



Office for Democratic Institutions and Human Rights

KYRGYZ REPUBLIC

PRE-TERM PARLIAMENTARY ELECTIONS

16 December 2007

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

5-6 November 2007



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation to observe the upcoming pre-term parliamentary elections, scheduled for 16 December 2007, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Kyrgyz Republic on 5 and 6 November 2007. The OSCE/ODIHR NAM was composed of Nicolas Kaczorowski, Deputy Head of the OSCE/ODIHR Election Department, and Nicola Schmidt, OSCE/ODIHR Election Adviser.

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

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Central Commission for Elections and Referendums, representatives of other state institutions, 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

The 16 December 2007 pre-term elections of deputies to the Jogorku Kenesh (parliament) have been called at short notice after the adoption by referendum of a new constitution and a new election code. Major changes for these elections are the introduction of a fully proportional system with 90 deputies to be elected in a single nationwide constituency on the basis of closed party lists and the introduction of nationwide and regional (oblast) thresholds. The OSCE/ODIHR concluded that previous elections did not meet OSCE commitments and other international standards for democratic elections though the early presidential election of 10 July 2005 marked tangible progress towards meeting commitments.

The pre-term parliamentary elections are perceived as significant as they are the first to be held under a fully proportional system and could lead to a new configuration in parliament with fewer political parties represented. The Kyrgyz political landscape is fragmented with over 100 registered political parties. The stated objective of the new electoral system is to achieve the consolidation of the party system. A new pro-

presidential party was formed in October, and parties including those in opposition expect a vigorous campaign and contest for the election.

A key issue in these elections will be the fairness of the election process itself. Some OSCE/ODIHR NAM interlocutors have expressed concerns about the equitable access to the media, the possible misuse of administrative resources and the potential for electoral fraud. While the authorities have expressed their commitment to conduct democratic elections, this expressed intention should be exhibited at all levels and by all election participants in order to conduct elections in line with OSCE commitments.

The new election code provides for a five per cent nationwide threshold, which will be calculated on the basis of all registered voters, and not on the basis of votes cast as is usually the practice. In addition, a regional threshold of 0.5 per cent has been introduced which has to be achieved in all regions (oblasts) of the country. The calculation of this threshold is not entirely clear, with the Central Commission for Elections and Referendums (CEC) seemingly leaning towards implementing this threshold on the basis of the nationwide electorate as well. Some interlocutors have criticized these thresholds as restrictive and leading to much higher real thresholds based on voter turnout.

The new election code also introduced the requirement for political parties to include in their candidate lists at least 30 per cent of candidates of a different sex in at least every fourth position, and in addition 15 per cent youth and 15 per cent national minorities.

The elections will be administered by a four-tiered election administration, headed by the CEC down to polling station level. The election code provides for some degree of political representation in the election administration but has eliminated the previous representation of non-governmental organizations.

All OSCE/ODIHR NAM interlocutors underscored that the quality of voter lists remains an issue due to its contained inaccuracies, the potential it creates for the disenfranchisement of voters and possible election day fraud. Some OSCE/ODIHR NAM interlocutors have also expressed concern with the possibility for manipulations on election day, such as multiple voting. The OSCE/ODIHR NAM understands that the implementation of inking, a safeguard against multiple voting, is contingent on its funding by possible donors.

Media coverage of the elections so far is limited, with the official campaign scheduled to begin on 26 November. Some OSCE/ODIHR NAM interlocutors expressed concern about the allegedly pro-presidential orientation of the main television channels, including the State-broadcaster, and the equitable access to the media.

Civil society is active in Kyrgyzstan and at least three organizations are planning non-partisan domestic observation of the elections by deploying long-term and short-term observers around the country.

The OSCE/ODIHR recommends that a standard Election Observation Mission be deployed to the Kyrgyz Republic in the immediate timeframe to assess the 16 December 2007 pre-term parliamentary elections in line with OSCE commitments.

The OSCE/ODIHR requests from participating States the secondment of 24 long-term observers and 250 short-term observers.

III. FINDINGS

A. BACKGROUND

The pre-term parliamentary elections of 16 December 2007 were called after two years of political instability in Kyrgyzstan and immediately after a new constitution and a new election code had been adopted by referendum on 21 October 2007.

The OSCE/ODIHR has observed elections in the Kyrgyz Republic since 2000, most recently the parliamentary and early presidential elections of 2005. The parliamentary elections in February and March 2005 were assessed as falling short of OSCE commitments and other international standards for democratic elections. The irregularities in the election process contributed to public protests which ultimately led to then President Askar Akaev's ouster on 24 March 2005. Kurmanbek Bakiev, an opposition leader, was appointed as acting Prime Minister and acting President until a presidential election could be held. The parliament elected in the disputed elections of February and March 2005 was certified by the Central Commission for Elections and Referendums (CEC).

The early presidential election of 10 July 2005 which confirmed Mr. Bakiev as president marked tangible progress towards meeting OSCE commitments, as well as other international standards for democratic elections. Particularly the pre-election period and the conduct of voting were assessed as showing improvement, although this deteriorated during the vote count.

The two years following the presidential election were marked by a series of street protests against President Bakiev and demands for constitutional reform as promised by the president. These protests led to a series of constitutional amendments passed by parliament in November and December 2006 as well as the resignation of Prime Minister Felix Kulov at the end of 2006. Renewed demonstrations in April 2007 resulted in Almazbek Atambaev, an opposition leader and leader of the Social Democratic Party of Kyrgyzstan, being appointed Prime Minister.

On 14 September 2007, the Constitutional Court rejected the amendments to the Constitution as unconstitutional and restored the 2003 constitution, following a constitutional court challenge. Shortly thereafter President Bakiev called for a referendum to decide on a new version of the constitution as well as a new election code. The conduct of the referendum was criticized by domestic observers and representatives of the international community in Bishkek. Observers also said that the contents of the documents adopted by referendum were largely unknown to citizens. The most significant change is the introduction of a fully proportional election system with all 90 seats in the Jogorku Kenesh (national parliament) elected from party lists.

On the day after the referendum, President Bakiev dissolved parliament, his prerogative under the 2003 constitution. Once the new constitution and new election

code were signed into law, President Bakiev called for pre-term parliamentary elections on 16 December 2007.

B. POLITICAL PARTIES

The political party structure in Kyrgyzstan is fragmented with over 100 registered political parties. In the past two years, the political landscape has changed and new parties have emerged in the forefront of political life. Among those are Ata-Meken led by former Speaker of Parliament Omurbek Tekebaev, Ar-Namys led by former Prime Minister Felix Kulov, and the Social Democratic Party of Kyrgyzstan (SDPK) led by current Prime Minister Almazbek Atambaev. In October 2007, a new pro-presidential political party, Ak Jol, was formed. President Bakiev was elected its chairman but suspended his activities as chairman during his presidency.

While all parties that the OSCE/ODIHR NAM met welcomed the change of the electoral system to a proportional one, concerns have been expressed about the short timeframe with which the pre-term elections were called. Politics in Kyrgyzstan have focused on personalities rather than party platforms and parties are now preparing actively for their campaign message and strategies.

The official election campaign will start on 26 November. The CEC has issued a general warning to political parties requesting them not to start their campaign before this date. Vigorous campaigning and competition between political parties is expected.

Fifty parties have submitted their documents to the CEC for the upcoming parliamentary elections. Parties must submit their candidate lists for registration as well as other documents required to the CEC by 18 November; the CEC has to decide by 25 November on the registration of candidate lists. It is widely expected that out of the 50 parties, only about 15 to 20 parties will eventually register their candidate lists to contest these elections.

Parties plan to have members on precinct election commission with decisive votes or, if this is not possible, with an advisory vote. They are also planning to deploy political party observers on election day.

Some political parties expressed concern about the abuse of administrative and state resources, especially on the side of the pro-presidential party Ak Jol, and possible election manipulations on and immediately after election day. In this context, they have raised the spectre of possible political protests.

C. LEGAL FRAMEWORK

The new constitution establishes a presidential-parliamentary republic. While the parliament nominates the prime minister and the government, the president appoints and dismisses the prime minister and the government; he has the right to decide on important government ministers, such as the ministers for foreign affairs, interior, defence and national security. The president however cannot easily dismiss the parliament.

The election code was revised in order to include changes related to the new election system. Parliament will now consist of 90 deputies who will be elected by proportional representation on closed party lists. Only political parties, not coalitions or individuals, can nominate candidates, on candidate lists comprising not less than 90 and no more than 100 candidates.

The code also introduces a new five per cent threshold for political parties to enter parliament, which is calculated on the basis of the total number of registered voters and not on the number of voters taking part in an election, as is usually the practice. This threshold has been criticized by some experts as effectively leading to a higher threshold depending on voter turnout.

In addition, a 0.5 per cent threshold has to be reached by parties in every oblast of the country. The code seems to leave room for the interpretation of this threshold's mode of calculation. The CEC has informed the OSCE/ODIHR NAM that it leans towards interpreting this threshold also as being calculated on the basis of the total countrywide electorate. This would mean that in addition to passing the nationwide threshold of 5 percent, each party would have to poll approximately 13,500 votes in every oblast to enter parliament. Theoretically, a party may be barred from entering parliament even if it enjoys a wide popular support. This additional regional threshold may also prevent regional parties, and parties representing national minorities concentrated in some oblasts, from entering parliament.

The constitution and the election code establish imperative mandates. The mandate belongs to a political party and not to the individual Member of Parliament. Should the MP be expelled from the party, she or he loses the mandate. In addition, if the party ceases to exist at all its deputies will lose their mandates.

The code introduces provisions aiming to increase the representation of women, youth and national minorities in parliament. No more than 70 per cent of candidates on a list can be of the same sex with no more than three candidates of the same sex in a row. At least 15 per cent of candidates on any list have to be under the age of 35 and 15 per cent from national minorities. The places of youth and national minorities on the lists are not specified, thus not ensuring their effective representation in parliament. However, it is the first time that national minorities and youth are explicitly recognized in the election code.

These quota requirements are generally seen as a positive step. However, some interlocutors expressed concerns that these requirements could present an additional obstacle for political parties to register their candidate lists. The CEC has indicated to the OSCE/ODIHR NAM that they consider these quotas as "ideal figures" and that they will interpret these quota regulations in a flexible manner.

The election code eliminates the representation of NGOs in election commissions. Up to one third of members can now be nominated by political parties, the rest will be nominated by so-called 'assemblies of voters'. State employees and public servants shall not make up more than one third of the total number of members of an election commission.

D. ELECTION ADMINISTRATION

The pre-term parliamentary elections will be administered by a four-tiered election administration, headed by the CEC. It will further comprise seven Oblast Election Commissions and the Bishkek and Osh City Commissions (OECs), 56 Rayon and Town Election Commissions and according to the CEC, around 3,000 Precinct Election Commissions (PECs). The CEC and OECs are permanent bodies appointed for a five-year term. The CEC Chairperson and six members are appointed by the president and the remaining six members by the parliament. Lower-level election commissions are formed through nominations by political parties and assemblies of voters. Formation of PECs must be concluded by 25 November.

Government administrations have been instructed to set up regional, district and town offices to assist election commissions with organizational, material and technical issues. This supportive administrative structure is headed by Prime Minister Atambaev. Some interlocutors have expressed doubts in the independence of the election administration and are concerned that election commissions might be involved in manipulation of votes.

The new election code reduces the number of voters from 3,000 to 2,500 per precinct. This reduction will lead to an increase in the number of PECs with around 3,000 PECs expected to be formed. The CEC plans to train PEC members in co-operation with international organizations.

The requirement for voter registration remains the residential registration (*propiska*). The new election code has introduced restrictions to inclusion in the voter lists which is no longer possible on the basis of temporary *propiska*. In addition, it will be more difficult for voters to be added to the additional voter lists on election day, except on the basis of a court certificate. OSCE/ODIHR NAM interlocutors have expressed concerns with regard to the quality of the voter lists due to the high internal and external migration. While currently about 300,000 voters are on the voter lists in Bishkek, unofficial estimates suggest that the number should be two to three times higher due to migration. In addition to potentially disenfranchising a large number of voters, interlocutors underscored that these inaccuracies could create opportunities for electoral fraud and could potentially undermine the principle of universal suffrage.

The election code provides for the inking of voters to prevent multiple voting. Inking is generally regarded as an efficient measure against multiple voting. The CEC is currently seeking support from international donors and organizations to fund the inking of voters.

Out of country voting will be organized by the Ministry of Foreign Affairs in diplomatic missions abroad and in places with a high population of Kyrgyz migrants. The Ministry expressed concerns with regard to the number of migrants who may be residing abroad illegally and therefore not be able to exercise their constitutional right to vote.

The new election code still provides for very complex voting and counting procedures. The protocols that PECs will have to fill out after counting are very complex and include a number of mathematical formulas that may be difficult to

understand and could lead to errors. In previous elections, the OSCE/ODIHR assessed counting and tabulation as particularly problematic, partly due to the complex procedures provided for by the legislation.

E. MEDIA

The access of citizens to mass media appears relatively limited, especially outside the main population centres. Television is the main source of information for citizens, with some radio stations also enjoying high popularity. State-funded *KTR* (Kyrgyz Television and Radio Corporation) covers most of the country and is considered to be the primary source of information. *Kanal 5*, former TV channel *KOORT*, a private television broadcaster, estimates to cover about 60 per cent of the territory. Newspaper circulation is limited outside main urban areas; they are expensive and often do not reach rural areas in time. In addition to State-funded newspapers, there are a number of private publications funded by opposition politicians and sometimes distributed free of charge.

The election code obliges State-funded broadcasters and print media to provide equal access to the media as well as airtime and print space free of charge to all political parties. The specific amounts of time and its division among election participants will be established by the CEC in a decision, but cannot be less than one hour per working day on State broadcasters and no less than one A4 page in the print media. The CEC has informed the OSCE/ODIHR NAM that a CEC working group will monitor free and other air time for balanced coverage of and equal access for election participants.

The CEC has warned especially about early campaigning in the media. Meetings with the media and with political parties took place at the CEC to enable them to receive clarifications from the CEC on this and other election-related issues. Television channels have taken off the air all political programmes until the start of the campaign so as not to be accused of early campaigning. Once the campaign has officially started on 26 November, TV broadcasters will liaise with the CEC on selection of participants for election related programming, including debates.

KTR is in the process of being transformed from a State to a public broadcaster. The supervisory board in charge of this transformation consists of 15 members of which five are appointed by the president and ten, including five from civil society, appointed by parliament. Eight of its 15 members have recently resigned leaving the board without a decision-making quorum. President Bakiev has appointed a new acting director, a former opposition politician, but apparently the board is currently unable to function.

Some interlocutors expressed concerns to the OSCE/ODIHR NAM about the mass media being controlled by the president and limited access for opposition politicians and parties to the media as a result thereof. However, the acting director of *KTR* has emphasized his intention to provide equal access to parties and neutral coverage of political events.

F. INTERNATIONAL AND DOMESTIC OBSERVERS

All OSCE/ODIHR NAM interlocutors welcomed the presence of OSCE/ODIHR observers for the 16 December 2007 pre-term parliamentary elections. Some stressed the need for a high number of international observers and urged quick deployment. On 2 November, the OSCE/ODIHR received an invitation from the Ministry of Foreign Affairs of the Kyrgyz Republic to observe the pre-term parliamentary elections.

Civil society is active in Kyrgyzstan. The OSCE/ODIHR NAM met with several domestic and international NGOs to discuss the pre-electoral environment and intentions of civil society organizations to observe these elections. Several domestic organizations have indicated their plans to field large observation missions including long-term and short-term observers based throughout the country and observing in almost all polling stations on election day. They have expressed their intention to coordinate with each other in their deployment to achieve the best possible coverage of the whole country. Some interlocutors have expressed concern about increased pressure on domestic non-partisan observers during the 21 October 2007 referendum and worry about a further increase in pressure in the run up to the parliamentary elections.

The OSCE/ODIHR NAM discussed the newly introduced provision in the election code which could potentially limit the publication of reports by international observers before the end of polling day, but were reassured that pre-election interim reports would be received in a constructive spirit.

IV. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the findings described above, the OSCE/ODIHR recommends that a standard Election Observation Mission be established according to the OSCE/ODIHR methodology. The OSCE/ODIHR requests from OSCE participating States the secondment of 24 long-term observers, to be deployed in the immediate timeframe. The OSCE/ODIHR EOM will follow the work of the election administration, the pre-election campaign, access to media, candidate registration, complaints and appeals, and election preparations. In addition, the OSCE/ODIHR will request 250 short-term observers for the observation of election day proceedings.

ANNEX – LIST OF MEETINGS

Bishkek, 5 and 6 November 2007

AUTHORITIES

Ministry of Foreign Affairs

Mr. Kydyrov Taalaibek Turgunbaevich, State Secretary of MFA, Deputy Minister of Foreign Affairs

Central Commission for Elections and Referendums

Ms. Klara Kabilova, Chairwoman of the Central Commission on Elections and Referendums of the Kyrgyz Republic

POLITICAL PARTIES

Ak-Jol

Mr. Kanimetov Jangoroz, Executive Secretary

Ar-Namys

Mr. Felix Kulov, Chairman

Social-Democratic Party of Kyrgyzstan

Mr. Edil Baisalov, Executive Secretary

Ata Meken

Mr. Temir Sariev

Mr. Kubatbek Baibolov

MEDIA

5th Channel

Mr. Maksim Kaganer, Executive Director

KTR

Mr. Melis Eshimkanov, Acting Director

CIVIL SOCIETY

Human Rights Center “Citizens Against Corruption”

Ms. Aida Bajumanova, National Coordinator

Ms. Lira Ismailova, Legal Expert

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