REPUBLIC OF TAJIKISTAN

PRESIDENTIAL ELECTION
November 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

1 - 3 July 2013

Warsaw
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I. INTRODUCTION

In anticipation of an invitation to observe the upcoming presidential election and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Dushanbe from 1 to 3 July 2013. The NAM included Richard Lappin, OSCE/ODIHR Senior Election Adviser, and Radivoje Grujić, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the election. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and the election administration, as well as with representatives of political parties, media, civil society, and the resident international community. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs and the OSCE Office in Tajikistan for their assistance and co-operation in organizing the NAM. The OSCE/ODIHR would also like to thank all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The presidential election is expected to be called for early November 2013, in line with constitutional and legal requirements, although the date has yet to be formally announced. If no candidate receives an absolute majority of votes in the first round, a second round is held between the two candidates who receive the most votes.

Tajikistan has a strong presidential system in which the executive branch exercises wide authority relative to the parliament. The upcoming presidential election will be the second since a 2003 constitutional amendment extended the term of the president from five to seven years and allowed the incumbent to stand for two additional consecutive terms. In his annual parliamentary address on 26 April, President Rahmon announced that the election would be held “democratically, freely, and fairly”.

Presidential elections are regulated by the Constitution and the Constitutional Law on Elections of the President. There have been no changes to the legal framework since 2005, despite previous OSCE/ODIHR recommendations. Proposed amendments by the opposition that sought to lower the percentage of signatures needed to support a candidature and to provide more balanced political representation in election commissions were rejected at committee level and did not receive a formal reading in parliament. In a positive development, the Central Commission for Elections and Referenda (CCER) recently adopted instructions on several electoral components that it intends to publish once elections are called.

The election administration operates at three levels, headed by the CCER, including 68 District Election Commissions and some 3,200 Precinct Election Commissions (PECs). Several OSCE/ODIHR NAM interlocutors expressed reservations about the independence of the election
administration, particularly in respect of election day procedures, the vote count, and the tabulation of results.

All citizens over 18 years of age have the right to vote, except for those recognized as incapable by a court decision. There is no central voter register and each PEC compiles the list of voters for its precinct based on data provided by local executive authorities. A voter can be added to the supplementary voter list and allowed to vote on election day upon proof of eligibility and residence. The authorities informed the OSCE/ODIHR NAM that there are around 4 million voters, including some 900,000 residing abroad. Several OSCE/ODIHR NAM interlocutors expressed concerns about the lack of aggregated data above precinct level and that the large number of citizens residing abroad often do not register their status with the authorities.

Candidates for president are required to be between 35 and 65 years old, to know the state language and to have lived in Tajikistan for the past ten years. The law does not allow for self-nominated independent candidates, which is at odds with paragraph 7.5 of the 1990 OSCE Copenhagen Document. Nominated candidates are required to support their candidature with signatures from five per cent of the electorate within a 20-day period, which according to many OSCE/ODIHR NAM interlocutors presents a significant obstacle. The law does not provide guidance on the signature verification process or how a signature is determined to be valid.

The election campaign starts once candidate registration is completed and ends 24 hours before election day. The CCER is required to provide equal campaign conditions for all candidates. Election commissions and local authorities are responsible to assist candidates in organizing campaign events. While the authorities informed the OSCE/ODIHR NAM that they expect a vibrant campaign with high participation, other interlocutors claimed that there is a growing level of voter apathy, particularly among the youth, and that local authorities may impose obstacles in organizing campaign events in the regions.

The law provides for the possibility of public campaign financing for presidential candidates, but does not indicate the amount or timing of support. Oversight of campaign finance and provisions for private financing are not detailed in the law.

Television is the main source of political information and provisions are in place to provide free airtime on state television to all candidates. While the Constitution provides for freedom of expression and defamation was recently decriminalized, legal provisions continue to limit the dissemination of information that discredits presidential candidates and state authorities. It was reported to the OSCE/ODIHR NAM that journalists often face lawsuits and other forms of pressure and that online news and social networking websites are frequently blocked.

Decisions of election commissions may be appealed to either the superior election commission or the courts, with the Supreme Court as a final instance in all cases. The OSCE/ODIHR has previously observed that this dual system of electoral dispute resolution could potentially lead to inconsistencies in decisions.

While the law provides for election observation by political parties, it does not provide for citizen election observation, and international observation is conditioned with the phrase “if necessary”. The OSCE/ODIHR NAM was informed that an official invitation will be extended to the OSCE and other international bodies. All OSCE/ODIHR NAM interlocutors expressed support for an OSCE/ODIHR election observation mission. Representatives of official bodies emphasized that the electoral process would be transparent and that observation by the OSCE/ODIHR and any recommendations for potential
improvement of the process would be welcome. Other interlocutors requested that the OSCE/ODIHR deploy a sufficient number of observers to cover all stages of the electoral process. Based on the findings of this report, the OSCE/ODIHR NAM recommends the deployment of an election observation mission for the upcoming presidential election. In addition to a core team of experts, the OSCE/ODIHR recommends the secondment of 14 long-term observers and 150 short-term observers from OSCE participating States.

III. FINDINGS

A. BACKGROUND

Tajikistan has a strong presidential system in which the executive branch exercises wide authority relative to the parliament. Among various responsibilities, the president appoints the prime minister and other ministers, as well as the executive authorities at the central and regional level. The president nominates the chairpersons and deputies to the Constitutional Court, Supreme Court, Supreme Economic Court, and the prosecutor general for parliamentary approval.

The People’s Democratic Party of Tajikistan (PDPT), chaired by incumbent President Emomali Rahmon, is the largest party in the country and holds the majority of seats in the directly-elected lower chamber of parliament. Other parliamentary parties include the Agrarian Party of Tajikistan (APT), the Communist Party of Tajikistan (CPT), the Islamic Revival Party of Tajikistan (IPRT), and the Party of Economic Reform of Tajikistan (PERT). In total, there are eight registered political parties. The OSCE/ODIHR NAM was informed of an initiative to register a new party, the New Tajikistan Party, which plans to submit documents for registration later this year.

On 26 April, in his annual parliamentary address, incumbent President Rahmon announced that the election would be held “democratically, freely, and fairly”, and this was reiterated by the authorities met with by the OSCE/ODIHR NAM.

The authorities noted the importance of a calm and stable electoral process in light of regional security concerns and the anticipated draw-down of the NATO-led International Security Assistance Force from Afghanistan in 2014. Although there have been several internal security incidents in the past three years, the Ministry of Internal Affairs and the Central Commission on Elections and Referenda (CCER) expressed their confidence that the electoral process would proceed peacefully.

The OSCE/ODIHR has observed four elections in Tajikistan since 2000 and reviewed the Constitutional Law on Elections of the President in 2006. The most recent OSCE/ODIHR EOM for the 2010 parliamentary elections found that the “elections failed to meet many key OSCE commitments contained in the OSCE 1990 Copenhagen Document and other international standards for democratic elections. Neither was domestic legislation fully respected. Notable shortcomings occurred regarding respect of legal provisions on complaints and the law was inconsistently applied with regard to campaign regulations. Serious irregularities took place on election day, including a high incidence of observed proxy voting.”

1 The three registered parties not represented in the parliament are the Democratic Party of Tajikistan (DPT), the Social-Democratic Party of Tajikistan (SDPT), and the Socialist Party of Tajikistan (SPT).

2 Tajikistan has experienced several security incidents since 2010, including a mass prison-break from a Dushanbe detention facility, the country's first suicide car bombing in Khujand, and several instances of armed conflict between government forces and opposition militants in the Rasht Valley.

3 All previous OSCE/ODIHR reports on Tajikistan are available at: www.osce.org/odihr/elections/tajikistan.
B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Presidential elections are primarily regulated by the 1994 Constitution and the 1999 Constitutional Law on Elections of the President (PEL), which was last amended in 2006. The legal framework also includes the 1998 Law on Political Parties, the 1998 Law on Public Meetings, the 2008 Civil Procedures Code, the 1998 Criminal Code, the 1996 Law on Citizens’ Complaints to Government Bodies, the 2013 Law on Periodical Print and Other Mass Media, as well as CCER instructions.

The president is directly elected by popular vote for a seven-year term by the absolute majority of votes cast. In 2003, the Constitution was amended by referendum to extend the president’s term from five to seven years and allowed the incumbent to stand for two additional consecutive terms. In case no candidate receives more than half of the votes, a second round is held within one month but not earlier than 15 days after election day. The Constitution establishes that more than half of the registered voters must vote for the election to be valid. The announcement of the election day is made at a joint session of both chambers of the parliament, no later than two months prior to the end of the incumbent’s term of office.

There have been no changes to the legal framework since 2005, despite previous OSCE/ODIHR recommendations. Proposed amendments to the PEL by the IRPT in November 2012 and May 2013 sought to lower the percentage of signatures needed in support of candidacy from five to two per cent and to provide equal representation of political parties in election commissions at all levels. The amendments were rejected at committee level and did not receive a formal reading in parliament.

The CCER recently adopted instructions on several electoral components that it intends to publish once elections are called. While the OSCE/ODIHR NAM was not in a position to review the instructions, measures to provide more detail on technical aspects of the election at the regulatory level are a positive development.

C. ELECTION ADMINISTRATION

Presidential elections are administered by a three-tiered structure headed by the CCER and including 68 District Election Commissions (DECs) and some 3,200 Precinct Election Commission (PECs). Additional PECs will be established outside of Tajikistan to facilitate out-of-country voting.

The CCER is a permanent body, consisting of a chairperson, a deputy chairperson, and 13 members, all appointed by the lower chamber of parliament for five-year terms upon proposals of the president. While all registered political parties are represented in the current CCER, many OSCE/ODIHR NAM interlocutors expressed concerns that the appointment mechanism and overall composition does not provide independence from the government. In addition, some opposition

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4 Although not specified in the Constitution, the prevailing interpretation of the amendments in Tajikistan is that the president is currently serving his first term (after the reform) and is therefore able to contest the 2013 election.
5 See, for example, the 2006 OSCE/ODIHR Assessment of the Law on Election of the President. Available at: http://www.osce.org/odihr/elections/tajikistan/20043.
6 The OSCE/ODIHR NAM was informed that instructions relate to the work of District Elections Commissions, the work of Precinct Election Commissions, the adjudication of complaints and appeals, candidate nomination, mass media, election observation, and voter education.
parties informed the OSCE/ODIHR NAM that their members are not properly informed about CCER sessions, and that decisions are made without their vote or knowledge.

The CCER is responsible for the overall conduct of the election, including the supervision and operational support of lower-level commissions, registration of candidates, and review of complaints against decisions of lower-level commissions. The CCER informed the OSCE/ODIHR NAM that preparations for the election have been ongoing since mid-2012, including the preparation of instructions and voter information. Trainings were organized for judges, to inform them about adjudication of complaints and appeals in the electoral process, and the CCER is currently identifying and training potential DEC members.

Lower-level commissions are appointed for each election. DECs are appointed 45 days before election day by the CCER upon proposals of the local executive authorities. PECs, in turn, are appointed by the DECs at least 35 days before election day. While the law prohibits candidates and their proxies from serving on commissions, it does not prohibit other persons with potential conflicts of interest, including state and local officials. There are no provisions for balanced political party representation in lower-level commissions. Several OSCE/ODIHR NAM interlocutors expressed concerns about the impartiality of lower-level commissions, particularly in respect of election day procedures, the vote count, and the tabulation of results.

Voting is conducted in-person at polling stations on election day, with the possibility to vote in advance for those voters absent from their residence on election day. A number of special polling stations will be established in hospitals and military units, and mobile voting is permitted for homebound voters. The law does not provide details on the timeframe or locations of early voting or on the procedures for applying for and administering mobile voting. In order to vote, a voter must present their passport or another valid identification document and sign the voter list. Voters are required to cast a so-called ‘negative vote’, whereby a voter strikes out the names of the candidates that he/she does not wish to elect rather than affirmatively marking the candidate that he/she wishes to elect.

D. VOTER REGISTRATION

All citizens over 18 years of age have the right to vote, except for those recognized as incapable by a court decision. There is no central voter register and each PEC compiles the list of voters for its precinct based on data provided by local executive authorities. Voter lists are made public 15 days prior to election day and from this point until the end of election day a voter can be added to the supplementary voter list upon proof of eligibility and residence. The authorities informed the OSCE/ODIHR NAM that there are around 4 million voters, including some 900,000 residing abroad. Several OSCE/ODIHR NAM interlocutors expressed concerns about the accuracy of the voter registration system, pointing to the lack of aggregated data above precinct level and that Tajikistani citizens residing abroad often do not register their status with the Ministry of Foreign Affairs.

E. CANDIDATE REGISTRATION

Candidates for president are required to be between 35 and 65 years old, to know the state language and to have lived in Tajikistan for the past ten years. The law does not specify measures for determining state language proficiency.

The law provides that presidential candidates can be nominated by registered political parties, the Federation of Independent Trade Unions, the Union of Youth of Tajikistan, as well as the council of
the Gorno-Badahshan Autonomous Province (GBAO), the council of Dushanbe City, and councils of provinces, districts, and towns. At odds with paragraph 7.5 of the 1990 OSCE Copenhagen Document, the law does not allow for self-nominated independent candidates.7

Nominated candidates are required to support their candidature with signatures from 5 per cent of the electorate within a 20-day period. Many OSCE/ODIHR NAM interlocutors stated that the high number of signatures, in combination with a short period of time, present significant obstacles to registering as a candidate. The OSCE/ODIHR previously recommended that the required number of supporting signatures should not exceed one per cent of the electorate, in line with international good practice.8 The law does not provide guidance on the signature verification process or how a signature is determined to be valid.

All registered political parties met with by the OSCE/ODIHR NAM expressed their intention to nominate candidates for the upcoming presidential election.

F. CAMPAIGN AND CAMPAIGN FINANCE

According to the law, the election campaign starts once candidate registration is completed and ends 24 hours before election day. The CCER is required to provide equal campaign conditions for all candidates, including via the media. Election commissions and local authorities are responsible to assist candidates in organizing campaign events. While the authorities informed the OSCE/ODIHR NAM that they expect a vibrant campaign with high participation, other interlocutors claimed that there is a growing level of voter apathy, particularly among the youth.

A number of political parties informed the OSCE/ODIHR NAM of their intention to conduct a countrywide campaign, primarily through meetings and door-to-door canvassing. While challenges were largely not anticipated in campaigning in Dushanbe, several parties informed the OSCE/ODIHR NAM of their concern that obstacles may be imposed by local authorities in the organization of meetings in the regions.

The PEL provides for the possibility of public campaign financing, including the provision of campaign venues and free public transport for candidates. However, the law lacks detail on several key issues, including the amount and timing of financial support, as well as campaign finance reporting and oversight. While the PEL prohibits foreign funding and support to presidential candidates, it does not provide guidance on whether private campaign financing from domestic sources is permitted and, if so, on what conditions.

G. MEDIA

Television is the predominant source of political information. While the state-owned Tajik TV is the only channel with nationwide coverage, other state and private channels are broadcast regionally, mostly in urban areas. There are 11 radio stations that largely broadcast entertainment programmes and only the state-funded Tajik Radio has a nationwide coverage. The print media is more pluralistic with more than 400 newspapers and magazines published. However, there is only one newspaper published on a daily basis (Imrouz News) and circulation is low, particularly outside of Dushanbe. A growing number of citizens use the internet to read political news, but internet access is limited outside of Dushanbe and other urban centers.

7 Paragraph 7.5 provides that participating States “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”
8 See paragraph I.1.3.ii of the Venice Commission Code of Good Practice in Electoral Matters.
The legal framework for the media includes the Constitution, PEL, and the Law on Periodical Print and Other Mass Media, as well as CCER regulations. The Constitution provides for freedom of expression and information and in 2012 sections of the Criminal Code were amended to decriminalize defamation. However, Article 37 of the PEL and Article 330 of the Criminal Code continue to prohibit the dissemination of information derogating the fame and dignity of a presidential candidate, state authorities, or members of election commissions.9

The State Committee for Television and Radio (SCTR) is responsible for the oversight of broadcast media. The SCTR informed the OSCE/ODIHR NAM that on the basis of a CCER decision, 30 minutes of free airtime will be allocated to each party, plus 15 minutes to each candidate, for presentation of their electoral platform. It is unclear whether the 30 minutes of free airtime is dedicated only to political parties or to other groups that can nominate a candidate. In addition, state broadcasters intend to cover the campaign in their news programmes and to organize debates with the candidates. Paid advertisements are allowed on state broadcast media and the OSCE/ODIHR NAM was informed that price lists will be approved in advance of the campaign.

Many OSCE/ODIHR NAM interlocutors complained that there are limitations in the work of media and obstacles in access to information. It was reported to the OSCE/ODIHR NAM that journalists often face lawsuits and other forms of pressure and that online news and social networking websites are frequently blocked. A lack of transparency in the issuing and removal of frequency licenses was also raised as an issue during some meetings, leading to practices of self-censorship.

H.  COMPLAINTS AND APPEALS

The PEL outlines complaints and appeals procedures in respect of decisions of election commissions, voter registration, and candidate registration. Decisions of election commissions may be appealed to either the superior election commission or the courts, with the Supreme Court as a final instance in all cases. The OSCE/ODIHR has previously observed that this dual system of electoral dispute resolution could potentially lead to inconsistencies in decisions. Complaints and appeals should be submitted within 10 days of a decision and the adjudication period is three days. If a complaint is filed less than six days before election day, it should be considered immediately.

The law allows citizens to complain to PECs in respect of the accuracy of voter lists, and obliges them to make a decision within three days or immediately if the complaint is filed within three days of election day. Appeals on decisions regarding voter lists can be submitted to the district court whose decision is final. A candidate who is denied registration can appeal to the Supreme Court, which is obliged to make a final decision within seven days. In case of criminal violations, the CCER is required to forward relevant materials and information to the prosecutor’s office.

The OSCE/ODIHR NAM was informed that the CCER and Supreme Court are currently training judges on electoral disputes. The Supreme Court confirmed to the OSCE/ODIHR NAM that all court sessions will be open to public.

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9 In a press release on 31 May 2012, Dunja Mijatović, OSCE Representative on Freedom of the Media stated: “I welcome President Emomali Rahmon’s initiative and the parliament’s subsequent steps to decriminalize defamation… I hope these remaining criminal provisions will soon be abolished.” See: http://www.osce.org/fom/90958.
I. ELECTION OBSERVATION

While the PEL provides for election observation by political parties, it does not provide for citizen election observation, and international observation is conditioned with the phrase “if necessary”. The PEL does not provide criteria for determining the “necessity” of international observation neither does it establish who would make the respective decision. However, the OSCE/ODIHR NAM was informed by the CCER that it had prepared an instruction on election observation and that an official invitation will be extended to the OSCE and other international bodies.

The prior OSCE/ODIHR recommendation that results protocols be publicly posted or provided to observers remains unaddressed and the CCER is not required to publish election results broken down to PEC level.

IV. CONCLUSIONS AND RECOMMENDATION

Most OSCE/ODIHR NAM interlocutors expressed support for an OSCE/ODIHR election observation activity. Representatives of official bodies emphasized that the electoral process would be transparent and that observation by the OSCE/ODIHR and any recommendations for potential improvement of the process would be welcome. Other interlocutors requested that the OSCE/ODIHR deploy a large number of observers to cover all stages of the electoral process, with a particular emphasis on the work of the election administration and candidate registration, voter registration, respect of freedoms of assembly and expression, as well as election day procedures, including the vote count and tabulation of results.

Based on the findings of this report the OSCE/ODIHR NAM recommends the deployment of an election observation mission for the upcoming presidential election. In addition to a core team of experts, the OSCE/ODIHR will request the secondment by OSCE participating States of 14 long-term observers to follow the election process countrywide, as well as 150 short-term observers to follow election day procedures, including voting, counting of votes and tabulation of results.

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10 This is not fully in line with paragraph 8 of the 1990 OSCE Copenhagen Document, which provides that “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place. They therefore invite observers from any other OSCE participating State and any appropriate private institutions or organizations who may wish to observe the course of their national election proceedings, to the extent permitted by law.”
ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs
Jamshed Khamidov, Deputy Head, Department of International Organizations

Executive Office of the President
Mukhabatsho Ruzadorov, Adviser to the President on Public Relations
Azamsho Sharipov, Head of International Relations Department

Central Commission on Elections and Referenda
Shermukhammad Shokhiyon, Chairperson

Supreme Court
Lola Khojaeva, Head, Civil Law Department
Larisa Kobilova, Judge, Civil Law Department
Roshiddin Turaev, Judge, Civil Law Department
Makhmadjon Oymakhmadov, Judge, Civil Law Department

Ministry of Interior
Major General Tokhir Normatov, Head, Department of International Co-operation
Colonel Ekaterina Smalyakova, Deputy Head, Passport and Registration Service
Colonel Tohir Nazarov, Deputy Head, Department for Protection of Public Order

State Television and Radio Committee
Asadullo Rakhmon, Chairperson
Saidalli Siddikov, First Deputy Chairperson
Tolibjon Kholov, Head, Human Resources Department

Political Parties
Zaragul Mirasanova, Member, Committee of Women, Communist Party of Tajikistan (CPT)
Saidjafar Ismonov, Chairperson, Democratic Party of Tajikistan (DPT)
Mukhidin Kabiri, Chairperson, Islamic Revival Party of Tajikistan (IRPT)
Mahmadali Khaitov, Deputy Chairperson, Islamic Revival Party of Tajikistan (IRPT)
Shamsuddin Jalalov, Deputy Chairperson, Party of Economic Reform of Tajikistan (PERT)
Gayur Safarov, First Deputy Chairperson, People's Democratic Party of Tajikistan (PDPT)
Abduhalim Gafforov, Chairperson, Socialist Party of Tajikistan (SPT)
Gulandom Olimova, Member, Socialist Party of Tajikistan (SPT)
Munira Safarova, Member, Socialist Party of Tajikistan (SPT)
Rakhatillo Zoirov, Chairperson, Social-Democratic Party of Tajikistan (SDPT)
Shukhrat Kudratov, Deputy Chairperson, Social-Democratic Party of Tajikistan (SDPT)

Civil Society
Abdugani Mamadazimov, Chairperson, National Association of Political Scientists of Tajikistan
Abdulkayasi Saidjabbor, Youth Activist, Kulyab Region
Mansur Khayotov, Youth Activist, Garm Region
Aziz Berdikulov, Youth Activist, Dushanbe

Media
Nuriddin Karshiboev, Chairperson, National Association of Independent Mass Media in Tajikistan
Zinatullo Ismoilov, President, Association of Independent Broadcasters
Qironsho Sharifzoda, Chairperson, Tajik Media Council
Khilvatsho Khodzhaev, Chief Editor, Ozodagon
Rustami Joni, Director General, Oriono Media
Fakhriddini Kholbek, Journalist, Radio Liberty
Nabijon Yusupov, Independent Media Consultant

International Community
H.E. Ambassador Markus Mueller, Head of the OSCE Office in Tajikistan
Gregoire Chilovski, First Counsellor, Embassy of the French Republic
Ali Vural, Second Secretary, Embassy of the Republic of Turkey
Sergey Kolotilinskiy, First Counsellor, Embassy of the Russian Federation
Sergey Yakovlev, Third Counsellor, Embassy of the Russian Federation
Patricia Dvoracek, Human Rights Officer, Consulate of the Swiss Confederation/Swiss Cooperation Office
Alice Burt, Governance Adviser, Embassy of the United Kingdom of Great Britain and Northern Ireland/DFID
Steven Mulvain, Vice Consul, Embassy of the United Kingdom of Great Britain and Northern Ireland
Aitzhan Aydashev, Counsellor, Embassy of the Republic of Kazakhstan
Viola von Cramon, German Parliamentarian on behalf of the Embassy of the Federal Republic of Germany