

**INTERIM REPORT No. 1
16 September 2011 – 3 October 2011**

6 October 2011

I. EXECUTIVE SUMMARY

- The upcoming presidential election is scheduled for 30 October 2011. According to the 2010 constitution, the president will be elected for a six-year term and is limited to a single term in office. The election will be conducted under a new legal framework.
- The election is administered by a three-level election administration, comprising the Central Election Commission (CEC), 58 Territorial Election Commissions and 2,318 Precinct Election Commissions. In addition to short public sessions at which decisions are usually taken without discussion, the CEC holds closed meetings without the presence of candidate representatives, observers or journalists; this appears to contradict legal provisions that require all CEC sessions to be open to the public.
- As of 3 October of the 86 nominated candidates, the CEC has registered 19. A total of 14 candidates withdrew and 53 were rejected. The number of registered candidates may increase as the appeals of nine candidates were satisfied by the District Court and upheld by the Supreme Court.
- Under the new election legislation, the CEC assumes responsibility for establishing all voter lists. The CEC is relying on door-to-door checks and voter lists are to be finalized by 27 October. Voters will no longer be entitled to be added to voter lists at polling stations on election day; they must be registered at least 10 days prior.
- The election campaign started on 25 September with some billboards, posters and television spots already visible for certain candidates. Small rallies are also taking place. Two candidates appealed CEC warnings for campaigning prior to the official start of the campaign period. The District Court ruled in favour of the candidates, finding that the CEC did not follow correct procedures for issuing warnings.
- A total of 40 TV and radio stations and 103 print media are accredited by the CEC to cover the campaign. Online media are also free to do so. Several international news channels were taken off cable, while some others are broadcast with delay, as a consequence of the ban on campaigning via the foreign media. The OSCE/ODIHR Election Observation Mission (EOM) commenced its media monitoring on 22 September.
- The CEC only accredited OSCE/ODIHR EOM observers on 1 October, referring to its decision of 11 July that accreditation of international observer only starts 30 days before election day. By OSCE commitments and the Kyrgyz election law, observers should have the right to observe the entire electoral process.
- The OSCE/ODIHR EOM officially opened on 16 September 2011. The EOM is led by Corien Jonker and consists of 14 core team members based in Bishkek and 28 long-term

observers deployed throughout the country. OSCE/ODIHR has recommended that participating states second 350 short-term observers for election day observation.

II. INTRODUCTION

Following an invitation from the Ministry of Foreign Affairs (MFA) of the Kyrgyz Republic and based on the findings and conclusions of the Needs Assessment Mission,¹ on 16 September 2011 the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) to observe the 30 October 2011 presidential election. The OSCE/ODIHR EOM, headed by Corien Jonker, consists of a 14-member core team based in Bishkek and 28 long-term observers (LTOs) present in all oblasts; the EOM is drawn from 22 OSCE participating States. OSCE/ODIHR has recommended that participating States second 350 short-term observers (STOs) to observe voting, counting and tabulation of results on election day.

OSCE/ODIHR has observed seven elections and one referendum since 2000.² The assessment of the 10 October 2010 parliamentary elections noted “a further consolidation of the democratic process” and that “authorities displayed the political will to hold democratic elections in line with OSCE commitments.” However, it also indicated “an urgent need for profound electoral reform”.

III. BACKGROUND

Based on the 10 October 2010 parliamentary election results, five political parties entered the *Jogorku Kenesh* (parliament). A governing coalition of three parties (*Ata-Jurt*, the Social Democratic Party of Kyrgyzstan, and *Respublika*) was established, while *Ar Namys* and *Ata-Meken* remained in opposition.

The upcoming presidential election will be an important step to complete the transitional period after the 2010 events, which led to ouster of President Bakiev. The incumbent Rosa Otunbaeva’s term as interim President, defined by a Provisional Government Decree,³ is to expire on 31 December 2011. The decree also stipulates that President Otunbayeva cannot stand in the 2011 election. On 30 June, the parliament scheduled the presidential elections for 30 October.

Due to the large number of candidates and in the absence of a clear front-runner, a highly competitive presidential election with a high probability of a second round is expected. A number of prominent political figures have either chosen not to run or have withdrawn for various reasons, including support for other candidates.

The security situation throughout the country remains generally calm, but instances of small-scale demonstrations and public protests, mostly unrelated to elections have taken place.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The 2010 constitution introduced a semi-parliamentary system of government, giving the parliament the power to decide on the structure and composition of the government and on matters of war, while the president retains certain key powers such as the right to veto legislation and appoint the heads of defense and security agencies.

¹ OSCE/ODIHR Needs Assessment Mission Report Available at: <http://www.osce.org/odihr/elections/Kyrgyzstan/81796>.

² OSCE/ODIHR reports on previous elections in the Kyrgyz Republic are available at: <http://www.osce.org/odihr/elections/kyrgyzstan>.

³ Government Decree 39 of 19 May 2010 approving the Law on Enactment of the Constitution of the Kyrgyz Republic defines Ms. Otunbayeva as President for a transitional period until 31 December 2011.

The new legal framework, which resulted from an extensive reform of electoral legislation, includes the 2010 constitution, the newly adopted Constitutional Law on Presidential and Parliamentary Elections (hereinafter, election law)⁴ and the Law on Election Commissions to Conduct Elections and Referenda (hereinafter, law on election commissions), Central Election Commission (CEC) instructions and decisions, and related legislation governing the activities of media, non-governmental organizations and political parties. The CEC has already promulgated key provisions governing the verification of candidate signatures, campaign finance reporting requirements, and voter registration. This will be the first election to be held under the new legal framework.

The president is elected for a six-year term in a direct and secret ballot and is limited to one term in office. To stand, potential candidates must fulfill the following requirements: be a citizen of the Kyrgyz Republic without citizenship of another country; be resident of the Kyrgyz Republic for at least 15 years in total; be between the ages of 35 and 70 years; be proficient in the Kyrgyz language; and not have a conviction on record or found legally incompetent by a court of law.⁵ In order to be elected, the successful candidate must receive more than half of the votes cast. If no candidate wins, the two highest-placed candidates take part in a second round to be conducted no earlier than two weeks from the day election results are officially determined.⁶ In case of appeals, the official determination of election results is suspended until all appeals are resolved.

Following a presidential decree on 7 April 2010, the Constitutional Court of the Kyrgyz Republic was dissolved. The new Constitutional Chamber in the Supreme Court envisioned in a law adopted on 13 June 2011 has yet to be established.⁷ The appointment of Constitutional Chamber judges is tied to the selection and appointment of judges to the Supreme Court and the entire process is currently stalled. While the Supreme Court continues to hear appeals of lower court decisions, the lack of a Constitutional Chamber means interested parties have no opportunity to challenge the constitutionality of the law or of CEC decisions. Three complaints challenging the constitutionality of the law related to the 2011 presidential election have been submitted to the District Court in Bishkek. All three were rejected on the grounds that it does not have jurisdiction over constitutional issues.

V. ELECTION ADMINISTRATION

The 2011 presidential election is administered by a three-level election administration system, as provided for by the law on election commissions: the CEC, 58 Territorial Election Commissions (TECs)⁸ and 2,318 Precinct Election Commissions (PECs).⁹ Presently, 30 per cent of CEC members, 37 per cent of TEC members and 54 per cent of PEC members are female.¹⁰ There are no national minority representatives among CEC members. However, the ethnic make-up of TECs largely corresponds to the ethnic composition of respective districts.¹¹

⁴ The new laws include some of the recommendations provided by previous missions and OSCE/ODIHR and Venice Commission Joint Opinion on the Draft Laws <http://www.osce.org/odihr/80842>.

⁵ Article 3(4) of the election law.

⁶ The same requirements for a candidate to receive an absolute majority of votes cast applies in the second round.

⁷ Law on the Constitutional Chamber of the Supreme Court, 13 June 2011.

⁸ 57 TECs plus 1 at the MFA for the out-of-country vote, as per CEC website www.shailoo.gov.kg.

⁹ 2,289 PECs for the in-country voting and 29 PECs for the out-of-country voting, according to a CEC publication on their website.

¹⁰ Source: CEC website www.shailoo.gov.kg. Article 5(2) of the law on election commissions states that no more than 70 per cent of the nominated members for the CEC shall be of the same gender. However, the law is silent concerning the gender composition of TECs and PECs.

¹¹ Data for PECs are not yet available.

According to the law, CEC sessions are to be open to the media, candidate representatives and observers and decisions are to be made public through the media and the CEC website. However, the CEC seems to apply a practice that in addition to short public sessions at which decisions are taken without discussion the CEC holds closed meetings without the presence of candidate representatives, observers or journalists. This appears to contradict article 16 of the law on election commissions, requiring that “CEC operation shall be carried out on the basis of publicity and transparency through an open and free discussion”.

Candidate Registration

In order to register as a candidate, presidential nominees are required to establish an electoral fund, to deposit 100,000 Kyrgyz *Som* (approximately 1,600 Euro) into it, to pass a Kyrgyz language exam, and to submit 30,000 signatures in support of their candidacy. The CEC decided that a random sampling of 20 per cent of submitted signatures would be scrutinized by a working group and set out the procedures for verification of signatures, indicating 37 possible types of shortcomings that could occur.¹² OSCE/ODIHR observers were able to observe some of the working group meetings where signatures were checked. A CEC-established language commission conducted the language tests, which were broadcast live on public television. Nominees were required to show their ability to write, read and express their thoughts in the Kyrgyz language, as per Article 51 of the election law.

By the 16 August deadline, a total of 86 candidate nominations were submitted to the CEC; 18 from political parties and 68 from self-nominated candidates (including 6 female candidates).¹³ On 25 September, the official registration deadline, the CEC initially registered 20 candidates (no female among them); 12 self-nominated and 8 from political parties. Registrations of 53 candidates were rejected for various reasons: 11 candidates for not having paid the electoral deposit by the established deadline; 12 candidates for not having submitted signature lists; 25 candidates for not providing enough signatures in support of their candidatures; and 5 candidates failed the language test. As of 3 October, there were 19 registered candidates, since one candidate withdrew. There were 14 withdrawals altogether, including 4 female potential candidates. The language commission established that 32 candidates had a command of the Kyrgyz language.

Among the 86 initially nominated only two candidates were of non-Kyrgyz ethnic origin and six nominees were female. Both non-Kyrgyz candidates as well as four female candidates withdrew at the early stage of the registration period. Registered candidates have the opportunity to withdraw until three days before election day.

Voter Registration

Voter lists should include all citizens of the Kyrgyz Republic who possess active voting rights on election day. Previously, voter registration was based on information taken from the civil registry, where local system administrators updated voter lists using the state automated system for elections (*GAS Shailoo*). Under the new election legislation, the CEC assumes the responsibility for establishing voter lists. With international technical support, the CEC developed new software and shifted to nationally unified system of voter registration, which facilitates the input of additional voter data, including voting by *electoral address*. The CEC also attempted to merge several different data sources together to have more comprehensive and accurate representation of voter data. However, this merged database is not being used as there are certain irreconcilable voter duplications, which artificially inflate the number of voters. Instead, the CEC will revert to

¹² CEC Instruction No. 5 from 5 July 2011 and CEC Decision No. 223 from 5 September 2011.

¹³ Information provided by CEC on 26 September 2011.

basing its voter data upon previous voter lists, which have thus far only been partially updated. All subsequent updates and corrections will be included in the unified system.

Unlike in previous elections, voters will not be entitled to be added to voter lists at polling stations on election day. Eligible voters must be registered at least 10 days prior to election day to be entitled to vote. Additionally, the election law establishes the concept of an *electoral address*. This provision allows voters to vote in a polling station coinciding with their actual place of residence, regardless of their permanent registration residence; for this, they need to follow voter registration regulations. The *electoral address* option is only valid for one election. CEC procedures are in place to ensure that those voting by *electoral address* are only included in one voter list. At the same time, the voter list from the voter's permanent residence should be updated to reflect that a voter will vote in another polling station according to his/her *electoral address*.

From 20 September, voter lists should have been distributed by TECs to all PECs for posting and public review. OSCE/ODIHR LTOs report that lists were received by PECs and made publicly available on time and posted in many cases. Voters have 30 days, until 20 October, to apply to correct the existing data to be included in the voter list, or to vote by *electoral address*. Ten days prior to election day, PECs are to forward all voter lists to the TECs. TECs then have seven days to review and update all information, to establish final voter lists, and return them to PECs by 27 October. Additionally, the CEC was legally required to post voter lists on its website by 20 September, which was only completed on 26 September, but are currently available to voters.

To further ensure voter list accuracy, the CEC intends to conduct a comprehensive verification campaign from 1 to 20 October. Three-person teams from each PEC will visit all eligible voters and double-check voter information, including the option to vote by *electoral address*.¹⁴ Mobile teams will also convey voter education information.

VI. CAMPAIGN

The election campaign started on 25 September with some billboards, posters and television spots already visible for certain candidates. Small rallies are also taking place. The focus has been on several topics, including the economic situation, privatization, allegations of involvement of politicians in criminal acts, corruption and rule of law as well as national unity. On 26 September, eight presidential candidates signed the Code of Honor for parties, candidates and their supporters.¹⁵

Two candidates appealed CEC warnings for campaigning prior to the official start of the campaign period. In both cases, the District Court ruled in favour of the candidates, finding that the CEC did not follow correct procedures for issuing warnings. In its review of the appeals, the Supreme Court upheld the decisions of the District Court.

As required under article 42 of the election law, the CEC established an audit group on 16 July to control all funds allocated for the elections from the central budget and all campaign contributions and expenditures of presidential candidates. The group consists of six members, including a specialist from the state tax authority. It is headed by a member of the CEC. Instructions issued by the CEC on 15 July 2011 require candidates to submit three reports on

¹⁴ Consisting of one member each from the PEC, the local authorities and the civil society.

¹⁵ The Code of Honor was elaborated by the candidates' representatives with the support of OSCE Centre in Bishkek and other international organizations. The document was signed by eight candidates: Temirbek Asanbekov, Sooronbai Dyykanov, Marat Imankulov, Kubanychbek Isabekov, Akylbek Japarov, Almambet Matuibraimov, Roman Omorov, and Marat Sultanov.

contributions and expenditures: the first must be submitted with the candidate's registration documents, the second no later than 10 days prior to election day, and the final no later than 10 days following polling. Additionally, the election law requires financial institutions where candidates have established electoral funds to report to the audit group on a weekly basis. The CEC confirmed that all financial institutions and candidates have complied with reporting deadlines. The CEC has not yet made these reports public. According to the election law candidates are allowed to spend a maximum of 50 million Kyrgyz *Som* each (approximately 800,000 Euro) for their campaign.

VII. COMPLAINTS AND APPEALS

To date, 24 appeals have been filed with the District Court related to the registration of candidates, 13 of which have subsequently been appealed to the Supreme Court. Nine candidates were successful in their appeals of CEC decisions to deny registration for lack of sufficient support signatures. The court found that the procedures for verification of the signatures were not correctly followed by the CEC: deadlines were not met, candidates were not notified, stamps and signatures were missing on verification documents, and procedures for the use of handwriting expert analysis were not defined. The CEC appealed in six of the cases and in all six cases the decisions of the District Court were upheld by the Supreme Court. Out of four complaints challenging the findings of the language commission or the decision of the CEC to deny registration based on language exam results, none were successful.

On 30 September, the parliament issued a decree requiring the CEC to follow the court decisions. Following the Supreme Court's decision and the parliamentary decree, the CEC requested a clarification from the District Court on what actions they are required to take, to which the court clarified that the decision does not instruct the CEC as to the next step. The CEC proceeded to administer the language test to those who had not yet taken it and on 3 October began a new process of verifying the signatures for those candidates involved.

VIII. MEDIA

Broadcast media continues to be the main source of information for citizens, including about the election process. Only state-funded broadcasters enjoy nationwide coverage, with public television *OTRK* being the most influential media outlet.¹⁶ While there is a relatively high number of print media, their outreach is limited or non-existent outside urban areas, with most newspapers having small, localized circulations. A number of media outlets continue to be perceived to be vulnerable to political interference.

The OSCE Representative on Freedom of the Media recently commended progress in the media field, including the decision to decriminalize libel, the first among Central Asia countries to do so. Nevertheless, she also urged authorities to do their utmost to ensure the safety of journalists and appealed to authorities to preserve media freedom achievements in light of several recent measures, such as banning live broadcasting by foreign media during the election campaign.¹⁷

A ban introduced by article 22(16) of the election law on campaigning via foreign media has caused controversy at the beginning of the campaign. Local TV providers complained that it is technically difficult to comply with the law that requires all foreign broadcasts to be recorded and aired with a delay. The CEC addressed the parliament with a request to interpret this provision. The parliament considered the possibility to amend the election law with an aim to postpone the effect of the provision for the upcoming election. On 29 September, however, it voted against the

¹⁶ On 22 September parliament decided to reorganize semi-private Channel 5 into a parliamentary channel.

¹⁷ Available at <http://www.osce.org/fom/press-releases>.

proposed amendment, thus preserving the current legal situation. Consequently, local cable operator decided to take off its cable package several news channels, including BBC, CNN and Euronews, while some others, such as Russian *First Channel*, are broadcast with delay. OSCE/ODIHR and the Venice Commission in their joint opinion underscored that there is no legitimate basis for such a limitation and that it is not in line with OSCE commitments.

The CEC accredited a total of 40 TV and radio stations and 103 print media to cover the campaign. At the same time, it did not accredit news agencies, arguing that online media do not fall under the legal definition of media. The CEC interpreted the decision as preventing news agencies from covering the campaign. After concerns raised both domestically and internationally, the CEC requested an interpretation from the parliament. On 16 August, the parliament reversed the CEC position, concluding that online media could cover the campaign, referring to article 22(13)(4) of the election law that enables campaigning via other forms not prohibited by the law.

On 19 July, the CEC established a working group on media, an advisory panel to facilitate the CEC's legal obligation to oversee media compliance with the electoral rules. The working group is composed almost exclusively of CEC personnel, including two CEC members, and representatives of state-funded media, and meets on an *ad hoc* basis. While it has so far issued ten written and six verbal reminders on campaign rules, both to media and candidates, the election law does not provide any legal basis for such a competence of the panel.

On 22 September, the OSCE/ODIHR EOM commenced its media monitoring based on a qualitative and quantitative analysis of six television channels, two radio stations, two news agencies and ten newspapers.¹⁸

IX. ELECTION OBSERVATION

The election law (article 17 and 23) allows observers to observe the entire election process. Domestic observer organisations and individual domestic observers do not need to be accredited by the CEC; they only need a letter of appointment from the organization they represent. For international observers, however, on 11 July, the CEC issued decision No. 14 that accreditation of international observers starts only 30 days before election day. By OSCE commitments and the Kyrgyz election law, observers should have the right to observe the entire electoral process.¹⁹ In accordance with the mentioned CEC decision, the OSCE/ODIHR EOM was only accredited on 1 October. In practice, however, the EOM was not prevented from attending CEC sessions (those which the EOM was informed of) and to meet election stakeholders, including TECs, PECs and local government officials in various parts of the country before that date.

X. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM opened its office in Bishkek on 16 September 2011 and held its opening press conference on the same day. The Head of Mission, Corien Jonker, has met with the Ministry of Foreign Affairs, the CEC Chairperson, the OSCE Centre in Bishkek, diplomatic representations of OSCE participating States and international organisations present in the

¹⁸ OTRK (public broadcaster), EITR (state-funded television), Channel 5, NBT, NTS and Osh TV (Osh-based), Kyrgyz Radio and Radio Azattyk; news agencies Khabar and Aki Press; newspapers Kyrgyz Tuusu (state-funded), Alibi, De Facto, Jany Agym, Super-Info, Uchur (in Kyrgyz), Slovo Kyrgyzstana (state-funded), Delo No., Moskovskiy Komsomolets and Vecherniy Bishkek (in Russian).

¹⁹ The OSCE/ODIHR Needs Assessment Mission in August 2011 had asked for clarifications on this issue and gained assurances from the CEC that if requests for accreditation are received earlier, the CEC will consider those at a session and may accredit observers earlier.

Kyrgyz Republic, as well as with candidates. Mission members regularly attend CEC sessions and court hearings and have established contacts with many of the candidates' offices.

The mission deployed 28 LTOs on 22 September in teams of two to all oblasts of the country. They are meeting regional election stakeholders and observing ongoing voter registration efforts and election campaign events.

The OSCE Parliamentary Assembly (PA), the European Parliament and the Parliamentary Assembly of the Council of Europe (PACE) intend to deploy observers for election day. The OSCE Chairperson-in-Office has appointed Walburga Habsburg Douglas to lead the OSCE short-term observer mission for this election.