

INTERIM REPORT No. 1
14 – 28 January 2010

8 February 2010

I. EXECUTIVE SUMMARY

- Parliamentary elections to elect 63 deputies will be held on 28 February 2010. Of those, 22 will be elected proportionally from political party lists in a single nationwide constituency with a 5 per cent threshold for seat allocation. Forty-one deputies will be elected in single-mandate constituencies under a two-round majoritarian system. In these contests, if no candidate gets more than 50 per cent of votes cast in the first round, the top two candidates compete in a second round within two weeks.
- The elections are primarily regulated by the Constitutional Law on Elections to the *Majlisi Oli* (election law). Previous OSCE/ODIHR recommendations concerning significant shortcomings in the legal framework following the 2005 parliamentary elections have yet to be addressed. Furthermore, the legal framework lacks sufficient detail to ensure a uniform and consistent conduct of the electoral process.
- Efforts by a 2008 working group, comprising all eight registered political parties, electoral authorities and other electoral stakeholders, to reform the election law resulted in some proposed amendments, but these have not yet been considered by parliament.
- The Central Commission for Elections and Referenda (CCER) administers the elections, supported by district and precinct election commissions. The CCER registered 73 candidates from 8 political party lists on 19 January. District election commissions have been appointed and are to register candidates in the single-mandate constituencies by 8 February.
- Political parties and candidates have the legal right to campaign on an equal basis. Thus far, there has been little publicity given to the elections.
- The OSCE/ODIHR Election Observation Mission (EOM) started its work on 14 January. The mission comprises 17 core team members and 20 long-term observers (LTOs) from 25 OSCE participating States. The LTOs are deployed throughout the country.
- On 19 January, the OSCE/ODIHR EOM commenced its quantitative and qualitative media monitoring of three TV channels, three radio stations and nine newspapers.

II. INTRODUCTION

Elections to the Assembly of Representatives (*Majlisi Namoyandagon*), the lower chamber of the parliament (*Majlisi Oli*) will be held on 28 February 2010. The election date was announced on 14 December 2009 by presidential decree in line with legal requirements providing that elections have to be called at least 75 days before the expiration of the parliamentary term. In line with their OSCE commitments, the authorities of Tajikistan invited the OSCE/ODIHR on 21 December 2009 to observe these parliamentary elections.

The OSCE/ODIHR conducted a Needs Assessment Mission (NAM) from 9 to 11 November 2009.¹ It subsequently deployed an EOM, which started its work on 14 January. The OSCE/ODIHR EOM, led by Dr. Artis Pabriks, comprises a 17-member core team based in Dushanbe and 20 long-term observers deployed throughout the country with 25 OSCE participating States represented. Local elections will be held concurrently with the parliamentary elections and will be observed by the OSCE/ODIHR only to the extent that they may impact on the conduct of the latter.

III. POLITICAL BACKGROUND

There are currently eight registered political parties in Tajikistan. Three of these are represented in the outgoing parliament. The People's Democratic Party (PDPT), which in 2005 won 52 out of 63 parliament seats, remains the predominant political force in the country. Of the remaining 11 seats, 4 seats were won by the Communist Party (CPT) and 2 by the Islamic Revival Party (IRPT).² The CPT recently voiced some criticism regarding government policies. The IRPT wishes to promote a larger role of Islam in public life while still upholding the secular nature of the state. In April 2009, one of the two IRPT members of parliament (MPs) left parliament for health reasons. The IRPT intended to fill the vacant seat with the next candidate on the 2005 party list, but the CCER ruled that the law does not allow an MP to be replaced within a year preceding the next general election. The IRPT unsuccessfully appealed the case to the Supreme Court and the seat was left vacant.

The Socialist Party (SPT), the Social Democratic Party (SDPT) and the Democratic Party (DPT) hold no seats in the current parliament. The SPT defines itself as "constructive opposition" while the SDPT is very critical of the government. Two new parties were established in 2006, the Party of Economic Reforms (PERT) and the Agrarian Party (APT). Both parties openly support the government, although they advocate changes on some issues in agricultural and economic policies.

On 15 April 2009, on the occasion of the annual address to parliament, President Rahmon explicitly called for transparency and compliance with the law in the organization of the upcoming elections.

IV. ELECTION SYSTEM AND LEGAL FRAMEWORK

The parliament of Tajikistan (*Majlisi Oli*) has two chambers. The assembly of representatives (*Majlisi Namoyandagon*) is the lower chamber with 63 members directly elected for a five-year term.³ Twenty-two members are elected through a proportional party list system from a single nationwide constituency with a five per cent threshold for seat allocation. Forty-one members are elected in single-mandate constituencies under a majority system. In these contests, if no candidate gets more than 50 per cent of votes cast in the first round, the top two candidates compete in a second round within two weeks. A 50 per cent turnout is required for elections to be valid.

Parliamentary elections are primarily regulated by the Constitution, adopted in 1994, and the Constitutional Law on Elections to the *Majlisi Oli* (election law), adopted in 1999.⁴ The Constitution provides for rule of law and basic civil and political rights, *inter alia* freedom of

¹ http://www.osce.org/documents/odihr/2009/12/41913_en.pdf.

² Five remaining seats were secured by independent candidates.

³ The upper chamber, the *Majlisi Milli* (national assembly), of 34 deputies is partially indirectly elected and partially appointed by the President, with reserved seats for all former presidents.

⁴ Other relevant laws include the Law on Political Parties (1998), Law on Public Meetings (1998), Administrative Offences Code (2008), Criminal Code (1998), Law on Citizens' Complaints (1996), Civil Procedure Code (2008), Gender Equality Law (2005), and media-related laws.

political participation, freedom of assembly, freedom of association, freedom of expression, and judicial protection by independent and impartial courts.⁵

Amendments to the election law in 2004 improved the legal framework, but significant deficiencies remain. Shortcomings noted in the OSCE/ODIHR Final Report following the 2005 parliamentary elections include the lack of guarantees for an inclusive and pluralistic composition of election commissions, lack of provision for domestic non-partisan observation, insufficient complaints procedures, and vague procedures on essential aspects of the election process, including on voter registration, voting, counting and tabulation.⁶ The recommendations made by the OSCE/ODIHR to address these shortcomings have not yet been implemented. The election law also lacks sufficient detail to ensure a uniform and consistent conduct of the electoral process.

Throughout 2008, concerted efforts were undertaken to reform the election law. Several working group sessions, including representatives of all registered political parties, the CCER, the parliament, the presidential administration, and the Centre of Strategic Research under the President were held. After a set of proposed amendments was negotiated and agreed to by all stakeholders, the PDPT, from the outset of the opinion that the election law did not require improvement, did not sign the proposals.⁷ In February 2009, the CPT formally introduced a majority of the working group's proposals to parliament,⁸ but they have not yet been given a formal reading.

A recent significant improvement in the legal framework was the adoption of a new Administrative Offences Code in 2008, which included 28 election-related offences that are subject to financial penalties imposed by a court decision, relating to a broad range of electoral violations.⁹ As the former Administrative Offences Code did not include any election-related offences, these elections will be the first time that this category of offences will be subject to penalty.

V. ELECTION ADMINISTRATION

The parliamentary elections are administered by three levels of election commission. Only the CCER is a permanent body. Its 15 members are appointed by the parliament on the proposal of the president for a five-year term. In line with legal provisions, the current CCER was appointed on 16 December 2009. It includes seven new members, while the chairperson and his deputy were re-appointed. Lower-level commissions are appointed for each election. For these elections, 41 District Election Commissions (DECs) with 9 members each were established by the CCER by 30 December. In addition, 3,067 Precinct Election Commissions (PECs) were formed by the DECs by 14 January with 5 to 19 members each, depending on the size of the precinct.

⁵ The 2005 report of the UN Human Rights Committee regarding Tajikistan notes an apparent lack of independence of the judiciary as reflected in the process of appointment and dismissal of judges [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.84.TJK.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.84.TJK.En?OpenDocument)

⁶ Since the last parliamentary elections, the only amendments to the election law were in 2007, whereby the provision on candidate eligibility was amended to exclude employees of the Agency on Drug Control and in 2008 to replace the term “minimum wage” with “measure of calculation”, which is currently used for calculating various monetary sums, such as the electoral deposit.

⁷ Proposed amendments included, *inter alia*, lowering the electoral threshold, equal representation of political parties on all election commissions, prohibiting acting government officials from serving on election commissions, provision for domestic non-partisan observation, elimination of the electoral deposit, a change from negative to positive ballot marking, the right for observers to receive results protocol copies, the right to receive decisions on complaints in written form within 24 hours of issuance and the extension of free airtime.

⁸ The proposals submitted by the CPT did not include the accreditation of domestic non-partisan observers.

⁹ Arts. 57-84, Administrative Offences Code: The offences generally relate to violation of rights of voters, election commissioners, observers, candidates, proxies, and journalists, bribing of voters, interfering in or not carrying out the duties of election commissions, violations of election campaign rules and campaign finance restrictions, and voting and counting irregularities.

Overall, the CCER composition is more inclusive and politically balanced than before. For these elections, all registered political parties were invited to nominate CCER members. Of the eight registered political parties, only the SDPT is not represented in the current CCER. The party claims that their nominee was rejected by the president, who in practice submits party proposals for CCER membership to the parliament for approval.

The election law provides that political parties' proposals for DEC membership be considered when the latter are established. For PECs, there is no legal provision for party representation. Polling stations have been set up in 14 countries to allow Tajik citizens residing abroad to vote.

The CCER is authorized to issue legally binding instructions to clarify how the electoral law should be implemented.¹⁰ However, it has not done so, leaving existing gaps and ambiguities on a range of central elements of the electoral process, such as voting and counting, unaddressed. The CCER informed the OSCE/ODIHR EOM that it has no plans for issuing such supplementary instructions; in its view, the law is sufficiently clear and detailed.

The CCER has issued a number of instructions, on the formation of electoral districts, on political parties' use of mass media, and on the formula for determining the amount of the electoral deposit. The CCER also published a calendar of electoral events. A voter education project was supported by international partners, including the OSCE Office in Tajikistan. Its broadcast started on 26 January.

VI. VOTER REGISTRATION

There is no central voter register in Tajikistan. Voter lists are compiled locally for each election by the respective PECs. They update the voter lists based on data provided by local executive bodies on voters living in the precinct. Voter list compilation started on 28 January. Citizens who are at least 18 years old on election day and who have permanent or temporary residence in a given precinct are entitled to be included in the voter list of that precinct.¹¹ Voter lists are displayed for public scrutiny 15 days before election day at PECs. Citizens may complain to PECs regarding inclusion or exclusion from lists. PECs must decide within two days (or immediately on election day). Rejected complaints can be appealed to a first instance court, which takes the final decision. The lack of a national or regional voter registration system makes it impossible to perform cross-checks for multiple entries. Inaccuracies and potential multiple registrations can, therefore, not be excluded.

VII. CANDIDATE REGISTRATION

Candidates must be at least 25 years old, possess voting rights, and have held citizenship and residency in Tajikistan for at least five years. In addition, the law requires a higher education to stand¹² and bans those under investigation or with a criminal conviction that has not been expunged from standing. Candidates can be nominated by political parties registering lists in a single nationwide constituency and by political parties or through self-nomination in the single-mandate constituencies. An electoral deposit of 7,000 *somoni*¹³ is required from each candidate. Only parties passing the five per cent threshold and elected candidates in single-mandate constituencies are refunded.

¹⁰ Art. 12(1), election law.

¹¹ Those serving a prison term, regardless of the nature of the crime, or who have been declared mentally incapable by a court are not eligible to vote (Art. 4, election law).

¹² According to OSCE/ODIHR EOM interlocutors, the legal requirement for a higher education as a prerequisite to stand as candidate is a particular obstacle to women participating in elections.

¹³ Changes to the system of calculating this deposit have effectively doubled it from some 600 to 1,100 EUR.

The CCER registered the candidate lists of all eight registered political parties on 19 January. It registered a total of 73 candidates.¹⁴ According to the CCER, several parties did not succeed in registering all nominated candidates as they were not able to pay the deposit for all. Only the PDPT was able to register the legally-established maximum of 22 candidates per party list. The registration of candidates by DECs in single-mandate constituencies started on 15 January and is to conclude on 8 February. In addition to the electoral deposit, self-nominated candidates must provide 500 support signatures. Political parties are exempt from this signatures collection provision.

VIII. ELECTION CAMPAIGN

All candidates and parties have the right to campaign on an equal basis using various means, including organization of public events with advance notification. Apart from campaign funding and free airtime provided to contestants by the state, use of “state property and means” for campaigning is prohibited by the election law.¹⁵

The election campaign starts on the day of registration of respective candidates. All political party lists were registered on 19 January, while registration of candidates in the single-mandate constituencies is ongoing. All parties published their platforms in party newspapers, but due to low print runs these might not reach the majority of the electorate. While the PDPT and the IRPT stated that they will campaign nationwide, other parties informed the OSCE/ODIHR EOM that they will concentrate their efforts in constituencies in which they have nominated candidates. Most parties do not anticipate obstacles in campaigning, although they noted a shortage of funds. Thus far, there has been little publicity given to the elections. Instead, the ongoing fundraising campaign for financing the construction of a hydro-electric power plant in Roghun is the main issue of public discussion.¹⁶

There is no state subvention of political parties in Tajikistan. Campaign funding is provided by the state to candidates and political parties (1,000 and 6,000 *somoni*, respectively)¹⁷ and is disbursed by the CCER. Private donations to candidates and parties for the electoral campaign are allowed but capped at 52,050 and 1,050,000 *somoni*, respectively.¹⁸ Parties and candidates are required to report to the CCER on their campaign spending after the elections.

IX. MEDIA

Broadcast media are the main source of information, also on the election process. However, only state-owned TV channels and radio broadcast nationwide. While there are a relatively high number of print media, most have a small circulation and are published only once or twice a week. Their reach outside urban centres is limited. The lack of diverse viewpoints in the media raises concern over voters’ access to a broad range of information.

The election law is the legal centrepiece for conducting the election campaign in the media. However, certain articles of the Constitution as well as other laws are also relevant. Article 30 of the Constitution guarantees freedom of speech, freedom of press and right to use mass media. State censorship and prosecution for criticism is prohibited. During election campaigns, media have no

¹⁴ A total of 109 candidates were nominated on lists of 8 political parties and 185 candidates were nominated in the 41 single-mandate constituencies.

¹⁵ Art. 9, election law.

¹⁶ The Roghun hydro-electric power station was designed in the 1970s, but was never completed due to lack of funds. After foreign investment initiatives failed, the government of Tajikistan launched a public fundraising campaign. In November 2009, the government called on citizens to buy shares in the venture.

¹⁷ Some 160 and 950 EUR.

¹⁸ Some 8,500 and 164,000 EUR.

right to publish information discrediting the honour, dignity and business reputation of candidates.¹⁹ At the same time, the criminal code still contains provisions on libel and defamation despite a number of attempts by media and civil society representatives to remove them.

Article 39 of the election law obliges state-funded national and local broadcast media to allocate airtime free of charge throughout the campaign period on equal conditions to registered parties (30 minutes) and for candidates in single-mandate constituencies (15 minutes). Based on a CCER decision of 28 December 2009, the State Committee on TV and Radio has to ensure compliance with this provision. The same CCER decision grants each party and each candidate eight A4 pages in state-funded newspapers free of charge.

Recently, Tajikistan's first media self-regulation body, the media council, was formed and officially registered by the Ministry of Justice on 14 January 2010. The council's board is composed of nine members, including journalists from national and local media, media organizations and academics.²⁰ The council, established with assistance from the OSCE Office in Tajikistan, aims to oversee media compliance with ethical standards and promotes professional conduct of the media.

The OSCE/ODIHR EOM commenced its qualitative and quantitative media monitoring of three TV channels on 19 January, three radio stations, nine newspapers and broadcast media in Khujand and Kurgan-Tube.²¹ The mission will evaluate whether media provide impartial and balanced coverage of the contestants and other political entities, according to domestic law and international good practice. In addition, the mission will assess how much attention media pay to voter awareness programmes and media compliance with legal requirements for allocation of free airtime and space.

X. COMPLAINTS AND APPEALS

The complaints and appeals process, regulated by a number of legal instruments including the election law and civil procedure code,²² generally lacks sufficient clarity. There is dual jurisdiction for consideration of complaints against decisions and actions of election commissions,²³ whereby political parties, candidates, proxies, observers and voters can submit complaints to either higher election commissions or courts, with the Supreme Court as the final instance in all cases. A lack of clear separation in the respective roles and mandates of the courts and electoral bodies is a concern.

The civil procedure code includes provisions for filing election related complaints in court.²⁴ In particular, complaints against decisions, actions and inactions of public authorities, local government bodies, officials, and state employees that violate electoral rights can be filed in the courts by a broad range of electoral stakeholders. However, the code does not authorize voters, political parties or candidates to challenge electoral violations committed by non-official bodies or people in court.²⁵

The election law does not outline complaints procedures regarding violations of its provisions, other than procedures for complaints against decisions and actions of election commissions. However, in

¹⁹ Art. 39, election law.

²⁰ The members of the board were elected from among representatives of the media council members (over 60 media outlets and organizations) in an internal process with a shortlist and final selection.

²¹ TV Tajikistan, TV *Safina*, *Jahonnamo* TV, National Radio, Radio Asia Plus and Radio *Imruz*, newspapers *Jumhuriyat*, *Sadoi Mardum*, *Faraj*, *Millat*, *Tojikiston* and Russian language *Asia Plus*, *Biznis i Politika*, *Vecherniy Dushanbe* and *Narodnaya Gazeta*.

²² A new civil procedure code, adopted in 2008, includes procedures for filing and considering election-related complaints in the courts.

²³ The election law is unclear about whether inactions of election commissions can also be challenged.

²⁴ Art. 259, civil procedure code.

²⁵ Only election commissions are authorized to file such complaints in court.

light of the CCER's and DEC's legal obligation to control the execution and equal application of the election law, the CCER and DECs seem to have an implicit responsibility to consider all election-related complaints.²⁶ PECs are responsible for considering complaints related to the preparation of elections and conduct of voting on election day.²⁷

The election law provides a 10-day deadline for filing any complaints against election commission decisions²⁸ and the civil procedure code provides up to 40 days to file complaints on electoral violations.²⁹ Complaints must be considered within three days or immediately if less than six days remain before the elections.³⁰ The election law does not provide standard procedural guarantees such as the right to a fair hearing, decisions in writing, with reasons provided, and notification of the right to appeal.

XI. PARTICIPATION OF WOMEN

The legal framework³¹ provides the basis for equal participation of women and men in the electoral process. The Law on State Guarantees of Equal Rights for Men and Women and Equal Opportunities for their Implementation (gender equality law) adopted in 2005 contains specific provisions on equal opportunities for men and women.³² A total of 15 women out of 73 candidates have been registered on political party lists, although most of them are low in the lists and stand little chance of being elected. In single mandate constituencies where the registration has not yet been finalised, there were 22 women among the 185 nominated candidates.

XII. DOMESTIC AND INTERNATIONAL OBSERVATION

The election law allows political parties and self-nominated candidates to appoint election observers, who have the right to be present at polling premises, to observe the work of election commissions, and to familiarize themselves with the voting results. Observers, however, are not entitled to receive copies of results protocols nor is there any provision for domestic non-partisan election observation. The law does foresee international observers, who are to be accredited by the CCER. Some 540 international observers are expected by the CCER for the upcoming elections.

XIII. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM began its work in Tajikistan on 14 January. During the course of this period, the Head of the OSCE/ODIHR EOM met with the Minister of Foreign Affairs and the CCER Chairperson. The EOM also established working contacts with all levels of the election administration, met various senior state officials, all registered political parties, representatives of the media and other electoral stakeholders. The EOM is grateful to the Ministry of Foreign Affairs for its support in facilitating official meetings. Twenty OSCE/ODIHR long-term observers arrived in Tajikistan on 21 January and were deployed across the country. Participating States have been requested to second 150 short-term observers to follow election day procedures. The OSCE/ODIHR, the OSCE Parliamentary Assembly whose delegation will be led by Ms. Pia Christmas Møller, and the European Parliament will join efforts for election day observation.

²⁶ Arts. 12 and 14, election law. The election administration, however, has limited authority to sanction violations of the election law. It can only deregister candidates and dismiss election commission members.

²⁷ Art. 17, election law.

²⁸ Art. 20, election law.

²⁹ Art. 260, civil procedure code.

³⁰ Art. 20, election law and Art. 260, civil procedure code. The exception is that the Supreme Court has six days to consider appeals on rejection of political party candidate lists (Art. 31, election law.)

³¹ The Constitution, Art. 17 and the election law, Arts. 4 and 28.

³² e.g., Art. "the state guarantees equal participation of men and women in the process of governing the state."