



Office for Democratic Institutions and Human Rights

**OSCE/ODIHR INTERIM RECOMMENDATIONS  
FOR  
THE KYRGYZ REPUBLIC  
EARLY PRESIDENTIAL ELECTION**



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# **OSCE/ODIHR INTERIM RECOMMENDATIONS FOR THE KYRGYZ REPUBLIC EARLY PRESIDENTIAL ELECTION**

## **I. INTRODUCTION**

Recent developments in the Kyrgyz Republic have resulted in the resignation of President Askar Akaev and the necessity for an early Presidential election. The election has been called by Parliament for 10 July, and this date is expected to be confirmed by the Central Election Commission (CEC).

Although the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) would not ordinarily make recommendations outside the context of a formal legal assessment or final report of an election observation mission, the current specific circumstances in the Kyrgyz Republic warrant the issuance of interim recommendations.<sup>1</sup> The OSCE/ODIHR offers these recommendations for consideration by the authorities of the Kyrgyz Republic in order to improve the electoral process for the early presidential election.

These recommendations are oriented towards what can feasibly be achieved in the limited timeframe available prior to the conduct of the early presidential election, focusing primarily on election administration measures, and including some key legal recommendations for consideration. This document does not represent an exhaustive review of the legal framework for elections, and does not include all possible recommendations for improvement in the election process.

The Electoral Code does have shortcomings to be addressed, should the Parliament be able to do this in the limited period prior to the early presidential election. The OSCE/ODIHR has previously commented on these issues and has made several specific recommendations for amendment of the Electoral Code to bring it more closely in line with OSCE commitments. To date, many of these recommendations have not been adopted. A number of them are summarized in this paper.

The authorities could implement a number of the interim recommendations outlined below without amending the Electoral Code. These could be implemented through effective election administration, including interpretation of existing law and the issuance of resolutions, instructions, regulations, and other acts, which are express powers granted to the CEC by the existing Electoral Code. Thus, a significant factor affecting the effective implementation of these recommendations will be the demonstration of a commensurate level of political will by election administration authorities and government bodies responsible for the conduct of the election.

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<sup>1</sup> The OSCE/ODIHR deployed an Election Observation Mission (EOM) for the 27 February and 13 March 2005 parliamentary elections in response to an invitation from the Ministry of Foreign Affairs of the Kyrgyz Republic. On 28 February, the OSCE/ODIHR, with the OSCE Parliamentary Assembly and European Parliament, issued a joint Statement of Preliminary Findings and Conclusions. The OSCE/ODIHR will be issuing a final report of the EOM, which will contain a full set of recommendations for improving the electoral process.

## II. INTERIM RECOMMENDATIONS

### Election Administration

- The existing plan to move the Central Election Commission (CEC) and the “Shailoo” State Registration System’s main server out of the Presidential White House should be completed rapidly. This is justified by two factors. First, in the interest of creating an independent CEC, it is important to ensure a separation between the electoral administration and the State administration, wherever possible. In addition to being independent, the CEC must be perceived as independent by the public.

Secondly, the CEC is a public institution accountable to citizens of the Kyrgyz Republic and subject to the requirements of openness, transparency, and accessibility. This requires that the CEC be located in premises which are accessible to citizens and which do not discourage citizens from actively attending sessions of the CEC. Citizens, as well as accredited observers and electoral participants, have the right to observe how the CEC conducts its daily business in administering elections and protecting suffrage rights. This right is denied when the CEC is located in premises that are difficult for citizens to access.

- The independence of lower election commissions must also be established and ensured. It is important to separate the Territorial Election Commissions (TECs) from the premises of *Rayon* and *Oblast* administrations, where not prevented by the limitations of infrastructure.
- Individuals employed by the same institution should not constitute more than one-third of the members of the same election commission. This recommendation could be implemented through a CEC instruction during this interim period, and eventually included in the Electoral Code as a permanent provision (See Legal Framework below).
- The CEC should immediately publish all of its written regulations.
- All sessions and meetings of the CEC and its working groups and tasks groups should be public. The CEC should, no later than twenty-four (24) hours before a session, publicly post on its website and at the main entrance to its office a notice for each CEC session. The notice should include an agenda of all items and matters to be considered at its session.
- During the entire election time period and until final publication of the election results, the CEC should hold regular sessions at pre-scheduled times and hold additional sessions as necessary during this period.
- The CEC should thoroughly and completely consider all written matters presented to it, regardless of the form and including complaints, appeals, applications, requests, and letters, and should provide a written decision in response. Although working groups

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and individual members of the CEC may provide advice to the CEC, all decisions must be made by the CEC only.

- The CEC should maintain a register for all complaints and appeals, which should be registered immediately upon their presentation to the CEC. The CEC register for complaints and appeals should be publicly accessible for observers, electoral participants, and citizens. The register should be kept current and maintained in a format that permits observers, electoral participants, and citizens to follow developments in the respective case, and check on its status. The full text of complaints and appeals should be available for public scrutiny.
- Every decision should be made in an open session of the CEC. When reaching a decision, the CEC should first attempt to make each decision by consensus.
- Every decision of the CEC should, within twenty-four (24) hours be recorded in writing and signed by the Chairperson of the CEC, and a copy of the written decision should be maintained in the office of the CEC and available for public inspection and copying. A copy of the decision should be provided to all CEC members, each person, candidate, or political party (election bloc) affected by the decision, and any voter who requests a copy of the decision. All decisions should be recorded in a CEC Decisions Register for access by the public.
- The CEC should make available on its website copies of all decisions, the register for complaints and appeals, and the CEC Decisions Register.
- The CEC should issue written instructions for a uniform procedure to be followed by the oblast and Bishkek and Osh city electoral commissions when verifying signatures in support of candidates.
- The use of transparent ballot boxes, while a positive step overall, can lead to violations of secrecy of the vote if ballots are not folded properly. The CEC should issue written instructions for a uniform procedure directing how a voter should fold a marked ballot before placing the ballot in the ballot box. This procedure should ensure that each citizen's right to secrecy of the vote is protected.
- The CEC should issue written instructions for uniform procedures and guidelines for the layout of polling stations in order to ensure each citizen's right for secrecy of the vote and that observers have a meaningful opportunity to observe the election process.

### **Transparency**

- The CEC should issue written instructions to ensure that observers (both domestic and international) are provided full access to the entire election process, including access to election commission meetings and electoral documentation and materials, commencing from the day of the observer's accreditation. Observers should be able to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other documents. Such an instruction would be consistent with the requirement in the existing Electoral Code that "the activities of election commissions shall be public and open," and consistent

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with OSCE commitments. This recommendation should eventually be included in the Electoral Code as a permanent provision (See Legal Framework below).

- Written minutes of all CEC sessions and meetings should be produced within 24 hours after their completion and made accessible to the public.
- All electoral contestants and accredited observers should be permitted access to the printing of ballot papers, in order to ensure confidence and transparency. Recognizing the potential for large numbers of people who may want to observe this stage of the electoral process, and certain security concerns, the CEC should establish an equitable basis upon which accredited observers and candidate representatives can have access to these procedures.
- An election commission member or other person, who obstructs, hinders, or interferes with an observer who is engaged in legitimate observation, should be held strictly accountable under the law.

### **Election Campaign**

- Constitutional principles, OSCE commitments, and international standards ensuring the right to assembly should be fully upheld, and any limitations of this right should be in strict proportion to any danger posed.
- In accordance with domestic law, candidates, political parties, and civil society organizations should be permitted to freely organize public meetings, rallies and other gatherings, barring a clear and present danger to national security, to other citizens, or to themselves. There should be an impartial, accessible and equitable procedure for determining the venue in the event of a dispute.
- The practice of using minor administrative penalties to discourage the fundamental right of assembly should cease.
- State authorities should refrain from any kind of interference in the activities of media and their representatives. Pressure, such as lawsuits, verbal attacks and denunciations further discourage establishment of a free media environment. State authorities should also ensure sufficient resources for conducting all election processes, such as the allocation of free broadcast time and print space in media.

### **Voter Lists**

- Voter lists should be revised and updated. There should be a thorough crosscheck at the regional and national levels for duplicate entries and misspellings.
- “Shailoo” (automated State registration system) administrators should be authorized to initiate voter list checks for their accuracy and completeness.
- The CEC should issue written instructions to ensure that copies of voter lists are displayed at PECs and TECs for public viewing access. Civil society groups, electoral participants, and voters should be able to initiate checks of the voter lists during the

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election campaign. Such an instruction would be consistent with the requirement in the Electoral Code that “lists of voters at precinct stations shall be presented for general familiarizing and additional updating”.

### **Legal Framework**

The following recommendations are offered specifically in relation to the legal framework for the upcoming early presidential election, and do not address more comprehensive amendments to the legal framework that may subsequently be envisaged.

#### *Freedom of Speech*

- Paragraph (2) of Article 36 could be interpreted to prohibit campaign speech and political discussion on important social problems and issues in the country. This paragraph should be reformulated so that it cannot be applied to limit legitimate political discourse during the campaign.
- Paragraph (6) of Article 36 prohibits campaign materials “that can damage dignity, honor or business reputation of candidates.” This limitation on free expression of speech and political opinions prevents a robust and vigorous campaign, which is critical to election campaigning in a democracy. It is recommended that paragraph (6) of Article 36 be amended to comply with international standards on freedom of expression. Paragraph (3) of Article 57 should be amended for the same reasons.
- Paragraph (3) of Article 31 prohibits the publication in the mass media of “the results of public opinion polls, forecasts of election results, other research materials in connection with the elections from the moment of candidates’ registration.” This provision should be amended to reflect the general international practices on opinion polling. The reference to “other research materials” should be deleted, and the prohibition on opinion polls and “forecasts of election results” should be limited to a more reasonable period, such as seven days prior to the close of polling on election day.

#### *Election Commissions*

- The Code should be amended to substantially broaden and guarantee the representation of political parties on election commissions, including the CEC.
- It is also recommended that any provisions for replacement of election commission members provide for (1) written notice to the commission member of the proposed grounds for removal, (2) a hearing before an appropriate tribunal to contest the challenged removal, (3) a voting requirement greater than simple majority in order to support the removal, and (4) the right to appeal to a court to challenge a decision for removal.
- Paragraph (7) of Article 11 provides that that “State and municipal employees, and employees of municipal bodies, may not comprise more than one-third of the total number of election commission members.” The OSCE/ODIHR has previously commented that precinct and district election commissions have been dominated by

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employees of official bodies. At a minimum, this can lead to the perception of partiality, as these persons are beholden to state authorities. In the absence of substantial confidence in the election process, the inclusion of such persons in election commissions should therefore be more strictly limited. In addition, no more than one third of the members should come from any one institution.

#### *Candidate Registration*

- The Election Code makes no provision for the possibility of a candidate to correct a defect in registration documents. Candidates should not be denied registration based on a defect in documents where the defect can be corrected in a timely manner. It is recommended that Articles 63, 73, 83, and 91 of the Code be amended to provide that in cases where the respective election commission identifies incorrect or incomplete information, it shall immediately notify the applicant, who shall have 48 hours to submit corrected information. The election commission should be required to consider re-submitted documents within 24 hours, and either register the candidate or issue a motivated decision on the refusal to register.
- De-registration of a candidate should only be permitted in the most serious circumstances. To improve clarity, such conditions should be specified in the Election Code.
- The use of a language test for prospective presidential candidates should be reconsidered. Such a test has clear implications for the participation of candidates from ethnic minorities. Any such test should be relevant and administered uniformly and transparently.

#### *Post-election cancellation of candidate registration*

- Post-election cancellation of candidate registration is generally contrary to OSCE election-related commitments. It is recommended that Article 56 of the Code be amended to allow post-election cancellation only where the elected candidate does not meet requirements for candidacy under the Constitution.

#### *Voting*

- In order to achieve a more inclusive environment for national minorities during the election, Article 39 should be amended to provide that ballots are also printed in the Uzbek language. This would facilitate the participation of this significant national minority in the elections.
- It is recommended that Article 41 be amended to clearly regulate early voting and to ensure that observers have a reasonable opportunity to observe the early voting process.

#### *Counting*

- The procedure in paragraph (6) of Article 44 for counting ballots in mobile ballot boxes requires that all ballots in a mobile ballot box be invalidated if the number of ballots in the mobile ballot box exceeds the number of written applications requesting

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to vote outside the premises. This provision treats voters unequally and discriminates against mobile voters because this invalidation requirement does not apply to regular ballot boxes. The same counting rules must apply to all voters. Further, the existence of one ballot too many is not a sufficient justification for invalidating all mobile ballots. The better practice is to count mobile ballots with regular ballots so that the same counting rules apply to each type of ballot. Article 44 should be amended to address these concerns.

#### *Announcement of Results*

- Paragraph (22) of Article 44 provides that the enlarged copy of the precinct (polling station) protocol “shall be posted for general information in the place, established by the precinct election commission.” It is recommended that paragraph (21) be amended to provide that the protocol shall be posted at the precinct election commission. It is also recommended that a similar provision be included in paragraph (7) of Article 45 for the posting of any election commission protocol.

#### *Appeal Procedures*

- Challenges to decisions of election commissions should be filed in only one forum designated by the Code – either a court or a higher election commission. If the forum designated by the Code is an election commission, then the Code must provide that the right to appeal to a court is available after exhaustion of the administrative process
- The amendment to paragraph (6) of Article 46 makes it impossible to challenge fraudulent results where the fraud is discovered after the protocols have been signed. This provision should be removed from the Code.

#### *International Support*

- It is recommended that paragraph (1) of Article 50 be amended to ensure that the prohibition on foreign funding cannot be applied to preclude international or domestic organisations from full engagement in support of observation activities, including the training of observers, deployment of personnel, compilation of data, fact finding, and subsequent analyses and reporting.

#### *Rights of Observers*

- Observation should include the right to observe the entire electoral process, including all activities, meetings, and decision making in election commissions, before, during, and after elections, by both domestic party and non-partisan observers, as well as international observers. Paragraphs (2) and (6) of Article 17 should be amended accordingly.

#### *Accountability for Legal Violations*

- Instances of administrative interference in the election process, violation of the Electoral Code and of associated rights, should be prosecuted to the full extent of the law. The Criminal Procedure Code should be amended to grant the public



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prosecutorial authorities the power to initiate criminal cases for election related violations.

### **III. CONCLUSION**

Citizens must have confidence in electoral processes and in the authority and legitimacy of their government. OSCE/ODIHR therefore offers the above interim recommendations for consideration by the authorities of the Kyrgyz Republic in order to improve the electoral process in the limited time period prior to the early Presidential election. These recommendations are provided in order to contribute to the conduct of meaningful and genuine democratic elections that are in conformity with OSCE commitments and other international standards for democratic elections. The OSCE/ODIHR stands ready to discuss these interim recommendations with the authorities in the Kyrgyz Republic, in cooperation with the OSCE Centre in Bishkek.