

**STATEMENT ON CONSTITUTIONAL REFORM IN TURKMENISTAN
To the Commission on Security and Cooperation in Europe**

November 19, 2008

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Mr. Chairman:

My name is Catherine A. Fitzpatrick. I am a consultant to the Jacob Blaustein Institute for the Advancement of Human Rights of the American Jewish Committee, a non-government organization in New York which has long been committed to the protection of human rights through multilateral institutions, and to the improvement of international mechanisms for individuals seeking redress from human rights violations. I have followed events in Eurasia for many years and frequently written on human rights issues in the region.

We can say in advance of the December 14 parliamentary elections in Turkmenistan that they will neither be free nor fair, as only one presidentially-controlled party and one presidentially-controlled civic movement approved by the state are allowed to take part in them, and any other civic initiatives have been heavily discouraged or even punished.

The election is being called ahead of schedule, because the Constitution was revised this year to increase the number of members of the Mejlis (parliament) from 50 to 125, and to disband the 2,500 member Halk Maslahaty (People's Council), originally created to resemble traditional tribal meetings. Selected by past dictator Saparmurat Niyazov, the unwieldy body was seen as associated with his power base, and the current leader, President Gurbanguly Berdymukhamedov evidently felt that it had to be disbanded.

President Berdymukhamedov's own accession to power was characterized by violation of the rule of law, such as it was in Turkmenistan. Under the previous law, the speaker of the Mejlis, or parliament, was to rule in the interim if the head of state died. This procedure was violated after Niyazov's death in December 2006. Ovezgeldy Atayev, speaker of the Mejlis at the time, was arrested after Niyazov's death, and is still in custody. His current condition not known. In February 2007, the Turkmen Supreme Court sentenced him to five years in jail on charges of driving his stepson's bride to suicide, an accusation that was not independently confirmed. Thus, instead of following the existing lawful procedure, the title of acting president was conferred on Gurbanguly Berdymukhamedov, who at that time served as vice chairman of the Cabinet of Ministers. The Halk Maslahaty then hastily amended the constitution in 2006 to enable the acting president, who originally under the law was not allowed to run in the elections, to appear as a candidate.

Changes to Turkmenistan's Constitution, approved by the Halk Maslahaty in September

2008, were greeted by great fanfare in the state-media, orchestrated by the president. Regrettably, some Western news outlets echoed this coverage, celebrating the fact that for the first time, permission for multiple parties was granted in the new Constitution, although this was merely window-dressing. In fact, the language contained in the Constitution ostensibly affording such new civil rights is declarative and vague, and contains no reference to the enabling legislation required in this country with a civil-law system, no functioning Constitutional Court, and a long-standing tradition of considering “Whatever is not explicitly permitted is not allowed.”

Art. 93 of the Constitution allows for political parties, civic associations and groups of citizens to nominate candidates, but does not provide a means for such groups to operate legally through registration. Art. 7 of the Law on Election provides for initiative groups of at least 30 people from parties, civic groups, and initiative meetings to nominate members to the district electoral commissions, yet these bodies themselves have no legal base. There is no citation of any law that could legalize a party, and thus no actual legal basis for parties to participate in elections.

Without a separate law on political parties and unions, they cannot be legalized and the constitutional references remain without effect. And while laws on NGOs and religious groups exist, they are not sufficiently enabling, or nor adequately implemented, to provide a basis for electoral activity. In fact, the existing Democratic Party itself has no legal underpinnings because there is no law on parties. While it may have a charter, the charter has no law governing it.

While Art. 29 of the new Constitution permits political rallies in the abstract, there is no specific enabling legislation on rallies, assemblies, and demonstrations. In the Soviet era, the Turkmen SSR did have such a law, passed during the time of perestroika. The procedure for obtaining permits for such rallies was spelled out in the law of that era, and meetings of political parties were included. Today, there is no such law in Turkmenistan. A constituent meeting convened to form a party would have no legality.

Unlike parties and unions, NGOs do have a law on civic organizations and are at somewhat of an advantage over parties. NGOs do have a formal path to legality and under the Constitution, have the right to nominate candidates in the elections. Here the issue, then, is rather a lack of enforcement of the technical rights available in the law. Groups, including some that would have liked to become involved in the elections, are simply not granted registration under various pretexts.

There are many lapses in law that mean even registered groups cannot engage in typical activities. For example, while civic organizations can in theory have a bank account and report their financial transactions – there is no such a provision in the Tax Code for such activity; NGOs are not even mentioned and are thus not a subject of the law. So the Constitution can mention parties or NGOs or unions, but they do not have the practical legislation to carry out their activities in supporting laws. There is no specific law governing the formation of trade unions; officially-recognized unions are said to be authorized on the basis of their charters.

While Art. 19 of the Constitution provides for equality of rights and liberties regardless of political convictions, party affiliation or any other affiliation, no party or group that is counter to official ideology is allowed to exist. There is evidence that even membership in the Democratic Party is coerced, or made strongly desirable for government officials to advance in their careers.

Art. 30 of the Constitution prohibits the formation of parties on ethnic or religious grounds, which means that ethnic Uzbeks, Russians and other minorities as well as Muslims and other religious believers are specifically barred from political organization.

Under Art. 29 of the Law on the Elections to the Parliament, detailed procedures are provided on the holding of nomination meetings. An initiative group of at least 10 citizens must seek permission from local authorities to convene the meeting. Their candidate's selection is then only recognized if they muster at least 200 eligible voters from that district to their meeting. All of those attending must be willing to register their names, addresses and dates of birth.

Already, President Berdymukhamedov has declared there are 250 candidates, RFE/RL reported this week. Evidently only the existing Democratic Party and the officially-approved Galkynysh movement, have been able to exercise the right of nomination under this law. These already-state-controlled bodies were personally taken over by President Berdymukhamedov in 2007, when he made himself chair of both of them.

The Turkmen Initiative for Human Rights has reported several incidents where citizens attempting to take the new law seriously have been discouraged. In early November, in the Boldumsaz etrap (district) of the Dashoguz velayat (province) at election precinct no. 51, a group of 10 people, including principals and teachers from local schools and a lawyer, submitted their application to hold a citizens' nomination meeting. The meeting, however, scheduled for November 10 at school no. 9, was cancelled. Days before, 8 members of the group suddenly withdrew from the nomination group, and it developed that all of them had been pressured by the local National Security Ministry agents and police. Although 2 members remained who were not intimidated, now they no longer had a valid initiative group, although they claimed 500 people willing to participate in the meeting. A similar fate met an initiative group formed in Bairamali, led by a lawyer and executive of a local learning center, who was discouraged from proceeding.

A reason why it is so easy for local officials to undermine the declarative electoral law on initiative groups is because there is no effective law on assemblies of any kind, so that only top-down, approved meetings are possible. Observers believe that this vagueness and lack of connection to enabling legislation is deliberate, as to interpret the law as needed by the authorities.

There are other aspects to the Constitutional revisions that have brought less democracy, not more. While a previous amendment in 2005 enabled regions to appoint their own hakims (governors) and other local officials, now such appointments are the prerogative

of the president, who has created a *vertikal*, or vertical chain of command from the center, and can appoint or dismiss the governors at will.

Past dictator Saparmurat Niyazov manipulated the People's Council (Halk Maslahaty) in existence at the time to have himself declared president for life. There is no such clause now -- the presidential term was defined for five years. But the Constitution is not clear on the issue of consecutive terms of office for the same leader, opening the door to possible multiple terms.

Those seeking office must comply with the Law on Selection of Persons for Government Service, which means they are checked for loyalty to the government and their relatives are also investigated, particularly if any are abroad, in prison, known as dissenters, etc.

As for future presidential elections, a law requiring 10 years residence within Turkmenistan before running for president will effectively disqualify those who were forced into exile under Niyazov.

While the new Constitution will put into effect the new 125-member Mejlis, or parliament, this body, now expanded, will operate under the old law on the Mejlis which has still not been revised.

Judges and prosecutors are barred from political parties and certain civic groups which can cut both ways; on the one hand, it can keep the punitive agencies out of civic groups, but on the other hand, as we have seen, early reform movements in this region are often spearheaded by such jurists who have a keen sense of injustice, and this law effectively ensures that such knowledgeable persons are kept from politics.

Legalization of private property and a market economy ultimately cannot have effect with only merely declarative and disconnected invocation of political parties. Here, too, we can expect extreme presidential control. When the independent Union of Entrepreneurs and Industrialists applied for legalization to the Ministry of Justice recently, initially they did not encounter any obstacles. They also obtained initial approval from the Prosecutor's office. Yet when President Berdymukhamedov reacted by deciding to make his own Union of Entrepreneurs, in effect displacing the one that had emerged independently, the original grassroots organization had to step aside -- and ultimately was not legalized.

Parties may emerge at some point, based on groupings like "farmers" or "youth," but then they will be thematic rather than consisting of political positions. Organizing society in this way will ensure that it can be more closely controlled to ensure no one competes with official ideology.

In looking at any ballot in Turkmenistan, we must note that elections take place in a context of supreme presidential power, with the trappings of authoritarian rule in part carried over from the Niyazov era, and with presidential intervention into nearly every aspect of life. While the portraits of Niyazov have been taken down, new ones with

Berdymukhamedov have gone up. While the traditional names of the days of the week have been restored, propagandistic speeches about the “Era of New Revival” abound, with the media constantly chastised to cover reforms only in a positive light.

An observer inside Turkmenistan commented to News Briefing Central Asia, “Not a leaf on the trees moves in this country without the personal consent of the president.” The president’s frantic programs of mass tree-planting, construction of state palaces, parks and fountains, large historical statues and even a race track in every province, serve to bolster the image of the strong state, dwarfing the individual.

All major decisions such as oil and gas contracts, construction projects, budgetary allocations for schools or clinics, relations with neighbors, the drafting of the constitution and many minor ones – such as what kind of school uniform children will wear or the wedding-cake shape of a resort hotel – are all decided personally by the president. The Turkmen leader keeps up a frenetic pace, travelling abroad or receiving a steady stream of foreign dignitaries, all of whom realize that if they are to get their projects or proposals reviewed or implemented, they must have the president’s personal sign-off. The president decided to prematurely disband the Halk Maslahaty, and despite a fictional cover of “proposals from the people” and “drafting of the Constitution by the parliament,” the exercise was basically conducted to expand his own powers. As has been made clear from reports of Cabinet of Minister meetings and special sessions of the Mejlis, the president personally approved all aspects of the new Constitution, noting in every public statement that it was accomplished with prestigious foreign advisors, and “fully in compliance with international norms”.

Direct presidential rule has made an indelible stamp on Turkmenistan’s governance, and it is hard to see how any parliament will function adequately. A climate of fear and uncertainty is deliberately maintained, with constant presidential reprimands finding fault in many ministers, who are put on probation for 6 months or publicly warned of immediate dismissal if improvements are not made. Ministers, law-enforcers, media executives and regional leaders have come and gone with disturbing frequency, usually in public disgrace, but for reasons that remain undisclosed beyond vague “shortcomings”.

While President Berdymukhamedov has removed the worst excesses of the Niyazov regime, such as the curtailing of years of education, health care facilities, and pensions, and restored them to their previous levels, and although he has ended his country’s isolation, the president has made it abundantly clear that dissidents or even loyal critics within the country will be heavily discouraged and punished, and that exiles will not be tolerated nor allowed to return.

In the last year, the U.S. has enthusiastically greeted the modest changes in Turkmenistan and prioritized energy and business talks in the opening climate. U.S. sponsored programs in education, training, Internet access, health, etc. have been opened in Ashgabat in a number of Turkmenistan’s provincial cities. And not surprisingly, given the continuation of heavy state control and top-down presidential management in

Turkmenistan, some of the activities of these programs have encountered resistance from authorities, and Turkmen citizens who sought to participate in them have been reportedly discouraged or threatened.

Earlier this year, the Turkmen Initiative for Human Rights reported on efforts by Counterparts International to work with a group of farmers to install a grain mill; a local security official, evidently alarmed at the contact with foreigners and the competition to state programs, put an end to the initiative. Turkmen citizens who wished to take part in some legal education seminars were harassed by officials. Educational exchanges have faced impediments; TIHR has recently reported on threats made against those hoping to participate in IREX and the American Center programs. The U.S. Embassy in Ashgabat has issued a rather mild response to these events, downplaying the reports and stressing that many other citizens have been able to benefit from these programs. The difficulty comes with the Turkmen government's manipulations of exchanges, giving permission to elites in government and diplomatic circles, to upgrade the level of bureaucrats' knowledge of the rest of the world, yet tempering such opportunities with bright lines drawn against any activity that would seem like a "color" revolution as took place in Ukraine and Georgia. U.S.-sponsored program officials under these circumstances do not always wish to protest any mistreatment, for fear it would disrupt their ability to operate in the country at all, which makes them continually vulnerable to Turkmen authorities' pressure.

Ultimately, all of these legal and social factors contribute to a non-permissible environment for free elections. Yet, it can be said that the ballot will not be completely without use. During presidential elections, we saw that at nomination meetings and candidate presentations, people were able to ask questions in public meetings, albeit in a controlled format. Certain pressing social problems, such as the disastrous state of the education and health systems, were able to be discussed, and remedies outlined. It is anticipated that the state media will cover some of these types of issues, in very limited form, of course, during the parliamentary elections, and people will have some very limited opportunity to declare concerns. This should not be considered a substitute for democracy, however.

And once seated, this 125-member body chosen under very constrained circumstances will be among the least legitimate parliaments of Eurasia. It will not be able to challenge the supreme presidential control, nor the presidentially-appointed gubernatorial rule in any significant fashion. Moreover, it will not have the power of the purse, to really obtain transparency of oil and gas revenues and to manage how such income is spent on society's needs. Nor is it likely, on its own, to take the initiative to draft and pass all the supporting legislation needed to uphold a civil society, such as a law on political parties.

Recommendations for U.S. on Turkmenistan

1. **U.S. Government** The CSCE should call on the U.S. State Department to make a

clear and unequivocal statement that conditions for democratic elections have not yet emerged on the eve of the parliamentary elections in Turkmenistan in December. While some modest progress in revising the Constitution is recognized, mainly to permit a market economy, the CSCE should emphasize that Turkmenistan must work to draft enabling legislation for the legalization of multiple political parties, unions, NGOs, and religious organizations, as well as ensure the freedom of independent media outlets, in order to create a climate for legitimate elections to take place in the future. Political prisoners should be released, and emigres and their relatives forced to go abroad should be allowed to travel to and from their homeland freely.

2. **OSCE** The CSCE should urge the Parliamentary Assembly of the OSCE not to send any full-fledged observation missions to Turkmenistan in December, as basic conditions have not been met for the poll. The PA should closely monitor and coordinate its efforts with the Office of Democratic Institutions and Human Rights (ODIHR), which should also be urged not to send a full-fledged mission. The PA should, in any case, follow the more cautious conditions established by ODIHR for electoral observation, and coordinate its public remarks closely with ODIHR to avoid undercutting that body's more thorough and carefully crafted findings and recommendations.

If any monitors do travel to Turkmenistan to assess the human rights and political situation during the ballot, they should be careful to explain that they are observing human rights conditions, not monitoring elections. They should send a coherent message about the lack of democratic prerequisites, and avoid cooptation by state-sponsored bodies and state-controlled media. Any travellers should make the effort to obtain independent international media coverage of their statements to counter possible misrepresentation of their presence in Turkmenistan in the state press.

CSCE should also call on fellow participating states in OSCE and OSCE institutions to condemn the efforts of the government of Turkmenistan to brand as "terrorists" domestic and exiled Turkmen NGOs that have neither used nor advocated violence, which have been accepted by ODIHR to participate in the annual Human Dimension Implementation Meeting, and to ensure that such Turkmen NGOs can take part in OSCE meetings without reprisals.

3. **UN** The CSCE should call upon the U.S. to urge UN election-monitoring bodies to refrain from monitoring the elections formally, as insufficient time has been allowed for pre-election analysis which is normally undertaken by the UN in such cases.

4. **Bilateral Contacts** When engaging bodies such as Turkmenistan's Commission to Examine Turkmenistan's Legal Obligations under International Human Rights Law, U.S. officials and NGOs should make an effort to obtain external media coverage of their criticism to avoid cooptation; the state media has repeatedly portrayed every foreigner meeting with this body as praising the president's reforms and applauding Turkmenistan's merely declarative intentions.

5. Technical Assistance Efforts to engage Turkmenistan's government and society should continue in the form of technical assistance, educational exchanges, cultural exhibits, and so on. Yet it is important not to tolerate hindrance of the normal functioning of such programs inside Turkmenistan. The U.S. government should investigate the experience of publicly-financed programs such as Counterparts and IREX, as well as private sector exchanges, which have reportedly encountered some difficulties recently, with officials warning Turkmen citizens against involvement in U.S. programs.

The solution is to involve non-operational agencies not directly in the field in assessing the level of freedom of operation and movement such programs, their efficacy and sustainability, and the political steps needed, including forceful advocacy with the highest levels of the Turkmen government, to ensure their continuation.

6. International Broadcasting The CSCE should vigorously urge the U.S. to continue, expand and improve broadcasts to Turkmenistan and to the Turkmen diaspora in both the Turkmen and Russian languages by Radio Free Europe/Radio Liberty (RFE/RL) and to restore Voice of America's Russian-language broadcasting to Central Asia. Russian business and civil society, as well as businesses and NGOs in neighboring Central Asian countries have a role to play in engaging Turkmenistan, and such broadcasting is an excellent way to inform the publics and involve them in the international debate about democracy.

7. US CIRF As has been recommended by the U.S. Commission on International Religious Freedom, CSCE should call for Turkmenistan to be designated as "a country of particular concern" on the grounds that religious expression, assembly, and registration continue to be suppressed and religious bodies controlled by the state. While some prisoners of conscience have been released, others remain in jail and members of religious communities continue to suffer harassment.

We are well aware of the urgent energy security and economic concerns that preoccupy the U.S. and the international community today, yet these problems are not solved by pushing human rights problems into the background. Time and again we have observed in the history of the Helsinki process that both security and humanitarian goals must be advanced simultaneously to achieve both. Turkmenistan's considerable gas deposits, with the South Yolotan field recently said to be the world's fifth largest, as well as the need to obtain alternative routes to Russia's monopoly over pipelines, currently supply one-fourth of the EU's gas needs, understandably dominate the geopolitics of the region now. Yet business cannot thrive without the rule of law to protect investment, and if the resource revenues are not used transparently and justly, human security concerns begin to themselves threaten regional security. No regime in this region has ever achieved stability and prosperity by tyranny. Turkmenistan's leader President Berdymukhamedov has declared that democratization of his country is vital, and reforms are necessary. Let us call him on his promises, and insist on their realization.