



Office for Democratic Institutions and Human Rights

KYRGYZ REPUBLIC
CONSTITUTIONAL REFERENDUM
27 June 2010

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

6 - 7 May 2010



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I. INTRODUCTION

On 7 May 2010, Kyrgyzstan invited the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the OSCE Parliamentary Assembly (OSCE PA) to observe the 27 June constitutional referendum. This invitation came during the Needs Assessment Mission (NAM) that was conducted from 6 to 8 May 2010. The OSCE/ODIHR NAM was composed of Beata Martin-Rozumilowicz, Deputy Head of the OSCE/ODIHR Election Department, Nicola Schmidt, OSCE/ODIHR Senior Election Adviser, and Anna Chernova, Programme Officer with the OSCE PA.

The purpose of the OSCE/ODIHR NAM was to assess the environment, conditions and level of preparation for the referendum, and to advise on modalities for a possible observation activity. The NAM held meetings in Bishkek with representatives of the provisional government, election administration, political parties, media, civil society and international community (see annex for list of meetings).

The OSCE/ODIHR expresses its appreciation to the provisional government of the Kyrgyz Republic, the Ministry of Foreign Affairs, the Central Commission for Elections and Referenda, political parties, civil society and media for their co-operation. The OSCE/ODIHR would also like to thank the OSCE Centre in Bishkek for the assistance provided during the NAM.

II. EXECUTIVE SUMMARY

Following the 7 April 2010 events that led to the ouster of President Bakiev and his government, a provisional government was formed. The provisional government has announced a 'Return to Democracy' program that foresees a peaceful transition to a democratic state, including, *inter alia*, the holding of a constitutional referendum on 27 June 2010 and parliamentary elections on 10 October. It is not yet decided whether a presidential election will be held together with parliamentary elections or at a later date. The provisional government dismissed the previous parliament, the Constitutional Court and the Central Commission for Elections and Referenda (CEC). It also passed several decrees to regulate the constitutional reform and other reform processes and to set the dates for the referendum and parliamentary elections. A provisional CEC was also established by decree.

The OSCE/ODIHR has observed elections in the Kyrgyz Republic since 2000. Both the 23 July 2009 presidential election and the 16 December 2007 early parliamentary elections were assessed as having failed to meet key OSCE commitments.

The upcoming referendum and parliamentary elections are regarded as crucial for Kyrgyzstan. All OSCE/ODIHR NAM interlocutors welcomed observation by the OSCE/ODIHR and expressed their readiness to co-operate. Conducting transparent voting processes and ensuring public confidence were seen as a particular challenge by the provisional government in view of previous experience with elections in Kyrgyzstan.

The general situation in Kyrgyzstan was volatile following the 7 April events, but has now stabilized. The provisional government has assumed *de facto* authority but also emphasized its transitional character. The OSCE/ODIHR NAM was assured that the security situation is now largely under control despite some concerns in the South. Discussions are ongoing about proposed changes to the constitution; political parties and civil society are involved in these discussions; they are able to advise and freely express their views about the performance and plans of the provisional government. Public consultations on the new constitution are to start on 20 May.

The legal framework which should regulate the referendum is unclear. The 1991 Law on Referendum was amended in the run-up to the 2007 referendum. It is not very detailed on the actual procedures but provides a minimum turnout of 50 per cent for a referendum to be valid. The existing election code may also be applied to the upcoming referendum. In cases of early elections, the code provides for deadlines to be shortened by one third; this may also be applied to the referendum. In addition, the referendum and possibly also the upcoming parliamentary elections could be regulated by decrees of the provisional government and decisions passed by the provisional CEC.

A provisional CEC has been formed with 16 members, equally divided between political parties and civil society. The provisional government has requested assistance and advice to the CEC from the international community, particularly the United Nations (UN). Lower-level election commissions are being formed on a similar basis. The preparations that are already underway, represent a significant challenge, due to the fact that the election administration is only being put in place now. Several international NGOs present in Kyrgyzstan are planning activities to support the provisional CEC and the upcoming electoral processes.

The quality and accuracy of voter lists remain a concern. Voter lists are compiled at local level, based on residence registration. National cross-checking of entries is difficult. Due to the high level of internal and external migration, OSCE/ODIHR NAM interlocutors were particularly concerned about how the right to vote can be ensured for all eligible voters.

The media environment in Kyrgyzstan continues to have a certain level of pluralism and vibrancy. Steps are being taken to improve the media environment in the wake of the recent events. The provisional government has announced a plan to transform the National TV and Radio Broadcasting Corporation into a public service broadcaster. This process initially began in 2005, but stalled under the previous authorities. The OSCE/ODIHR NAM was assured that the public broadcaster will provide balanced coverage of the ongoing discussions on constitutional changes as well as of the upcoming referendum.

Civil society is very active in Kyrgyzstan and provides an important element of transparency and accountability to the current political processes. Several civil society organizations are planning to observe the referendum.

All OSCE/ODIHR NAM interlocutors welcomed OSCE/ODIHR observation of the referendum. International observation was deemed useful in contributing to transparency of the process and to enhancing public confidence. In this context and in view of the recent turbulent changes in Kyrgyzstan, the current political and pre-electoral situation, and the stated intention of the provisional government to hold the referendum in line with OSCE commitments and other international standards for democratic elections, the OSCE/ODIHR NAM recommends the deployment of a standard election observation mission for the 27 June referendum. In addition to the deployment of a core team of analysts, the OSCE/ODIHR will request from OSCE participating States the secondment of 24 long-term observers to observe the conduct of the referendum in all regions throughout Kyrgyzstan and of 300 short-term observers to follow the proceedings on referendum day.

III. FINDINGS

A. BACKGROUND

President Bakiev had come to power in 2005 through popular protests against manipulations during the February 2005 parliamentary elections and against the regime of former President Akaev. Mr. Bakiev was elected president in a presidential election on 10 July 2005. Following a constitutional referendum in October 2007 that adopted a new constitution and electoral code, the 16 December 2007 early parliamentary elections resulted in an overwhelming majority of seats in parliament for the pro-presidential party *Ak Jol* (71 of 90). Mr. Bakiev entered his second term following the 23 July 2009 presidential election.

The OSCE/ODIHR has observed all national-level elections in Kyrgyzstan since 2000. Both the 2007 parliamentary elections and the 2009 presidential election were assessed as having failed to meet key OSCE commitments, in particular the commitments to guarantee equal suffrage, to ensure that political campaigning is conducted in a fair and free atmosphere and that votes are reported honestly as well as to maintain a clear separation between party and state. This was despite a certain level of pluralism in the field of parties and candidates and the engagement of civil society which provided an important element of transparency and accountability.¹

The OSCE/ODIHR also provided several reviews of the electoral code and draft amendments. The last review of the electoral code was provided in July 2006.² The OSCE/ODIHR engaged in follow up and electoral reform activities in Kyrgyzstan following the 2005 elections but recent offers to support the Kyrgyz authorities in improving their legal framework and the conduct of elections were not taken up.

¹ For OSCE/ODIHR reports on previous elections in Kyrgyzstan please see: <http://www.osce.org/odihr-elections/14475.html>

² For more information, see <http://www.osce.org/odihr-elections/13449.html>.

B. POLITICAL CONTEXT

Protests by citizens and opposition activists against the government of President Bakiev, particularly against corruption and rising prices, resulted in the ouster of the government on 7 April 2010. Over 80 people are said to have been killed and several hundred injured during the protests. Following these events, a provisional government was established, headed by Ms. Roza Otunbaeva, a former foreign minister. Several other key opposition figures serve as deputy heads of the provisional government: Mr. Almaz Atambaev responsible for economic affairs (chairman of the Social Democratic Party of Kyrgyzstan, SDPK, and former prime minister); Mr. Temir Sariiev responsible for financial issues (chairman of *Ak-Shumkar* party, former member of parliament); Mr. Omurbek Tekebaev responsible for constitutional reform (chairman of *Ata Meken* party, former speaker of parliament); and Mr. Azimbek Beknazarov responsible for prosecution and justice issues (former General Prosecutor and former member of parliament).

On 13 April, President Bakiev offered his resignation; he left the country on 16 April. The provisional government has lifted his immunity and has asked for his extradition from Belarus, where he is now residing. The security situation was volatile following the 7 April events but during a meeting with the Acting Minister of Interior, Mr. Bakytbek Alymbekov, the OSCE/ODIHR NAM was assured that the security situation in the country is now largely under control. He confirmed, however, that security problems remain outstanding in certain areas, especially in the South.

As first steps, the provisional government dissolved the parliament, the CEC as well as the Constitutional Court. It announced a so-called 'Return to Democracy' program with the aim of a peaceful transition to democracy, including *inter alia*, a review of the existing legislation, particularly the constitution. A new version of the constitution will be put to referendum on 27 June. The referendum will likely be followed by a review of the existing electoral code. Parliamentary elections were announced for 10 October 2010. A presidential election is also expected although it is not yet clear whether it would be held on the same day as the parliamentary elections or on a later date.

The provisional government has assumed *de facto* authority, with the stated intention of moving forward quickly with the referendum and the parliamentary elections. Some parliamentarians from the disbanded parliament met to elect a new speaker and resolved to accept the provisional government. However, the legal consequences of this development are unclear.

Discussions are currently underway regarding changes to the constitution. A 75-member constitutional council has been formed, including representatives from political parties and civil society. Several working groups as part of the council are discussing different aspects of constitutional reform, including on human rights, system of government and division of powers, local self-government and the judiciary. A draft constitution is expected to be published on 20 May, followed by nationwide public discussions. The OSCE/ODIHR has previously urged Kyrgyz authorities to ensure that changes to the constitutional and legal framework should undergo broad public discussion.³

³ See the OSCE/ODIHR Final Report on the 16 December 2007 early parliamentary elections, available at: <http://www.osce.org/odihr-elections/27921.html>.

A number of issues are discussed in the ongoing drafting process, including the proposed abandonment of the Constitutional Court, the system of government (a suggested parliamentary republic with reduced authority of the president), and the proportional election system and the number of members of parliament (a proposed increase from 90 to 120). Several OSCE/ODIHR NAM interlocutors have expressed concern about the lack of information outside Bishkek and of information exchange between the regions and those involved in the discussions in Bishkek.

Representatives of political parties met by the OSCE/ODIHR NAM stated their support for the plans of the provisional government and the amendment of the constitution. Many held views that differ from the current proposals, but they confirmed they are able to openly make their proposals in context of the constitutional council.⁴ Representatives of civil society seconded this opinion and added that the first plenary sitting of the council, which addressed human rights issues, had taken into account proposals of the working group on human rights. Plenary sessions of the constitutional council are televised, media report on the ongoing discussions and a number of projects are underway or planned to support nationwide discussion of the proposed constitution to ensure that voters will be aware of the proposed changes on the day of the referendum.

All OSCE/ODIHR NAM interlocutors stated their strong support for an observation activity by the OSCE/ODIHR, noting that an external, unbiased observation would promote confidence in the process.

C. LEGAL FRAMEWORK

The legal framework for the 27 June referendum is unclear. The existing constitution and election code were amended in a nationwide referendum in October 2007. The election code was subsequently amended in early 2009. Referenda are to be regulated in a separate law. The 1991 Law on Referendum was changed in the run up to the 2007 referendum; it contains very little detail about concrete procedures. It provides for a referendum to be valid when more than 50 per cent of registered voters participate. In the 2007 referendum, procedures as stipulated by the election code were applied.

The OSCE/ODIHR NAM was informed that both the Law on Referendum as well as the election code will be applied to the upcoming referendum. The election code provides for deadlines to be shortened by one third in the event of an early election. This may be applicable also for the upcoming referendum. In addition, the provisional government has so far passed several decrees, including on the dates of the referendum and parliamentary elections and the composition of the CEC. It is likely that the provisional government will pass further decrees related to the upcoming referendum and electoral processes. The CEC chairperson informed the OSCE/ODIHR NAM that the CEC may also pass decisions to regulate aspects of the process. Such aspects include that election results are published in a timely manner and broken down to polling station level; this has been previously recommended by the OSCE/ODIHR and could be regulated by CEC decisions.

⁴ The NAM attempted to make contact with the *Ak Jol* party on numerous occasions. Party representatives either were not contactable or had changed their numbers.

It is expected that following the 27 June referendum, the election code will either be amended to reflect constitutional changes or changes will be introduced by decree until a newly elected parliament would consider amendments to the election code at a later stage.

D. ELECTION ADMINISTRATION

The provisional government has by decree appointed a provisional CEC with 16 members, of which 8 are representatives of political parties and 8 are representatives of civil society organizations. The chairperson was proposed by NGO representatives and has the decisive vote in case of a tie in decision-making.

The OSCE/ODIHR NAM was informed that the referendum will be administered by the existing structure of the election administration which consists of seven Oblast Election Commissions and the Bishkek and Osh City Commissions (OEC), 56 Rayon and Town Election Commissions (RECs), and approximately 2,300 Precinct Election Commissions (PECs) that will be established for referendum day. The OECs are usually permanent bodies, appointed for a five-year term. It is unclear whether OEC members have also been replaced. Formation of RECs and PECs is currently underway, according to a similar principle of political party and NGO representation as in the provisional CEC.

Previous elections were characterized by a lack of public confidence in the election administration and its independence. The provisional government as well as the chairperson of the provisional CEC are aware of this issue and have stated their intention to ensure transparency in the conduct of the referendum. The provisional government has also requested support from the international community for the upcoming referendum and elections, including the provision of United Nations advisers to the CEC.

The preparations that are already underway represent a significant challenge, due to the fact that the election administration is only being put in place now. The provisional CEC has only recently been constituted and is still establishing the necessary plans for activities, such as formation of lower-level election commissions, training, materials, and ballot printing. The *GAS Shailoo* electronic tabulation system is currently non-functional; its server was destroyed during the 7 April events. As a step to increase public confidence, the OSCE/ODIHR NAM was informed that a new server would be located in the CEC rather than in the president's building, as was previously the case. In previous elections, the OSCE/ODIHR had observed serious problems with the functioning of and data input into the *GAS Shailoo* system.

Out-of-country voting will be organized by the Ministry of Foreign Affairs and the provisional CEC. The exact procedures remain unclear; however, the OSCE/ODIHR NAM was informed that care would be taken to avoid problems observed in previous elections with regards to the out-of-country voting.

E. VOTER REGISTRATION

The quality and accuracy of the voter lists has been of concern in previous elections. For the upcoming referendum, OSCE/ODIHR NAM interlocutors also expressed concerns

with regard to the quality of the voter lists, especially due to the high level of internal movements and labour migration.

Voter lists are compiled at local level and are generally not cross-checked at national level. Voter lists are based on residential registration (similar to the former *propiska*). The OSCE/ODIHR NAM was informed that lower-level election commissions will compile the voter lists for the upcoming referendum rather than local authorities as has previously been the case. Based on existing voter lists, election commission members will confirm registered voters through door-to-door visits.

Voters can be included in additional voter lists on election/referendum day based on absentee voting certificates received by the respective authority. It is unclear whether voters can also be included, based upon a court certificate confirming their eligibility to vote (as in the 2007 early parliamentary elections) or based on a written statement by the voter on non-inclusion in the voter list and presentation of a valid passport with relevant residential registration (as in the 2009 presidential election).

F. MEDIA

The media environment in Kyrgyzstan continues to exhibit a certain level of pluralism and vibrancy, with an active corps of media professionals, numerous print outlets in both Kyrgyz and Russian, and several TV and radio broadcasters. The provisional government has stated its intention to move forward with the transformation of state TV and radio, the National TV and Radio Broadcasting Corporation (NTRBC), into a public service broadcaster. This process initially began in 2005 but later stalled and had most recently been abandoned by the previous authorities. A supervisory board will be established for which nominations are currently underway. The selection of candidates is to commence on 7 June and is to be finalized by 7 August. Media professionals met by the OSCE/ODIHR NAM were positive about this move, provided that it is implemented transparently.

OSCE/ODIHR NAM interlocutors also informed that prior to the 7 April events, incidents of attacks on journalists, state pressure, and self-censorship were on the increase. They noted that this peaked during the recent troubles. They also noted that now state pressure against journalists seems to have decreased, but the deeply entrenched practice of self-censorship remains a concern. Investigations into past violence against journalists have slowed, but OSCE/ODIHR NAM interlocutors thought this likely due to the more pressing issue of stabilizing the situation in the country.

Media professionals told the OSCE/ODIHR NAM of their concerns about the availability of information from and in the regions. They intend to implement projects with international support which would increase the information flow. They also raised concerns about issues of security and capacity in internet media, which is becoming increasingly important as a means of information-sharing in the country.⁵

⁵ Media interlocutors stated that 1.1 million people (17 per cent) in Kyrgyzstan have Internet, although 88 per cent of those are thought to live in Bishkek and environs. A higher number may have secondary access.

OSCE/ODIHR NAM interlocutors were similarly negative about the recent forced take-overs of private TV stations Channel 5 and *Pyramida* by private individuals. Ideas have been mooted by the provisional government to nationalize these stations but several interlocutors stated that questions of ownership should be settled through the courts.

Most citizens continue to receive their main information from NTRBC which has a national broadcasting outreach not enjoyed by other media outlets. The OSCE/ODIHR NAM was informed that NTRBC plans to provide access to all sides and is already showing a number of programs, partly in co-operation with international NGOs, to provide information on the ongoing constitutional reform process. In previous reports on elections in Kyrgyzstan, the OSCE/ODIHR has criticized NTRBC for failing to provide balanced coverage of election campaigns and candidates or parties standing for election.

G. CIVIL SOCIETY

Civil society remains very active in Kyrgyzstan and continues to provide important elements of transparency and accountability. Representatives of NGOs are actively engaged in the discussion of changes to the constitution as well as in the election administration. Civil society also provides information on the ongoing discussions, the recent changes in government as well as on the 7 April events. Several organizations have made recommendations to the provisional government to provide for investigation of the 7 April events as well as on principles to follow in the ongoing transition process, also with a view to the upcoming referendum and elections.

H. INTERNATIONAL AND DOMESTIC OBSERVERS

All OSCE/ODIHR NAM interlocutors welcomed the presence of OSCE/ODIHR observers for the upcoming referendum. They expressed hope that an OSCE/ODIHR presence would contribute to transparency of the process and enhance public confidence. Several domestic civil society organizations plan to observe the referendum.

International NGOs present in Kyrgyzstan as well as the European Union and the UN are ready to support the upcoming referendum and election processes by providing assistance to the provisional CEC and the referendum and election process in general. Other projects aim at increasing public knowledge about the constitutional reform process.

IV. CONCLUSIONS AND RECOMMENDATIONS

The recent turbulent changes in Kyrgyzstan and the current political and pre-electoral situation make the upcoming referendum and parliamentary elections a crucial moment in the history of the country. The provisional government and other OSCE/ODIHR NAM interlocutors have stated their will and hope that the referendum and elections will be held in line with OSCE commitments and other international standards for democratic elections. Their expressed aim is to ensure transparency of the upcoming electoral processes. All OSCE/ODIHR NAM interlocutors welcomed OSCE/ODIHR observation of the referendum and were convinced of its contribution to transparency of the process and to enhanced public confidence.

The OSCE/ODIHR NAM therefore recommends that a standard election observation mission be established as soon as possible to observe the 27 June 2010 referendum. The OSCE/ODIHR mission will follow the work of the election administration, preparations for the conduct of the referendum, the political campaign, media coverage and possible complaints and appeals. In addition to the deployment of a team of analysts, the OSCE/ODIHR will request from OSCE participating States the secondment of 24 long-term observers to observe the conduct of the referendum in all regions throughout Kyrgyzstan. In addition, the OSCE/ODIHR will request the secondment of 300 short-term observers for the observation of proceedings on referendum day, including counting and tabulation of results.

ANNEX – LIST OF MEETINGS

Bishkek, 6 and 7 May 2010

AUTHORITIES

Provisional Government

Mr. Omurbek Tekebaev, Deputy Head of Provisional Government for Constitutional Affairs

Mr. Edil Baisalov, Head of Executive Office of Ms. Roza Otunbaeva, Head of Provisional Government

Ministry of Foreign Affairs

Mr. Ruzlan Kazakbaev, Acting Minister of Foreign Affairs

Ministry of Interior

Mr. Bakytbek Alymbekov, Acting Minister of Interior

Provisional Central Commission for Elections and Referenda

Mr. Akylbek Sariiev, Chairperson

POLITICAL PARTIES

Mr. Omur Beksultanov, Head of Secretariat, “Ak Shumkar”

Mr. Rinat Shamudinov, Head of Youth Wing, Social Democratic Party of Kyrgyzstan (SDPK)

Mr. Emil Aliev, Deputy Chairperson, “Ar-Namys”

Mr. Nikolay Baylo, Secretary of Central Committee, Party of Communists of Kyrgyzstan (PCK)

MEDIA

Mr. Kubat Otorbaev, Director General, Kyrgyz National Television and Radio Broadcasting Corporation (NTRBC)

Mr. Marat Tokoiev, Director, “Journalists” Public Union

Ms. Begaim Usenova, Executive Director, Media Commissioner Institute

Ms. Adel Laisheva, Trainer, Representative Office of Internews Network in the Kyrgyz Republic

Ms. Nurgul Abdykerimova, Director, Center for Information Law

Mr. Alexandr Kulinskiy, Chairman, Media Complaints Committee

Mr. Bektour Iskender, KloopKG web portal, Head

Ms. Tattu Mambetalieva, Civil Initiative on Internet Policy, Director

CIVIL SOCIETY

Ms. Tolekan Ismailova, Director, “Citizens against Corruption” Human Rights Center

Mr. Abdy Kerim Ashyrov, Lawyer, “Citizens against Corruption” Human Rights Center

Ms. Aida Baijumanova, Coordinator, “Citizens against Corruption” Human Rights Center

Mr. Almaz Esengeldiev, Senior Program Officer, Freedom House
Ms. Tattu Mambetalieva, Committee of Civil Control for the Monitoring of Provisional Government Activity
Ms. Ainura Usupbekova, Executive Director, “Taza Shailoo” (“Fair Elections”)

INTERNATIONAL COMMUNITY

OSCE Centre in Bishkek

Mr. Lilian Dari, Deputy Head of OSCE Centre
Mr. Oleg Semenenko, Senior Human Dimension Officer

Embassies

Mr. Peter Neven, Deputy Head of Mission, Embassy of the Federal Republic of Germany
Mr. Vladimir Gavrikov, Counsellor, Embassy of Russian Federation
Mr. Sebata Tsutomu, 2nd Secretary, Embassy of Japan

International Organizations and NGOs

Ms. Jackie Charlton, Senior Regional Governance Adviser for Central Asia, DFID
Ms. Fiona Frazer, Human Rights Officer and Officer-in-Charge, Regional Office for Central Asia, OHCHR
Ms. Natalya Seitmuratova, Human Rights Officer, OHCHR
Ms. Gulmira Mamatkerimova, Expert, EC/UNDP Project
Mr. Kurmanbek Turdaliev, EU-UNDP National Consultant on Parliamentary Development
Mr. Mirbek Sydygaliev, UNDP National Consultant on Parliamentary Development
Mr. Gavin Weise, Deputy Director on Europe and Asia, IFES
Mr. Dmitry Shevkun, Chief of Party, IFES
Mr. Scott Kearin, Resident Director, NDI
Mr. Jason Smart, Director, IRI
Ms. Colombe de Mercey, Attachée, Project Manager, Delegation of the European Union to the Kyrgyz Republic
Mr. Neal Walker, UN Resident Coordinator and UNDP Resident Representative in the Kyrgyz Republic
Mr. Steven Wagenseil, Consultant, UNDP