

**INTERIM REPORT No. 1**

**7 – 13 September 2010**

**17 September 2010**

**I. EXECUTIVE SUMMARY**

- Elections for the Parliament of the Kyrgyz Republic (*Jogorku Kenesh*) will be held on 10 October 2010 following the adoption of the new Constitution through the 27 June 2010 referendum. The elections will mark the country's transition to a semi-parliamentary form of government.
- The 2010 Constitution altered the election system by introducing provisions that increase the number of seats in parliament to 120 and prevent a single political party from holding a constitutional majority. Discrepancies in the legal framework are addressed by decisions issued by the Central Commission for Elections and Referenda (CEC).
- The CEC has thus far conducted preparations in an open and transparent manner and respected key legal deadlines. Lower-level commissions have been formed with a view to ensuring a balance between political parties and civil society representatives.
- The voter register is currently being updated. Voter lists will be available for public review from 15 September. The CEC has reinstated the practice of inking voters' fingers with invisible ink as a safeguard against multiple voting.
- A total of 29 political parties representing a wide spectrum of political forces will contest the elections. The legal requirements ensure representation of women, youth and minorities on the candidate lists. There are no provisions for individual candidates.
- The official campaign period started on 10 September. Opposition parties have expressed concern that candidates close to the provisional government will make use of 'administrative resources'.
- The precarious security situation in the country remains a concern. The President has publicly stated that the elections could be postponed if warranted.
- A total of 183 media outlets have registered with the CEC to provide paid airtime and print space on equal conditions to election contestants. State-funded media will provide free airtime and print space as required by law. The transformation of the state broadcaster into a public service broadcaster is underway; its supervisory board was recently appointed with 15 members exclusively drawn from civil society.
- The OSCE/ODIHR EOM opened its office in Bishkek on 7 September, with a 17-member core team. Additionally, 22 long-term observers have been deployed to 9 locations throughout the country. The OSCE/ODIHR EOM is drawn from 23 participating States.

## II. INTRODUCTION

The provisional government of the Kyrgyz Republic set the date for the elections to the *Jogorku Kenesh* (Parliament) for 10 October 2010. Following an invitation from the Kyrgyz authorities, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 7 September. The OSCE/ODIHR EOM, headed by Corien Jonker, consists of a 17-member core team based in Bishkek and 22 long-term observers deployed to all oblasts as well as the cities of Bishkek and Osh. The OSCE/ODIHR EOM is drawn from 23 OSCE participating States. The OSCE/ODIHR has requested participating States to second 300 short-term observers to observe voting, counting, and tabulation on election day.

The OSCE/ODIHR has observed six elections and one referendum since 2000.<sup>1</sup> The assessment of the recent 27 June 2010 constitutional referendum was cautiously optimistic, underscoring the need for reform to strengthen the legal framework, voter registration and polling day procedures. It offered a number of short and long-term recommendations for consideration of the authorities, political parties and civil society to support the conduct of elections in line with OSCE commitments and other international standards for democratic elections.

## III. BACKGROUND

On 27 June 2010, the authorities of the Kyrgyz Republic succeeded in creating the necessary conditions for the conduct of a peaceful constitutional referendum despite the challenging circumstances following the tragic events in Osh and Jalal-Abad. The referendum gave more than 90 per cent support to the new constitution with a 72 per cent turnout. The new Constitution, introducing a semi-parliamentary form of government, will enter into force fully once a new parliament convenes after these elections.

On 10 August, President Roza Otunbaeva confirmed 10 October as the date for holding parliamentary elections.<sup>2</sup> Some actors, such as the Mayor of Osh, Melis Myrzakmatov, continue to question the provisional government's legitimacy. Political tensions remain high and there have been attempts by politicians to destabilize the situation, at times using inflammatory language and exploiting regional and ethnic differences.<sup>3</sup>

The precarious security situation in the country remains a concern for the conduct of the elections. In light of this, on 7 September 2010, President Otunbaeva stated that if any political party were to escalate the situation, intimidate a part of the population or endanger the integrity of the country, the provisional government could declare a state of emergency and postpone the elections.

## IV. LEGAL FRAMEWORK

The parliamentary elections are primarily governed by the 2010 Constitution. Article 7 of the Law on the Enactment of the Constitution of the Kyrgyz Republic stipulates that the parliament is

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<sup>1</sup> OSCE/ODIHR reports on previous elections in the Kyrgyz Republic are available at: <http://www.osce.org/odihr-elections/14475.html>.

<sup>2</sup> Provisional Government Decree 39 of 19 May 2010 approving the Law on Enactment of the Constitution of the Kyrgyz Republic defines Ms. Otunbaeva as President for a transitional period until 31 December 2011.

<sup>3</sup> On 5 August 2010, Urmat Baryktabasov, a businessman and leader of the *Meken Tuu* political party, pursued for criminal charges in Kyrgyzstan and Kazakhstan, who recently returned to the country, organized a rally from Balykchy to Bishkek with the objective to hold a peaceful assembly and claim the post of Prime Minister. The march was stopped outside the capital by special forces and Mr. Baryktabasov was detained on charges of allegedly attempting to overthrow the constitutional order (allegedly also stoking up ethnic tensions). Other politicians have used inflammatory language exploiting regional or ethnic differences.

elected under the provisions of Article 70 of the Constitution.<sup>4</sup> This framework is supplemented by the 2007 Electoral Code (as amended in 2009), the 1999 Law on Political Parties and the 2004 Law on the Central Election Commission, where they are not in contradiction with the 2010 Constitution. The CEC, through its decisions, can supplement the regulatory framework and address discrepancies between the Electoral Code, other normative acts and the 2010 Constitution.<sup>5</sup> The CEC has elaborated for example on the inking of voters' fingers and campaign rules.

Most notably, the 2010 Constitution introduced a semi-parliamentary system where the President retains certain key powers including the right to veto legislation and appoint government members to State defense and security agencies.<sup>6</sup> Furthermore, the Constitution guarantees the protection of human rights and fundamental freedoms and gives international treaties and conventions self-executing power, i.e. that they do not have to be transposed in domestic legislation.

Discrepancies exist between the 2010 Constitution and the Electoral Code. This concerns the number of members of parliament (MPs) to be elected and the requirements for nominating and standing as a candidate. In an attempt to address these discrepancies, on 1 July, the provisional government amended the Electoral Code by decree. Following strong criticism, these amendments were revoked by another decree on 9 August. CEC decisions of 23 and 24 August regarding the application of certain articles of the Electoral Code have removed some, but not all inconsistencies.<sup>7</sup>

In light of the recent frequent changes to the legal framework, the CEC has conducted training for Supreme and District Court judges as well as prosecutors with the expressed aim of ensuring its uniform application during the election process.

## V. ELECTION SYSTEM

Parliamentary elections are conducted on the basis of universal, equal and direct suffrage by secret ballot. The Constitution establishes a system of proportional representation with 120 MPs elected on closed party lists in a single nation-wide constituency for a five-year term. The Constitution limits the number of seats won by a single party to 65, yet the regulatory framework is silent on what should happen if a party qualifies for more seats. The code imposes two threshold requirements to qualify for participation in the distribution of seats: a party must gain more than five per cent of the vote, calculated against the number of registered voters nationwide, and at least 0.5 per cent of the vote, calculated against the number of registered voters in each of the seven oblasts and the cities of Bishkek and Osh. If none of the parties overcome these thresholds, repeat elections are held.

A citizen with the right to vote and who has reached 21 years of age<sup>8</sup> may stand for election. Registered political parties, which informed the CEC about their intentions to contest the elections,

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<sup>4</sup> Provisional Government Decree No 39.

<sup>5</sup> According to Article 5 of the Law on the CEC.

<sup>6</sup> The President retains the broader powers envisaged by the 2007 Constitution until the new parliament convenes, see Provisional Government Decree No 39.

<sup>7</sup> For example, the Electoral Code still provides for only 90 MPs to be elected. In its "Clarifications on Application of Articles 25.3, 69.1, 70, 77.2 and 77.3 of the Electoral Code of the Kyrgyz Republic" of 24 August 2010, the CEC "explained that in Article 70 and paragraph 3 of Article 77 of the Election Code, the number 120, as defined in the Constitution of the Kyrgyz Republic, should be used instead of the number 90."

<sup>8</sup> The age requirement for active suffrage is 18 years. Citizens who are recognized incapable by a court decision or serving a prison sentence do not enjoy active or passive suffrage.

are eligible to nominate a list of candidates. The code offers no possibility for independent candidates to stand for election.<sup>9</sup>

## VI. ELECTION ADMINISTRATION

The election is administered by a four-tiered election administration, headed by the Central Commission for Elections and Referenda (CEC). Below the CEC are seven Oblast and the Bishkek and Osh City Commissions (OECs), 56 Territorial (Rayon and Municipal) Election Commissions (TECs), and 2,289 Precinct Election Commissions (PECs). A further 44 precincts have been established abroad for out-of-country voting.

The CEC and OECs are permanent bodies appointed for a five-year term. However, the provisional government dismissed the previous CEC and appointed a new one for the 2010 referendum and parliamentary elections. The new CEC has 13 appointed members, seven drawn from political parties and six, including the chairperson, from civil society. Currently, there are 11 serving CEC members after two members resigned following the nomination of their spouses as candidates. A further six seats are available for international members with an advisory vote. Only two seats have been taken thus far, both by experts of the United Nations Development Programme. Political parties contesting the elections may nominate members with an advisory vote to election commissions at all levels.

The provisional government also decreed that the OECs should be re-selected.<sup>10</sup> In August, the CEC appointed new OECs with 11 members each. Lower-level election commissions are *ad hoc* bodies appointed by the superior commission and comprise members from political parties and groups of voters.<sup>11</sup> If the number of nominations exceeds the available positions, members are selected by lottery. No more than one third can come from political parties, and no more than one third should be state employees (excluding local council members and officials who cannot be commission members). Chairpersons and secretaries are chosen by the commissions themselves at their inaugural meeting. All TECs and PECs were appointed in line with legal deadlines. Training organized by the CEC for all levels of the election administration is underway. PEC members will receive a full day of training as compared to a half day for the referendum.

CEC sessions are open to media and observers and decisions are made public through the media and the CEC website. Thus far, the CEC has adopted a number of decisions, as well as checking and approving candidate lists. The budget for the administration of the elections is 136.5 million KGS (approximately EUR 2,250,000), all of which has been transferred to the CEC. To date, the CEC has met key legal deadlines.

## VII. VOTER REGISTRATION

The voter register includes citizens who possess active voting rights on election day. It is based on information in the registers of residency (*registracija*, commonly referred to as *propiska*) births, deaths and marriages provided by the agencies in charge. System administrators from the local administrations compile and update the voter register using the state automated system for elections (*GAS Shailoo*), a countrywide system also used to tabulate election results. Precinct

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<sup>9</sup> Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides that OSCE participating States should “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

<sup>10</sup> Provisional Government Decree No 19 of 21 April 2010.

<sup>11</sup> The CEC Regulation on the Formation and Dissolution of Election Commissions of 17 August 2010 defines a group of voters as being a minimum of five voters who must submit their names and minutes of their meeting to the relevant commission.

boundaries are determined according to initial voter data with no more than 2,500 voters assigned to any one polling station.

The local administration compiles voter lists (VLs) for each polling station as provided by law and submits one copy of the list to the TEC and another to the PEC by 15 September. From that date, the VLs are to be available for public review. Based on public request, the CEC decided to print an additional copy of the VL for each PEC to assist in the verification process.<sup>12</sup> Voters and citizens may request changes or additions until two hours prior to the close of polls. In case of omissions, the PEC adds the voter to an additional voter list (AVL). In the past, PECs and local administration staff have conducted additional door-to-door verifications of the lists with varying degrees of consistency; it is unclear whether this procedure will be carried out for these elections.

The Electoral Code provides for early and absentee voting for voters who will be away from their registered polling station on election day. If traveling to remote areas or overseas, voters can apply for early voting (to be conducted between 1 and 9 October). Voters away from their normal place of residence may apply for absentee voting to the PEC where they are registered, remove themselves from the register and take the absentee voting certificate to the polling station where they want to vote. The PEC will add such voters to the AVL on election day. Special VLs are created for voters temporarily staying in specifically designated locations.<sup>13</sup>

A voter may be included in only one VL. However, there is no mechanism in place for nationwide cross-checking for multiple entries. The CEC has reinstated the inking of voter's fingers as a safeguard against multiple voting.

## VIII. REGISTRATION OF PARTY CANDIDATE LISTS

A total of 57 political parties applied to the CEC to take part in the elections, but only 29 parties submitted their candidate lists to the CEC by the 31 August deadline. These parties represent a wide spectrum of political forces in the country. All 29 party candidate lists were registered. Eight parties officially announced their decision not to run, some citing a lack of resources as a reason.

The legal requirements for the candidate lists ensure representation of a certain number of women, youth and minorities among the proposed candidates. No more than 70 per cent of candidates can be of the same sex and the gap between a male and female candidate on the list must not be more than three positions. Further, at least 15 per cent of the candidates should be younger than 35, and at least 15 per cent must belong to different 'nationalities'. However, there are no placement requirements for youth and minority candidates. Prior to final registration, through consultation between the CEC and party representatives, some party lists were significantly changed to meet these requirements.

## IX. CAMPAIGN ENVIRONMENT

The campaign environment is characterized by intense competition between political parties. Key members of the provisional government left their posts to run for election to avoid conflicts of interest. Most remaining members of the provisional government have clear political affiliations, and some have relatives among candidates.<sup>14</sup> Opposition parties<sup>15</sup> have expressed concern that

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<sup>12</sup> CEC Decision No 242 of 12 September 2010.

<sup>13</sup> According to Article 22.7 of the Electoral Code, such locations are sanatoriums, hospitals, remote regions, pre-trial and temporary detention centres, voters living overseas as well as military units.

<sup>14</sup> They include, *inter alia*, the President, Deputy Prime Minister Azimbek Beknazarov, Minister of Interior Kubatbek Baibolov, and Minister of Energy Osmon Artykbaev.

candidates close to the provisional government will make use of ‘administrative resources’ in their campaign. Representatives of 26 political parties have signed a Code of Ethical Conduct for a fair campaign.<sup>16</sup> Of these, 16 political parties have submitted candidate lists and are taking part in the elections.

On 23 August the CEC clarified the rules on the use of printed campaign materials, party signs and symbols.<sup>17</sup> The campaign officially started on 10 September; the OSCE/ODIHR EOM was informed of some instances of early campaigning.<sup>18</sup> The CEC has set up a campaign finance audit group and issued detailed regulations for campaign financing.<sup>19</sup> Political parties are obliged to open campaign funds and report campaign expenditures ten days before and ten days after election day.

## X. MEDIA

By the start of the official campaign period, the CEC had accredited 183 media outlets.<sup>20</sup> The accreditation entitles media outlets to provide paid airtime and print space for political parties on an equal basis with the prices made public. Political parties are also provided with free airtime and print space in state-funded media. The CEC allocated free airtime by lottery on 13 September in the presence of party representatives, observers and the media. The CEC has issued additional guidelines on the coverage of the campaign in the media.<sup>21</sup>

In line with previous OSCE/ODIHR recommendations, the provisional government has decreed the transformation of the National Television and Radio Broadcasting Corporation (NTRBC) into a public service broadcaster.<sup>22</sup> All 15 members of its supervisory board have now been appointed. Membership nominations were considered by a commission composed of representatives of civil society and the provisional government. Members are exclusively drawn from non-profit and non-governmental organizations.<sup>23</sup>

There is no media supervisory body in charge of electronic media. Thus, no official media monitoring will be conducted during the election campaign. In case of breaches of media provisions of the Electoral Code, the CEC is entitled to issue a warning. Media-related complaints may be filed with the courts or the prosecutor’s office.

The 2010 Constitution guarantees freedom of expression, speech and the press. It further guarantees in more detail the right of access to information and explicitly prohibits criminalizing defamation. This could potentially strengthen the position of journalists. However, the 1997 Criminal Code has not yet been brought in line with the Constitution and still contains articles criminalizing defamation. The media situation in recent years has been characterized by self-censorship and serious crimes targeting critical journalists. The OSCE Representative on Freedom

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<sup>15</sup> For example *Ata-Jurt*, *Butun Kyrgyzstan* and *Ar-Namys*.

<sup>16</sup> The ‘Code of Ethical Conduct of Political Parties in the Elections’ was elaborated with the support of the OSCE Centre in Bishkek in co-operation with the National Democratic Institute (NDI), the International Republican Institute (IRI) and USAID and the NGO “Parliament of Political Parties”.

<sup>17</sup> CEC Regulation No 173 of 23 August 2010.

<sup>18</sup> The OSCE/ODIHR EOM observed that some party banners were on display in Bishkek prior to the start of the campaign and was informed that some parties held informal rallies ahead of the campaign.

<sup>19</sup> CEC Decision No 163 of 17 August 2010 amended by decision No 172 of 23 August 2010.

<sup>20</sup> CEC accredited 133 newspapers, 43 TV and radio stations and 7 news agencies.

<sup>21</sup> CEC Decision No 160 of 17 August 2010.

<sup>22</sup> Provisional Government Decree No 28 of 30 April 2010.

<sup>23</sup> Members of political councils of any political party, members of the parliament and government employees are excluded from membership of the supervisory board.

of the Media and international media development organizations have recognized that the provisional government has taken some steps to improve the media environment.<sup>24</sup>

In order to assess the conduct and coverage of the campaign in the media, on 10 September the OSCE/ODIHR EOM started the monitoring of five television stations, two radio stations and six newspapers in both the Kyrgyz and Russian languages.<sup>25</sup>

## **XI. DOMESTIC AND INTERNATIONAL OBSERVERS**

Thus far, three domestic organizations have announced that they will observe the elections. The Coalition for Democracy and Civil Society (CDCS) has deployed 112 long-term observers and plans to observe at 500 polling stations on election day. *Taza Shailoo* and the Alliance of Liberal Youth are expecting to observe at 800 and 125 polling stations, respectively, on election day. There is no requirement for domestic observer organizations to register with the CEC. Domestic observers present a letter from their organization to the commission they wish to observe to gain admission. In addition to the OSCE/ODIHR EOM, the Inter-Parliamentary Assembly of the Commonwealth of Independent States (CIS) has so far accredited observers.

## **XII. OSCE/ODIHR EOM ACTIVITIES**

The OSCE/ODIHR EOM officially opened its office in Bishkek on 7 September 2010. The head of the OSCE/ODIHR EOM (HoM), Corien Jonker, has met with the Ministry of Foreign Affairs and the Chairperson of the CEC. The HoM has also met with the OSCE Centre in Bishkek, diplomatic representations of OSCE participating States and international organizations active in the Kyrgyz Republic. The OSCE/ODIHR EOM has established working contacts with the Ministry of Foreign Affairs, the CEC, political parties, civil society, and the media. The 22 long-term observers are meeting election stakeholders in the regions.

The OSCE Parliamentary Assembly (PA) and the European Parliament will deploy an observer delegation for election day observation. The OSCE Chairperson-in-Office has appointed Mr. Kimmo Kiljunen as Special Co-ordinator to lead the OSCE short-term observer mission for these elections.

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<sup>24</sup> The OSCE Representative on Freedom of the Media for example commended the appointment of the supervisory board for the public broadcaster. See [http://www.osce.org/fom/item\\_1\\_45873.html](http://www.osce.org/fom/item_1_45873.html). See also <http://www.article19.org/pdfs/press/kyrgyzstan-statement-on-the-media-situation-in-the-kyrgyz-republic.pdf>.

<sup>25</sup> The monitored TV stations are NTRBC TV, *Obshchestvennaya Tele Radio Kompaniya* “EITR”, Channel 5, *Pyramida*, *Nezavisimoe Bishkekskoye Televidenie* (NBT) and Osh TV. In addition, the OSCE/ODIHR EOM monitors two radio stations: NTRBC radio and Radio *Azattyk*; and six newspapers: *Delo Nomer*, *Uchur*, *Agym*, *Forum*, *Slovo Kyrgyzstana* and *Vecherny Bishkek*.