



Office for Democratic Institutions and Human Rights

KYRGYZ REPUBLIC

PRE-TERM PARLIAMENTARY ELECTIONS 16 December 2007

OSCE/ODIHR Election Observation Mission Final Report



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TABLE OF CONTENTS

I. EXECUTIVE SUMMARY	1
II. INTRODUCTION AND ACKNOWLEDGEMENTS.....	3
III. POLITICAL BACKGROUND.....	3
IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM.....	4
V. ELECTION ADMINISTRATION.....	7
VI. VOTER REGISTRATION.....	9
VII. CANDIDATE REGISTRATION.....	9
VIII. ELECTION CAMPAIGN.....	11
A. INVOLVEMENT OF STATE BODIES IN THE ELECTION PROCESS	12
B. CAMPAIGN FINANCING	13
IX. MEDIA	13
A. MEDIA ENVIRONMENT.....	13
B. LEGAL FRAMEWORK FOR THE MEDIA.....	14
C. OSCE/ODIHR EOM MEDIA MONITORING.....	15
X. PARTICIPATION OF WOMEN.....	16
XI. PARTICIPATION OF NATIONAL MINORITIES	17
XII. DOMESTIC AND INTERNATIONAL OBSERVERS.....	17
XIII. COMPLAINTS AND APPEALS	17
XIV. VOTING AND COUNTING	18
A. POLLING PROCEDURES.....	18
B. COUNTING PROCEDURES.....	19
C. HANDOVER OF ELECTION MATERIALS AND TABULATION PROCEDURES	19
XV. ANNOUNCEMENT OF ELECTION RESULTS AND POST-ELECTION DEVELOPMENTS.....	20
XVI. RECOMMENDATIONS	21
A. LEGAL FRAMEWORK.....	21
B. ELECTION ADMINISTRATION.....	22
C. VOTER REGISTRATION	23
D. ELECTION CAMPAIGN.....	23
E. MEDIA	24
F. COMPLAINTS AND APPEALS.....	24
G. DOMESTIC AND INTERNATIONAL OBSERVERS.....	24
H. PARTICIPATION OF WOMEN	25
I. PARTICIPATION OF NATIONAL MINORITIES	25
J. VOTING PROCEDURES	25
ANNEX: OFFICIAL ELECTION RESULTS.....	26
ABOUT THE OSCE/ODIHR.....	28

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I. EXECUTIVE SUMMARY

Following an invitation from the Ministry of Foreign Affairs of the Kyrgyz Republic to observe the 16 December 2007 pre-term parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) on 21 November 2007. The OSCE/ODIHR assessed the election process for compliance with OSCE commitments and domestic legislation. For election day observation, the OSCE/ODIHR joined efforts with the OSCE Parliamentary Assembly (OSCE PA) observer delegation.

In their Statement of Preliminary Findings and Conclusions, the OSCE/ODIHR and the OSCE PA concluded that the 16 December pre-term parliamentary elections failed to meet a number of OSCE commitments, despite respecting some that underscore existing pluralism. The elections were a missed opportunity, falling short of public expectations for the further consolidation of the democratic election process in Kyrgyzstan. Further efforts and political will are necessary to underpin the progress which was evident during the 2005 presidential election.

The elections to the *Jogorku Kenesh* (Parliament) were held under a new election system with 90 deputies elected for five-year terms. Mandates were allocated according to a proportional representation system with closed party lists in a single nationwide constituency. The new system included unusual provisions for translating votes into parliamentary seats; parties were required to pass two separate thresholds, determined as percentages of all registered voters. The authorities contended that the new system was designed to stabilize the country.

The first threshold required parties to get five per cent of votes of registered voters nationwide. The second threshold required parties to surpass a 0.5 per cent threshold of all registered voters in each of the country's seven regions and in the cities of Bishkek and Osh. The Central Election Commission (CEC) initially determined this second threshold to be calculated against all registered voters nationwide. A protracted appeal process followed, and a final decision of the Supreme Court was issued only after election day on 18 December. The decision overturned the CEC resolution on calculating the 0.5 per cent threshold. In a non-transparent adjustment, the 0.5 per cent was then calculated by the CEC against the number of registered voters in each respective region. This created uncertainty, and the rules for allocation of parliamentary seats compromise the objective of proportional representation.

The election campaign took place in a generally calm environment. Voters had a choice of 12 political parties, but candidate list registration procedures were unequally applied. Political parties appeared to experience difficulties in organizing their campaigns in the short timeframe. Misuse of administrative resources in favour of the *Ak Jol* party, and frequent allegations of intimidation of voters, did not contribute to equitable campaign conditions.

Freedom of assembly was generally respected, but limitations were introduced in the capital by a decision of the Bishkek City Council. In addition, legal actions taken against specific parties contributed to a failure to fully uphold a pluralistic election environment.

Implementation of legal provisions and court decisions (including on candidate registration) ran contrary to rule of law principles in Paragraph 2 of the 1990 OSCE Copenhagen Document, which states that the rule of law “does not mean merely a formal legality” but justice “guaranteed by institutions providing a framework for its fullest expression”.

The media failed to provide adequate information for voters to make an informed choice. State television and radio (KTR) did not meet its obligation to inform the public about election contestants. While respecting legal provisions for free equal airtime, it provided only limited coverage, amounting to some 25 minutes for each party. This coverage was aired after 23:00 hours and only on 7 out of the 19 days of the official campaign. Parties faced difficulties purchasing paid airtime; some court challenges resulted in late and limited redress.

Key legislation regulating the parliamentary elections includes the Constitution and the Election Code (EC). Both were adopted by referendum on 21 October 2007. The election code contains inconsistencies and unclear provisions, and fails to address a number of past OSCE/ODIHR recommendations. Some previously indicated shortcomings have lost relevance due to changes in the electoral system; new provisions have compounded others.

While the CEC conducted its work in a generally open manner, transparency was an issue; closed meetings became more frequent as election day approached, on election day itself and afterwards. Open sessions were attended by representatives of the media, political parties and domestic and international observers. A number of parties expressed a low level of confidence in the work of the CEC. The CEC generally met legal deadlines. The uniformity of voter list compilation, however, continued to be a concern, as was their accuracy.

Although courts generally heard complaints and appeals within the legally prescribed deadlines, it appeared that some decisions may have been politically motivated. The complaints and appeals process lacked uniformity and consistency, as previously noted. The CEC received a number of complaints from election stakeholders, but failed to review any of these in open sessions during the course of the OSCE/ODIHR EOM.

Election day was generally calm and conducted in an overall orderly manner throughout the country. Official CEC figures provided to the OSCE/ODIHR only on 18 December show turnout at 73.86 per cent. The voting process was assessed as ‘good’ or ‘very good’ in some 91 per cent of polling stations visited, with some regional variations; in Osh city, 32 per cent of observers assessed the voting process as ‘bad’ or ‘very bad’. The main problems observed included cases of ballot box stuffing, a high number of unauthorized persons present during voting, counting and tabulation, and inconsistent checking and application of ink as a safeguard against multiple voting.

The count showed a deterioration of the process, with some 34 per cent of observations being negative. During tabulation of polling station totals at higher level election commissions, significant problems were also noted. These included: delayed and non-transparent announcement of nationwide turnout figures and preliminary party totals by the CEC; and inconsistencies between preliminary and final totals. The CEC failed to post polling station data on its website for the duration of the OSCE/ODIHR EOM’s deployment.

The results were challenged by the *Ata Meken* party to the *Pervomayski* District Court, which upheld the respective CEC decision on 22 December. *Ata Meken* appealed this decision to the Supreme Court, which also upheld the initial ruling. The NGO *Coalition for Democracy and Civil Society* attempted to appeal results of individual polling stations to the *Pervomayski* court, but the CEC claimed that deadlines for lodging complaints had elapsed.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of the Kyrgyz Republic to observe the 16 December 2007 pre-term parliamentary elections and the deployment of a Needs Assessment Mission¹, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) in the Kyrgyz Republic on 21 November 2007. It was headed by Mr. Nikolai Vulchanov and consisted of 14 experts and 20 long-term observers (LTOs) from 21 OSCE participating States, who were based in Bishkek and in all seven regions.

For election-day observation, the OSCE/ODIHR joined efforts with an observer delegation from the OSCE Parliamentary Assembly (OSCE PA). Mr. Kimmo Kiljunen, a member of the Parliament of Finland, Vice President of the OSCE PA and Head of the OSCE PA delegation, was appointed by the OSCE Chairman-in-Office as Special Co-ordinator to lead the OSCE short-term observers. On election day, some 270 observers from 38 OSCE participating States were deployed by the OSCE/ODIHR, including a 26-member delegation from the OSCE PA and 180 short-term observers seconded to OSCE/ODIHR by OSCE participating States. The EOM observers visited 836 of 2,236 polling stations and observed the work of 23 of 56 Rayon Election Commissions (RECs).

The election process was assessed for compliance with OSCE commitments and domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions released at a press conference on 17 December 2007.²

The OSCE/ODIHR is grateful to the Ministry of Foreign Affairs, the Central Election Commission, and to political parties and civil society in Kyrgyzstan for their co-operation. The OSCE/ODIHR also wishes to express its appreciation to the OSCE Centre in Bishkek, diplomatic representations of OSCE participating States and international organizations in Kyrgyzstan for their co-operation throughout the course of the mission.

III. POLITICAL BACKGROUND

The 16 December 2007 pre-term parliamentary elections were the fifth set of elections observed by the OSCE/ODIHR in Kyrgyzstan since the country's independence in 1991. The last parliamentary elections, held in February and March 2005, were assessed as having been more competitive than previous elections, but fell short of meeting OSCE commitments and other international standards for democratic elections in a number of important areas.³

¹ See OSCE/ODIHR Needs Assessment Mission report:
www.osce.org/documents/odihr/2007/11/27920_en.pdf

² The Statement of Preliminary Findings and Conclusions is available at:
www.osce.org/documents/odihr/2007/12/28916_en.pdf.

³ The reports of previous election observation missions deployed by the OSCE/ODIHR since 2000 are available on the OSCE/ODIHR website (www.osce.org/odihr).

Mass demonstrations had developed during the course of the 2005 parliamentary elections and led to popular unrest and the eventual ouster of President Akaev. Mr. Kurmanbek Bakiev, an opposition leader, was subsequently appointed as acting Prime Minister and President until early presidential elections in July 2005, which confirmed him as President.

Following two years of some political instability, including demonstrations in autumn 2006 and spring 2007, and significant disputes over the process of amending the 2003 Constitution and the election code, President Bakiev announced a referendum on a new Constitution and election code for 21 October 2007. While the authorities called the referendum a success, representatives of the international community expressed concern with regard to its conduct. Immediately following this referendum, President Bakiev dissolved parliament on 22 October and on 23 October called pre-term parliamentary elections for 16 December.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The main legal documents regulating parliamentary elections in the Kyrgyz Republic are the Constitution and the election code. New texts of both of these documents were adopted shortly before the elections through a referendum on 21 October 2007. The new election code contains inconsistencies and unclear provisions and fails to address a number of past recommendations made by OSCE/ODIHR. Some of the previously indicated shortcomings have lost relevance after changes to the electoral system, but others have been compounded by new provisions. Other laws that are relevant for the election process also contain problematic provisions.

For the first time in Kyrgyzstan, all 90 deputies to the unicameral parliament (*Jogorku Kenesh*) were elected on the basis of a system of proportional representation, with closed party lists, in one nationwide constituency. Deputies are to serve 5 year terms. While proportional representation is broadly used in the OSCE region, conditions set by the Kyrgyz legislation for eligibility of parties to qualify for seat allocation are unusual.

In order to qualify for seat allocation, a party had to win sufficient votes to pass two separate thresholds. The first was a five per cent national threshold, calculated against all registered voters nationwide. The second was an additional 0.5 per cent threshold that a party needed to pass in each of the seven regions (*oblasts*) and in cities of *oblast* status: Bishkek and Osh.

As the election code did not clearly specify how this second threshold should be determined, the CEC issued a resolution on 19 November that the 0.5 per cent threshold would also be calculated against all registered voters nationwide. However, this CEC resolution was overturned by the Supreme Court on 18 December; two days after election day, but before the announcement of final election results by the CEC.⁴ This Supreme Court decision followed two unsuccessful previous appeals in lower courts by *Ak Jol*, a political party affiliated with President Bakiev. The belated adjustment of this fundamental element of the new electoral system at such a late stage in the election process meant that election stakeholders did not fully comprehend on what basis they were contesting the election until after election day.

⁴ Following this Supreme Court ruling, the CEC allocated mandates in the new parliament with the 0.5 per cent threshold calculated against the number of registered voters in **each** *oblast*. This was done without any formal CEC resolution to this effect being made.

Thus, under the new system of seat allocation, it was possible that a party might receive more than five per cent⁵ of the vote nationwide, but if it missed the 0.5 per cent in only one region, it would not gain parliamentary representation, thus compromising the objective of proportional representation.⁶ If no party passed both thresholds, the elections would have to be repeated. Thus, the system would allow for an endless cycle of failed elections.

Despite general support for a fully proportional system, parties voiced concerns over the haste in calling new elections. They stated that they lacked time to prepare for an election under the new system. The lack of a comprehensive public debate on the draft legislation submitted to referendum is not fully consistent with the 1990 OSCE Copenhagen Document, Paragraph 5.8; this foresees public procedures before adoption of new legislation. It is also considered good practice to hold elections only after a reasonable time period after fundamental amendments to election legislation, to permit stakeholders to accustom themselves to a new framework.⁷

The election code (Article 40) allows voters to vote “against all” candidate lists, without requiring voters to make a positive choice for an option. While the code fails to clarify the consequence if the votes “against all” pass both thresholds, it stipulates that if “against all” receives the highest number of votes cast, the elections must be repeated with new candidate lists.

Contrary to previous OSCE/ODIHR recommendations, the election code continues to contain provisions imposing unreasonable restrictions on the right to stand as a candidate. Only parties may nominate candidates. The election code offers no possibility for independent candidates, limiting the right of individuals to stand, provided for in the 1990 OSCE Copenhagen Document.⁸ The election code also establishes that deputies lose their mandate if they leave a party, are dismissed from it, or if the party “ceases activity”. This gives party leaderships a disproportionate control over deputies elected by popular vote and challenges the commitment that candidates who obtain the legally necessary votes remain in office until their term expires.⁹

Article 20 of the new Constitution recognizes the right of Kyrgyz citizens to hold a second citizenship. In the light of this provision, it is unclear why the election code (Article 27) allows the refusal of candidacy on the basis of holding citizenship of another state.¹⁰ Permanent residency of a citizen in another country is another disqualifying factor.

The election code denies candidacy rights on the basis of any previous legal convictions that have not been cancelled or voided. This denial of suffrage due to convictions for *any* crimes is

⁵ It merits reminding that the five per cent threshold is calculated on the basis of the number of all registered voters nationwide. Thus, with a voter turnout of 50 per cent, e.g., a party would be eligible for seat allocation, if it collected 10 per cent of the valid votes cast.

⁶ One party did surpass the five per cent threshold nationwide, but was not allocated any seats as the party did not pass the 0.5 per cent threshold in the city of Osh. This was on the basis of final results announced by the CEC. In contrast, another party that received a little more than half as many votes as the aforementioned party succeeded in receiving seats in the new parliament.

⁷ See European Commission for Democracy through Law’s (Venice Commission) *Code of Good Practice in Electoral Matters*. 52nd Session, 18-19 October 2002.

⁸ Paragraph 7.5: “[The participating States will] respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

⁹ 1990 OSCE Copenhagen Document, Paragraph 7.9.

¹⁰ It is important to note that Article 57 of the Constitution prescribes termination of a deputy’s mandate if he/she loses Kyrgyz citizenship or acquires the citizenship of another state. Even in the light of this provision, it remains unclear whether citizenship of another state, held *in parallel* with Kyrgyz citizenship, should prevent citizens from standing for office.

a disproportionate sanction. The election code also establishes a blanket restriction on the voting rights of prisoners, irrespective of length of sentence, the gravity of the offence, or individual circumstances; these provisions are not consistent with OSCE commitments.¹¹

In a positive development, the election code introduced quotas enhancing gender equality and the participation of youth and various nationalities. These, if properly implemented, could improve the representation of these groups in parliament. Article 72.3 of the election code provides that no more than 70 per cent of candidates, and that a maximum of three consecutive candidates in each list, be of the same gender. It further requires that 15 per cent of the candidates in each list be below 35 years of age and that no less than 15 per cent represent various nationalities.

The CEC used the requirement for gender distribution as grounds for refusing registration to certain party lists. Political parties were not allowed to make changes to their lists, pursuant to a prohibition contained in the election code (Article 72.5). It remained unclear why parties were not permitted to bring lists into compliance by removing candidates, as per provisions in the law. It is important to note that after the registration process ended, parties removed candidates from party lists with impunity and without replacements that would make lists compliant with the prescribed gender distribution order.

Cancellations of candidate registration also raised concerns; grounds for cancellation remain broad and sometimes vague. The election code (Article 56) lists the grounds for cancellation of candidate and list registration, which are noted as being exhaustive (Article 56.5). However, other parts of the election code also provide for deregistration. Further, while some provisions limit deregistration to the period until three days prior to elections, others do not contain any time limits, thus even allowing for post-election cancellation of registration.

A basic principle embodied in the OSCE commitments is that voters should have the opportunity to choose in genuinely democratic elections, from among citizens, those people who are to govern. The choice of candidates should, therefore, be left to voters to determine and not be artificially curtailed. Deregistration provisions as contained in the election code significantly limit the rights of voters in addition to those of candidates.

The process for establishing party lists for the elections also raised concern. The election code prescribes that a party must propose lists with at least as many candidates as the total number of mandates (Article 25.3) and that the candidate list must be proposed at a party congress (Article 72). Both provisions appear to over-regulate the list formation process. A party can also be excluded from the race if candidates pull out or are disqualified prior to registration. This was the case with the *Rodina* party, which was initially refused registration by the CEC. This was not re-instated by the court when the court found that 12 of the party's candidates had allegedly withdrawn prior to registration. This principle effectively makes a citizen's right to stand for office dependent on the willingness or eligibility of other candidates to run.

¹¹ 1990 OSCE Copenhagen Document, Paragraph 24. See also *Hirst v. United Kingdom (No. 2)* (Application no. 74025/01, 6 Oct. 2005), in which the Grand Chamber of the European Court of Human Rights held that a blanket restriction on the voting rights of prisoners, "irrespective of the length of their sentence and irrespective of the nature or gravity of their offence and their individual circumstances", was a violation of Protocol 1, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court also noted that Protocol 1, Article 3 "guarantees individual rights, including the right to vote and to stand for election".

In addition, the election code contains undue restrictions on campaigning rights. The code (Article 30.9) sets out a broad definition of election campaigning. Further, Article 30.13 prohibits campaigning by “members of charitable organizations, members and representatives of religious organizations” unless registered as candidates or candidate representatives. It also prohibits campaigning by those under 18 years of age and foreign citizens. Given the broad definition of campaigning, such limitations are disproportionate and infringe on freedom of speech and expression. Prohibitions on campaigning by “members” of religious and charitable organizations, rather than institutions, are also unreasonable restrictions; it remains unclear why this is the basis for denying citizens their fundamental political rights.

The election code limits the public expression of opinion by international observers until after the completion of voting (Article 18.10). Although this provision had no practical implication for the OSCE/ODIHR EOM on this occasion, it is vague and potentially places undue restrictions on the rights of individuals to free speech and expression.

Limitations on campaigning have also been noted in other legislation. For example, the Bishkek city council passed a decision, published on 7 December, limiting public meetings to specific locations in Bishkek and introducing a 10-day notification period that effectively made public meetings impossible during the remainder of the election campaign. Similar decisions were made prior to the election in other parts of Kyrgyzstan. It would appear that such decisions are not in line with the Constitutional Court ruling of 14 October 2004, which overturned a similar decision.

There is no requirement for the CEC to publicly post election results by polling station. Introduction of such a measure, recommended by the OSCE/ODIHR on a number of occasions and implemented in the 2005 presidential election, would significantly contribute to the general transparency of the election process.

V. ELECTION ADMINISTRATION

The elections were administered by a four-tiered election administration, consisting of the Central Election Commission (CEC), 7 Oblast Election Commissions and Bishkek and Osh City Commissions (OECs), 56 Rayon and Town Election Commissions (RECs), and 2,274 Precinct Election Commission (PECs), including 38 that were established out of country. Political parties can nominate up to one-third of the membership of RECs and PECs, and parties actively nominated members. Parties with registered candidate lists are also entitled to nominate one member with advisory status to the CEC and to have observers at each PEC and REC. OSCE/ODIHR EOM observers noted party observers from a variety of political parties in all polling stations visited on election day.

The CEC is a permanent administrative body comprised of 13 members: six were appointed by the outgoing parliament, while the other six and the Chairperson were appointed by the President. The CEC serves a 5-year mandate; its structure and status is regulated by a separate Law on the Central Election Commission.

The CEC generally met legal deadlines in administering these elections. Its sessions were overall conducted in an open manner and were attended by representatives of the media and political parties, as well as domestic and international observers. However, the CEC also held meetings behind closed doors and during at least one such meeting held on 4 December, it

considered important election issues. The conduct of closed meetings became more frequent as election day approached, on election day itself and afterwards.

The CEC is tasked with ensuring uniform implementation of the election code (Article 10.1.1). The CEC apparently utilized this provision to issue far reaching resolutions, including the determination of calculating the 0.5 per cent threshold on the basis of the number of registered voters nationwide. This resolution was criticized by political parties, ten of which wrote an open letter to President Bakiev. *Ak Jol* challenged the resolution to the Bishkek inter-district court, which upheld the resolution, and a further appeal by *Ak Jol* was not successful. Following election day, however, the Supreme Court overturned the resolution. In a non-transparent adjustment, the CEC then calculated the 0.5 per cent threshold against the number of registered voters in each respective region.

After election day, the CEC failed to respond to OSCE/ODIHR EOM requests for election-related information, including separate figures for registered voters on the main and additional voters lists, broken down by PEC level. The limited information provided by the CEC overall did not provide election stakeholders with a clear understanding of the tabulation process.

The RECs and PECs were formed within legal deadlines. The PECs seemed prepared for election day although some operated under difficult conditions, with insufficient but legally required logistical and technical support from local authorities and higher level commissions. The RECs and PECs rarely met in formal sessions, as required by law. While sessions were purported to be public, little effort was made to ensure that stakeholders were informed of such sessions.

The OSCE/ODIHR EOM was also aware of numerous complaints over the composition of RECs and PECs addressed to the CEC and the General Prosecutor's Office (GPO). Complaints sent to the GPO were later forwarded to the CEC.¹² However, the CEC did not consider any of the complaints on election commission composition in open sessions.

On election day, a number of EOM observers, as well as domestic observers, were denied access to information, including voter lists, to applications for early voters, lists of early voters, and applications for mobile voting. During the counting procedures, many EOM observers and domestic observers were instructed to stand at a distance from the counting table and many could not see the ballots or how they were marked, limiting their capacity to observe adequately.

The CEC established 38 out-of-country precincts that, as of 5 December, included 29,614 voters. On 17 November the CEC adopted a resolution permitting mobile voting in places qualified as "locations frequently attended by Kyrgyz citizens". A CEC member publicly stated that PECs abroad would individually take decisions on mobile voting in such places.

The OSCE/ODIHR EOM made several requests to the CEC for its decision on allocation of out-of-country votes, but these requests went unanswered. The out-of-country results were not publicly disclosed and were not recorded in the CEC's final results protocol.

¹² http://www.prokuror.kg/index.php?option=com_content&task=view&id=52&Itemid=51

VI. VOTER REGISTRATION

All citizens eligible to vote should be included in voter lists (VL) on the basis of their registered place of residence. They are to be included in only one polling station VL. Voter registration for these elections made use of a computerized voter database, *GAS Shailoo*, which was maintained in the CEC. Information was to be regularly updated by system administrators, who received updated voter data from passport desks and local authorities. Throughout the pre-election period and in contrast to past elections, voters could not check their voter list details on the CEC website.

On 29 November, the CEC declared the total number of voters to be 2,689,341. VLs should have been available at in-country PECs for public scrutiny by 28 November. Spot checks by the OSCE/ODIHR EOM at a number of PECs indicated that few had received the VLs by this date and that some PECs were closed during working hours. These spot checks, however, still identified a number of potential multiple records within the same PECs.

The election code (Article 22.10) provides that VLs are to remain unchanged from the moment they are signed and stamped by local administration heads and submitted to the PECs.¹³ Nevertheless, some PECs visited by the OSCE/ODIHR EOM were undertaking door-to-door checks, sometimes together with local authorities, with a view to amending the VLs. A number of PECs and local authorities visited mentioned that voters' names could be deleted from the lists on the basis of their *de facto* absence from their registered place of residence. A few days before the elections, observers saw what appeared to be newly reprinted VLs, although the respective receipt protocols for these lists had been dated 28 November. In some other cases, PECs confirmed to observers that VLs had been re-printed and that some names had been taken out. Numerous voters were sent to courts on election day to be added to the VL. On election day in Bishkek, long queues were noted by OSCE/ODIHR observers at the city's courts. These findings imply that the accuracy of the VLs remains an outstanding issue.

A number of VLs did not contain the required notations that should be made before the names of early voters in the main VLs. In some cases, PECs had not received a list of early voters from RECs. EOM observers reported that in some RECs, the number of early voters was significantly higher than in other RECs. For instance, the number of early voters reported in Alamudinskiy REC was 9.44 per cent of all registered voters in that REC. In many cases, EOM observers were not given access to relevant documentation for early voting, such as lists of early voters or written statements submitted by them prior to voting. One PEC in Alamudinskiy REC had some 15 per cent early voting, although the legal procedures for early voting are tightly delineated and only allow specific categories of voters to vote early.

VII. CANDIDATE REGISTRATION

To register for these elections, political parties were required to submit candidate lists to the CEC containing no less than 90 and no more than 100 names. This provision that candidate lists cannot contain less than the number of available mandates represents an unreasonable hurdle. The election code (Article 72.5) prohibited changes to candidate lists following

¹³ Of note, the number of voters in the main voter list has changed from the figure of 2,689,341, as announced on 29 November, to 2,694,366, as reflected in the CEC protocol on the final results. This represents an increase of 5,025 voters from the time the voter lists officially closed.

submission; only if candidates were withdrawn was it possible for parties to replace them. This proved problematic during the registration process.

The registration process was, at times, inconsistent and lacked inclusiveness. Registration was granted to 12 of the 19 parties that sought to run in the election.¹⁴ Six of the remaining seven parties were denied registration for lack of compliance with the gender distribution provision in Article 72.3 of the election code. However, although the candidate list of one party failed to comply with this provision, the party was registered nonetheless. On 20, 23 and 27 November and as required by the election code (Article 27.11), the CEC published the registered party candidate lists in the state newspaper, *Erkintoo*.

One of the parties denied registration was *Rodina*, perceived by some interlocutors as being affiliated with the Uzbek minority in Kyrgyzstan. *Rodina* was initially refused registration by the CEC on the basis that the Kyrgyz citizenship of 16 of its candidates could not be determined, thus failing to comply with the minimum number of candidates required by the election code (Article 25.3). Although the Department of Passport and Visa Control subsequently confirmed citizenship for all candidates concerned, the CEC's refusal of registration was supported by the court. The court opined that the party list would not include the required number of candidates because of candidate withdrawals, which the party claimed were coerced.

All refusals of registration by the CEC were appealed to the court of first instance. In all seven cases, the court upheld the CEC's resolutions. Five parties appealed further to the Supreme Court, which in all cases upheld the decision of the first instance court.

The CEC de-registered certain candidates after the registration of party lists. This skewed the gender ordering in some candidate lists. Some candidates were de-registered by the CEC because they did not provide documents demonstrating that they had resigned from or suspended any employment incompatible with candidate status. However, the CEC did not provide a clear explanation as to which posts were not compatible with candidate status.

Mr. Edil Baisalov, an SDPK candidate, was de-registered as a candidate and excluded as a CEC member with advisory status by two CEC resolutions dated 4 December. This de-registration was triggered by an image of a ballot that appeared on Mr. Baisalov's web-log (blog) following his visit to the printing house where ballots were printed. The CEC argued that Mr. Baisalov had revealed the security features of the ballot, thus obstructing the conduct of the elections. According to Mr. Baisalov, his intention was to show the lack of security features on the initial ballot print run.

Both CEC resolutions were issued on unclear legal grounds and were adopted prior to any proof of guilt by a court of law; this undermined the presumption of innocence and challenged Paragraph 5.19 of the 1990 OSCE Copenhagen Document. Furthermore, according to the

¹⁴ The 12 registered parties were: *Aalam* (Universe – Party of Non-Party Members), *Ak Jol* (Bright Path), *Ar-Namys* (Dignity), *Asaba* (Banner), *Ata Meken* (Motherland), *ErK* (Free Kyrgyzstan), *Erkindik* (Freedom), *Glas Naroda* (The Voice of the People), *Novaya Sila* (New Force), Party of Communists of Kyrgyzstan (PCK), Social Democratic Party of Kyrgyzstan (SDPK), *Turan* (an old Iranian name for Central Asia). The 7 parties refused registration were: the Communist Party of Kyrgyzstan in the CPSU (CPK), the Peasants' (Farmers') Party of Kyrgyzstan, the Green Party of Kyrgyzstan, the Party of War Veterans in Afghanistan and Participants of other Local Battle Conflicts, *Rodina* (Fatherland), *Taza Koom* (Clean Society), and *Zamandash* (Compatriot).

election code, the CEC could have requested the prosecution of a candidate by an appropriate institution; rather, it took the position of a tribunal on itself, thus undermining due process.

Mr. Omurbek Babanov, the leading name on the SDPK candidate list, was de-registered by the *Pervomayski* District Court in Bishkek in the early hours of election day. The court decided on the basis of a private citizen's appeal who claimed to have information calling into question Mr. Babanov's Kyrgyz citizenship. While Mr. Babanov previously served as a deputy in the Kyrgyz parliament, the court established that he was not eligible to stand for office. In court, the CEC argued against the suit; namely, that de-registration took place after respective legal deadlines had expired. After election day, the Supreme Court reinstated Mr. Babanov as a candidate, following his appeal.

VIII. ELECTION CAMPAIGN

The election campaign took place in a generally calm environment that was largely free from violence.¹⁵ The rights to freedom of assembly and expression guaranteed by the Constitution were generally respected and rallies were held in a peaceful and orderly manner. However, limitations were imposed in Bishkek by a decision of the city council to limit public meetings to three venues and requiring parties to notify the local authorities in writing ten days prior to holding a public event.¹⁶ This decision does not appear in line with a 14 October 2004 Constitutional Court ruling and effectively made public meetings in the capital impossible from the date of its promulgation on 7 December 2007.

The campaign began following completion of candidate registration on 26 November and ran until 15 December. The short timeframe due to the pre-term nature of these elections, together with major changes to the political landscape including the formation of the president-affiliated *Ak Jol* party in October 2007, affected political parties' ability to organize their campaigns and to reach out to large segments of the electorate.¹⁷

The election campaign remained relatively low key throughout the whole period. The OSCE/ODIHR EOM observed campaigning by all twelve registered political parties, including in rural areas. Parties focused on smaller meetings with voters, door-to-door canvassing, and leafleting. Some held larger rallies.

Ak Jol appeared the best organized of the parties and the most well resourced financially. Although only recently formed, it had developed an extensive regional infrastructure prior to the elections. The party held a variety of campaign events, including concerts and sports competitions, targeted at a wide spectrum of voters. It also used innovative campaign techniques such as text messaging and its billboards featured prominently nationwide.

The campaigns of *Ata Meken* and SDPK were also well organized and resourced and involved rallies, door-to-door campaigning, posters and billboards. However, restrictions on the use of

¹⁵ Four attacks on candidates and party activists were reported to the OSCE/ODIHR EOM in Bazar-Korgon, Bishkek, Karakol and Jany-Nokat. However, in two cases, the parties did not link the attacks to their election activities.

¹⁶ The mayor of Kara-Balta told the OSCE/ODIHR EOM that in accordance with a 1998 decision of the Jayil Regional Council, permission from the governor's office was required for holding outdoor meetings. However, the OSCE/ODIHR EOM was not provided with a copy of this decision and is unaware of concrete instances of its application during the course of the campaign.

¹⁷ Most political parties complained about difficulties in printing campaign materials within the compressed timeframe. *Asaba* and *Ar-Namys* alleged that this effectively delayed the distribution of their campaign materials in the regions.

loudspeakers were applied by the Ministry of Interior (MoI) and *Ata Meken* appealed to the authorities over vehicles being stopped by traffic police, as well as some arrests of individuals driving *Ata Meken's* loudspeaker vehicles. During a meeting with the OSCE/ODIHR EOM, the MoI claimed that regulations required special permission and examinations for operators to use loudspeakers. Despite requests, the Kyrgyz authorities were not able to provide the OSCE/ODIHR EOM with a copy of the relevant regulations. When questioned by observers, operators of an *Ak Jol* campaign vehicle with loudspeakers informed the OSCE/ODIHR EOM that no special permits were needed. Such unevenly applied measures placed unreasonable restrictions on parties' abilities to campaign equally and freely.

The campaigns of *Asaba*, *Ar-Namys*, *Turan*, *Erkindyk* and *Erkin Kyrgyzstan* were also in evidence in some parts of the country, but other parties were less active and visible. All parties engaged in posting campaign materials. However, local authorities in some regions failed to designate official locations for campaign posters,¹⁸ as per their legal responsibilities. This shortcoming, combined with the difficulties faced by some parties in renting billboard space, effectively increased the visibility of *Ak Jol*, and compromised the principal of equal campaign opportunities for all election stakeholders.

The OSCE/ODIHR EOM observed a number of meetings between voters and political parties, organized by the OECs in accordance with a schedule confirmed by the CEC. These meetings were intended to provide political parties with an opportunity to present their programmes to the electorate, however, they appeared poorly organized, were often rescheduled and on some occasions never materialised.¹⁹ Political parties complained that voters were not well informed of the times and venues of such meetings. While such meetings could have served as important fora for election debates, their poor management by the election administration effectively reduced voters' opportunity to make an informed choice.

Confidence in the competence and neutrality of election commissions, courts and law-enforcement agencies appeared low among most political parties and election stakeholders. OSCE/ODIHR EOM interlocutors expressed pessimism regarding their ability to seek redress through these institutions. On 6 December, a number of political parties and NGOs publicly expressed their lack of confidence in the CEC, due to the perceived failure by the latter to ensure that all political parties participate in the election process on equal terms in an "atmosphere of freedom, free of intimidation and pressure on electoral stakeholders".²⁰

On 12 December, a leader of the *Asaba* party, Mr. Nazaraliev, announced his decision to boycott the elections due to lack of confidence in the election process. On 14 December, *Ata Meken* requested the GPO to initiate criminal proceedings against the CEC Chairperson over failure to carry out legal duties, allegedly resulting in widespread violations of voter rights. These events further underscored the significant lack of confidence amongst election stakeholders in the election administration and in the wider election process.

A. INVOLVEMENT OF STATE BODIES IN THE ELECTION PROCESS

Over the course of the campaign, abuse of administrative resources was noted and instances of campaigning by local administration in favour of *Ak Jol* were observed by the OSCE/ODIHR EOM.²¹ Such circumstances created unequal campaigning conditions for other

¹⁸ Confirmed to OSCE/ODIHR EOM by local authorities in Balykchy, Osh and Ton.

¹⁹ For example, in Bakay-Ata on 29 November and in Naryn on 7 December.

²⁰ Statement available at: www.atameken.kg

²¹ For instance, in a meeting with the residents of Tyup village, the Governor of Issyk-Kul region called upon the audience to vote for *Ak Jol* and invited an *Ak Jol* candidate up to speak. On a separate

parties and ran contrary to Paragraphs 7.6 and 7.7 of the 1990 OSCE Copenhagen Document. The OSCE/ODIHR EOM also received allegations of pressure and intimidation of some groups of voters.²² Allegations of pressure on private owners to terminate rent agreements with other parties were received in Batken, Chui and Osh regions.²³ Credible allegations of intimidation of party activists and candidates were received from Batken, Chui, Jalal-Abad and Osh regions.²⁴

B. CAMPAIGN FINANCING

The election code (Article 51) stipulates that political parties are to establish election funds for the financing of their election campaigns. The new code does not allow candidates running on party lists to establish individual election funds and sets the maximum limit for campaign expenditures for each party at approximately 2,000,000 EUR. Contributions to election funds may not come from foreign countries or state bodies. The election code (Article 52) sets out a procedure for establishing an audit control group under the CEC to supervise the proper use of election funds by political parties and to audit their financial reports. Political parties must submit financial reports on contributions and contributors and on campaign expenditures within ten calendar days after election day. Although parties must report campaign expenditures to the CEC, there is no requirement for the CEC to publish this information, thereby reducing the transparency of campaign financing.

IX. MEDIA

A. MEDIA ENVIRONMENT

The overall media environment in Kyrgyzstan, while having undergone some positive changes after March 2005, has yet to develop into a free and independent system. Media are often controlled by political forces, including those in government, and are frequently subjected to pressure by them. The advertising market that might otherwise serve to mitigate political control by providing revenue to media outlets has, thus far, been unable to develop more intensively.

Television continues to be the dominant medium and the National State TV and Radio Company (*KTR*) has almost complete coverage of the country. Most non-State TV and radio stations are based in Bishkek and operate in a difficult financial environment. With regard to private TV stations, Channel 5 appears to be the most influential, reaching approximately 60

occasion, local administration in Karakol supported an entertainment event and the tickets sold stated that the event was sponsored by *Ak Jol* and bore the stamp of the local administration. *Ak Jol* campaign materials, such as flags, posters and leaflets, were observed in official premises of local authorities and election commissions in Chui, Issyk-Kul, Jalal-Abad and Osh regions. In addition, numerous allegations of abuse of administrative resources by *Ak Jol* were made in Batken, Chui, Issyk-Kul, Jalal-Abad, Osh and Talas regions. Inside a PEC in Chui region, observers noted an advertisement offering voters to have their photograph taken for their *Ak Jol* membership cards.

²² In particular, reports were received of pressure on teachers and students in Jayil, Kyzyl Kyya, Naryn, Osh, Sokuluk and Talas, to become members of *Ak Jol*, to vote for the party or to attend their campaign events. In several instances, threats reportedly included job loss or expulsion from the educational institution.

²³ *Ata Meken* told the OSCE/ODIHR EOM that they had to relocate seven campaign offices in Batken region after owners of the premises were pressured by local administration and *Ak Jol* to terminate their contracts. *Asaba* stated that in Eki-Nookat, they had to move premises three times for similar reasons.

²⁴ During a meeting between OSCE/ODIHR EOM observers and regional representatives of *Ar-Namys* in Shark Village, Osh, a police officer entered their office, stating that he wanted to know who the *Ar-Namys* coordinator was. *Ar-Namys* told observers that they had had earlier visits from the police.

per cent of the population. Beyond the capital, access to print media and Internet are limited. The newspaper with the widest readership is *Vecherniy Bishkek*, the country's only daily.

B. LEGAL FRAMEWORK FOR THE MEDIA

The election code forms the main legal basis for the conduct of the election campaign in the media; the Constitution and other legislation are also pertinent.²⁵ Candidates and political parties have the right to free airtime on State TV and radio between 20:00 and 24:00 hours, defined as primetime by the election code, when TV and radio programmes get maximum audiences. Article 32 of the election code determines that the total amount of free airtime is to be no less than one hour "on working days" and to be distributed equally among registered candidates or political parties. Article 33 obliges print media to provide free print space on an equal basis for materials submitted by candidates or political parties of no less than one A4 formatted page.

The CEC and *KTR* implemented legal provisions for free airtime and print space restrictively, illustrating a tendency to limit the scope of campaigning. Free airtime was broadcast on *KTR* only between 4 and 12 December and only after 23:00 hours. The total amount of free airtime for all parties provided was 12 hours, 6 on TV and 6 on radio. Thus, each political party was provided with some 25 minutes of free airtime during the entire course of the campaign. Additionally, the 25 minutes were broadcast simultaneously on both TV and radio, obliging voters to choose one or the other medium.

Of the 25 minutes provided, the free airtime was structured so that 13 minutes were dedicated to party platform presentations and 12 minutes per party to debates that took place among three different parties each time. Four debates were broadcast during the course of the campaign, lasting approximately 30 minutes each. Free print space, barely half of an A4 formatted page per party, was published only once on 7 December in the two state newspapers, *Slovo Kyrgyzstana* and *Kyrgyz-Tuusuu*.

The election code (Article 30.10) provides for equal conditions of access to the mass media for candidates and political parties and establishes rules for paid time or space in either state or private media. However, the election code failed to provide clear guidelines on balanced news or information programmes during the campaign. While Article 30.9 includes a clear definition of what is considered campaigning, it does not stipulate how media should deal with covering the election outside of official campaigning.

The CEC's restrictive interpretation regarding media's role in providing information about competitors and its references to Article 30.9 discouraged commentary and critical analysis of parties' platforms, impeding media from providing sufficiently diverse and balanced information to enable voters to make informed choices. The CEC acknowledged that it did not have the means to conduct its own media monitoring during the campaign to assess the application of provisions.

Some political parties disputed the allocation of paid airspace during the campaign. *SDPK*, *Asaba* and *Ata Meken* contested the distribution of paid time on *KTR*. The parties alleged that they had been unable to sign contracts to place their campaign advertisements during primetime. *Ata Meken* won a court case against *KTR* on this issue on 7 December. However, *KTR* failed to implement the court's decision and *Ata Meken* appealed to the Supreme Court,

²⁵ The Law on Mass Media (1992), the Law on Professional Activities of Journalists (1997), the Law on Administrative Penalties (1998).

which on 13 December upheld the initial decision. Subsequently, the OSCE/ODIHR EOM observed some 10 minutes of paid *Ata Meken* advertisements on *KTR* primetime only on the last two days of the campaign.

C. OSCE/ODIHR EOM MEDIA MONITORING

From 24 November, the OSCE/ODIHR EOM monitored broadcasts daily on six TV channels,²⁶ on two nationwide radio stations,²⁷ and the content of five Kyrgyz language²⁸ and seven Russian language newspapers,²⁹ providing both quantitative and qualitative analysis.

Overall, media coverage of the campaign was a significant concern. The media offered little coverage overall of the political campaign. The news coverage offered by the main TV and radio stations focused extensively on the activities of authorities, including the President, State and local authorities. This indirectly benefited the party *Ak Jol*, broadly perceived to be associated with these institutions.

During the campaign period shortly before election day, President Bakiev made appearances in the State media: on 13 December in a live programme on *KTR* and on 14 December in the newspaper *Vecherniy Bishkek*. The President answered citizens' questions and called on citizens to vote. He also discussed the inception of the *Ak Jol* party and expressed his wishes for a constructive opposition in the future parliament. The TV programme lasted nearly two hours and was broadcast during prime time at 20:00 hours.

The OSCE/ODIHR EOM's media monitoring found that State TV gave all parties an equal, albeit limited, amount of free airtime. Aside from official programmes and broadcasting of voter information, it devoted little airtime to the campaign during regular news reporting.

KTR did not meet its obligation to provide voters with adequate information on the election or fair and balanced coverage of the campaign. State TV devoted over 76 per cent of coverage to the authorities and a further 5 per cent to *Ak Jol* that was mostly positive or neutral. In contrast, *SDPK* received some 6 per cent of coverage that was mostly negative and *Ata Meken* received about 6 per cent of overwhelmingly negative coverage. If speaking opportunities provided to different political actors are taken into account, the combined time dedicated to the authorities and *Ak Jol* was nearly 91 per cent of the total.

The main news edition of State radio gave some 76 per cent of coverage to the authorities and 16 per cent to *Ak Jol*. The OSCE/ODIHR EOM's monitoring of *KTR* paid airtime showed that *Ak Jol* bought some 44 per cent of the total time sold, *Turan* - 17 per cent, *Ata Meken* - 12 per cent, *Aalam* - 11 per cent and *SDPK* - 7 per cent. In all monitored TV channels, *Ak Jol* bought some 49 per cent of the total sold airtime, *Turan* - 17 per cent, *SDPK* - 16 per cent, with the remainder divided among other parties.

KTR failed also to provide accurate news coverage of the 17 December Press Conference where the OSCE/ODIHR and the OSCE PA presented their Statement of Preliminary Findings and Conclusions. Reports in both the Russian and Kyrgyz language evening newscasts were misleading, reflecting an overall positive assessment of the elections; no correction of this was made.

²⁶ *KTR*, *EITR*, Channel 5, *Pyramida*, *NTS* and *NBT*.

²⁷ News programmes were monitored on *KTR* and *Azattyk*.

²⁸ *Aalam*, *Agym*, *Kyrgyz Tuusu*, *Erkin Too*, and *De Facto*.

²⁹ *Slovo Kyrgyzstana*, *Vecherniy Bishkek*, *MSN*, *Delo Nomer*, *Komsomolskaya Pravda*, *Argumenty i Fakty* and *Litsa*.

Election coverage in private TV showed similar bias. In the main private TV, *Channel 5*, combined coverage of the authorities and *Ak Jol* approximated 56 per cent of the total political time. *SDPK* received some 18 per cent, but almost 65 per cent of this was negative reporting. In total, on all other TV channels monitored, the combined coverage of the authorities and *Ak Jol* reached almost 70 per cent.

Radio *Azattyk* was the only electronic media showing some balance in its news programmes, providing speaking opportunities to the main contestants. Of the time with voice on air provided to different political stakeholders, *Ak Jol* received some 15 per cent, while *Ata Meken* got 22 per cent, *Novaya Sila* 16 per cent, *SDPK* 8 per cent, and the Communist Party and *Turan* received 6 per cent, each. Altogether, the State authorities received 21 per cent.

Newsprint offered some diversity of views, but its impact is limited due to prices and distribution issues. Newsprint coverage also focused overwhelmingly on the activities of the authorities, devoting some 60 per cent of its space to them, with a further 13 per cent to *Ak Jol*, apart from paid space provided to parties. In *Vecherniy Bishkek*, the combined coverage of the authorities and *Ak Jol* reached 86 per cent of the total space dedicated to political issues. Regarding paid advertising in all newsprint monitored, *Ak Jol* bought some 43 per cent and *Ata Meken* bought 32 per cent. The remainder was divided among other parties.

X. PARTICIPATION OF WOMEN

The Kyrgyz Constitution establishes that men and women enjoy equal rights, freedoms and opportunities. As per the new gender quota introduced in the election code, some 39 per cent of registered candidates in this election were women. The quota was considered by many interlocutors as a positive step towards increasing the representation of women in parliament; in comparison, the previous parliamentary convocation did not have a single female deputy. Women also were underrepresented in decision making positions: only three of 21 members of government were women. The role of women's organizations and advocacy groups appeared to have made a contribution to the process of adopting the quota requirement.

In the election administration, three of 13 CEC members were women, including the Chairperson. Of 56 RECs, 11 were chaired by women, as was one of nine OECs. Involvement of women in PECs was high and in 49 per cent of polling stations visited by EOM observers on election day, the PEC chairperson was a woman.

Women candidates tended to receive less coverage than male candidates in the media. During the campaign, they received some 10 per cent of the total political time on TV and radio and only some five per cent of the total political space in newspapers, disproportionate to the number of women registered.³⁰

Altogether, 23 women were awarded mandates in the new parliament: 18 from the *Ak Jol* party, three from the *SDPK*, and two from the *PCK*.

³⁰ Information processed by the OSCE/ODIHR EOM.

XI. PARTICIPATION OF NATIONAL MINORITIES

According to the 1999 National Population Census,³¹ the majority population of Kyrgyzstan are Kyrgyz, some 65 per cent. The second largest group are Uzbeks, some 14 per cent, and the third largest group are Russians with 12.5 per cent. Other nationalities include Dungans (1.1 per cent), Ukrainians (1 per cent), Uighurs (1 per cent), Tatars (0.9 per cent), Kazakhs (0.9 per cent), Tajiks (0.9 per cent), Turks (0.7 per cent), Germans (0.4 per cent) and Koreans (0.4 per cent).

The election code (Article 72.3) establishes that party candidate lists must include no less than 15 per cent from various nationalities. From the published candidate lists for this election, it appeared that from among the 120 'top ten' places, 23 went to different ethnic groups, including: 10 Russians, 6 Uzbeks, 2 Dungan, 2 Koreans, 1 German, 1 Karachai, and 1 Uighur.

The refusal on registration of the *Rodina* political party, perceived by some interlocutors as being affiliated with the Uzbek nationality in Kyrgyzstan, raised concerns over equal access of all national groups to the election process.

XII. DOMESTIC AND INTERNATIONAL OBSERVERS

According to the election code, international observers are accredited only if they have been invited by the president, parliament, the government, or the CEC. In this election, the CEC accredited 594 international observers from the OSCE/ODIHR, the OSCE PA, the Commonwealth of Independent States, the Shanghai Cooperation Organization, international NGOs and bilateral delegations.³² Domestic non-party election observation groups, such as the Coalition for Democracy and Civil Society, Citizens against Corruption, *Taza Shailoo*, and *Interbilim*, observed both the pre-election period and election day throughout the country.

On 20 December, some of the above-mentioned NGOs held a roundtable on the election process. They stated that they did not recognize the 16 December elections as having been open and democratic and noted a number of election violations: their observers had been intimidated or limited in their observation in a number of cases; many election commissions refused to accept and/or consider their complaints on election day; and many PECs refused to provide them with certified copies of protocols. On this basis, the NGOs declared that they would seek an invalidation of the election results.

XIII. COMPLAINTS AND APPEALS

The election code establishes several complaint channels for election-related complaints, including higher-level election commissions, courts, prosecutors and police. The complaints and appeals process continues to lack uniformity and consistency, as previously noted by the OSCE/ODIHR.³³

³¹ <http://www.stat.kg/Eng/Home/census.pdf>

³² The figure is per information on the CEC website (www.shailoo.gov.kg) on 17 December 2007.

³³ See previous OSCE/ODIHR Reports, available at: <http://www.osce.org/odihr-elections/15526.html>; see also the OSCE/ODIHR Assessment of the Election Code, Warsaw, 7 July 2006, available at: <http://www.osce.org/odihr-elections/13449.html>

Prior to election day, the CEC received a number of complaints from election stakeholders, but failed to review any of these complaints in open sessions during the course of the OSCE/ODIHR EOM. The CEC responded to some complaints by letter, signed by the CEC Chairperson, members, or staff, and certain complaints were delegated by the CEC to lower-level commissions. However, as the CEC is a collegial body, and although it can assign members and staff with preparatory work on responding to complaints, decisions should be taken by a vote of the CEC.

An additional problem is that certain provisions of the election code (Article 46.7) make it impossible to challenge the election results in cases where fraud is discovered by election stakeholders after results protocols have been signed. A justifiable complaint or appeal should not be disqualified simply because a person has failed or is prevented from entering a remark in the protocol. This provision significantly reduces the possibility of eliminating fraud in the election process and denies effective remedy for violations of the law.

The courts heard a number of election-related cases, including those on non-registration of candidate lists. Court cases were heard within legal deadlines and in the presence of OSCE/ODIHR EOM observers. Most notably, in relation to the case of Mr. Baisalov, the General Prosecutor's Office and the CEC sued the SDPK for damages incurred by the state in printing a second run of ballots. The court decided in favour of the plaintiff and ordered the SDPK to reimburse the CEC over 20 million Kyrgyz Som (approx. EUR 400,000). An investigation into the determination of the guilt of Mr. Baisalov in alleged wrongdoing has yet to reach its conclusion. Certain court decisions appeared to have been politically motivated, which runs contrary to the rule of law, as outlined in Paragraph 2 of the 1990 OSCE Copenhagen Document.

XIV. VOTING AND COUNTING

Election day was calm and voting took place in an orderly manner, overall, throughout the country. According to official CEC figures, turnout reached 73.86 per cent, as provided to the OSCE/ODIHR EOM by the CEC on 18 December.

A. POLLING PROCEDURES

EOM observers were present at the opening of 88 polling stations throughout the country and evaluated the opening as good or very good in some 89 per cent. Stationary ballot boxes were properly sealed before voting in all cases observed. Nevertheless, observers noted that in 52 per cent of PECs visited, the PECs did not fill out all the relevant sections of protocols. In 40 per cent of cases, PECs did not properly record those who had voted during the early voting period from 10 December, and in 30 per cent of cases early voting envelopes were not opened during the opening procedures as required by law. In 21 per cent of PECs, these votes were not placed in the stationary ballot box, as required. Unauthorized people were observed in some 24 per cent of cases during opening procedures.

EOM observers assessed the voting process as good or very good in some 91 per cent of polling stations visited. Negative assessments were higher in urban areas. There was also a regional variation, with PECs in the south of the country and in Bishkek being generally evaluated more negatively compared with the regions of Chui, Issyk-Kul, Naryn, and Talas. Osh city fared particularly poorly with 32 per cent of observers assessing the voting process

as bad or very bad. Domestic observers from a variety of political parties were noted as being present in all polling stations visited.

Significant problems were observed during the voting process, including 18 cases of ballot box stuffing, prevalent in Jalal-Abad and Osh regions. In Bishkek, significant irregularities were noted at a polling station at the Kyrgyz National University, including the possession of ballots by an unauthorized person. The organized transport of voters by bus was observed in 22 cases. Unauthorized people were noted in some 14 per cent of PECs visited. Inking of voters was neither checked nor properly applied in some 15 per cent of polling stations visited; this inconsistency was particularly noted in Osh region. Political party information was not posted as required by law in over two thirds of polling stations visited.

The quality and management of voter lists was also of concern. At least two courts in Bishkek were overcrowded with approximately one thousand people waiting at one to try to get a court order to allow them to vote. Further, EOM observers noticed what looked like identical signatures on voter lists in some cases. However, access to voter lists was denied to EOM observers in some 10 per cent of cases.

B. COUNTING PROCEDURES

EOM observers assessed the organization of the count as bad or very bad in 33 per cent of cases, with implications for transparency and accountability of the process. In some 18 per cent of polling stations observed, the count did not start immediately after closing; in some of these, the start of counting was delayed for more than 30 minutes after closing.

Significant procedural errors were observed during the vote count, including 23 per cent of PECs not properly sealing and stamping destroyed ballots and 13 per cent not recording them, unused additional voting certificates (AVCs) not being counted in 20 per cent of cases, and the number of voters issued ballots not counted in 27 per cent of PECs visited. In 19 per cent of observations, the mobile ballot papers were not counted or recorded. In some 20 per cent of observations, protocols were not completely filled in before being signed. In addition, around 16 per cent of protocols were not filled out in ink, and in 14 per cent of polling stations visited, observers noted deliberate falsifications of voter list entries, results, or protocols.

Also of concern was that 51 per cent of PECs did not sign and seal the voter list, and that the number of voters in the additional voter list was not counted and recorded in some 25 per cent of polling stations observed. In some 54 per cent of observations, it was noted that the voter's mark on the ballot was not shown to those present during the count. Unauthorized persons were observed in some 36 per cent of polling stations observed during the count, directing the work of the PEC in some 4 per cent. EOM observers were hindered in their observation in some 12 per cent of cases and in 18 per cent of PECs an official copy of the results protocol was not provided to all who requested one.

EOM observers noted that there was a delay in transferring results protocols from PECs to RECs in some 19 per cent of cases. In some instances PECs visited local administrations before going to the RECs, in contravention of legal norms.

C. HANDOVER OF ELECTION MATERIALS AND TABULATION PROCEDURES

The tabulation process was observed in about 40 per cent of RECs and was generally evaluated negatively. Inside REC premises, observers noted a general lack of transparency.

Tabulation frequently took place in separate rooms to which observers and party representatives often did not have access. In several cases, observers were obstructed in their observation of the process, and in six instances observers were not allowed access to RECs.

Some issues raised particular concern including the presence of unauthorized people in 37 per cent of RECs observed and data being entered in pencil into the tabulation spreadsheet. More than half of RECs observed did not enter the PEC protocols into tabulation spreadsheets and PECs were observed making changes to their protocols at the REC without undertaking recounts. In many instances, problems were observed with the functioning of and data input into the *GAS Shailoo* electronic tabulation system.

At the level of the CEC, the tabulation process was marred by serious irregularities and inconsistencies, accompanied by a failure to make public the preliminary and final results in an adequate and timely manner.

XV. ANNOUNCEMENT OF ELECTION RESULTS AND POST-ELECTION DEVELOPMENTS

On 19 December, the CEC announced preliminary election results based on the party totals from 99.96 per cent of election commissions. The CEC issued its resolution on final results of the election on 20 December (see Annex). After all complaints and appeals were adjudicated, the final results of both numbers of votes and allocated seats were made public. Nevertheless, significant problems were evident in the determination of the election results and inconsistencies were noted.

Although the CEC published preliminary turnout figures on its website every two hours on election day, from 18:00 hours the CEC failed to provide any further updates on turnout or preliminary results until the following morning. As far as the OSCE/ODIHR is aware, disaggregated data by polling station of party totals was not published.

Preliminary turnout figures and party totals were announced by the CEC for the first time at 09:00 hours on 17 December at a CEC press conference. From figures provided by the CEC, it appeared that not one single person had voted in the city of Osh between 18:00 hours and the close of polls at 20:00 hours on election day. In addition, while turnout figures at 09:00 hours on 17 December were given as 71.93 per cent, by 20 December, this figure had increased to 73.86 per cent.

The CEC published the final results and announced the newly installed parliamentary deputies in the *Erkintoo* state newspaper on 20 and 21 December, respectively.³⁴ However, the publications did not include three attachments to CEC final results resolution No. 174.³⁵ The text of CEC Resolution No. 174, as provided by the CEC to the OSCE/ODIHR EOM and to other electoral stakeholders, differed from the text published in *Erkintoo*; paragraph 2 contained different text and paragraphs 3 and 4 were switched in their positions and numberings. This created difficulties for *Ata Meken*, which challenged the CEC resolution in court, since the party's appeal was built on CEC Resolution No. 174 provided to them by the CEC, while the court referred to the information published in *Erkintoo*.

³⁴ CEC Resolutions Numbers 174 and 175, both dated 20 December 2007.

³⁵ The CEC protocol on the final results, the notification of elected party candidates on election results, and the CEC spreadsheet on final results were not included.

Notably, three CEC members had voted against the CEC resolution on the final election results.

On 18 and 20 December, a few dozen young people protested against the election process outside the CEC premises, holding up A4 sheets with the slogan “I do not believe!” The organizer of the event, civil society activist Ms. Tolekan Ismailova, and 14 students were arrested and taken into custody for three days by decision of the *Pervomayski* District Court that found them guilty of disobeying police and violating rules for organizing meetings, as established by the Bishkek City Council. It should be noted that the *Pervomayski* District Court held the court hearing in the premises of the Bishkek City Interior Detention Centre, where the protesters had been taken by police, rather than in a court of law. The remaining 11 protesters were convicted and issued with administrative fines of up to KGS 1,000 (approx. 20 EUR).

The overall election results were challenged by the *Ata Meken* party to the *Pervomayski* District Court, which decided against the party on 22 December. *Ata Meken* appealed this decision to the Supreme Court, which upheld the ruling of the *Pervomayski* court in a last instance decision. The Coalition for Democracy and Civil Society also appealed the results of individual PECs to the *Pervomayski* court, but their suit was rejected on the grounds of the CEC’s claim that legal deadlines for lodging complaints had expired.

XVI. RECOMMENDATIONS

The following recommendations are offered to the Kyrgyz authorities, political parties and civil society with a view to supporting the stated objective of conducting elections in line with OSCE commitments and other international standards for democratic elections. A number of these have already been offered in previous OSCE/ODIHR reports, but remain to be addressed.

A. LEGAL FRAMEWORK

1. All thresholds for the allocation of parliamentary mandates should be calculated against the total number of valid votes cast, rather than against totals of registered voters. In general, the continued use of the regional threshold is not advised as it has the potential of seriously skewing representation in the parliament and compromises the objective of a proportional representation system.
2. Consideration should be given to eliminating the possibility of voting “against all”.
3. While the introduction of gender, national minorities and youth quotas can have a positive impact, such positive discrimination mechanisms should not be used to disqualify competitors. Political parties should be able to amend their candidate lists prior to registration to make them compliant with such requirements.
4. The election code should be amended to eliminate the minimum number of candidates required to register a political party list. In addition, the code should be adjusted to allow parties to decide their own procedures for nomination of candidates in their party lists (whether through party congresses or otherwise).

5. The election code should be amended to allow independent candidates to stand for office, as stipulated in the 1990 OSCE Copenhagen Document.
6. The election code should be amended to remove provisions that have *de facto* introduced an imperative mandate and a disproportionate level of party control over deputies elected by popular vote. Deputies who have been duly installed should be permitted to remain in office until their terms expire.
7. All eligibility requirements to stand for parliament, including those related to dual citizenship and residency should be explicitly stated in the code in one place, together with other provisions, such as age and citizenship.
8. The election code should be amended to remove undue restrictions on the right to stand as a candidate, including the blanket prohibition on the basis of any previous convictions that have not been cancelled or voided. The denial of active suffrage for all categories of prisoners, independent of the gravity of the crimes committed, should also be reconsidered. The principle of proportionality should be used to determine any restrictions on fundamental rights such as suffrage and the right to vote.
9. Cancellation of a candidate's registration should be strictly limited to those cases where basic legal requirements for candidacy (citizenship, age, residence) have not been met. Such cancellations should only take place prior to the completion of registration of candidate lists. It is a fundamental tenet of the democratic electoral process that the right to choose belongs to the people and they should be the ones to judge the capabilities, honesty, and integrity of candidates. Such cancellations place undue restrictions on voters' freedom to choose the best candidate.
10. The election code should be amended to ensure full respect for freedom of speech and expression for all categories of Kyrgyz citizens and for non-citizens. Any provisions that may potentially infringe on the freedom of speech should be reconsidered. Limits on campaigning should be carefully reviewed for their respect for fundamental civil and political rights of all citizens, irrespective of their organizational membership.
11. Proposed amendments to the election code should undergo broad public debate.
12. Other election-related legislation should be brought into compliance with the Kyrgyz Constitution and the country's international commitments.
13. The election code should be amended to require the CEC to publish election results, broken down by each polling station, in a timely manner.
14. Efforts should be strengthened to further the independence of courts and to cease the practice of politicizing courts, which undermines confidence in the judiciary.

B. ELECTION ADMINISTRATION

15. All meetings of the CEC should be open to the public. It is recommended that the CEC post a notice of each session on its website and at the main entrance to its office in a timely manner; the notice should include an agenda of all items to be considered.

16. All CEC members should have access to all election-related documents. CEC regulations, resolutions and decisions should be publicly available as soon as possible.
17. Copies of CEC decisions should be provided to each CEC member, candidate, or party impacted by the decision and to accredited observers in a timely manner. All decisions should be recorded in a centralized CEC Decisions Register and publicly accessible.
18. The independence of lower election commissions should be ensured. It is important to separate OECs and RECs from the premises of *rayon* and *oblast* administrations, wherever possible.
19. Ballot security features should be made known to election commission members so that they are able to detect fraud. Otherwise, the aim of such security features is redundant.
20. Election commission members who violate election or other related legislation should be held to account before the law.

C. VOTER REGISTRATION

21. Voter lists should be revised and updated on a regular basis. There should be thorough crosschecks at the regional and national levels for possible multiple entries, misspellings and absence of names of registered voters on the lists. A consistent and countrywide method of compilation and verification of voter lists should be established.
22. The CEC should issue written instructions to PECs to ensure that copies of voter lists are displayed for public scrutiny by voters, election stakeholders, and civil society. The CEC could consider making it possible for voters to check their voter list details online.
23. A transparent review of the *GAS Shailoo* system should be undertaken with a view to detecting duplicate records, deceased voters, and movements of voters.
24. Election commissions should conduct voter education on election-day procedures at the local level. (During this election, the lack of such information resulted in many voters failing to check their names in voter lists on the assumption that they could be added on election day, as was the case under the previous election code.)
25. Legislation should include sanctions and respective enforcement mechanisms for such officials that have been appropriately informed by voters, but who have failed to provide accurate voter lists.
26. Consideration should be given to developing a reliable, efficient system of civil registration as the basis for voter registration. Further progress in the ongoing reform of the civil registration would have a positive impact on the accuracy of the voter lists. As such, this could incorporate a national campaign of issuing citizens with proper identification documents.

D. ELECTION CAMPAIGN

27. Constitutional principles, OSCE commitments, and international standards ensuring the right to assembly should be fully upheld, and limitations of this right should be in strict

proportion to any danger posed. The decision of the Bishkek City Council should be revisited in light of these principles.

28. The process of registering candidate lists should be open, transparent, non-discriminatory and fair. Parties should be immediately informed of any errors or omissions and given time to make corrections, which should be considered within an established timeframe.
29. The election code should envisage sanctions for the misuse of administrative resources.
30. State authorities should serve as guarantors of an election campaign free from pressure and intimidation.

E. MEDIA

31. The newly adopted election code potentially allows for a correct, balanced and comprehensive coverage of the election campaign, provided that it is not interpreted in a restrictive manner. Strict definitions in Article 30.9 of what constitutes campaigning should not impede journalists from their duty to provide voters with complete and correct information on parties and candidates, supported by commentaries and critical analysis. These definitions should also not be used by the CEC to limit provision of information.
32. Article 32 of the election code should be amended to clearly state that free airtime of at least one hour should be provided on every day of the campaign (including weekends) and during real primetime (20:00-22:00 hours). This could include more debates among parties.
33. Transformation of the State broadcaster into an independent public service broadcaster should be expedited and completed, incorporating the expertise of media NGOs.

F. COMPLAINTS AND APPEALS

34. All levels of election commissions, including the CEC, should hear and make formal decisions on all complaints received in an open and collegial manner. While individual commission members and staff may engage in preparatory work on complaints, binding decisions should be made by the commission concerned, as a full body.
35. The CEC register of complaints and appeals should be kept current and publicly accessible to election stakeholders, observers, and voters. The full text of complaints and appeals should be available to the public.

G. DOMESTIC AND INTERNATIONAL OBSERVERS

36. The election code should clearly allow for observers to move freely within polling stations and to observe all parts of the election process.
37. All electoral contestants and accredited observers should be permitted access to the printing of ballots, in order to further confidence and transparency. Any rules of conduct should be clearly regulated by the CEC and conveyed to all stakeholders.

H. PARTICIPATION OF WOMEN

38. Parties should create greater opportunities for women's participation within their structures.
39. Women's places in party lists should not be affected by de-registrations or withdrawals.
40. Serious consideration should be given as to how to facilitate the increased participation of women in the election process and their representation in decision-making positions.

I. PARTICIPATION OF NATIONAL MINORITIES

41. When amending electoral legislation, authorities are encouraged to consult with national minorities on issues of concern to them. The Lund Recommendations on the Effective Participation of National Minorities in Public Life of the OSCE High Commissioner on National Minorities and the OSCE/ODIHR Guidelines to Assist National Minority Participation in the Electoral Process should be taken into account in order to secure effective representation of national minorities to elected bodies.

J. VOTING PROCEDURES

42. PEC as well as REC and OEC members should receive special training on counting procedures as well as on filling out protocols. Leaving protocols blank or not compiling them in ink should be prohibited and sanctioned by law.

ANNEX: OFFICIAL ELECTION RESULTS³⁶

1	Number of voters introduced in main voter's list as of the moment when voting ends	2 6 9 4 3 6 6
1a	Number of voters introduced in additional list	0 0 5 9 3 6 1
2	Number of ballot papers received by precinct election committee	2 7 0 4 5 5 3
3	Number of ballot papers issued for early voting	0 0 1 2 6 0 5
4	Number of ballot papers issued to the voters in the voting premises on the voting day	1 9 7 1 2 9 3
5	Number of ballots papers issued to voters who voted outside the polling station on voting day	0 0 5 0 0 6 3
6	Total number of voters participated in election	2 0 3 3 9 6 1
7	Number of destroyed ballots	0 6 7 0 2 6 2
8	Number of ballots in mobile ballot boxes	0 0 5 0 0 6 1
9	Number of ballots in stationary ballot boxes	1 9 8 3 7 8 7
10	Number of valid ballots	2 0 1 7 3 8 2
11	Number of invalid ballots	0 0 1 6 4 6 6
12	Total number of voters participated in election	2 0 3 3 8 4 8
13	Name of political parties (as in ballot paper)	Cast of votes for each candidate's list
1	Ata Meken	0 2 2 8 1 2 5
2	Erkindik	0 0 2 5 7 5 3
3	Novaya Sila	0 0 0 5 8 2 3
4	Turan	0 0 5 5 6 2 8
5	Ar-Namys	0 0 4 4 0 4 8
6	SDPK	0 1 8 8 5 8 5
7	ErK	0 0 2 8 3 1 5
8	Glas Naroda	0 0 1 2 0 7 4
9	Aalam	0 0 1 3 5 0 3
10	Asaba	0 0 2 3 4 5 9
11	Ak Jol	1 2 4 5 3 3 1
12	PCK	0 1 4 0 2 5 8
14	Against All	0 0 0 6 4 8 1
15	Number of AVC`s received by election commissions	0 0 3 7 7 6 8
15a	Number of AVC`s issued by election commission one day prior to elections	0 0 0 5 1 0 0
15b	Number of voters who voted with AVC`s off certificates at the polling station	0 0 0 4 8 8 3
15B	Number of unused (destroyed) AVC`s	0 0 3 2 2 7 5
16	Number of lost ballot papers	0 0 0 0 3 8 8
17	Number of ballots exceeding the number of ballots received	0 0 0 0 0 0 0
18	Names of deputies, considered elected. ³⁷	

19	Based on Article 77 of the EC of KR on elections in KR CEC determined following distribution of deputy's mandates, received by political parties:	
	Political Party Name	Number of deputy mandates
1	SDPK	11
2	Ak Jol	71
3	Party of Communists of Kyrgyzstan (PCK)	8

³⁶ A hard copy of this final protocol was provided to the OSCE/ODIHR EOM by the CEC on 21 December 2007.

³⁷ To see full list of names of deputies elected, please consult www.shailoo.gov.kg

Before issuing these final results, the CEC also provided preliminary party totals that were of questionable consistency, as illustrated in Table 2. In discussions with the CEC, they were unable to provide adequate explanations of these findings. Inconsistencies included:

- After the addition of the results of the last polling station:
 - (a) A number of parties were reported to have fewer votes, compared to totals before adding this last polling station. Notably, *Ak Jol* ‘lost’ 49,661 votes at this stage,
 - (b) The SDPK was reported to have gained 47,551 votes by adding the party totals from the last polling station to the remaining total of 2,235 polling stations, which brought the SDPK slightly above the 5 per cent threshold nationwide. Notably, the EC provides for a maximum of 2,500 registered voters per polling station.
- PCK’s votes increased by 65,285, nearly doubling, by adding the polling station totals of 101 polling stations to the provisional total of 2,134 polling stations. This brought the PCK from some 3 per cent to just above the 5 per cent threshold nationwide.

Table 2

Time of release by the CEC	17 December at 15:07, based on 2,134 of 2,236 PECs counted (95.44%):	19 December at 09:48, based on 2,235 of 2,236 PECs counted (99.96%):	Final official result from Table 1, CEC resolution of 20 December:
<u>Party</u>	<u>Votes for</u>		
Ak Jol	1,260,810	1,294,992	1,245,331
Ata Meken	224,590	228,319	228,125
SDPK	109,676	141,034	188,585
PCK	73,830	139,115	140,258
Turan	51,996	55,651	55,628
Ar-Namys	39,091	44,206	44,048
ErK	24,561	28,315	28,315
Asaba	24,087	25,950	23,459
Erkindyk	23,074	23,464	25,753
Aalam	12,474	13,520	13,503
Glas Naroda	11,688	11,888	12,074
Novaya Sila	5,661	5,872	5,823
Against All	7,724	6,398	6,481

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect human rights and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).