Council are now in the jurisdiction of the Mejlis, including ratifying and denouncing international treaties and addressing territorial divisions within the country.

The president has likened the situation in Turkmenistan in 2008 to an "era of new renaissance," further suggesting that the days of complete executive control over the country were coming to a close. Certain provisions of the new Constitution betray this enthusiasm, however. The all-important post of *Hyakim* (mayors of cities and governors of Welayats, or territories) are again considered "representatives of the President" and appointed and dismissed by him, a privilege briefly granted to regional legislatures as of the 2005 constitutional amendments. This will have the effect of keeping pro-presidential loyalists as the head of territorial and local government bodies, a trend that has served to undermine elections in neighboring Kazakhstan and fellow Central Asia country Tajikistan, where there at least is a modicum of political competition. In addition, while the Mejlis has been elevated as the undisputed legislative body, its ability to appoint members of the Central Election Commission has reverted to the President, which calls into question the independence and objectivity of that body.

President Berdymukhammedov has stated that "some articles and rules of the constitution are outdated, lagging behind the times, even hindering progress" in presenting the constitutional reforms to the public. Yet in spite of the changes adopted, the constitution is still ambiguous regarding separation of powers between the branches of government. It is likely that the document has not seen its final amending.

Concerning the parliamentary election law (there are separate election laws for eight different levels of legislative bodies), this document also remains somewhat simplistic and largely inadequate as a basic framework for democratic elections. For in democracies quite complicated situations can arise that demand legal regulation and intervention, such as we see in the United States. The new legislation is on a par with what was seen in other successor states of the Soviet Union around 1992. Among the inadequacies are the very difficult rules that independent candidates need to follow in order to be accredited to run in the parliamentary elections, and the practical reality that the environment is not conducive to the registration of independent candidates or movements. In one such instance the independent candidacies of some individuals who dared to run outside of the Democratic Party of the pro-government public associations were denied allegedly due to submitting their applications late, after the government arbitrarily moved up the submission deadline.

Additional problems include the lack of detailed election procedures needed to regulate the processing of voters, issuance and counting of ballots, use of the mobile ballot box, unregulated early voting, unclear guarantees for media and rights of domestic observers, and preparation and public displaying of

results protocols. Nor is there an acceptable process for filing and resolving complaints and appeals, or regulations on campaign finance. Lastly, candidates still require governmental permission and “assistance” to meet with voters and generally conduct their campaigns, which places undue control on their movements and messages.

Election commissions cannot be considered truly independent bodies at any level in Turkmenistan, though this is a problem in all of the Central Asian republics. In some countries such as Armenia, however, the Chair and Deputy Chair of the CEC are made up of representatives from different political parties, and not necessarily those in lock step with the president. Likewise there is diversity in the composition of local election commissions in many former Soviet republics, though in Turkmenistan this is practically impossible due to the lack of any alternative parties. It should be noted that representatives of the National Revival Movement “Galkynysh” (consisting of public associations including Trade Unions, the Women’s Union, the Veteran’s Union and the Youth Union) have the right to nominate members of lower-level election commissions, though these associations are largely loyal to the President and the Democratic Party.

The Turkmen election code was even slow to incorporate changes that have been adopted in fellow Central Asian states, including the removal of “negative voting” on ballots and a switch to making the ballot *in favor* of the candidate for whom one is voting, as opposed to crossing out the names of all of those candidates one is voting *against*. This may seem like a small change, but it carries with it an important psychological connotation for voters, who have previously associated elections with rejecting candidates instead of supporting them. There is no doubt that should Turkmenistan hope to continue evolving along the lines of a democratic state, the election law will need to be further revised and developed.

In terms of international involvement in the elections, the OSCE will send a small observer delegation for the December 14 elections, and will be joined by, among others, a CIS observation mission. For its part, the UNDP has played a constructive role engaging the CEC on training of election management bodies. U.S.-funded democracy assistance organizations specializing in technical elections assistance, while not present for the current election process, would also seem to have a role to play in the long-term, and there is the real possibility that such assistance would be welcomed by the CEC.

When assessing the overall electoral process it must be noted that even the best election codes require the political will to enforce them. The recent presidential election in Azerbaijan featured a number of improved electoral legal provisions yet was bereft of serious competition. The pre-election atmosphere was accordingly devoid of the excitement that pre-election presidential campaigns bring, as many voters were apathetic or disinterested in what they knew to be a pro forma vote. In Turkmenistan it is doubtful that people are fully aware of the upcoming Mejlis elections, nor the changes brought about by the constitution. If Turkmenistan, a country whose under-25 population constitutes a growing majority of its 5.2 million population and a growing percentage of its 2.7 million voters, is to someday be a democratic success story, then its citizens will have to embrace a “culture of democracy” from an early age. This can and must be reflected in study of the outside world and Turkmenistan’s place in it, learning about democracy and the role of citizens, and understanding the structure of government and that it chosen *by* the people to work *for* the people.

Supporting democracy in Turkmenistan must continue to be a priority of U.S. foreign policy, and it needs to be a long-term investment. Turkmenistan may be slow to change, but it is changing. This change needs to be supported by ongoing and strategic engagement with programs encouraging democracy,

political competition, an open media, respect for human rights, and a vibrant civil society. As we see elsewhere in Central Asia, there is serious competition to these very basic democratic ideals emanating from inside Turkmenistan's neighbors as well as from external sources. While energy issues largely continue to dominate foreign policy orientation towards Turkmenistan, we must not neglect the need to support the call of democracy no matter where it is heard, and no matter how softly it may ring.

I again thank the Commission for the opportunity to speak today on this important topic.