

**INTERIM REPORT
21 May – 13 June 2010
17 June 2010**

I. EXECUTIVE SUMMARY

- Following the ouster of President Bakiev and his government in early April, the provisional government of the Kyrgyz Republic announced a constitutional referendum for 27 June 2010.
- Tensions between Kyrgyz and Uzbek communities in the South of the country led to an eruption of violence on 10 June, resulting in large numbers of dead and injured. At the time of writing the impact of the violence on the referendum preparations was unclear.
- The legal framework for the referendum derives from various decrees adopted by the provisional government, which, according to a decree, supersede other constitutional laws. Although specified by existing laws, the provisional government has abolished the turnout requirement. The Constitutional Court, mandated to oversee the constitutionality of legal acts, was dismissed by the provisional government in April.
- The Central Commission for Elections and Referenda (CEC) has thus far conducted preparations in an open and transparent manner and respected key deadlines. Lower-level commissions have been formed and reflect a balance between political parties and civil society.
- Absentee voting certificates are no longer required for voters to cast their ballot outside their precinct. The practice of inking of voters' fingers has been reinstated as a safeguard against possible multiple voting.
- The referendum campaign has so far been low-profile. Key parties in the provisional government and their allies support the draft constitution. Opponents criticize the legitimacy of the provisional government and the inclusion of different issues in one referendum question. They express doubts whether the draft constitution and referendum would stabilize the country.
- CEC rules for campaigning state that the media must guarantee equal conditions to competing groups. Electronic media have provided a variety of programs on the referendum, but with minimal debate between 'Yes' and 'No' positions.
- A wide range of voter education programs are underway with support from the international community. One and a half million copies of the draft constitution are being distributed in Kyrgyz, Russian and Uzbek.
- The OSCE/ODIHR ROM opened its office in Bishkek on 21 May, with a 13-member core team. Additionally, 14 long-term observers have been deployed to seven locations throughout the country. On 12-13 June, long-term observers were temporarily withdrawn from Osh and Jalal-Abad oblasts due to security concerns.

INTRODUCTION

On 21 April 2010, the provisional government of the Kyrgyz Republic set 27 June 2010 as the date for a referendum on adopting a new constitution. Following an invitation from the Kyrgyz authorities and based on the recommendation of the Needs Assessment Mission,¹ the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established a Referendum Observation Mission (ROM) on 21 May. The ROM, headed by Ambassador Boris Frlec, consists of a 13-member core team based in Bishkek and 14 long-term observers, deployed to seven locations throughout the Kyrgyz Republic. The OSCE/ODIHR ROM is drawn from 19 OSCE participating States. The OSCE/ODIHR has requested participating States to second 300 short-term observers to observe voting, counting, and tabulation on referendum day.

The OSCE/ODIHR has observed six elections in the Kyrgyz Republic since 2000. Recently, 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.² This is the first referendum that the OSCE/ODIHR is observing in the Kyrgyz Republic.

III. POLITICAL BACKGROUND

Violent protests on 7 April 2010 by opposition activists and citizens, primarily against corruption and rising prices, resulted in the ouster of President Kurmanbek Bakiyev and his government. Over 80 people were killed during the protests, with several hundred injured. Following these events, a provisional government made up of several political parties assumed authority and dismissed the parliament, the Constitutional Court, and the CEC. On 16 April President Bakiyev departed from the country.

The provisional government announced a ‘Return to Democracy’ program intended for a peaceful transition to a democratic state. A review of existing legislation, particularly the Constitution, was identified as a key step in this transition. The provisional government scheduled parliamentary elections for 10 October 2010.³ Furthermore, a presidential election will be organized by October 2011 should a ‘Yes’ vote prevail in the referendum.

On 10 June, violent clashes erupted between groups of ethnic Kyrgyz and Uzbeks in the city of Osh. By the evening of 13 June, violence had spread to Osh and Jalal-Abad oblasts resulting in large numbers of dead and injured. This led to several thousands citizens crossing into neighboring Uzbekistan.

IV. LEGAL FRAMEWORK

The legal framework for the 27 June constitutional referendum consists primarily of the 2007 Constitution and the 1991 Law on Referendum (amended in 2007). The 2007 Election Code, as amended in 2009, will regulate aspects of the administration of the referendum that are not governed by other laws. In addition, various decrees passed by the provisional government and CEC decisions regulate procedural aspects of the referendum.

¹ OSCE/ODIHR Needs Assessment Mission Report is available at: www.osce.org/odihr-elections/43837.html.

² OSCE/ODIHR reports on previous elections in the Kyrgyz Republic are available at: www.osce.org/odihr-elections/14475.html.

³ Provisional Government Resolution No 13, 21 April 2010.

The provisional government decided that its decrees represent normative acts, and therefore have the power of laws.⁴ Decrees No 19 and 20 stipulate that constitutional laws should guide the administration of the referendum unless they contradict the decrees; in such cases the decrees supersede constitutional laws. According to the 2007 Constitution, the Constitutional Court is the highest body of judicial power mandated to oversee the constitutionality of legal acts. On 12 April it was dismissed by the provisional government.⁵

Questions submitted to a referendum can propose amendments to the constitution.⁶ The Law on Referendum is explicit in stating that a question must exclude the possibility of multiple interpretations and ensure that only a definitive answer can be given.⁷ The current question of the referendum offers the electorate the choice to vote in favor or against the draft constitution and the law on its enactment.⁸ The latter law refers to two decrees of the provisional government: Decree No 2 that abolishes the Constitutional Court and Decree No 39 that confirms Ms. Roza Otunbaeva as interim president until 31 December 2011.

Under the current Constitution and the Law on Referendum, a minimum 50 per cent turnout of eligible voters is required for a referendum to be valid. Decree No 20 provides that a referendum is successful if supported by more than half of the voters participating in the referendum. However it leaves the issue of the turnout requirement unaddressed. In response to ensuing uncertainty on this issue, the CEC eventually stated that no turnout is required to validate the referendum.⁹

Citizens of the Kyrgyz Republic who are 18 years or older have the right to vote. Those who have been recognized as incapable by a court decision are deprived of the right to vote. Contrary to previous OSCE/ODIHR recommendations, the right to vote of citizens serving sentences in prison continues to be restricted irrespective of the crime committed.

Campaigning is mainly regulated by the Law on Referendum and the CEC Rules adopted on 17 May 2010. According to the Law on Referendum the campaign starts from the day the referendum is announced (21 April), whilst the CEC Rules state that the campaign begins from the day the draft constitution is published (21 May). The right to rally and hold public meetings is regulated by the 2002 Law on Freedom of Assembly. It should be noted that the (now dismissed) Constitutional Court decided on 2 March that Article 3 of this law is unconstitutional, and that specially designated places for citizens to assemble are no longer required.

V. REFERENDUM ADMINISTRATION

The referendum is administered by a four-tiered administration, headed by the CEC. Below are seven Oblast and the Bishkek and Osh City Election Commissions (OECs), 56 Territorial (Rayon and Town) Referendum Commissions (TRCs), and 2,281 Precinct Referendum Commissions

⁴ Provisional Government Resolution No 8, 10 April 2010. The 2009 Law on Normative Acts does not recognize decrees as having such status.

⁵ Provisional Government Decree No 2, 12 April 2010.

⁶ Article 98.1 of the 2007 Constitution and Article 7.1 of the Law on Referendum.

⁷ Article 7, Law on Referendum.

⁸ 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.'

⁹ CEC Press Conference, as reported by Kabar Agency, 10 June, (http://kabar.kg/index.php?option=com_content&task=view&id=1047).

(PRCs). In addition, the CEC formed 29 out-of-country referendum precincts in 22 countries for some 16,000 citizens registered abroad.¹⁰

The CEC and OECs are permanent bodies, appointed for five-year term. The provisional government dismissed the previous CEC and appointed a new one for the upcoming referendum and elections.¹¹ The reconstituted CEC comprises eight political party and seven civil society representatives.¹² A further six seats are available for international advisory members nominated by the United Nations. At the time of this report, one of these members has joined the CEC.

CEC sessions are open to the media and observers. An agenda is available at the start of sessions and most decisions are made public through the state-funded media or the CEC's website.¹³ The CEC adopted detailed voting procedures for the referendum, which, with a few exceptions, are consistent with the Law on Referendum.¹⁴ Preparations for the referendum, including ballot printing and formation of PRCs, are mostly in line with the CEC's timetable.

The CEC has established that no more than 50 per cent of lower-level commission's members are to come from political parties and that the remainder must come from nominations made by groups of voters.¹⁵ In addition, the Election Code provides that no more than one person should come from the same workplace or institution and no more than a third should be state employees.¹⁶

The provisional government authorized the CEC to appoint new 11-member OECs.¹⁷ The CEC also directly appointed the TRCs who in turn appointed PRC members by 7 June. TRCs are operational and have been co-operative with OSCE/ODIHR ROM observers. Many members have not served on previous TRCs although some have experience from previous lower-level election commissions or were political party or non-partisan observers in the past. TRC members were trained by the CEC between 25 and 28 May.

VI. VOTER REGISTRATION

On 27 May the provisional government announced that it would be adopting special measures to improve the accuracy of the voter list (VL).¹⁸ Local administration bodies were to organize door-to-door checks prior to the printing of the VL and to exclude citizens from the VL who have moved away from their registered residence on the basis of written statements of relatives.

The local administration should submit one copy of the VL for each polling station to each TRC and one copy to the PRC by 7 June. OSCE/ODIHR ROM observers noted that this deadline has

¹⁰ Several NGOs and political parties contested the arrangements for out-of-country voting, as the number of registered voters is significantly lower than some 146,000 registered for the 2009 presidential election.

¹¹ Provisional Government Decrees No 19, 21 April 2010, and No 22, 30 April 2010.

¹² The Party of Communists of Kyrgyzstan representative and one civil society member are not participating in the CEC for reasons not communicated to the OSCE/ODIHR ROM.

¹³ As provided by Provisional Government Decree No 20, 21 April. By 13 June, the CEC had made 87 decisions, of which 77 were published either on its website or in the official gazette.

¹⁴ CEC Decision No 58, 1 June 2010. Exceptions include: the CEC decided not to post samples of the 'Yes' and 'No' ballots at PRCs as prescribed by Article 35.3 Law on Referendum; early voting is set by CEC to be held from 18 June, though Article 19.1 Law on Referendum envisages early voting from 12 June; the TRCs have been formed by the CEC instead of OECs, who are authorized to do so by Article 16.3 Law on Referendum.

¹⁵ CEC Rules on the Formation and Dissolution of the Election Commission, 30 April. These rules define 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.

¹⁶ State and local officials, members of the police, military or judges cannot be members of commissions.

¹⁷ Provisional Government Decree No 19, 21 April 2010.

¹⁸ Provisional Government Decree No 20, 21 April, as amended by Decree No 53, 27 May.

been largely respected. The CEC has informed the OSCE/ODIHR ROM that VLs will be publicly displayed at PRC premises. PRCs are tasked with familiarizing voters with the VL and conducting additional door-to-door checks. Citizens can request changes or additions, including on referendum day. In case of omissions the voter is added to an additional voter list (AVL). In addition, special VLs are created for voters temporarily staying at designated locations.¹⁹ The Election Code provides that a voter may be included in only one VL. However, there is no mechanism for nationwide cross-checking of VLs.

The Election Code contains several provisions to enfranchise individuals who will be away from their registered polling station. If they are traveling to remote areas or overseas they can apply for early voting (to be conducted between 18 and 26 June). The use of absentee voting certificates was abolished by the provisional government on 10 June, effectively allowing voters to vote in any polling station within the country.²⁰ At the same time, the practice of marking voter's fingers with ink has been reinstated as a safeguard against possible multiple voting.

VII. CIVIC AND VOTER EDUCATION

Numerous organizations and institutions are involved in civic and voter education programs, through printed materials, public meetings and TV spots.

The CEC has planned a 'get out the vote' campaign. In addition, local administration bodies have put up street banners, posters and other outdoor advertising. A larger campaign, led by the provisional government and the Constitutional Council,²¹ is familiarizing people with the draft constitution. One and a half million copies of the draft constitution have been printed in Kyrgyz, Russian and Uzbek, and are being distributed by PRC members and local administration. Members of the Constitutional Council started to hold public meetings around the country. A number of national organizations are also hosting round tables and community meetings and distributing some 500,000 copies of information material.

VIII. REFERENDUM CAMPAIGN

At the time of writing, no formal 'Yes' and 'No' blocs had formed. However, a clearly identifiable 'Yes' grouping has emerged, centered on the three key parties represented in the provisional government: 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 Sariiev.²² Other parties in the provisional government, including *Ar Namys* (Dignity), *Erkindik* (Freedom), *Uluu Birimdik* (Great Unity), and the Green Party of Kyrgyzstan have also voiced their support for voting 'Yes' at the referendum. The Party of Communists of Kyrgyzstan (PCK) and *Zamandash* (Contemporary) have offered qualified support of the constitution as the best method to stabilize the country. Whilst these parties are loosely united in their support of a 'Yes' vote, a co-ordinated campaign has so far not materialized.

The existence of a 'No' group is less defined. *Ata Jurt* (Motherland) chaired by Sadyr Japarov, *Butun Kyrgyzstan* (United Kyrgyzstan) led by Adahan Madumarov, and *El Armany* (People's Destiny) led by Miroslav Niyazov have all, separately, publicly opposed the proposed constitution

¹⁹ According to Article 22.7 of the Election Code, such locations are sanatoriums, hospitals, hard-to-access regions, pre-trial and temporary detention centers, voters living overseas as well as military units.

²⁰ Provisional Government Decree No 63, 10 June.

²¹ The 75-member Constitutional Council was formed by Provisional Government Resolution No 29, 30 April 2010, and was mandated to elaborate the draft of the Constitution.

²² The party leaders of SDPK, *Ata Meken*, and *Ak Shumkar* are deputy heads in the provisional government. The fourth deputy head, Azimbek Beknazarov, is currently unaffiliated to a party.

and made critical statements against the referendum and the provisional government. These parties have indicated that they would encourage their supporters to abstain from voting, however, they have stopped short of calling for a ‘No’ vote.

Considering the recent political turmoil, the campaign to date has so far been remarkably low-key. Organized campaigning is not very visible. Campaign events, such as public meetings, are taking place on an uneven basis across the country. Parties have generally expressed a preference for door-to-door campaigning. Several parties have indicated that they are more focused on the parliamentary elections and will not dedicate large resources to the referendum campaign.

Campaign messages have thus far focused on questions of stability, the legitimacy of the provisional government, the legitimacy of the referendum question, and, to a lesser extent, the relative strengths and weaknesses of the proposed constitution.

Several parties and civil society groups have noted concerns about ambiguities regarding the required turnout to legitimize the referendum. Some parties also expressed unease about possible irregularities to increase the turnout and the lack of adequate provisions for out-of-country voters. In addition, the distinction between civic education and referendum campaigning by state officials has at times been blurred.²³

IX. NATIONAL MINORITIES

The largest national minority groups are Uzbeks (14.7 per cent) and Russians (8.3 per cent).²⁴ The provisional government has one ethnic Russian deputy head and no ethnic Uzbek member. The Russian community tends to align themselves with mainstream political parties.

OSCE/ODIHR ROM interlocutors from the Uzbek minority stated that the draft constitution provides fewer guarantees for minorities as compared to the 2007 constitution. It specifically prohibits the creation of political parties on an ethnic basis.²⁵ Some OSCE/ODIHR ROM interlocutors from the south of the country expressed that the Uzbek minority is divided on the matter of the constitutional referendum.²⁶ *Rodina* (Fatherland) party, which has significant Uzbek representation, has yet to articulate a public stance.

X. MEDIA

There are numerous media outlets operating in the Kyrgyz Republic. Television is considered as the primary source of information for most citizens. Print media in Kyrgyz and Russian language is diverse, but it is constrained by a limited circulation in the regions. The CEC has accredited 51 media outlets for the referendum, out of which approximately one fifth are active outside of Bishkek.

The state-funded National Television and Radio Broadcasting Company (NTRBC) serves the entire territory of the country. On 30 April 2010, the provisional government transformed the NTRBC into a public service broadcaster.²⁷ Candidates for the first supervisory board of the public broadcaster were submitted by civil society organizations. The final selection of the 15 members

²³ As observed by OSCE/ODIHR ROM in Bishkek, Chui, Issyk-Kul, and media monitoring section.

²⁴ National Statistics Committee of the Kyrgyz Republic, 2009, <http://www.stat.kg/rus/part/census.html>.

²⁵ Article 4.4, draft constitution.

²⁶ The Uzbek community presented four proposals through its representatives in the Constitutional Council, one of which was accepted.

²⁷ Provisional Government Decree No 28, 30 April 2010.

will be made by the provisional government within the next month, according to OSCE/ODIHR ROM interlocutors. The board will have no rights to interfere in the content of the programs.

The 2007 Constitution recognizes freedom of expression as a fundamental human right. The Law on Referendum constitutes a comprehensive legal basis for the conduct of the campaign through the media. By law, the state-funded broadcasters are required to offer at least one hour free airtime to competing groups and to allocate it within peak time. ‘Yes’ and ‘No’ positions must be guaranteed equal conditions of access to the media. The media also have the right to sell airtime or print space to competing groups on a non-discriminatory basis and at equal prices. The CEC rules for referendum campaigning reinforce the principles of equal conditions to competitors, transparency of payments for paid air time and obligating state media to offer free airtime.²⁸ The CEC is charged with overseeing compliance with these rules and, in case of violations by media outlets, it may task law-enforcement bodies to enforce them.

Since 27 May, the ROM has been monitoring a cross-section of Kyrgyz media outlets that includes six television channels and two radio stations from 18:00 to 24:00, plus ten Kyrgyz and Russian language newspapers.²⁹ During the reporting period, NTRBC provided the public with TV programs on the referendum where experts, election officials, members of the Constitutional Council, state authorities and human rights activists discussed changes in the draft constitution. On 5 June NTRBC started to air civic education spots where articles of the draft constitution are displayed on the screen and read out in Kyrgyz and Russian. The coverage of constitutional issues is substantial, but the referendum campaign through the media has been low-profile, with minimal debate between ‘Yes’ and ‘No’ positions.

XI. DOMESTIC OBSERVERS

Two national non-governmental organizations have announced that they will observe the referendum, the Coalition for Democracy and Civil Society (CDCS) and *Taza Shailoo*. The CDCS have deployed 35 long-term observers across the country to observe the pre-referendum period and plan to observe at 500 polling stations on referendum day. They intend to conduct VL verification in 80 precincts. *Taza Shailoo* is expecting to observe at some 300 polling stations.

XII. OSCE/ODIHR ROM ACTIVITIES

The OSCE/ODIHR ROM opened its office in Bishkek on 21 May. The Head of the OSCE/ODIHR ROM (HoM), Ambassador Boris Frlec, has met with the Head of the provisional government, the CEC chairperson, Ministry of Foreign Affairs, officials of the provisional government and political party representatives. The HoM has also met with the OSCE Centre in Bishkek, diplomatic representations of OSCE participating States and international organizations. The mission established working contacts with all relevant election stakeholders at the national and regional levels. On 12-13 June, long-term observers based in Osh and Jalal-Abad oblasts were withdrawn due to security concerns.

²⁸ CEC Rules During the Preparation and Conduct of a Referendum in the Kyrgyz Republic, 17 May 2010.

²⁹ TV channels: NTRBC, *Obshchestvennaya Tele Radio Companiya ‘EITR’*, Channel 5, *Pyramida*, *Novaya Televizionnaya Set (NTS)*, *Nezavisimoe Bishkekskoye Televidenie (NBT)*; radio stations: NTRBC radio and Radio *Azattyk*; newspapers: (*Aalam*, *Agym*, *Kyrgyz Tuusu*, *Erkin Too*, *Slovo Kyrgyzstana*, *Vecherni Bishkek*, *Moya Stolitsa Novosti (MSN)*, *Delo Nomer*, *Komsomolskaya Pravda*, *Argumenti I Fakti*).