



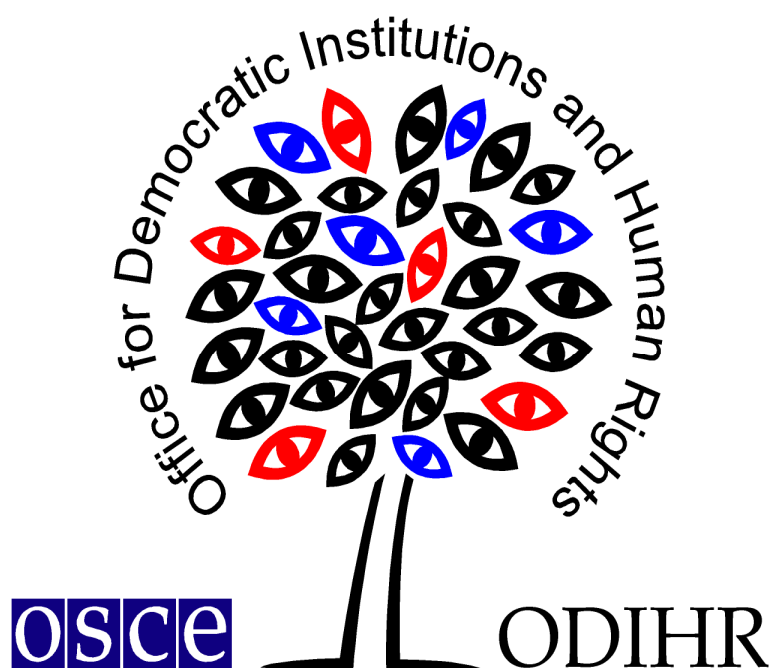
Office for Democratic Institutions and Human Rights

THE KYRGYZ REPUBLIC

CONSTITUTIONAL REFERENDUM

27 June 2010

OSCE/ODIHR Limited Referendum Observation Mission Report



Warsaw
27 July 2010

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KYRGYZ REPUBLIC
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OSCE/ODIHR Limited Referendum Observation Mission Final Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the authorities of the Kyrgyz Republic to observe the 27 June 2010 constitutional referendum, and based on the recommendation of its Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a referendum observation mission to the Kyrgyz Republic on 21 May. Due to the security environment, on 18 June the OSCE/ODIHR decided not to deploy short-term observers and continued to observe the process as a Limited Referendum Observation Mission (LROM).

The authorities of the Kyrgyz Republic succeeded in creating the necessary conditions for the conduct of a peaceful constitutional referendum despite challenging circumstances. Although there were evident shortcomings, the reported high turnout of 72 per cent indicated citizens' resilience and desire to shape the future of their country. Immediate and resolute measures are required to build upon positive developments and to remedy flaws before the forthcoming parliamentary elections. At the same time, long-term reform should be envisaged for strengthening the legal framework and polling day proceedings. Strong political will is necessary to establish a democracy based on effective democratic institutions, rule of law, security for all and protection of human rights.

The constitutional referendum took place against a backdrop of violent conflict in Osh and Jalal-Abad starting on 10 June, which brought new challenges for administering the referendum. Despite the temporary disruption of referendum preparations, the electoral authorities reported that all polling stations in conflict affected areas were supplied with election materials and fully staffed for referendum day. Furthermore, efforts were made to enfranchise internally displaced voters, including those without identification; however, refugees were not provided with possibilities for casting their ballot.² The pervasive atmosphere of fear and intimidation, compounded by arrests of prominent public figures from the Uzbek community, may have dissuaded some voters from casting their ballot. Indeed, participation in the South was lower than in the rest of the country.

The legal framework provided an inconsistent and confusing basis for the conduct of the referendum. Although at times operationally justifiable, last-minute alterations and the fluidity of the legal framework meant that referendum commissions and election stakeholders may not have always been aware of their legal rights and the applicable legal framework.

¹ The English version of this report is the only official document. Unofficial translations are also available in Kyrgyz and Russian.

² It is unclear how many refugees were still in Uzbekistan on referendum day. However, it was widely reported that most had returned to the Kyrgyz Republic by referendum day.

The Central Commission for Elections and Referenda (CEC) administered the process in a largely transparent, collegial and timely manner, especially considering the strenuous circumstances and shortened timetable. CEC sessions were open to all observers and media, a transparency generally replicated by lower level commissions. The process for selecting lower-level commissions was modified to decrease the possibility of administrative and political influence as well as to ensure a more balanced composition. However, the way the CEC adjudicated the few complaints received prior to referendum day did not afford plaintiffs effective and timely remedies.

The formulation of the referendum question as a composite of issues made it difficult for voters to make a unitary choice; a 'yes' vote approved the draft constitution and the law on its enactment, confirmed Roza Otunbaeva as interim president until 31 December 2011 and dismissed the judges of the Constitutional Court. Voters may have been in favour of one matter but against another, but the single question precluded voters from expressing their views separately on the three issues.

The new Constitution and the constitutional referendum were presented to the country as a forward-looking project by the provisional government after the ouster of President Bakiev. The constitutional referendum had the additional political aim of legitimizing the provisional government, enhancing stability and reaching out to citizens throughout the country. However, closer to referendum day the campaign was increasingly framed around stability and the legitimacy of the provisional government. This was detrimental to a genuine discussion of the strengths and weaknesses of the draft constitution.

The campaign was low-profile with most parties advocating a 'yes' vote. However, co-ordinated 'yes' and 'no' campaigns never emerged. As such, a genuine debate between the 'yes' and 'no' positions did not materialize in the media. Overall, political parties could campaign freely. The prevailing security conditions in the South hampered the possibility for campaigning there in the last two weeks before the referendum. The conflict led some political parties and civil society actors to call for postponement, but a 'no' position was never publicly articulated.

A relatively pluralistic media environment offered the public wide coverage of the referendum, even though there was a significant shift in the media focus from the referendum to the emergency situation in the South from 10 June onwards. The state media fulfilled their obligation to organize civic and voter education, thus providing the opportunity for voters to engage in the referendum. In its news coverage, however, it favoured the 'yes' position.

Considerable efforts were made by variety of international and non-governmental organizations and the authorities to disseminate the draft constitution widely, promote discussion on its content and to encourage citizens to vote. State officials often blurred the line between informing voters and actively campaigning for a 'yes' vote.

The provisional government issued decrees to allow citizens to vote anywhere in the country and for voters in Osh and Jalal-Abad oblasts to vote without identification, if recognized by the precinct election commission. While these measures were intended to enhance the universality of the vote, the inking of the voter's thumb, which was commendably reinstated for the referendum, remained as the only safeguard against possible multiple voting.

In line with standard OSCE/ODIHR methodology for LROMs, the mission did not conduct a comprehensive and systematic observation of referendum day proceedings, but visited a limited number of polling stations and territorial referendum commissions across the country and remained in contact with domestic observer groups.

Polling stations across the country were reported to have opened on time. In polling stations visited, voting proceeded in an orderly manner. Poll workers seemed aware of procedures and managed the process in a largely proficient manner. However, in the polling stations visited, the verification of inking was at times inconsistent. In addition, the voters' choice was often disclosed as ballots were not properly folded, thus compromising the secrecy of the vote. Counting and tabulation processes in the referendum commissions visited were assessed less positively, with commissioners not always being aware of, or not respecting, the procedures. The CEC immediately posted the polling station result protocols on its website, strengthening transparency and public confidence in the results process.

This report offers a number of priority recommendations for the consideration of the authorities of the Kyrgyz Republic before the next parliamentary elections. In addition, other recommendations are offered to address issues in the longer term. The OSCE/ODIHR stands ready to support the authorities to further improve the electoral process in line with OSCE commitments and other international standards for democratic elections.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the authorities of the Kyrgyz Republic and based on the recommendation of a Needs Assessment Mission, on 21 May 2010 the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed a referendum observation mission to observe the 27 June constitutional referendum. Due to the security environment, on 18 June the OSCE/ODIHR decided not to deploy short-term observers as part of its ongoing observation of the referendum. It continued to observe the process as a Limited Referendum Observation Mission (LROM).

The OSCE/ODIHR LROM, headed by Ambassador Boris Frlec, consisted of 13 core team experts and initially 14 long-term observers (LTOs), deployed to all regions in the country.³ The mission members were drawn from 19 participating States.

The referendum was assessed for its compliance with OSCE commitments and other international standards for democratic elections, as well as with the legislation of the Kyrgyz Republic. This Final Report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference in Bishkek on 28 June 2010.⁴

The OSCE/ODIHR LROM wishes to thank the authorities of the Kyrgyz Republic for their invitation to observe the referendum, and the CEC and the Ministry of Foreign

³ LTO teams were withdrawn from Osh and Jalal-Abad on 12 and 13 June for security reasons. Two LTOs left the mission for private reasons.

⁴ The Statement of Preliminary Findings and Conclusions is available at:
http://www.osce.org/documents/odihr/2010/06/44868_en.pdf.

Affairs for their assistance and co-operation. The mission also expresses its appreciation to other state institutions, political parties and civil society organizations for their co-operation. Finally, the mission is grateful to the OSCE Centre in Bishkek and to diplomatic representations of OSCE participating States and international organizations in Bishkek for their support and assistance.

III. POLITICAL BACKGROUND

Following a popular uprising which resulted in the ouster of President Askar Akaev, Kurmanbek Bakiev was elected President of the Kyrgyz Republic in July 2005. His party, *Ak Jol*, won a majority of seats in the December 2007 pre-term parliamentary elections and Mr. Bakiev was re-elected as President in July 2009. The OSCE/ODIHR assessed both these elections as having failed to meet key OSCE commitments.⁵ In recent years, the political landscape in the Kyrgyz Republic has been tense and characterized by frequent confrontations between government and opposition forces.

On 7 April 2010, violent protests led to the ouster of President Bakiev. The newly formed provisional government, headed by Ms. Otunbaeva, announced a 'Return to Democracy' program intended for a peaceful transition into a democratic state. A review of existing legislation, particularly the Constitution, was identified as a key step in this transition and a referendum to adopt a new constitution was set for 27 June 2010. The draft constitution was the result of a consultation process with national and international stakeholders and sought to introduce a semi-parliamentary system. The provisional government also announced plans to hold parliamentary elections on 10 October 2010 and a presidential election in October 2011. The new Constitution stipulates that Ms. Otunbaeva is not entitled to run for president in that election.

Starting from 10 June, a series of violent clashes between members of Kyrgyz and Uzbek communities in Osh and Jalal-Abad resulted in a high number of casualties and displaced citizens, leading to a deterioration of the security situation and concerns over preparations for the referendum in this part of the country. The Uzbek community was subsequently alienated from the referendum process due to humanitarian conditions, security fears limiting the freedom of movement, and several prominent Uzbek public figures being detained on charges of organizing and participating in the violence or hiding fearing prosecution. Reports on human rights violations, arbitrary detentions, mistreatment, torture and rape as well as allegations about the involvement of forces close to former President Bakiev in the clashes have been published. However, no investigation has yet been undertaken nor conclusive evidence about these allegations and reports provided. The provisional government has established a national commission of inquiry into the events in the South.

A state of emergency was subsequently imposed in large parts of Osh and Jalal-Abad *oblasts* which was temporarily lifted prior to referendum day. Several political party and civil society representatives called for a postponement or cancellation of the referendum. They argued that it would be inappropriate to ask people to vote in such circumstances and that the legitimacy of the results would be questionable if large

⁵ OSCE/ODIHR reports on previous elections in the Kyrgyz Republic are available at: <http://www.osce.org/odihr-elections/14475.html>.

numbers of displaced people were unable to vote. The provisional government, in contrast, consistently reiterated its commitment to proceed with the referendum as scheduled.

IV. LEGAL FRAMEWORK

The legal framework for the 27 June constitutional referendum failed to fully regulate the process. It was based on the 2007 Constitution and the 2007 Law on Referendum, as well as several provisions from the 2007 Election Code and the 2004 Law on the Central Commission for Elections and Referenda. These laws were supplemented by provisional government decrees and CEC decisions that addressed procedural aspects of the referendum.

The constitutionality of provisional government decrees is disputable. Although existing laws stipulated that decrees do not represent normative acts, the provisional government resolved that its decrees have the power of law.⁶ Moreover, Decrees No 19 and 20 stated that constitutional laws guide the administration of the referendum unless they contradicted the decrees, thus placing decrees above constitutional laws in the hierarchy of norms. Additionally, on 12 April the Constitutional Court, the only institution mandated to oversee the constitutionality of legal acts, was dismissed.⁷

The fluidity of the legal framework prior to the referendum, and the changes implemented throughout the process, meant that election commissions and election stakeholders may not always have been sure about their legal rights and the applicable legal framework. Paragraph 5.3 of the 1990 OSCE Copenhagen Document requires that OSCE participating States should comply with the Constitution and act in a manner consistent with the law. In addition, altering the legal framework so close to a referendum is inconsistent with good practice as it may undermine its timely implementation.⁸ Late regulations and decrees were not communicated to the lower level referendum commissions in a consistent manner, resulting in procedural inconsistencies. This was particularly notable with regulations concerning voter registration.

In general, provisional government decrees followed the established framework for a referendum, yet some of the new provisions led to uncertainty and allowed for conflicting interpretations. For instance, the 2007 Constitution and the Law on Referendum stipulate that a referendum is valid if a minimum 50 per cent of eligible voters turn out to vote. However, this requirement is absent from Decree No 20. A series of conflicting statement by officials, including on the eve of referendum day, contributed to public uncertainty on whether this requirement was applicable. In addition, the 2007 Constitution does not permit holding a referendum whilst a state of emergency is imposed, yet Decree No 20 was amended by Decree No 73 to allow for

⁶ Provisional Government Resolution No 8 (10 April 2010). The 2009 Law on Normative Acts does not recognize decrees as having such status.

⁷ Provisional Government Decree No 2 (12 April 2010).

⁸ The Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe: [www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

holding a referendum, provided that the number of voters in the area under the state of emergency is less than half of the total number of eligible voters.⁹

The question submitted for the referendum comprised different matters yet required voters to provide only a single answer.¹⁰ This contradicted existing legislation¹¹ and good practice for the conduct of referenda which requires unity of content of the question. It is also desirable that the same question does not apply simultaneously to different hierarchical levels.¹² Voters may have been in favour of one matter but against another. The single question, however, precluded voters to express their views separately on the three issues.

The newly adopted Constitution introduces a semi-parliamentary system where the president retains certain key powers. Until a new parliament convenes, Ms. Otunbaeva will exercise the presidential powers as provided by the 2007 Constitution; once a new parliament convenes she will exercise powers as provided by the 2010 Constitution.¹³

All citizens of the Kyrgyz Republic over the age of 18 have the right to vote. The law contains further provisions to facilitate the exercise of universal franchise by providing for early, out-of-country and home-bound voting. Individuals who have been recognized as incapable by a court decision are deprived from their suffrage rights. Contrary to previous OSCE/ODIHR recommendations, the law continues to disenfranchise citizens serving prison sentences irrespective of the crime committed. This blanket denial of suffrage rights does not take into account the offence's gravity. It runs contrary to paragraphs 7.3 and 24 of the 1990 OSCE Copenhagen Document. Forfeiture of political rights should be proportionate to the offence committed and restoration of rights should be automatic after a person has served the prison sentence.¹⁴

The main legislation pertaining to the campaign included the Law on Referendum and CEC rules.¹⁵ While terms provided by both acts were similar, significant

⁹ Provisional Government Decree No 73 (16 June 2010).

¹⁰ The referendum question asks the voters to decide if they want to "adopt the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic on enactment of the Constitution of the Kyrgyz Republic, which were submitted for the referendum (nation wide vote) as drafts by the Provisional Government." The latter law includes references to the Provisional Government Decrees No 2 and 39, which dismissed the judges of the Constitutional Court and confirmed Ms. Otunbaeva as interim president until 31 December 2011. The new Constitution transforms the Constitutional Court into a chamber of the Supreme Court.

¹¹ Article 7.2 of the Law on Referendum.

¹² Code of Good Practice on Referendum of the Venice Commission of the Council of Europe: [http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)008rev-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)008rev-e.asp).

¹³ Provisional Government Decree no 39 (19 May 2010), paragraph 5.

¹⁴ See for example the UN Human Rights Committee's General Comment 25 and the Code of Good Practice on Referendum of the Venice Commission of the Council of Europe. Also of note is that the European Court of Human Rights ruled in 2005 that a blanket restriction on the voting rights of prisoners, "irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances", was a violation of Protocol 1, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court also noted that Protocol 1, Article 3 "guarantees individual rights, including the right to vote and to stand for election". See *Hirst v. United Kingdom*, no. 74025/01 (6 October 2005), available at www.echr.coe.int.

¹⁵ CEC Rules for Campaigning during the Preparation for and Conduct of a Referendum in the Kyrgyz Republic (17 May 2010).

inconsistencies remained. By constitutional law, the campaign started from the day the referendum was announced, whilst according to CEC rules it began the day the draft constitution was published. In a positive development, on 2 March 2010, the Constitutional Court, now dismissed, ruled that the requirement to hold rallies in specially designated places is unconstitutional.¹⁶

V. REFERENDUM ADMINISTRATION

A. CENTRAL COMMISSION FOR ELECTIONS AND REFERENDA (CEC)

The referendum was administered by a four-tiered administration, headed by the CEC. The provisional government dismissed the previous CEC and appointed a new, 15-member commission, to organize the referendum and the upcoming parliamentary and presidential elections.¹⁷ After two resignations the CEC comprised seven political party and six civil society representatives.¹⁸ The CEC chairperson was appointed by the provisional government and represents civil society. A further six advisory seats were available for international experts, of which only one was filled by referendum day.

The CEC administered the referendum process in a largely transparent, collegial and timely manner, especially considering the challenging circumstances and shortened timetable.¹⁹ CEC sessions were open to all observers and media, and decisions were published on their website,²⁰ although some questions were discussed without prior notification.²¹ The CEC made efforts to clarify procedures,²² and bring them in line with decrees issued by the provisional government. Some of these decrees and CEC regulations were issued extremely late and consequently were not communicated to lower level commissions and voters.²³ This affected the way lower-level commissions implemented some polling procedures on referendum day.²⁴

¹⁶ Article 3 of the Law on Freedom of Assembly provided that citizens have the right of assembly without the necessity to notify the local self-government if such events are to be organized (1) in areas specifically designated for such purposes by a decision of the local administration, and (2) upon permission of the owner or the authorized person for that area.

¹⁷ Provisional Government Decree No 19 (21 April 2010) and Resolution No 22 (30 April 2010).

¹⁸ Provisional Government Resolutions No 492 and 493 (23 June 2010) accepted the resignations of one political party representative and one civil society representative.

¹⁹ Provisional Government Decree No 20 (21 April 2010) and Resolution No 22 (30 April 2010) shortened the preparation period from a minimum of 3 months (as provided by Article 14.2, Law on Referendum) to 2 months.

²⁰ Article 13 of the Provisional Procedure of the Referendum (approved by the Provisional Government Decree No 20 of 21 April 2010) stipulates that CEC decisions concerning organization and holding of the referendum are to be published in mass media.

²¹ Including CEC decisions No 118, 120, 121 (25 and 26 June 2010).

²² Particularly in regard to the counting and tabulation of results, security of documents, access for observers and media and guidelines for PRCs in emergency situations.

²³ Voter lists were delivered to the PRCs by 8 June but the CEC rules for exclusion of absent citizens were issued on 14 June. Voting procedures were amended on 21 and 23 June on the basis of Provisional Government Decrees No 63 (10 June 2010), No 73 (17 June 2010), No 80 (23 June 2010), after the majority of PRCs had been trained.

²⁴ For example, results for PSs No 1004, 1005, 1006 and 1315 in Bishkek were cancelled by the CEC (01 July) because the PRCs had not properly implemented CEC decision No 120 (26 June 2010) on mobile voting.

B. LOWER LEVEL COMMISSIONS

Below the CEC are 7 Oblast and the Bishkek and Osh City Election commissions (OECs), 56 Territorial (Rayon and Town) Referendum Commissions (TRCs) and 2,319 Precinct Referendum Commissions (PRCs), including 38 out-of-country PRCs in 22 countries.

Although the OECs were appointed after the presidential election in 2009,²⁵ the provisional government decided that they should be dismissed prior to the forthcoming parliamentary elections.²⁶ The CEC decided not to make any OEC replacements until after the referendum.

The process for selecting lower-level commissions was modified to decrease the possibility of administrative and political influence as well as to ensure a more balanced composition. The CEC modified the selection process so that up to half of the members came from political party nominees and the remainder from groups of voters.²⁷ This move was welcomed by civil society and helped to foster public confidence in the referendum commissions. It also resulted in many TRC and PRC members not having worked on an election commission previously. The distribution of members between political parties within their quota was made by drawing lots but there were no set criteria for members nominated by groups of voters. This opened up the possibility for abuse of the selection process.

The CEC bypassed the OECs and directly appointed TRC members in contradiction with the law.²⁸ The CEC argued that this measure would enhance the independence of the commissions. TRC and PRC members were generally appointed within legal deadlines, although political party nominations to PRCs were insufficient.²⁹

The overall transparency of the work of the CEC was generally replicated by lower level commissions.³⁰ However, the appointment of PRCs members was a concern on several levels. PRCs should have 5-9 members,³¹ but the CEC instructed TRCs to appoint 7-13 members without issuing corresponding instructions or criteria to establish the number of commission members required.³² Moreover, the TRCs were not provided with clear guidelines about how to select members according to legal requirements.³³

The CEC, together with the International Foundation for Election Systems (IFES), provided training to TRC and PRC members, which was conducted in an interactive

²⁵ According to Articles 16.2-16.4, Law on Referendum, OECs are permanent bodies appointed for five year terms whereas TRCs and PRCs are appointed for the referendum.

²⁶ Provisional Government Decree No 19 (21 April 2010).

²⁷ CEC Rules on the Formation and Dissolution of the Referendum Commissions (30 April 2010) define a group of voters as being a minimum of five voters who must submit their names and minutes of the meeting to the relevant commission.

²⁸ Article 16.3 Law on Referendum, provides that TRCs are appointed by corresponding OECs.

²⁹ As observed in all areas except Chui oblast.

³⁰ However, OSCE/ODIHR LROM observers were not allowed to observe tabulation procedures at Sverdlovsky TRC in Bishkek on referendum night.

³¹ Article 16.4 of the Law on Referendum.

³² CEC Rules on the Formation and Dissolution of the Referendum Commissions (30 April 2010).

³³ No more than one commission member can be from any one organization, no more than one third can be state employees and none can be members of local administrative bodies.

manner but assessed by the OSCE/ODIHR LROM as too short taking into account the general inexperience of PRC members in election procedures.³⁴ The lack of training of TRCs meant that, at times, the local administration assisted in their work, which called into question the independence of the commissions.³⁵ A further factor which may have influenced the independence of commissions was their location within the rayon, oblast or city administration offices noted throughout the country.

The violent clashes in the south of the country brought new challenges for administering the referendum. An unconfirmed number of PRC members in both Osh and Jalal-Abad cities could not be found or expressed a wish to withdraw from their duties. The CEC conducted an assessment of affected areas and made a call for political parties and NGOs to nominate new commission members resulting in a further 87 new members being recruited in Osh city.³⁶ The CEC and OECs reported that all polling stations in affected areas were supplied with election materials and were able to open on time on referendum day. However, the abduction of six poll workers after the first training session in Osh city increased fears amongst polling staff and prevented any further training from taking place.

Efforts were made to enfranchise internally displaced voters without identification, including those from Osh and Jalal-Abad. However, the refugees who remained in Uzbekistan were not provided with possibilities to cast their ballot.³⁷ Domestic observers reported a lack of knowledge in some polling stations of the latest decisions designed to ensure enfranchisement of voters that had lost their ID or had been displaced by the violence.³⁸

VI. VOTER REGISTRATION

The quality and accuracy of the voter list (VL) has been an increasing concern over past elections and several different methods were employed during the referendum period to improve its accuracy and to ensure universal suffrage. However, a local expert group expressed concerns that some of the measures could be perceived as attempts to manipulate turnout, lead to disenfranchisement of voters, or reduce safeguards against multiple voting.³⁹

The voter list is based on the civil register of residency, or *propiska*, and is updated quarterly from the register of births, deaths and marriages, and from the local civil registry office when citizens change their place of residence. The VL is created using

³⁴ TRC trainings lasted one day. PRC trainings were reduced to half a day.

³⁵ As observed in Chui oblast and Balykchy.

³⁶ According to CEC information, a total of 864 PRC staff were on duty in Osh city.

³⁷ It is unclear how many refugees were still in Uzbekistan on referendum day. However, it was widely reported that most had returned to the Kyrgyz Republic by referendum day.

³⁸ The Coalition for Democracy and Civil Society, observed in Osh city that some people without IDs were turned away from polling stations by PRCs due to concerns that they would have insufficient ballots.

³⁹ An 'Expert Group' composed of leading Kyrgyz election experts, supported by IFES, wrote an open letter to the government on 1 June 2010 stating that efforts to improve the quality of the voter list should wait until after the referendum when more accurate information on participants would be available from VLs and additional voter lists (AVL).

the *GAS Shailoo* (*Shailoo* means election in Kyrgyz), an automated countrywide system that is also used to tabulate election results.

However, the process for updating national passports is arduous and requires a number of different documents.⁴⁰ In addition, the *propiska* is not computerized which makes the process very slow. As such, there is little encouragement for citizens to update their residency details when they move. The high levels of internal and external migration in the Kyrgyz Republic⁴¹ have resulted in a large number of inaccuracies in the *propiska*, and, as such, the VL.

The Law on Referendum provides for persons away from their place of residence to vote at another polling station by using an absentee voting certificate (AVC).⁴² This form ensures that the voter is removed from one voter list before being added to another and provides a safeguard against multiple voting. The provisional government abolished the necessity of obtaining an AVC for the referendum, thus allowing voters to vote anywhere in the country.⁴³ At the same time, the practice of marking voters' thumbs with invisible ink was reinstated to protect against multiple voting.⁴⁴ While commendable this practice may not be sufficient in preventing possible multiple voting due to the need for inking to be properly applied and consistently checked.

The provisional government made efforts to update the VL and identify voters who were away from their place of registration through door-to-door checks.⁴⁵ These were mostly conducted by representatives of the lowest level of the local administration or by representatives of a community or of an apartment block. Forms were provided for completion by family members testifying that a particular person was absent from the area. Marks or notes were made on the VL by these voters' names indicating that they were not present. The final number of registered voters was calculated at the close of voting; it was the sum of voters on the VL without any "absent" marks plus the citizens who voted on the AVL.

The OSCE/ODIHR LROM observed that these checks were inconsistently performed. Some oblasts and cities performed thorough checks, completed forms diligently and passed the information to the PRCs before referendum day. In other places, checks were not always made, forms were not completed, and persons were removed from the list if they were absent for three visits.⁴⁶ Concerns were raised by OSCE/ODIHR

⁴⁰ Birth certificate, residence certificate, copy of previous passport or letter explaining why it is lost, marriage certificate (if applicable), an official ID card such as driver's license (if they have none of the previously mentioned IDs). If any of these documents are missing, requests have to be made to the relevant departments by post.

⁴¹ Official figures from the Department of Population Registration for January-June 2010 indicate 15,943 emigrants, 79,510 permanent internal relocations, and 79,732 temporary migrants. In addition, 2,572 registered people moved to informal settlements. Thus, approximately 3.2 per cent of the population officially relocated in the six months prior to the referendum.

⁴² Article 38 provides that voters can return to their original place of registration and request an AVC. It allows them to be added to the AVL of any polling station on referendum day and removes them from the VL at the original location. However, the need for a voter to return to their original place of residence can present a barrier for migrants in obtaining an AVC.

⁴³ Provisional Government Decree No 63 (10 June 2010).

⁴⁴ Article 38.4 of the Law on Referendum.

⁴⁵ Provisional Government Decree No 53 (27 May 2010).

⁴⁶ Observed, respectively, in Naryn, Talas and Chui oblasts.

LROM interlocutors that not all community representatives may act impartially and that there is little oversight of the process.⁴⁷

Citizens are able to verify their own data by checking the VL in their polling station. Although the CEC procedures stipulated that VLs should be posted for public checking, this was rarely done since the PRCs only received one copy of the list, which contained voters' personal data. Instead the VL generally was available for viewing upon request.

For out-of-country voters, the Ministry of Foreign Affairs compiled lists of citizens registered at embassies and consulates in 22 countries. However, there was no widespread campaign to encourage people to register to vote in these locations resulting in 31,603 people being registered by referendum day.

Following these updates the number of voters on the in-country VL was reduced from 2,726,481⁴⁸ to 2,480,498 on referendum day, a decrease of some 9 per cent. By comparison, the number of people added to the AVL on referendum day was 180,273 or 6.6 per cent of the original VL figure. Thus, the total number of voters after updates and additions to the VL was 2,660,771.⁴⁹

VII. CIVIC AND VOTER EDUCATION

Considerable efforts were made by the authorities and a variety of international and non-governmental organizations to inform voters about the content of the draft constitution and to encourage them to vote. The CEC conducted a widespread 'get out the vote' campaign which was assisted by local administration bodies through street banners, billboards, and TV and radio spots.

The CEC also printed one and a half million copies of the draft constitution for dissemination by local administration and PRC members. A further 330,000 copies and 620,000 leaflets and brochures were produced by the European Union/United Nations Development Programme (UNDP) for the use of civil society organizations. Roundtables and community meetings led by civil society groups were held across the country, sometimes with the participation of members of the Constitutional Council.⁵⁰ However, these roundtables were canceled in the South due to the security situation.

The OSCE/ODIHR LROM observed that civic education events generally supported the draft constitution rather than encouraged neutral discussion.⁵¹ Interlocutors from some organizations involved in civic and voter education admitted to the OSCE/ODIHR LROM that event moderators were trained to answer questions on the constitution in a positive light. Local administration bodies were also observed engaging school teachers and other state employees to encourage the 'yes' position.⁵²

⁴⁷ This opinion was expressed, for example by domestic observers and in IFES-funded reports on voter registration, which are not publicly available at the time of writing.

⁴⁸ CEC figure from 7 June, when the VLs were printed and sent to PRCs.

⁴⁹ This does not include out-of-country voters. See annex.

⁵⁰ The 75-member Constitutional Council was formed by the provisional government and mandated to elaborate the draft constitution.

⁵¹ As observed in Karakol, Batken and Naryn.

⁵² As observed in Belovodskoye Moskovski rayon, Chui and Issyk-Kul oblasts.

The emergency measures taken for displaced voters in the South, such as the possibility to vote without AVCs and identification as well as the possibility for mobile voting in affected areas, were not communicated to referendum stakeholders in a consistent manner. The provisional government made media announcements on the changes in identity document requirements and on the fact that individuals could vote in their nearest polling station without an AVC. However, these announcements were sometimes confusing to citizens in other parts of the country and to PRC members who, in some instances, were unsure which provisions applied to their area.⁵³

VIII. REFERENDUM CAMPAIGN

The referendum campaign was low-key; organized and widespread campaigning never fully materialized. Political parties indicated that their focus was on the forthcoming parliamentary elections rather than the referendum.

The ‘yes’ position was advocated primarily by the three parties forming the core of the provisional government: the Social Democratic Party of Kyrgyzstan (SDPK) led by Almazbek Atambaev; *Ata Meken* (Fatherland) led by Omurbek Tekebaev; and *Ak Shumkar* (White Falcon) led by Temir Sariev.⁵⁴ Other parties in the provisional government, including *Ar Namys* (Dignity), *Erkindik* (Freedom), *Uluu Birimdik* (Great Unity) and the Green Party of Kyrgyzstan also called for voting ‘yes’ at the referendum. Whilst these parties were loosely united, a co-ordinated campaign did not emerge. The key messages promoted by the ‘yes’ grouping centered on the need to stabilize the country and to provide legitimacy to the provisional government.

A ‘no’ position was never publicly articulated during the referendum campaign. However, several parties including *Butun Kyrgyzstan* (United Kyrgyzstan), *Ata Jurt* (Fatherland) and *El Armany* (People’s Destiny) expressed their opposition to the referendum and called for its cancellation. They objected to the proposed reduction of presidential powers in the draft constitution and criticized the inclusion of multiple issues into a single referendum question.

Following the outbreak of violence in the South, several parties which were initially positive about the referendum altered their stance and called for the postponement of the referendum or for achieving government legitimacy through other means. These included the Party of Communists of Kyrgyzstan (PCK), *Akyikat* (Justice), and *Zamandash* (Contemporary).

One hundred and fifteen political parties were registered in the Kyrgyz Republic,⁵⁵ many of which tended to be personality based rather than having a solid political platform and nationwide party structures. Referendum campaign methods consisted mainly of speeches reported through the press, use of social and family networks and small public meetings.⁵⁶ State officials often blurred the line between informing the

⁵³ As observed in Bishkek and Issyk-Kul oblast.

⁵⁴ The party leaders of SDPK, *Ata Meken*, and *Ak Shumkar* were deputy heads in the provisional government. The fourth deputy head of the provisional government, Azimbek Beknazarov, was unaffiliated to a party.

⁵⁵ Figure as of 1 June 2010, according to the Ministry of Justice.

⁵⁶ As observed in Issyk-Kul and Naryn.

public of the referendum and actively campaigning for a ‘yes’ vote.⁵⁷ The referendum was increasingly framed in terms of national stability to the detriment of a genuine discussion of the strengths and weaknesses of the draft constitution. The authorities and campaign messages never clearly communicated what a ‘no’ vote would entail.

Overall, political parties could freely campaign. No obstructions to their activities were reported. However, an atmosphere of fear and the prevailing security conditions in Osh and Jalal-Abad oblasts hampered possibilities for campaigning in the last two weeks before the referendum. During this time, the referendum agenda was supplanted by much greater concerns of the population which stilted public debate.

IX. MEDIA

A. MEDIA LANDSCAPE

A wide range of media outlets operate in the Kyrgyz Republic. The media environment is relatively pluralistic and offers an adequate degree of diversity. Radio and television are the primary sources of information for many citizens, whilst print media has a limited impact due to low circulation in rural areas. The CEC accredited 51 media outlets for the referendum, with about one fifth of them active outside of Bishkek.

In a positive step and in line with previous OSCE/ODIHR recommendations, the National Television and Radio Broadcasting Company (NTRBC) was transformed into a public service broadcaster.⁵⁸ The 15 members of the first supervisory body, composed exclusively from civil society representatives, will be appointed by the provisional government.⁵⁹

In contrast to events in previous years, the OSCE/ODIHR LROM did not observe any case of apparent censorship against the media during the campaign period. However, a number of interlocutors in Bishkek, Osh and Talas indicated that the practice of self-censorship remains a concern among journalists. The visible lack of criticism towards politicians and representatives of the government is partly a consequence of the abuse of criminal defamation laws by authorities in the past. Nevertheless, no pressure against journalists in respect of referendum coverage was noted.

B. LEGAL FRAMEWORK FOR THE MEDIA

The 2007 Constitution recognizes freedom of expression as a fundamental right.⁶⁰ Other laws governing the media are the 1992 Law on Mass Media, the 2008 Law on

⁵⁷ As observed in Bishkek, Chui and Issyk-Kul, and by the OSCE/ODIHR LROM media monitoring unit.

⁵⁸ Provisional Government Decree No 28 (30 April 2010).

⁵⁹ By the 7 June deadline, the provisional government received 59 applications. Of those, 10 were declined for not complying with the requirements. A commission composed of representatives from civil society and provisional government considers the applications. However, this commission has an advisory role only and the final decision will be taken by the provisional government. The decision should be taken and the supervisory body formed before the parliamentary elections.

⁶⁰ Article 14.6.

TV and Radio Broadcasting and the 1997 Law on Protection of Professional Activities of Journalists. While the 1997 Criminal Code⁶¹ contains provisions on defamation and prohibits public insults of state officials, the new Constitution states that no one may be subject to criminal prosecution for the dissemination of information which debases or humiliates the honor and dignity of a person.⁶²

The Law on Referendum⁶³ provides a comprehensive legal basis for the conduct of referenda campaigns. State-funded broadcasters are required to offer free airtime to competing groups and to allocate it within peak time (20:00-24:00 hours). Initiative groups,⁶⁴ groups against the referendum and other referendum participants are to be guaranteed equal conditions of access to the media. The media also have the right to sell airtime or print space to individuals or groups on a non-discriminatory basis. The price for paid advertising should be equal for all competitors.

On 17 May, the CEC approved rules for campaigning,⁶⁵ reinforcing *de facto* the principles of equal conditions for competitors, transparency of payments for paid airtime, and obligating the state media to offer free airtime. The CEC is charged with overseeing the compliance to these rules and, in case of violations by media outlets, it may task law-enforcement bodies to enforce them.

C. MEDIA MONITORING

The OSCE/ODIHR LROM monitored a cross-section of media outlets.⁶⁶ The media provided extensive coverage of constitutional issues and voter education initiatives. NTRBC TV, the first national channel, allotted 34 per cent of its news agenda to referendum issues. Newscasts of other channels showed similar editorial policies (*EITR*, 43 per cent; Channel 5, 41 per cent; *Pyramida*, 32 per cent; NBT, 46 per cent; NTS, 34 per cent; NTRBC Radio, 40 per cent; Radio *Azattyk*, 47 per cent). In the week after the violent clashes in Osh and Jalal-Abad, there was a significant shift in the media focus from the referendum to the emergency situation.

In addition to the news programs, NTRBC TV also broadcast several programs⁶⁷ where members of the Constitutional Council, civil society representatives and experts discussed provisions of the draft constitution. Beginning on 5 June, civic education spots, where articles of the draft constitution were displayed on the screen and read out in Kyrgyz and Russian, appeared on NTRBC TV. During the week prior to referendum

⁶¹ Articles 127 and 128.

⁶² Article 38.5.

⁶³ Articles 30 and 31.

⁶⁴ According to the Law on Referendum (Art. 11), an initiative group is a group of referendum participants that collects signatures in support of the referendum. These groups are entitled to campaign in favour of the referendum.

⁶⁵ CEC Rules During the Preparation and Conduct of a Referendum (17 May 2010).

⁶⁶ Monitoring period was 27 May - 27 June. TV channels (NTRBC TV, *Obshestvennaya Tele Radio Kompaniya 'EITR'*, Channel 5, *Pyramida*, *Novaya Televidionnaya Set* (NTS), *Nezavisimoe Bishkekoye Televidenie* (NBT)) and radio stations (NTRBC radio and Radio *Azattyk*) were monitored between 18:00-24:00. The monitored newspapers were *Aalam*, *Agym*, *Kyrgyz Tuusu*, *Erkin Too*, *Slovo Kyrgyzstana*, *Vecherniy Bishkek*, *Moya Stolitsa Novosti* (MSN), *Delo Nomer*, *Komsomolskaya Pravda* and *Argumenti I Fakti*.

⁶⁷ Such as *Achyk Soz* ('open discussion'), *Jani Bashat* ('new beginning'), *Surool* ('questions'), *Synak* ('criticism').

day, voter education spots were aired by NTRBC TV, *EITR*, NBT, NTRBC Radio, Channel 5 and NTS. Overall, the monitored electronic media dedicated 212 minutes to voter education spots, the majority of which appeared shortly before referendum day.

Although state media were charged to provide competing groups with direct access to address voters, no group applied for this provision of free airtime. Beginning on 21 June, only *Ata Meken* placed a limited number of paid referendum advertisements on television. As a consequence of the low-profile campaign, a genuine debate between the ‘yes’ and ‘no’ positions did not emerge in the media.

OSCE/ODIHR LROM monitoring revealed that in the news coverage all electronic media favoured the ‘yes’ option. In its news reports, NTRBC TV was monitored as giving 36 per cent of its coverage to the ‘yes’ position and 63 per cent to neutral reports on the referendum. Similarly, the other state-funded TV channel *EITR* gave 35 per cent of its news coverage to the ‘yes’ position and 65 per cent to neutral reports. NTRBC radio devoted 27 per cent of its news to the ‘yes’ position and 72 per cent to neutral reports. The ‘no’ option was virtually absent also in the private electronic media Channel 5, *Pyramida*, NBT, NTS and Radio *Azattyk*.

Prominent campaigning by state officials in support of the draft constitution was observed. The provisional government received 80 per cent of TV and radio news coverage,⁶⁸ often in favour of the ‘yes’ option. In fact, the media extensively aired reports of meetings and press conferences where ministers openly supported the draft constitution. On 24 June, in a 10-minute state address, broadcast by NTRBC TV, *EITR*, *Pyramida*, Channel 5 and NTRBC radio, Ms. Otunbaeva explicitly urged citizens to vote ‘yes’ in the constitutional referendum.

The monitored print media offered wide coverage of the referendum, mostly endorsing the ‘yes’ position. The state newspapers *Slovo Kyrgyzstana* and *Kyrgyz Tuusu* published the draft constitution and dedicated, respectively, 42 and 50 per cent of their overall news agenda to the referendum. The private newspapers *Vecherniy Bishkek* and *Delo Nomer* carried some criticism of constitutional changes. Despite some coverage of political statements on the possibility to postpone or cancel the referendum due to the emergency in the South, an appeal to vote ‘no’ was never expressed in the print media.

During the commendable wide media coverage of referendum day, all monitored electronic and print media respected the provisions for campaign silence.

X. PARTICIPATION OF WOMEN

At the time of the referendum, the provisional government, headed by Ms. Otunbaeva, had 7 senior female officials compared to 22 men. In contrast, women played an active role in the campaign and in public life, particularly in civil society. Women were also well represented at all levels of the referendum administration. At the CEC 38 per cent of members were women as were 40 per cent of OEC members. At the TRC level, 19 per cent of chairpersons were women. Women were reported as being well represented

⁶⁸ NTRBC TV, 82 per cent; *EITR*, 89 per cent; Channel 5, 80 per cent; NBT, 57 per cent; NTS, 81 per cent; *Pyramida*, 71 per cent; NTRBC Radio 82 per cent; Radio *Azattyk*, 81 per cent.

at PRCs.⁶⁹ The OSCE/ODIHR LROM media monitoring revealed that electronic media allotted 35 per cent of their news to women politicians. Besides Ms. Otunbaeva, provisional government members Damira Niyazalieva, Aida Salynova and Elmira Ibraimova received notable exposure in the media.

XI. PARTICIPATION OF NATIONAL MINORITIES

Kyrgyz are the majority group in the country, comprising some 69.2 per cent of the population. Other groups include Uzbeks (14.7 per cent), Russians (8.3 per cent), Dungans (1.2 per cent), Uighurs (1 per cent) and other nationalities (5.6 per cent).⁷⁰

The 2007 Constitution guaranteed national minorities the right to preserve their mother tongue, culture and traditions. The constitution and legislation also protect individual rights and freedoms, regardless of race, ethnicity, language and religion.

Whereas the Russian community largely aligned itself with mainstream political parties, the Uzbek minority expressed disappointment with the draft constitution, as it did not include special mechanisms to promote participation of ethnic Uzbeks in public administration and senior appointments, including in the security and justice sectors, and to ensure language rights.⁷¹ OSCE/ODIHR LROM interlocutors from the Uzbek minority believe that the new Constitution provides fewer guarantees for minorities as compared to the 2007 Constitution. For example, it specifically prohibits the creation of political parties on an ethnic basis.⁷²

With the support of the international community, 10,000 copies of the draft constitution were distributed in the Uzbek language by civil society groups. However, all official referendum materials were only provided in Kyrgyz and Russian. In addition, state TV aired spots where articles of the draft constitution were displayed on the screen and read aloud only in Kyrgyz and Russian.⁷³

In the run-up to the referendum, interethnic relations in the South became highly politicized. Major violence in Osh and Jalal-Abad oblasts led to large numbers of casualties and displaced persons. Heightened security fears limited the freedom of movement, while breakdown of inter-communal relations made participation of Kyrgyz and Uzbeks on referendum commissions problematic. Several prominent Uzbek public figures, who previously supported the provisional government and its campaign for the 'yes' vote, were detained on charges of organizing and participating in the violence or went into hiding fearing prosecution. Such reactions to the violent events further alienated the Uzbek community from the referendum process.

⁶⁹ OEC figures give Osh city 68 percent, Chui 65 per cent, Issyk-Kul 53 per cent, Naryn 46 per cent and Talas 39 per cent.

⁷⁰ National Statistics Committee of the Kyrgyz Republic, 2009:
<http://www.stat.kg/rus/part/census.html>.

⁷¹ The Uzbek community had four representatives in the Constitutional Council. One of their four proposals promoting minority rights was accepted, i.e. changing the opening paragraph of the introduction of the draft constitution from 'Kyrgyz people' to 'people of Kyrgyzstan.'

⁷² Article 4.4.

⁷³ The UN Human Rights Committee's General Comment No 25 (1996), paragraph 12 states that 'information and materials about voting should be available in minority languages.'

XII. COMPLAINTS AND APPEALS

The right of legal redress was provided by the 2007 Constitution and other applicable legislation.⁷⁴ All referendum stakeholders were entitled to initiate a complaint when voting and electoral rights were infringed. Jurisdiction over referendum disputes was shared between referendum commissions and the courts. The Supreme Court was the highest instance for such disputes. Although the legal framework provided for a dual channel of adjudication, parallel complaints to a referendum commission were to be suspended until the court's final ruling.

Deadlines for adjudicating complaints were generally adequate to enable effective remedy for the complainant. Complaints had to be filed within three days of a decision, action, or in-action of a referendum commission or another instance that is subject of the complaint and considered within three days of receipt. However, consideration of a claim may be subject to a ten-day extension if further clarification is required. Although it was not an issue in this referendum, this could have resulted in unnecessary delays.

In addition, there was no legal provision for keeping public records of complaints. As part of the commitment to provide effective remedies,⁷⁵ proceedings on complaints and appeals should be transparent.⁷⁶ Good electoral practice also points to the publication of 'full details concerning the handling of each complaint or appeal, including the decision of the dispute-resolution body and its justification.'⁷⁷

During the referendum preparation period very few complaints were filed with the CEC and none were filed at the courts; of these, most related to the composition of referendum commissions. Complaints were dealt with in a manner that lacked transparency and due process. They were assigned to one CEC member and considered outside of CEC sessions, often without the presence of the complainants. The CEC failed to provide appropriate remedy to complainants, as their complaints were often left unanswered or the answer was based on the opinion of one CEC member. This approach was not in line with legal provisions which provide for transparency of the work of the CEC and public consideration of complaints. In addition, it did not provide complainants with effective means of redress against administrative decisions, as set out in paragraph 5.10 of the 1990 OSCE Copenhagen Document.

On a positive note, the CEC considered in session six complaints that alleged referendum day violations. These included allegations of ballot stuffing, breaches of mobile voting regulations and infringements of the campaign silence. As a result, the CEC annulled the results of four polling stations.⁷⁸ One complaint regarding inadequate behavior of commission members, which resulted in their exclusion from PRC membership, was forwarded to the Prosecutor's Office for further investigation. The remaining complaints were dismissed on the grounds of jurisdiction or as not being substantiated.

⁷⁴ See the section on the Legal Framework.

⁷⁵ Paragraphs 5.10 and 11 of the 1990 OSCE Copenhagen Document.

⁷⁶ See Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR: http://www.osce.org/publications/odihr/2003/10/12345_127_en.pdf.

⁷⁷ See Existing Commitments for Democratic Elections in OSCE Participating States, OSCE/ODIHR: http://www.osce.org/publications/odihr/2003/10/12345_127_en.pdf, page 75.

⁷⁸ PRC No's 1004, 1005, 1006, 1315 in Bishkek.

XIII. DOMESTIC AND INTERNATIONAL OBSERVERS

There is no requirement for domestic organizations to register observers prior to referendum day. Individual observers had to present a letter from their nominating organization to the PRC chairperson on referendum day.

Several domestic observer organizations monitored the referendum, increasing the transparency of the referendum process. They included the Coalition for Democracy and Civil Society (CDCS) with 35 long-term observers and 1,000 short-term observers, *Taza Shailoo* (Clean Election) with 720 short-term observers, and the Assembly of Nations of Kyrgyzstan with 579 short-term observers.⁷⁹ CDCS were the only observers present in Osh city for the referendum.⁸⁰

The CEC accredited 189 international observers for this referendum. No legal restrictions were placed on either domestic or international observers although there were reports of some domestic observers being removed from PRCs.

Taza Shailoo and CDCS issued a joint statement on 28 June, which CDCS followed with a detailed report on 29 June. The reports stated that, on referendum day, observers had witnessed some isolated incidents but few major violations.

Two NGOs undertook technical audits in co-operation with the CEC. CDCS undertook an audit of the VLs from 80 precincts. The Civil Initiative for Internet Policy audited the *GAS Shailoo* results system. Unfortunately, both audits started late and were not published by the time of this report.

XIV. REFERENDUM DAY

The OSCE/ODIHR LROM did not conduct a comprehensive and systematic observation on referendum day, but observers did visit a limited number of polling stations and TRCs.

The atmosphere on referendum day was calm and peaceful. All polling stations were reportedly open on time. Security forces from police, community volunteers, and sometimes military personnel were present at polling stations visited. However, they did not interfere with the process and their presence did not seem to be interpreted as intimidating, but rather as reassuring. On several occasions unauthorized persons such as local authority representatives, councilors and state employees were present inside polling stations.⁸¹ In most instances domestic observers were present, while political parties were less represented.

In the polling stations visited the layout and premises were adequate, polling staff understood the procedures and voting was conducted in an orderly fashion. However, there was no control of the number of voters allowed inside the polling station at any

⁷⁹ CDCS and *Taza Shailoo* are NGOs whilst the Assembly of Nations of Kyrgyzstan is an advisory body to the presidential administration set up by former President Bakiev.

⁸⁰ CDCS deployed 50 observers in the Osh oblast and three mobile groups in Osh city.

⁸¹ For example, in Jalal-Abad and Chui oblasts and Bishkek.

one time, leading to inconsistent ink checks, overcrowding and, at times, voters being added to the AVL without completing the request form.⁸² As ballots were usually not folded twice, voters' choice was at times revealed and its secrecy compromised.

The counting processes in the limited number of polling stations visited were less orderly than the voting and not as well administered. Polling staff demonstrated a lack of understanding of procedures which led to poor implementation in most cases. PRCs often required domestic observers to remain seated, which inhibited their ability to view the count.⁸³ Sorting of ballots into 'yes' and 'no' piles was done quickly and lacked transparency. In one polling station the number of 'no' votes was calculated by a deduction of the 'yes' votes from the number of total ballots cast. In another instance, local administration staff interfered in the count. All PRCs in the polling stations visited encountered difficulties in completing the protocol due to confusing terminology. This may have led to erroneous figures. From the CEC website it can be seen that a number of polling stations recorded 90 to 100 per cent turnout.⁸⁴ In one polling station visited this was due to the PRC filling in the number of voters who voted in the box for registered number of voters. However, this may not always have been the case and such results raise questions as to their accuracy. In all polling stations visited the poster sized protocol was completed, observers were asked to sign the protocols and were provided with authorized copies.

The organization of reception of protocols in the TRCs visited was chaotic and confusing. In many instances the space allocated was insufficient or divided between several rooms.⁸⁵ In Talas city TRC the *GAS Shailoo* room was some five minute walk from the reception area. Lack of space adversely affected the transparency of the tabulation making it difficult for observers to enter rooms or view proceedings. One OSCE/ODIHR LROM observer team was denied access to a TRC, whilst another team was denied entry to the *GAS Shailoo* room.⁸⁶

Procedures for checking the PRC protocols varied in the TRCs visited. In three TRCs protocols were completed in pencil but signed in ink. The figures were checked in a computer before reaching the *GAS Shailoo* and amended until the control ratios were correct without completing the necessary explanatory statements.⁸⁷ In Batken city OSCE/ODIHR LROM observers noted three protocols that were changed on entry into the *GAS Shailoo* results database.⁸⁸ Except for Karakol TRC, poster sized protocols were not completed during the tabulations in the TRCs visited.

⁸² There were unusually high numbers of voters appearing on the AVL in some areas. For example, 12 per cent of polling stations in Issyk-Kul oblast recorded over 30 per cent of voters who voted using the AVL, raising concerns over how procedures were implemented.

⁸³ For example, in Chui, Batken, Bishkek and Issyk-Kul. Article 18.4.d of the Election Code specifically provides for observers to observe the count at a distance where they can see the content of the ballot.

⁸⁴ In Issyk-Kul oblast, for example, 28 of the 243 polling stations recorded 100 per cent turnout.

⁸⁵ TRCs in Oktyabrsky Rayon (Bishkek) and Naryn.

⁸⁶ TRCs in Sverdlovsky Rayon (Bishkek) and Naryn respectively.

⁸⁷ TRCs in Batken city, Oktyabrsky Rayon (Bishkek) and Alamundi (Chui oblast).

⁸⁸ PRC numbers 8065, 8067 and 8076. Differences between the signed protocols and the figures in the *GAS Shailoo* show that the number of voters registered was reduced by 446 overall whilst number of voters who voted was increased by 1,361.

Security personnel were present in all TRCs visited but few political party or domestic observers were present.

XV. ANNOUNCEMENT OF RESULTS AND POST-REFERENDUM DEVELOPMENTS

The CEC announced turnout figures throughout referendum day. Preliminary results based on results from about 94 per cent of the polling stations were available in the morning of 28 June on the CEC website. The CEC swiftly posted individual PRC results protocols online as they were entered into the *GAS Shailoo* system, strengthening transparency and public confidence in the results process.

Final results, as announced by the CEC on 1 July, showed that the referendum was approved by 90.55 per cent of votes cast, with a turnout figure of 72.24 per cent.⁸⁹ Official results were published on 2 July in the *Erkin Too* state newspaper.⁹⁰ Ms. Otunbaeva was sworn in as Interim President on 3 July, before the deadline for submitting appeals on referendum results had expired.

Referendum results were broadly accepted across the political spectrum. Although *Ata Jurt*, *Butun Kyrgyzstan*, and PCK publicly expressed doubts regarding the conduct and results of the referendum, no formal complaints were submitted.

Starting from 22:00 hours on 27 June, a state of emergency was re-imposed in large parts of Jalal-Abad and Osh oblasts which is due to expire on 10 August.⁹¹

XVI. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of the Kyrgyz Republic to support democratic progress. A number of recommendations made in previous OSCE/ODIHR observation mission reports not yet implemented remain fundamental to improving the electoral process in the Kyrgyz Republic. The recommendations are identified as priority recommendations for the consideration of the authorities of the Kyrgyz Republic in the short-term and before the parliamentary elections. Other recommendations are offered to address issues in the longer term. The OSCE/ODIHR stands ready to assist the authorities to further improve the electoral process.

⁸⁹ According to information on final results on the CEC website:
<http://www.shailoo.gov.kg/ru/news/svodnaya-tablica-cik-kyrgyzskoj-respubliki-po-itogam-vsenednogo-golosovaniya-na-referendume-27-iyunya-2010-goda-svodnaya-tablica-cik-kyrgyzskoj-respubliki-po-itogam-vsenednogo-golosovaniya-na-r/#more-3819>

⁹⁰ According to Article 46.4 of the Law on Referendum and Provisional Government Decree No 20 (21 April 2010), Article 19, the referendum result enters into force on the day of its official publication by the CEC.

⁹¹ Provisional Government Decree No 83 (27 June 2010).

A. SHORT-TERM, PRIORITY RECOMMENDATIONS

Legal Framework

1. The legal framework needs amendments to take account of the provisions of the new Constitution. It should be harmonized to eliminate discrepancies between different laws. Only the necessary changes should be made in the run-up to the parliamentary elections. A comprehensive overhaul of the legal framework for elections should be conducted once a new parliament has been elected. Any revisions should ensure full compliance with OSCE commitments and other international standards. Fundamental changes should be adopted leaving enough time before an election for all stakeholders to become familiar with them. It is also essential that changes are adopted as a result of an open and consultative process.

Election Administration

2. The CEC should continue to work in a transparent, professional and collegial manner in order to enhance public confidence. These principles should also guide the work of lower-level commissions.
3. Clear and consistent procedures for appointing commissioners should be applied not only to political parties as was done during the establishment of referendum commissions but also to civil society nominees. The number of precinct commission members should be adjusted to the size of the precinct.
4. The independence of election commissions must be strengthened before the parliamentary elections. The prohibition of state and local officials' presence in polling premises except for the purpose of voting as well as the prohibition of their interference in the polling process should be enforced.
5. The CEC should ensure that all decisions are published on the CEC website as soon as possible. As with the referendum results, it should ensure the immediate publication of detailed election results broken down by polling stations for the parliamentary elections.
6. Election procedures must be consistent with the law and be issued in advance of the training of election commissions. Several procedures require clarification prior to the parliamentary elections, for example: inking, rules for inclusion into the AVL, folding of ballots for preserving their secrecy, guidelines for valid and invalid ballots, clearer result protocols, counting mobile ballots and amending of precinct commission protocols during tabulation.
7. For the forthcoming parliamentary elections, the balance introduced by the CEC for the nominations to election commissions from political parties and civil society should be maintained.
8. Training for commissions should address the shortcomings observed during the referendum. Main areas to be addressed are counting and tabulation procedures, completion of protocols, the correct application and systematic checking of the inking of voters' fingers, rights of observers and use of tamper evident bags.

Voter Registration and Voter Lists

9. Adequate safeguards must be in place to protect against multiple voting. The reinstatement of inking procedures is a positive measure, but in accordance with the electoral law and international good practice, a registered voter should be removed from a VL before being added to another to avoid multiple registrations.
10. Absentee voting certificates should be reinstated and the criteria for voter identification should be clarified.
11. Authorities should continue their efforts to improve the quality of the VL, which is an essential safeguard against multiple voting. Methods used by local authorities to verify the VL should be consistent throughout the country and must not disenfranchise migrants (domestic and abroad). In the short-term, this could be partially provided by reviewing the VLs and AVLs which are stored in the referendum archive. Consideration should be given to allow a voter to both re-register and de-register at the *Gas Shailoo* office where the voter currently resides. This will enhance universality of the vote in line with OSCE commitments.⁹²
12. Consideration could be given to verifying the identity and residency of voters added to the additional voter lists on referendum day with the view to adding them into the main voter lists before the parliamentary elections.

Political and Electoral Campaign

13. Consideration should be given to adopting a code of conduct for political parties to commit to responsible campaigning and fair conduct of the election process.

Media

14. The rules for campaigning through the media can be improved to enhance fairness, balance and impartiality in respect of election coverage. They should ensure that the free airtime is sufficient and adequately allocated among competitors, for example by drawing lots for broadcast slots, with time granted on an equal basis. They should also ensure that its format is specified and the schedule published in advance. Paid airtime should be clearly marked to inform voters of its partisan nature.
15. During election campaigns, the media should refrain from giving an advantage to government officials. The reporting of government activities must not be used for receiving additional campaign coverage. For example, statements of candidates holding governmental positions should be considered as campaigning and therefore be counterbalanced with airtime offered to other candidates unless the statements cover official duties. CEC regulations could also specify that during the election campaign, members of the government should be interviewed only in their official capacity without mentioning any political platform or campaign message.

⁹² Paragraph 7.3 of the 1990 OSCE Copenhagen Document.

16. NTRBC should promote diversity and pluralism and provide all election contestants with balanced, objective and fair coverage.
17. Training opportunities for journalists to explore different formats of election campaign coverage may be considered as a means to develop voter information on political alternatives.

Civic and Voter Education

18. Civic education on the constitution should be continued. In the run-up to the parliamentary elections, civic education can address the role of political parties in a parliamentary system and key concepts of parliamentary representation. Civic education must be separated from partisan messages.
19. Voter information on correct marking and folding of ballots should be posted in the polling stations, as required by law.

Participation of National Minorities

20. The authorities are encouraged to consult with national minorities on issues of concern to them. All parties and individuals, irrespective of ethnicity, should be provided the opportunity to participate in electoral processes openly and without fear and intimidation.
21. The authorities should ensure that voter and civic information is produced in minority languages, including Uzbek.⁹³

Complaints and Appeals

22. All election commissions should consider complaints in line with legal provisions. The consideration of all election related complaints should respect the principles of due process: consideration of complaints at public meetings, the right to a written decision with a justification that is made public, as well as the right for the complainant to be present during the consideration of the complaint and being notified of the right to appeal a decision made. This would further contribute to fair, effective and transparent dispute resolution.
23. To ensure consistency, the elaboration of standard procedures for handling complaints and appeals for all levels of election commissions should be considered.
24. All deadlines for adjudicating complaints and appeals should be conducive to timely and effective remedies. In this regard, the possibility to extend the three-day deadline to ten days should be reconsidered.

⁹³ The UN Human Rights Committee's General Comment No. 25 (1996), paragraph 12, and article 25 of the International Covenant on Civil and Political Rights (ICPPR).

Observers

25. Observers should have full access to all stages of an election process, including counting and tabulation of results as well as data entry into the *GAS Shailoo* system.
26. Domestic observers would benefit from additional training on observer rights and obligations, polling procedures and how to file complaints. Election commissions must allow observers to move freely, especially during counting.

Polling Procedures

27. Better organization of voting proceedings is required, including controlling the number of voters allowed in a polling station at a time. This will allow for more accurate ink checking and adherence to procedures inside the polling stations.
28. The counting and tabulation of results should follow a verifiable chain of evidence. All counting and tabulation protocols should be completed in ink before commission members sign them. Any corrections to errors on precinct commission protocols at the next higher level should be accompanied by the obligatory explanatory note. Poster sized protocols containing the results for each polling station should be posted during the tabulation process.
29. In response to the security situation the authorities provided substantial security forces at the polling stations. In the future only state police should secure the electoral process, as stipulated by the law.

B. OTHER RECOMMENDATIONS

Legal Framework

30. The restrictions of suffrage rights for people serving prison sentences should be reviewed. Any forfeiture of voting rights should be proportionate to the crime committed.
31. Authorities should ensure proper investigation of electoral fraud, and pursue liabilities as already envisaged by the legislation.

Election Administration

32. Nominations to election commissions should consider education, experience, ethnicity and gender. Political parties should assume their responsibility to nominate representatives to the electoral commissions to ensure that commissions at all levels are fully composed.
33. Consideration should be given to providing adequate premises for the OECs and TECs, separate from local administration.
34. The results software of the *GAS Shailoo* system would benefit from a review.

Voter Registration and Voter Lists

35. In the long term, the authorities should undertake a thorough review of voter registration and consider conducting it separate from the *propiska*. The list could include voters' personal identification numbers so that national cross-checking of voter registrations can be conducted and duplication of registration avoided.

Political and Electoral Campaign

36. In order for the new semi-parliamentary system to function effectively, appropriate measures could be considered to encourage the strengthening of political parties. These should include capacity building programs to aid the development of internal party structures and the strengthening of party platforms.

Media

37. The formation of a supervisory body to monitor the compliance of the media with legal provisions and CEC regulations on campaigning should be considered. This body, independent or constituted within the CEC, should include a media monitoring component to effectively detect violations.

38. In order to comply with the new constitution, amendments to media related laws are necessary. For example, provisions on defamation are contrary to Article 38.5 of the new Constitution. The decriminalization of libel builds confidence among journalists and may reduce the observed pattern of self-censorship.⁹⁴

Participation of National Minorities

39. Any revisions of the legal framework should encompass special measures for ensuring equality of national minorities in exercising their rights and freedom, including effective participation in public affairs.⁹⁵

⁹⁴ 'All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws', Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, N. 190, December 2002: http://www.osce.org/documents/rfm/2002/12/190_en.pdf.

⁹⁵ Paragraphs 31 and 35 of the 1990 OSCE Copenhagen Document.

ANNEX: FINAL RESULTS⁹⁶

**REFERENDUM (NATION WIDE VOTING) IN KYRGYZ REPUBLIC
 27 JUNE 2010
 CEC PROTOCOL
 ON RESULTS FOR REFERENDUM IN KYRGYZ REPUBLIC**

As a result of vote tabulation for the referendum in Kyrgyz Republic on accepting the Constitution of KR and the law of KR ‘On enactment of the Constitution of KR’, the CEC established:

1	Total number of voters, included in the voter list, at the moment of finishing the voting	2 5 0 4 8 1 2
1a	Number of voters in the additional voter list	0 2 1 1 8 7 5
2	Number of ballots received by the PRC	2 7 6 4 7 3 6
3	Number of ballots issued to voters for early voting	0 0 1 3 5 2 8
4	Number of ballots issued to voters at the polling stations on referendum day	1 8 6 8 7 5 8
5	Number of ballots issued to voters for mobile voting on referendum day	0 0 8 0 5 5 1
6	Number of citizens who received the ballots	1 9 6 2 8 3 7
7	Number of unused ballots	0 8 0 1 8 6 9
8	Number of ballots in mobile ballot boxes	0 0 8 0 5 5 1
9	Number of ballots in stationery ballot boxes	1 8 8 2 2 5 3
10	Number of valid ballots	1 9 3 5 7 1 2
11	Number of invalid ballots	0 0 2 7 0 9 2

⁹⁶ Unofficial translation of the results protocol published by the CEC.

12	Total number of citizens who cast the ballots	1	9	6	2	8	0	4
13	CONTENT OF THE QUESTION Adopt the Constitution of the Kyrgyz Republic and the Law of the Kyrgyz Republic on enactment of the Constitution of the Kyrgyz Republic, which were submitted for the referendum (nation wide vote) as drafts by the Provisional Government.							
1	Number of voters who voted 'YES'	1	7	7	7	3	3	9
2	Number of voters who voted 'NO'	0	1	5	8	3	7	3
14	Number of absentee voting certificates received by PRCs	0	0	1	6	9	2	9
14a	Number of voters voted with absentee voting certificates	0	0	0	0	2	8	8
14b	Number of absentee voting certificates issued to voters by PRCs before the referendum day	0	0	0	1	7	0	8
14c	Number of unused absentee voting certificates	0	0	1	5	2	2	1
15	Number of lost ballots	0	0	0	0	0	3	0
16	Number of ballots exceeding the received number of ballots	0	0	0	0	0	0	0

The list of complaints (appeals), legal and other documents attached to the protocol:

- Complaints (appeals) from representatives of the Coalition for Democracy and Civil Society – 4 complaints
- Complaints (appeals) from citizens – 3 complaints

In accordance with Art. 45 of the Law of KR on '**Referendum in KR**' CEC has decided to consider the **conduct of the referendum valid**; and consider the issue 'To accept the Constitution of KR and Law of KR 'On enactment of the Constitution of KR'', drafts of which were proposed by the Provisional Government of KR for the referendum (nationwide voting)' **adopted**.

The CEC Chairperson A.Sariev
 CEC members of KR

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 Alymbekova G.T.
 Bayalinov A.J.
 Iriskulbekov E.B.
 Li A.S.
 Skripkina G.A.

Akmatov Zh. A.
 Bapanova Zh. B.
 Zhanzhalbekov M. J.
 Korsunskiy M. A.
 Mamaramov A. M.
 Sheripov N. T.

1st July 2010

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States 'to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society' (1992 Helsinki Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education, and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organisations.

More information is available on the ODIHR website (www.osce.org/odihr).