Office for Democratic Institutions and Human Rights

REPUBLIC OF TAJIKISTAN

COMMENTS ON DRAFT AMENDMENTS TO THE ELECTION LAW PROPOSED BY POLITICAL PARTIES

Warsaw
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I. INTRODUCTION

These comments discuss draft amendments proposed by political parties to the Election Law of the Republic of Tajikistan.[1] These comments are limited to the draft amendments and are not an assessment of the law itself. The OSCE/ODIHR has previously assessed the law and noted significant shortcomings in the law that require improvement in order to provide the necessary legal framework for democratic elections in Tajikistan. These comments are limited solely to the proposed draft amendments and do not restate the concerns previously noted by the OSCE/ODIHR.[2] Previously stated concerns remain as the draft amendments do not correct current shortcomings in the law and, in some instances, have aggravated existing problems.

The comments do not warrant the accuracy of the translations reviewed. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

II. PROPOSAL ONE DRAFT AMENDMENTS

Although there are some positive amendments, there are several concerns with the Proposal One draft amendments. Amendments are discussed in the order in which they appear in the draft. There are some technical amendments clarifying existing legal text, which are not discussed, as they are self-explanatory.

A. ARTICLE 3 AMENDMENT

An amendment to Part 2 of Article 3 provides the following additional text to the article: "Participation in elections is voluntary". This is a positive amendment that addresses a previously noted concern that the law should expressly state this point.

B. LIMITATIONS ON TRANSPARENCY AND OBSERVERS IN ARTICLE 8 AMENDMENT

Proposal One amends Article 8 of the existing law. The current Article 8 is deficient and should be improved. However, the proposed amendments do not address existing deficiencies and present additional shortcomings.

First, the amendment limits domestic observation rights to political parties and self-nominated candidates. Domestic observation should not be limited to these select groups. Non-governmental organisations, involved in election observation or other

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1 This review considers to two draft proposals. "Proposal One" consists of amendments on 11 pages of text. "Proposal Two" consists of amendments on seven pages of text. Both proposals reviewed are based on unofficial English translations of text.

2 *See* OSCE/ODIHR Assessment of Draft Amendments to the Law on Elections to the Majilisi Oli, Republic of Tajikistan, 17 September 2003.

relevant areas in the field of human rights, and representatives of the media should also be provided the right to observe elections.

Secondly, the amendment severely restricts the right of observation to activities occurring in the polling station on election day. An election is not limited to events in the polling station on election day. An election is a process that includes significant events before and after polling. An election law should clearly state that all observers have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other documents, at all levels, *during the entirety of the election processes*, including processes before and after election day.

International observers, in contrast to domestic observers, have the right to "observe during the preparatory period and conduction (sic) of elections". Although this is broader than the right of domestic observers, it is still limited, as it does not expressly include post election day activities, such as the complaints and appeals processes.

Finally, the amendment places unreasonable restrictions on international observers in the final formation of opinions by "disallowing any favorable or unfavorable feelings to electoral commissions" and requiring that all opinions be founded on "material facts". These requirements challenge principles protecting the right to free speech and expression.[3] Further, any legal provision that attempts to "muzzle" observers or prevent them from reporting or releasing information that has been obtained by observation efforts is questionable.

C. DISCRIMINATORY CAMPAIGN FINANCE PROVISIONS IN ARTICLE 9 AMENDMENT

The amendment to Article 9 regulates creation of campaign funds in elections. This article permits campaign funds for candidates to come from different sources. However, one of the sources in Article 9 is limited to a candidate nominated by a political party. Thus, this article discriminates against independent candidates as it prohibits independent candidates from receiving funds from political parties. Paragraph 7.5 of the OSCE 1990 Copenhagen Document provides that citizens have the right "to seek political or public office, individually or as representatives of political parties or organisations, without discrimination". Further, a political party should have the right to provide financial support to an independent candidate in an election where the political party has not nominated its own candidate. A small political party may not have sufficient strength to nominate a candidate. However, it should have the right to support a candidate, financially and otherwise.

Article 9 also prohibits campaign contributions of "international public movements". This phrase is vague and could be applied to prohibit a contribution from a purely domestic organisation that supports a philosophy or political view that transcends national borders.

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[3] *See* Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 9 also prohibits campaign contributions of "charity and religious organisations, also the (sic) established by them (sic) organsisations". The English text is not clear and there appears to be missing text. Further, any limitation on the rights of religious organisations must be carefully considered. OSCE participating states commit to "take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers."[4]

The provision in Article 9 that requires forfeiture of a campaign fund to the state budget for violation of Article 9 is excessive. This forfeiture is required, regardless of the amount of the contribution and even if there was an honest accounting error or mistake in accepting the contribution. Forfeiture of the entire campaign fund based on the slightest legal violation is a disproportionate sanction for violation of the law. It would be more appropriate to authorize the imposition of a monetary fine based on consideration of several factors, which could include: (a) the amount of the contribution, (b) whether there were other illegal contributions, (c) whether and to what degree there was an effort to conceal the contribution, (d) the attitude and conduct of the violator upon discovery of the violation, (e) whether government authorities or public officials or resources were involved in the violation, and (f) the potential harm to free, fair, democratic, and transparent elections in the future.

Similarly, the provision in Article 9 that requires cancellation of candidate registration based on a violation of the campaign contribution provisions is disproportionate punishment. It also violates the right of suffrage and fails to provide minimum legal safeguards required by OSCE commitments and international standards. Secondly, Article 9 would permit post-election cancellation of candidate registration, which would include cancellation of the registration of an elected candidate. This is a violation of Paragraph 7.9 of the OSCE 1990 Copenhagen Document.

As the right to be a candidate is a fundamental human right, the right cannot be taken away with complying with certain legal safeguards. As noted in Paragraph 5.19 of the OSCE 1990 Copenhagen Document, every person is presumed innocent until adjudicated guilty in accordance with certain legal safeguards. This presumption of innocence applies not only to criminal proceedings, but proceedings that seek to revoke, remove, or "cancel" a human right or fundamental freedom.[5] Further, "in the determination of his civil rights", everyone is entitled to a fair and public hearing

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4 Paragraph 16.1 of the OSCE 1989 Vienna Document. *See also* Paragraph 9.4 of the OSCE 1990 Copenhagen Document. *See* Principle VII, Paragraph 1 of the OSCE 1975 Helsinki Document; Paragraphs 13.7 and 16.1 of the OSCE 1989 Vienna Document; Paragraphs 5.9 and 7.3 of the OSCE 1990 Copenhagen Document; Paragraph 7 of the OSCE 1994 Budapest Document; Paragraph 2 of the OSCE 1999 Istanbul Document; Articles 2 and 21 of the Universal Declaration of Human Rights; Articles 2 and 26 of the International Covenant on Civil and Political Rights; Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Articles 17 and 26 of Constitution of Tajikistan.

5 Although all legal systems apply different "burdens" or "levels" of proof in criminal and civil or administrative proceedings, all legal systems do require that there be proof and mere accusation never is sufficient.

within a reasonable time by an independent and impartial tribunal established by law."[6] "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights…"[7] Paragraph 5.16 the OSCE 1990 Copenhagen Document and Paragraph 21 of the OSCE 1989 Vienna Document specifically incorporate these cited provisions for the determination of civil rights, and Paragraph 13.9 of the OSCE 1989 Vienna Document provides that "the right to a fair and public hearing within a reasonable time before an independent and impartial tribunal, include[s] the right to present legal arguments and to be presented by legal counsel of one's choosing." Paragraph 5.17 of the OSCE 1990 Copenhagen Document also recognizes the right to be given free legal counsel where the person does not have sufficient means for legal assistance and the interests of justice so require. All of these safeguards are the minimum requirements the law must provide before revoking a person's human right to passive suffrage.

Article 9, in addition to establishing disproportionate punishment, permits cancellation of candidate registration without providing the necessary minimum legal safeguards.

D. ARTICLE 19 AMENDMENTS

An amendment to Part 1 of Article 19 provides that sessions of electoral commissions are open for the public and mass media. This is a positive amendment that should increase transparency.

Another amendment to Article 19 changes the voting requirements in an electoral commission from a majority to two-thirds in order to make a decision. Although a two-thirds voting requirement is acceptable, it must be evaluated within the context of the country in order to ensure that it will not result in deadlock, obstruction, or paralysis of the election process. This concern is also applicable to the amendment in Part 10 of Article 46, which adopts a similar requirement for approval of the polling station protocol by the polling station electoral commission.

E. ARTICLE 22 AMENDMENT

An amendment to Part 7 of Article 22 states: "The town, district chairman based on proposal of the district electoral commission about formation of the polling stations, within 3 days provides each polling station with voting premises." This text is vague and it is not possible to determine whether the "proposal of the district electoral commission" is a binding decision, which must be followed.

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6 *See* Article 6(1) of the European Convention for Protection of Human Rights and Fundamental Freedoms.

7 Article 10 of the Universal Declaration of Human Rights. *See also* Article 14 of the International Covenant on Civil and Political Rights ("In the determination … of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.").

F. ARTICLE 27 AMENDMENT

An amendment to Part 4 of Article 27 states: "Actions or dissemination of exhorts for … postponing the date of elections or term and electoral procedure, established in accordance with the present law is prohibited." This provision violates OSCE commitments and international standards.

Paragraph 7.7 of the OSCE 1990 Copenhagen Document requires that elections be conducted in a "fair and free atmosphere". If a "fair and free atmosphere" were not present, then an individual would be justified in advocating a postponement of the election date. Further, this prohibition violates a person's right to free speech and expression, which is critical to a democracy. Such a broad prohibition is not in compliance with OSCE commitments, international standards, and domestic constitutional principles.[8]

G. LIMITATIONS ON CANDIDACY RIGHTS IN AMENDMENTS TO ARTICLES 32 AND 35

An amendment to Article 32 establishes a registration fee for a candidate for deputy in the amount of 1,500 times the minimum salary. This provision discriminates on the basis of social or property status as it precludes candidates who do not have sufficient personal wealth to pay the fee. The amendment is not clear, but it appears that the wage unit reference is a monthly wage. Requiring a person to pay 125 years of wages, in order to be a candidate, is simply unacceptable. In addition to discriminating on the basis of social and property status, the provision also likely has a discriminatory impact on women, as women are often economically disadvantaged in comparison with the general population.[9] There is no legitimate basis for requiring such a high registration fee in order to be a candidate in elections. Even an economically disadvantaged citizen has the right to participate in government, including the right to be a candidate for deputy. The fact that the fee is refundable to those candidates who win does not cure the problem. The registration fee of 33,000 times the minimum wage for political parties participating in the nationwide constituency is problematic for the same reason.

An amendment to Article 35 requires a candidate to submit "a medical certificate on psychical (mental) health". There is no justification for this requirement. It discourages citizens from exercising the right to seek public office, is contrary to domestic law, and problematic under international standards. A citizen's "psychic state of health" is not relevant to qualification for candidacy *except* where the citizen has been "judged incapable by a court". This principle is recognized in Article 4 of the Election Law ("citizens recognized incapable by a court" cannot be a candidate). Article 4 of the Election Law is consistent with the universal legal principle that a person is presumed competent and can be a candidate until adjudicated in a court of

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8 *See* Paragraph 9.1 of the OSCE 1990 Copenhagen Document; Paragraph 26 of the OSCE 1991 Moscow Document; Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Article 30 of the Constitution of Tajikistan.

9 *See* Consolidated Summary and Chair's Conclusions, OSCE Human Dimension Seminar, Participation of Women in Public and Economic 13-15 May 2003(Warsaw).

law as not possessing mental competency. In addition to the human rights principles involved, there are historical and practical reasons that speak against the requirement for a medical certificate of psychical state of health. Historically, in many countries, political opponents and dissidents have been silenced by calling into question their psychic health and discrediting them through the use of state sanctioned "psychical health" documents. Practical considerations also speak for rejection of this requirement. As this is a legal requirement for candidacy, a candidacy could be rejected on the basis that the certificate was in some manner "deficient". Such a challenge could even occur after the elections.

Voters are best suited to judge the intellectual capacity, honesty, integrity, and general persona presented by candidates. There is no justification for the requirement of a medical certificate of psychical state of health as a condition for candidacy.

An amendment to Part 7 of Article 35 requires a denial of candidate registration where a person presents "unreliable information on income or the property belonging to the candidate". This phrase is vague, subject to abuse, and can be applied in a politically motivated and biased manner. As an example, the value that one places on certain property belonging to the candidate is a matter of subjective opinion. One person may legitimately believe that a specific item of property has a value of X and another person may legitimately believe that that the value is XX. How is it to be determined which person has presented "unreliable" information? This amendment invites abuse and should be omitted from the law.

H. ARTICLE 39 LIMITATION ON FREE SPEECH

The OSCE/ODIHR has previously expressed concern about limitations on free speech in Articles 39 and 58. Article 39 prohibits "misuse of the freedom of media" and the publishing of "information discrediting honour, dignity and business reputation of candidates". This limitation on free expression and speech prevents a robust and vigorous campaign, which is critical to election campaigning in a democracy. Outside the context of a political campaign, a government may limit freedom of expression in order to protect the reputation or rights of others.[10] However, in the context of a political campaign, or where a person is exercising the right to express political opinions, a law for the protection of the reputation or rights of others cannot be applied to limit, diminish, or suppress a person's right to free speech and political expression.[11]

An amendment to Article 39 adds the following phrase after the already troublesome text: "using mental, physical or religious compulsion methods." The word "physical" is understood and violence should be prohibited. Arguably, the word "mental" might

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[10] *See, e.g.,* Article 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[11] *See, e.g., Oberschlick v. Austria*, Case No. 6/1990/197/257, European Court of Human Rights (23 May 1991); *Lopes Gomes Da Silva v. Portugal,* Application No. 37698/97, European Court of Human Rights (28 September 2000); *Bowman v. The United Kingdom*, Case No. 141/1996/760/961, European Court of Human Rights (19 February 1998); *Incal v. Turkey*, Application No. 41/1997/825/1031, European Court of Human Rights (9 June 1998).

imply the use of threats, which should also be prohibited. However, "mental" could also be interpreted to mean intellectual persuasion, which is the basis of philosophical and political discourse in a democracy. Although it is not clear what is intended by "religious compulsion methods", an appeal to the moral, ethical, or spiritual principles of voters cannot be prohibited in a democracy. Thus, problems remain with Article 39 and the amendment does not positively address the article. The amended Article 39 remains contrary to international norms that protect the right of free speech and political expression.

An amendment to Article 39 provides that the free airtime given to candidates and political parties shall consist of 15 minutes on television and 20 minutes on radio. Although this is an improvement over the existing text, there remain several shortcomings in Article 39 previously noted by the OSCE/ODIHR concerning regulation of equal access to media during the campaign. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of September 2003.

I. AMENDMENTS TO ARTICLE 40

An amendment to Part 3 of Article 40 requires that the ballot boxes are visible and accessible to polling station electoral commission members and observers, and that they are placed so that voters can be observed placing the ballot in the ballot box. This is a positive amendment that should increase transparency.

An amendment to Part 4 of Article 40 prohibits armed persons and persons in military uniforms, including law enforcement personnel, in voting premises "except for being there for preclusion of violations". Although this principle should be included in Article 40, it does require some clarification. It should be made clear that such persons have to be requested by the polling station electoral commission and cannot decide on their own that a violation has occurred that requires their presence. It should also be made clear that such persons must leave the polling station after the electoral commission determines their presence is no longer needed.

J. AMENDMENT TO ARTICLE 41

The amendment to Article 41 requiring the inclusion of additional information in the polling station protocol before voting begins is a positive amendment that should increase transparency.

K. AMENDMENT TO ARTICLE 42

The amendment to Article 42 is not clear because the amendment is to "Part 12" and it may be that "Part 13" is intended. It appears that the amendment requires that the mobile voting process must occur in the presence of observers. The OSCE/ODIHR has previously expressed concerns about mobile voting. This amendment is a step in the right direction but is still inadequate.

Although the amendment to Article 42 is an improvement, it is not a sufficient improvement to address the problems that have been noted with mobile voting in past elections. Article 42 should include the following safeguards for mobile voting:

- Mobile voting should be used only in cases where it is physically impossible for the voter to travel to the polling station to vote. This fact must be established by the voter, making a written application to the polling station committee, explaining why it is physically impossible for the voter to travel. The application must be submitted by the voter, and acted upon by the polling station committee, within a deadline established by law. This deadline should not be one or a few days before Election Day, but should be sufficiently in advance of Election Day to permit observers to plan in advance to observe mobile voting.
- The number of ballot papers taken out for mobile use and the number later returned should be formally recorded in all protocols.
- The number of ballot papers taken out should accord with the number of requests received, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.
- The number of persons who have used the mobile box should be recorded in polling station and successive protocols. This makes it possible to identify particular areas where the proportion of votes cast using mobile boxes is unusually high, which may point to fraud.
- At least two members of the polling station committee should administer mobile voting jointly within the geographical territory covered by a polling station and, where possible, members should not be from the same political party.

The amendment to Article 42 does not adequately insulate the mobile voting process from election fraud or provide the necessary level of transparency. The above safeguards should be incorporated in Article 42.

L. AMENDMENT TO ARTICLE 47

An amendment to Part 2 of Article 47 requires that a recount of votes be conducted in the "presence of observers and proxies". This is a positive amendment that should increase transparency.

M. AMENDMENT TO ARTICLE 54

The text of this amendment is not clear. However, it appears to prevent invalidation of election results except where a legal violation "influences determination of the candidate-winner". This concept is acceptable. There is no reason to invalidate the results if the legal violation did not affect determination of the winning candidate. The text should be reconsidered in the original language to ensure that this is the purpose of the amendment.

N. AMENDMENT TO ARTICLE 55

An amendment to Article 55 requires that preliminary results are announced in mass media within 24 hours after the close of polling. This is a positive amendment that should increase transparency and public confidence in elections.

However, Article 55, which also provides for the publication of results, requires additional amendment to improve transparency. The article should be amended to require that publication of results must be in the form of tables with all relevant details, which will enable all interested parties to audit the outcome of the elections from polling stations, through intermediate levels, to the CCER level. The tables should include the number of voters in each polling station who used the mobile ballot box and other alternative voting procedures in order to identify particular areas where the proportion of votes cast using mobile or other alternative voting procedures is unusually high, which may point to fraud.[12]

III. PROPOSAL TWO

Although there are some positive amendments, there are several concerns with the Proposal Two draft amendments. Amendments are discussed in the order in which they appear in the draft. There are some technical amendments clarifying existing legal text, which are not discussed, as they are self-explanatory.

A. AMENDMENT TO ARTICLE 3

One of the amendments to Article 3 is an improvement in the current law. An amendment to Part 3 of the article prohibits interference of executive branch bodies in the activities of electoral commissions and the "process of identifying voting results". This is a positive amendment intended to diminish the influence of government on electoral commissions.

B. LIMITATIONS ON TRANSPARENCY AND OBSERVERS IN AMENDED ARTICLE 8

Proposal Two also amends Article 8 of the existing law. The current Article 8 is deficient and should be improved. However, the proposed amendments do not address existing deficiencies and present additional shortcomings.

First, the amendment limits domestic observation rights to political parties and self-nominated candidates. Domestic observation should not be limited to these select groups. Non-governmental organisations, involved in election observation or other relevant areas in the field of human rights, and representatives of the media should also be provided the right to observe elections.

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[12] The same information for early voting should be included if the early voting process is retained in the law.

Secondly, the amendment restricts the right of observation, as it allows accreditation of observers to be delayed until "no later than two days and nights prior to voting day", and the list of observers' rights is limited. The rights of observers should be broad and include every possible election activity except for the secrecy of the marking of the ballot. Further, it should not be possible to delay observer accreditation until two days before voting day, as an election is not limited to events in the polling station on election day. An election is a process that includes significant events before and after polling. An election law should clearly state that all observers have the right to inspect documents, attend meetings, and observe election activities at all levels, and to obtain copies of decisions, protocols, tabulations, minutes, and other documents, at all levels, *during the entirety of the election processes*, including processes before and after election day.

C. AMENDMENTS ON FORMATION OF ELECTORAL COMMISSIONS

There are amendments to Articles 10, 11, 12, 13, and 16 on the formation of electoral commissions. These amendments require that electoral commissions "are formed by equal representation of political parties, registered according to the established by law procedure, not less than a year prior to the elections". Although the "equal representation" concept is acceptable, the critical aspect of this process is the practical implementation, which is done "according to the established by law procedure". The failure to provide the practical implementation process in these articles is a significant omission that should be addressed. Indeed, the current text, unless the problem is one of translation, appears to provide the possibility for several inconsistent processes as the procedure for a given level of election administration is determined by the legislative authority at that level. These amendments should be expanded to state a detailed process on how "equal representation" is to be achieved. The appointment process is a critical detail that the law must provide. It should not be left to other legislation.

It is assumed that the reference to "established by law procedure" does not mean the current text of the election law. However, if the reference is to the current law, there are several shortcomings in the current legal text previously noted by the OSCE/ODIHR. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of 17 September 2003.

D. ARTICLE 21 AMENDMENTS ON FORMATION OF ELECTORAL CONSTITUENCIES

Article 21 regulates the formation of electoral constituencies. There is an inconsistency concerning the number of constituencies for the Assembly of Representatives. Article 21 states there are 41 constituencies. The amendment to Article 28 recognizes 64 constituencies. These articles should be reconciled.

There remain several shortcomings in Article 21 previously noted by the OSCE/ODIHR. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of 17 September 2003.

E. AMENDMENT TO ARTICLE 31

An amendment to Article 31 deletes Part 5 of the article. Part 5 addresses nomination of candidates in an electoral district that embraces two or more administrative government units (districts or cities). This amendment is acceptable if there is no possibility of an electoral district embracing two or more administrative government units. This issue should be carefully examined to ensure that the deletion of Part 5 of Article 31 does not create a gap in the law.

The amendment to Part 11 of Article 31 clarifies the time period on submission of candidacy documents and is acceptable.

F. AMENDMENTS TO ARTICLE 35

There are several amendments to Article 35 that clarify the candidate registration process, particularly where there are document deficiencies that can be corrected. These are positive amendments that improve the process for candidate registration. These amendments allow a candidate to correct document deficiencies within 3 days of refusal of registration. These amendments also prohibit an election commission from requesting any documentation not specifically required by Article 35.

Although these amendments are improvement, there remain several shortcomings in Article 35 previously noted by the OSCE/ODIHR. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of 17 September 2003.

G. AMENDMENT TO ARTICLE 39

An amendment to Article 39 provides that the free broadcast time provided to candidates and political parties shall consist of 30 minutes on television and radio for political parties and 15 minutes on each for candidates. Although this is an improvement over the existing text, there remain several shortcomings in Article 39 previously noted by the OSCE/ODIHR concerning regulation of equal access to media during the campaign. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of 17 September 2003.

H. AMENDMENT TO ARTICLE 40

An amendment to Part 4 of Article 40 prohibits armed persons, including "employees of the power structures and law enforcement bodies" from being in voting premises. This amendment does not provide for an exception where their presence might be requested by the polling station electoral commission. Thus, this amendment should be clarified. It should be made clear that such persons can be requested by the polling station electoral commission should there be a disturbance that requires their presence. It should also be made clear that such persons must leave the polling station after the electoral commission determines their presence is no longer needed.

I. AMENDMENTS TO ARTICLES 41 AND 42

An amendment to Article 41 requires that ballots "should have several protection degrees". It would be preferable to state what specific "protection" measures must be included for ballot security (*e.g.*, ballot coupons, watermark paper, ballot envelopes).

An amendment to Article 42 requires, for ballot security purposes, that each ballot is signed by three members and sealed by the polling station commission, in the presence of observers, before the opening of the polling stations.

J. AMENDMENTS TO ARTICLE 46

An amendment to Article 46 requires that protocols be completed in ink. This is a positive amendment intended to prevent erasure and changing of protocols completed with pencil.

An amendment to Part 10 of Article 46 changes the voting requirements from a majority to two-thirds for approval of the polling station protocol by the polling station electoral commission. Although a two-thirds voting requirement is acceptable, it must be evaluated within the context of the country in order in order to ensure that it will not result in deadlock, obstruction, or paralysis of the election process.

Another amendment to Article 46 requires public posting of polling station protocols. Although this is a positive amendment, it should specifically state the physical location where the protocols will be posted. If it is intended to mean the polling station, then this should be expressly stated.

K. AMENDMENT TO ARTICLE 47

An amendment to Article 47 requires that copies of the election commission's protocol on the voting results are to be given to observers from political parties, proxies and candidates for deputies. Although this is a positive amendment, the text underscores the omission of domestic observer groups from Article 8, which regulates accreditation of observers.

L. AMENDMENTS TO ARTICLE 48

An amendment to Article 48 adds Part 10, which requires that preliminary results are announced in mass media within 12 hours after the close of polling, and final results within five days of Election Day. This is a positive amendment that should increase transparency and public confidence in elections. However, this article and Article 55 require additional amendment to require that detailed results that should be included in this publication. A description of what detailed categories must be included in the results is noted in the discussion concerning the amendment to Article 55 in Proposal One.

Another amendment to Article 48 states: "In case of disagreement with decision of the electoral commission, candidates for deputies or political parties have right to

claim the case to court" (sic). This amendment does not address problems with the current text of Article 20 and the failure of the law to provide for a single and uniform process for legal protections. Thus, shortcomings previously noted by the OSCE/ODIHR concerning protection of electoral rights remain. These shortcomings are not restated and the reader is referred to the OSCE/ODIHR assessment of 17 September 2003.

The final amendment to Article 48 provides for the preservation of electoral documents. This amendment prohibits access to archived documents except when permitted "by decision of the relevant court of the area where the arguable question is raised". Consideration should be given to amending this article to permit access for purposes that might improve the quality of electoral processes, such as for the purpose of academic research.

IV. CONCLUSION

These comments are provided by the OSCE/ODIHR with the goal of assisting the authorities in Tajikistan in their efforts to improve the legal framework for elections, meet OSCE commitments and other international standards, and develop the best practices for the administration of democratic elections. The OSCE/ODIHR stands ready to assist the authorities in their efforts.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (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 Document).

The 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 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, civil society, freedom of movement, gender equality, and trafficking in human beings. The ODIHR implements a number of targeted assistance programs annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The 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. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

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).