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OPINION ON DRAFT CONSTITUTIONAL LAW ON AMENDMENTS TO THE CONSTITUTIONAL LAW 'ON ELECTIONS OF THE PRESIDENT OF THE KYRGYZ REPUBLIC AND MEMBERS OF JOGORKU KENESH OF THE KYRGYZ REPUBLIC'

KYRGYZSTAN

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Based on an unofficial English translation of the Draft Constitutional Law

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

On 17 February 2025, a group of Members of Parliament (MPs) initiated a draft Constitutional Law "On amendments to the Constitutional Law 'On elections of the President of the Kyrgyz Republic and Members of *Jogorku Kenesh* of the Kyrgyz Republic" (hereinafter "Draft Law"); it was registered with the parliament on 17 March 2025, and passed the first reading on 20 March.

The proposed amendments change the electoral system from the existing mixed proportional and first-past the post system, to a majoritarian system with 30 three-member districts. Further, the Draft Law alters other important rules of the electoral process, including candidate nomination and registration, distribution of seats, filling of vacant seats, delineation of electoral constituencies, and campaign financing.

The Draft Act primarily concerns changing the electoral system. While ODIHR respects that the choice of electoral system remains the sovereign decision of a state, the design and implementation of an electoral system should be carefully considered, in conjunction with other existing regulations on elections and political parties and the political life of the country, to ensure conformity with the principles contained in OSCE commitments and other international standards and good practice pertaining to democratic elections. In particular, the implementation of the electoral system should guarantee that universal, equal, free and secret suffrage are respected and take into consideration the countries' commitments to promoting inclusive participation. ODIHR therefore offers comments and assessments on the established characteristics, potential impact, and other considerations of the electoral system design as proposed in the amendments and recommendations to encourage that such decisions conform with the above-mentioned standards and principles. ODIHR also provides an assessment of other technical solutions proposed in the draft amendments.

The Draft Act does not incorporate any prior ODIHR election recommendations. Therefore, ODIHR reiterates that previous recommendations from its election observation missions remain applicable and recommends they be considered as part of a comprehensive reform that is implemented through an inclusive consultation process.

ODIHR makes the following recommendations to strengthen the Law in accordance with international standards, OSCE commitments and good practices:

A. Given the current proposal for the vote option of 'against all', in order to ensure that the representative nature of the results is maintained and to prevent distribution of mandates to candidates who did not gain sufficient voters' support, consideration could be given to introducing a provision prescribing verification that a minimal eligibility quota of votes had been obtained or repeat elections for those seats will be held.

B. If the electoral system remains as proposed, the model of the replacement of the vacant seats in the parliament should be reconsidered to ensure that the results remain representative, and the elected candidates enjoy public trust and support. This could be achieved through instituting bi-elections for vacant seats.

C. Consideration could be given to reviewing the system for determination of the winner in case of a tie. To ensure the equality of the vote and representative elections results, the mechanism when the winner is determined based on the date of submission of candidacy nomination documents should be substituted with criteria reflecting the voters' choice; consideration should be given to providing for a repeat voting among the candidates with the equal results.

D. The regulation on procedures and methodologies for constituencies delineation would benefit from revision to bring it closer in line with international good practice. In particular, the electoral districts shall be determined by an impartial committee through a participatory public process with the participation of members of national minorities and other stakeholders, with their opinions and interests duly considered. The boundaries of electoral districts should be defined outside of the electoral cycle. The frequency of periodic revision of electoral districts should ensure adequate reflection of the demographic situation, and equal voting power, but should not diminish the legal stability, or undermine public trust with perceived politically motivated manipulation.

E. Eligibility to stand for elections should be brought in line with the ODIHR recommendations made on the basis of international standards, including reconsideration of restrictions based on disability, education, and criminal record. Introduction of the new five-year residency requirement for candidacy is at odds with international standards on democratic elections and should be reconsidered.

F. Consideration could be given to clarifying Article 60 and the corresponding provisions to ensure legal clarity and uniformity of interpretation of the number of candidates political parties may nominate. While political parties may be required to nominate a reasonable minimum number of candidates, generally parties should be granted the possibility to determine the number of candidates they wish to nominate.

G. Consideration should be given to reintroducing the financial measures facilitating access of persons with disabilities to political office, including revision of deposit amounts or its complete elimination.

H. The electoral deposit amounts should be determined in consultation with smaller political parties, with due consideration given to the economic conditions of the country and avoiding a discriminatory impact. Consideration should be given to reviewing Article 61.4 to allow a proportional decrease of the amount on the electoral deposit, in case the political parties nominate less than 30 candidates.

I. Consideration should be given to reviewing the rules on the distribution of mandates under the gender quota to prevent a potential restrictive interpretation of the law, which would limit the number of mandates available for women to the 30-quota mandate.

J. To ensure political pluralism and respect of the rights of underrepresented groups, consideration should be given to developing affirmative measures that would facilitate the right to be elected for members of such communities. The measures could include, but should not be limited to, the introduction of an explicit requirement that the borders of electoral districts shall be determined taking into consideration the settlements of national minorities; further, to ensure representation of various groups, meaningful

candidate nomination quotas, reserved parliamentary mandates, decreased electoral deposits for representatives of such groups could also be considered.

K. Consideration should be given to ensuring that the campaign financing rules do not disproportionately affect the equality among candidates.

These and additional Recommendations, are included throughout the text of this Opinion, highlighted in bold.

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.

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I. INTRODUCTION

1. On 14 March, the Central Election Commission of the Kyrgyz Republic sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of the Draft Constitutional Law "On Amendments to the Constitutional Law 'On the Election of the President of the Kyrgyz Republic and the members of *Jogorku Kenesh* of the Kyrgyz Republic'" (hereinafter "the Draft Act").
2. On 19 March, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the compliance of these draft amendments with international human rights standards and OSCE human dimension commitments.
3. From 7 to 9 April 2025, a delegation composed of ODIHR experts participated in a working visit to Bishkek. The delegation met with the Central Election Commission (CEC), members of the Inter-Agency working group, members of the parliament, international community, and civil society organizations, including those specializing in domestic election observation.
4. Given the short timeline to prepare this legal review and the subject matter amended by the Draft Act, ODIHR decided to prepare an Urgent Opinion on the Draft Act, which does not provide a detailed analysis of all the provisions of the Draft Act but primarily focuses on the most concerning issues relating to the technical aspects of the proposed electoral system, determination of electoral districts, candidate nomination, including the participation of underrepresented groups, determination of election results, and campaign financing.
5. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.[1]

II. SCOPE OF THE OPINION

6. The scope of this Opinion covers the Draft Act submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating electoral process in the Kyrgyz Republic.
7. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the Draft Act. The ensuing legal analysis is based on relevant OSCE human dimension commitments, international and regional human rights and rule of law standards, norms and recommendations. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards, while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another

[1] See, in particular, 1998 Oslo Ministerial Declaration, MC.DOC/1/98, stating "Expression should be given to support for the enhancement of OSCE electoral assistance work and the strengthening of internal procedures to devise remedies against infringements of electoral rules, with the participating States invited to provide the ODIHR in a timely fashion with draft electoral laws and draft amendments to these laws for review so that possible comments can be taken into account in the legislative process". See also 1999 OSCE Istanbul Document which states: "… appreciate the role of the ODIHR in assisting countries to develop electoral legislation in keeping with OSCE principles and commitments".

country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

8. The Draft Act primarily concerns changing the electoral system. While ODIHR respects that the choice of electoral system remains the sovereign decision of a state, the design and implementation of an electoral system should be carefully considered, in conjunction with other existing regulations on elections and political parties and the political life of the country, to ensure conformity with the principles contained in OSCE commitments and other international standards and good practice pertaining to democratic elections. In particular, the implementation of the electoral system should guarantee that universal, equal, free and secret suffrage are respected and take into consideration the countries commitments to promoting inclusive participation. ODIHR therefore offers comments and assessments on the established characteristics, potential impact, and other considerations of the electoral system design as proposed in the amendments and recommendations to encourage that such decisions conform with the above-mentioned standards and principles. ODIHR also provides an assessment of other technical solutions proposed in the draft amendments.

9. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter "CEDAW") and the *2004 OSCE Action Plan for the Promotion of Gender Equality* and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.[2]

10. This Opinion is based on the official Russian version of the Draft Act provided by the authorities, and an unofficial English translation. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

11. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in the Kyrgyz Republic in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

12. The main relevant international standards, commitments and good practice related to the Draft include:

- Article 25 of the International Covenant on Civil and Political Rights, with the UN Human Rights Council's General Comment 25, obliging the State Parties to "[…] take effective measures to ensure that all persons entitled to vote are able to exercise the right." Article 2 of the International Covenant on Civil and Political Rights under which the Participating States undertook to "to respect and to ensure to all individuals within [their] territory and subject to [their] jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status";
- Article 29 of the United Nations Convention on the Rights of Persons with Disabilities that obliges States Parties "a) To ensure that persons with disabilities can effectively and fully

[2] The 1979 UN Convention on the Elimination of All Forms of Discrimination against Women, adopted by General Assembly resolution 34/180 on 18 December 1979. See the 2004 OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para 32.

participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected […]; b) To promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs […]";

- Article 5c of the International Convention on the Elimination of All Forms of Racial Discrimination imposes on the States Parties "to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the […] political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service";
- Paragraph 6 of the 1990 OSCE Copenhagen Document, which stipulates the free expression of the will of people through periodic and genuine elections and the respect for the rights of the citizens to take part in the governing of their country either directly or through freely chosen representatives;
- Paragraph 7.6 of the 1990 OSCE Copenhagen Document that guarantees universal and equal suffrage of the adult citizens;
- Paragraph 35 of the 1990 OSCE Copenhagen Document states that "The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs";
- The Council of Europe European Commission for Democracy through Law (the Venice Commission) Code of Good Practice in Electoral Matters that creates the international good practice regarding, *inter alia*, delineation of electoral districts by an impartial body comprising representatives of various social groups, including national minorities, and a professional component (e.g. geographer, statistician etc), through an inclusive consultative process, with districts stability requirement for a majoritarian system.

2. BACKGROUND AND LEGISLATIVE PROCESS

13. The electoral system for parliamentary elections in the Kyrgyz Republic has undergone several revisions. Elections have been conducted under both a mixed system, a majoritarian system, and a proportional system. In particular, since the 1991 to 1999, Kyrgyzstan was using a majoritarian electoral system with single-member constituencies. Ahead of the 2000 elections, the proportional component was introduced, changing electoral system into a mixed one, with 15 out of 105 seats elected under the proportional system. From 2007, the country shifted to a fully proportional system, which was included in the 2010 Constitution. In 2021, the current mixed system combining proportional representation and single-mandate districts (SMDs) was introduced.[3]
14. Unlike the previous 2010 Constitution, the electoral system for the *Jogorku Kenesh* is currently not regulated constitutionally, despite ODIHR and Venice Commission

[3] The ODIHR and Venice Commission criticised certain aspects pertaining to the electoral system, including restrictions on the number of elected MPs from one political party that undermined the equality of the vote. See the 2021 ODIHR IEOM's Statement of Preliminary Findings and Conclusions on the parliamentary elections, p. 6; see also the 2014 ODIHR and the Venice Commission Joint Opinion on the Draft Electoral Law of the Kyrgyz Republic, and the 2021 ODIHR Final Report for parliamentary elections.

recommendation not to leave such major question to lower-level legislation.[4] The ODIHR and Venice Commission stated that leaving the electoral system out of the Constitution may engender a permanent temptation for the majority of the day to introduce changes they see fit.[5]

15. The Constitutional Law on the Election of the President of the Kyrgyz Republic and the members of *Jogorku Kenesh* of the Kyrgyz Republic (the Election Law) was adopted on 2 July 2011, and was amended 11 times, most recently in 2021, 2022, 2023 and 2025. The amendments introduced in 2021 aligned the Election Law with the new Constitution adopted by the republican referendum in 2021, introducing the regulation necessary to implement the new mixed electoral system.

16. The electoral system was most recently reformed in 2021 with the adoption of the new constitutional and legislative framework, and only tested once in the 2021 parliamentary elections. A new initiative to conduct another reform of the electoral system in such a short timeframe undermines stability and foreseeability of the law - the key aspects shaping the public trust in electoral system and election processes. Frequent changes of the electoral system as such can also compromise public confidence in any of the chosen options.[6]

17. The ODIHR and Venice Commission have consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.[7]

18. The Code of Good Practice in Electoral Matters cautions that in adopting amendments related to key elements of the electoral process, such as the electoral system proper, "care must be taken to avoid not only manipulation for the advantage of the party in power, but even the mere semblance of manipulation."[8] Such significant a reform as the one on electoral system should result from a meaningful and broad public discussion and consultations, and benefit from an open, inclusive and transparent process that involves a wide array of election stakeholders, including both parliamentary and non-parliamentary parties, as well as civil society, including with organizations promoting women's political participation and representing historically marginalized or under-represented groups[9]

19. According to international good practice, the law-making process must comply with the rule of law principles. The 1990 OSCE Copenhagen Document requires that legislation should be "adopted at the end of a public procedure, and [that] regulations will be published, that being

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4 See 2021 ODIHR and Venice Commission Joint Opinion on the Draft Constitution, paragraph 68.

5 See the 2021 ODIHR and Venice Commission Joint Opinion on the Draft Constitution.

6 The explanatory report of the 2002 Venice Commission Code of Good Practice in Electoral Matters (Code of Good Practice) states that "Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections".

7 See, among other, 2023 ODIHR and Venice Commission Joint Opinion on the amendments to the Election Act of Germany, para 18; 2022 ODIHR and Venice Commission Joint Opinion of the Amendments of the Electoral Legislation of Türkiye, paragraph 20; Follow up Opinion to the Joint Opinion On the Draft Amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, paragraph 8.

8 2002 Venice Commission Code of Good Practice in Electoral Matters, paragraphs 64-65.

9 Paragraph 5.8 of the 1990 OSCE Copenhagen Document states that legislation should be "adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability". Paragraph 8 of the 1996 United Nations Committee on Human Rights General Comment 25 to Article 25 of the International Covenant on Civil and Political Rights states that "citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association." See also the 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws, Principle 7 and paragraphs 175-180.

the condition for their applicability".[10] The OSCE commitments require that legislation be adopted "as the result of an open process reflecting the will of the people, either directly or through their elected representatives".[11] The ODIHR Guidelines on Democratic Lawmaking for Better Laws (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages.[12] The Venice Commission's Rule of Law Checklist also emphasizes that the public should have access to draft legislation and a meaningful opportunity to provide input during the law-making process, and that the legislative process must be "transparent, accountable, inclusive and democratic". In principle, evidence-based impact assessments should be made early in the process of preparing a law or an amendment, where deemed necessary.[13] Public consultations constitute a means of open and democratic governance as they lead to higher transparency and accountability of public institutions, and help ensure that potential controversies are identified before a law is adopted.[14]

20. On 17 February 2025, the Draft Act was proposed by a group of 11 MPs. The amendments primarily reform the existing electoral system for parliamentary elections, and introduce other associated changes related to, *inter alia*, formation of electoral districts, candidate nomination, distribution of mandates, a gender quota, and campaign finance. According to the interlocutors ODIHR met during the country visit, the Draft Act resulted from the initiative of the presidential administration, which facilitated the Act's development and enactment, and allegedly limited the scope of the parliamentary debate to technical adjustments. The Explanatory Report to the draft amendments cites goals such as improving the electoral process, combating corruption within the political parties, eliminating shortcomings in the current system, increasing public trust, and reinforcing the connection between the electorate and their representatives.

21. On the day of the proposal, the Draft Act was published for public consultations on the website of the Parliament.[15] The public consultations lasted for a month, until 17 March, the same day the Draft Law was formally registered with the Parliament.[16] This suggests that the requirement under Article 46 of the Rules of Procedure to submit the results of the public discussions is unlikely to have been fulfilled. This raises concerns about whether the public had a genuine opportunity to contribute meaningfully to the process or receive adequate feedback. Proper consultations are essential to promote transparency, accountability, inclusiveness and effectiveness of the law-making process, contributing to maintaining public trust in the process and in public institutions in general.[17]

22. The Draft Act was, however, submitted to the permanent Inter-Agency Working Group, created under the auspices of the Central Election Commission (CEC) and composed of a number of public institutions and civil society representatives for comments and proposals. Further, on 7 April, a round table discussion of the proposals to the Inter-Agency Working Group was conducted, with participation of members of parliament, civil society, the CEC,

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10 Paragraph 5.8 of the 1990 OSCE Copenhagen Document.
11 Paragraph 18.1 of the 1991 Moscow Document.
12 See the 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws, in particular Principles 5, 6, 7 and 12. See also the 2016 Venice Commission Rule of Law Checklist, Part II.A.5.
13 See the 2016 Venice Commission Rule of Law Checklist.
14 See the 2015 Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes (from the participants to the Civil Society Forum organized by ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.
15 See Parliament's webpage dedicated to these draft amendments.
16 See the Parliament's webpage on the Bill No. 6-2463/25 as registered on 17 March 2025 with the Parliament.
17 See the 2023 ODIHR Opinion on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic, , paragraphs 49-52; see also 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws, paragraph 184. The Draft Act received two publicly available comments from the members of the civil society: one on the incompatibility of the regulation of voting rights in the election law in force and the Draft Act with the Constitution and the ICCPR, the second – regarding the necessity for affirmative measures, including electoral quotas, for candidates with disabilities.

and the international community, including ODIHR. The proposals by the participants primarily concerned actions to ensure adequate representation of voters in electoral districts, voting rights, re-introduction of measures to increase diversity within the Parliament. On 11 April, the CEC planned to submit its proposal to the parliament.

23. While holding public consultations was generally praised by ODIHR interlocutors and is welcome, most of them expressed concerns that only issues of technical nature, those related to the implementation of the proposed system, were open to meaningful consideration. While there was no explicit opposition voiced to the idea of a new electoral system, a number of ODIHR interlocutors negatively assessed the initiative for the change, citing concerns about weakening political parties and diminishing the representative nature of the Parliament, created by the electoral system in force, which was generally described by the interlocutors to have resulted from a wide social consensus.

24. The Draft Act underwent several rounds of parliamentary discussions. On 18 March, one day after it was formally registered at the Parliament, the Draft was discussed at the parliamentary Committee on Constitutional Legislation, State Structure, Judiciary and Rule of Procedures of the Parliament, which decided to recommend the parliament to adopt the Draft Act on first reading.[18] The parliamentary Rules of Procedure allow up to 30 working days following the receipt of a bill for a respective committee to review it, when it is also required to obtain the conclusions on a draft constitutional bill by the Supreme Court, the Prosecutor General and the Cabinet of Ministers on issues within their competency, before forwarding the bill for parliamentary review.[19] The conclusions of the Committee on the Draft Act do not contain any analysis whether the Draft Act concerns issues within the competence of these institutions, nor a decision to forward the Draft Act to obtain such conclusions. The Committee conclusions also reference the findings of several parliamentary expert committees on the Draft Act's compliance with legal and linguistic requirements, dated 17 March, the date of the official registration of the Draft Act with the Parliament.[20] The short deadlines of parliamentary analysis of the Draft Act do not appear to allow for its meaningful consideration, which could diminish public trust in the legislative process. The committee examination was followed by a parliamentary plenary discussion on 20 March, where it gained cross-factional support, despite a number of contested issues, and was adopted in first reading.

25. ODIHR notes that in line with good electoral practice, the discussion of the change of the electoral law was initiated well in advance of the regular parliamentary elections planned for October 2026, thus allowing time for electoral stakeholders to get familiar with new rules ahead of the next elections.[21] ODIHR encourages the public authorities to ensure that prior to final adoption, the Draft Law is subject to inclusive, extensive and effective consultations, including with representatives of various political parties, academia, civil society organizations, national minority communities, offering equal opportunities for women and men to participate. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.[22]

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18 See the Committee's conclusions (in Russian).
19 See Article 50 of the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic (in Russian).
20 The conclusions of the expert examinations were not published online.
21 See Section II.2.b of the 2002 Venice Commission Code of Good Practice in Electoral Matters.
22 See 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws, para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).

3. REFORM OF ELECTORAL SYSTEM

26. Since 2021, 90 members of parliament (MPs) have been elected for a five-year term through a mixed electoral system. Of these, 54 MPs were elected through open party lists in a single nationwide constituency, and 36 MPs elected in single-mandate districts under the first-past-the-post system. To qualify for seat distribution in the proportional component, political parties must surpass a 5 per cent nationwide threshold and secure at least 0.5 per cent of votes in each of the seven regions and the cities of Bishkek and Osh. The Election Law limits the number of parliamentary seats per a political party under the proportional system to 27.

27. The proposed amendments change the mixed electoral system to the majoritarian single non-transferrable vote system, in which 90 members of parliament are elected across 30 three-member districts. Candidate nominations are open to both political parties and independent candidates. The three candidates who obtain the most votes are elected in each district as long as at least one is a woman. The voters are granted a possibility to vote against all candidates. A political party nominates one candidate per electoral district. The candidates nominated by political parties may only include up to 70 per cent of the same gender. The Draft Act provides for a 30-mandate gender quota, reserving one seat in each district for a woman who obtained the highest number of votes among all women candidates in the district. The Draft Act does not establish any other measures to facilitate representation of other groups, and it is recommended to utilize current reform process to provide for effective mechanisms and measures to enhance participation of other groups.

28. Under the suggested electoral system, each voter casts a single vote for a candidate, while multiple seats are allocated in each electoral district. Candidates with the highest vote totals secure mandates. Overall, this system tends to produce more proportional results than the first-past-the-post system in a single mandate constituency, as multiple mandates are distributed, granting access to candidates preferred by a higher proportion of voters. At the same time, it does not ensure pluralist representation as effectively as proportional representation systems, as it leads to a high number of wasted votes due to votes being dispersed among numerous individuals., especially as under the proposed system electoral districts are large in proportion to the number of seats.

29. The system is considered personality-based and accommodating the interests of individual candidates. In such a system, small parties may struggle to gain fair representation, especially if their support is not geographically concentrated.[23] Further, majoritarian systems have been observed to provide greater advantage to the incumbent as compared to proportional systems. Incumbents in majoritarian systems campaign on the local accomplishments and what they have done to improve the local administration, something that has proven to be conducive to clientelist politics and corruption. Moreover, a SNTV system gives room for parties gaining higher representation per electoral district through coordinated politics, targeting selected groups of voters and ensuring the minimal necessary vote in favour of several candidates, representing a single political force.[24]

30. According to the Explanatory Report to the Draft Act, the shift to electing the *Jogorku Kenesh* through party lists has weakened the connection between deputies and voters. In contrast, according to the report, when the *Jogorku Kenesh* was elected through territorial constituencies, the relationship between deputies and voters was allegedly closer. The proposed abolition of party lists with multiple candidates was justified due to alleged inter-party corruption, when candidate placing was conditional to bribery.

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23 See the 2005 International Idea publication "Electoral System Design: The New International IDEA Handbook".

24 The system was used in Japan from 1947 to 1993, helping to ensure the dominance of the Liberal Democratic Party.

31. One of the characteristics of the non-transferrable vote system is its tendency to focus electoral campaigns on candidate personalities rather than policy differences. To succeed in such a contest, candidates tend to focus efforts to cultivate personal reputations, which can undermine political party cohesion and development. In the Kyrgyz Republic, where political parties have historically been leader-centric, lacked proper institutionalization and strong grassroots structures, this dynamic is particularly pronounced during elections.[25] The introduction of the new system poses the risk of further weakening party structures and exacerbating the dominance of personality-based competition in elections.[26]

32. Majoritarian systems are known to generally disadvantage women candidates, compared to proportional systems.[27] The Venice Commission Report on the Impact of Electoral Systems on Women's Representation in Politics states that "[r]esearch and statistics have shown that where proportional representation systems are used, it has often been easier for women to get access to parliament. […] whereas only modest advances have been made through plurality or majority systems", especially in societies with specific socio-economic and cultural factors, including patriarchal societies.[28] The 2021 ODIHR Final Report for parliamentary elections raised concerns that "the reduction in the size of parliament, combined with the introduction of a majoritarian component of the electoral system, which traditionally favours male contestants, negatively impacted women's overall participation in the campaign and their representation in parliament". The implications on women's participation resulting from the introduction of a fully majoritarian system further highlight the need for strong individual campaigns by women candidates, underlining the importance of measures to enhance nomination and meaningful and effective campaigning by women candidates.[29]

Distribution of seats and filling of vacant seats

33. The Draft Act sets out several rules that may exacerbate the problem generally attributed to the proposed electoral system, namely the compromised representativeness of the results. The Draft Act allows voting against all, the possibility of candidates' withdrawal, and the possibility for early termination of MP mandates, which does not entail a re-election.[30] **In order to ensure that the representative nature of the results is maintained and to prevent distribution of mandates to the candidates who did not gain a sufficient voters' support, consideration could be given to introducing a provision prescribing verification that a minimal eligibility quota of votes had been obtained.**[31]

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25 See the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan.

26 ODIHR interlocutors shared that a plan for the respective revision of the Law on Political Parties was under consideration within the Inter-Agency Working Group.

27 See the 2024 ODIHR Opinion "On Two Organic Laws of Georgia Amending the Election Code and the Law on Political Unions of Citizens in Relation to Gender Quotas", para. 26. See the 2005 International Idea publication "Electoral System Design: The New International IDEA Handbook", paras. 79 and 107b, for example that "evidence across the world suggests that women are less likely to be elected to the legislature under plurality/majority systems than under PR ones." And that the first-past-the post system "excludes women from representation".

28 See the 2009 Venice Commission Report on the Impact of Electoral Systems on Women's Representation in Politics, para. 43; see also para 6 of the Report: "There are a wide variety of socio-economic, cultural and political factors that can hamper or facilitate women's access to parliament. […] women's participation in politics is dependent on factors such as the overall development of the country, an extended welfare state, the socio-economic status of women, the levels of female education or the proportion of women in employment. Cultural approaches refer to gender differences in political socialisation and adult gender roles and to the role of religion or cultural traditions."

29 See paragraph 22 of the CEDAW Committee General Recommendation No. 25, on Article 4, paragraph 1 of the CEDAW, on temporary special measures.

30 The Draft Act provides that in case of early termination of the mandate, the seat shall be transferred to the candidate who obtained the next highest number of votes. Articles Art 31 para 8.1 voting, 35 para 11.1, 37 para 6 (elections are invalidated if the "against all" options gains more votes than several leading candidates together); Article 63, 2 (determination of election results); Article 66. 9 and 10 (termination of mandates).

31 For example, the Droop quota, calculated as Integer (total valid poll/(seats+1)) +1; alternatively, the Hagenbach-Bischoff quota is proposed for SNTV, calculated as Integer (total valid pollseats+1).

34. One of the specific features of the proposed electoral system, as stipulated by Article 59.9 and 66.4, is that in case of vacant seats, new elections will not be held, and the mandate will automatically be assigned to the candidate who received the next highest percentage of votes. The model where the vacant seat is filled by the next candidate is characteristic of proportional representation systems, where voters cast their preferences for political parties. However, transferring this model to a candidate-centred system is not advisable, as transferring seats to candidates that did not obtain votes to get elected in three-member district (fourth, fifth, sixth in line) distorts the representation.

35. In the proportional representation system, political parties win a share of votes that allows them to replace a candidate in the event of withdrawal after mandates have been distributed. This logic, however, does not apply to the systems where citizens vote directly for candidates, and political parties nominate only one candidate per district. In this model, as the distribution progresses, the candidates have less direct support from voters. Therefore, such design of filling vacancies will grant a seat in a three-mandate district to candidates who did not obtain sufficient voters' support to be in the parliament. This diverges from the intended design of the electoral system and no longer accurately reflects the will of the voters. Such model of replacement also weakens the connection between elected representatives and voters, departing from the declared goal of the proposed amendments.

36. Article 63 of the Draft Act provides that in case of several leading candidates receiving equal number of votes, the winner is determined depending on the date of submission of candidate registration documents. The date of submission of nomination documentation does not reflect the voters support and is an irrelevant factor in determination of the will of voters and their representation in the parliament. Therefore, consideration should be given to reconsidering this solution and opting for a representative method, for example a repeated elections between the two candidates.

RECOMMENDATION A.

Given the current proposal for the vote option of 'against all', in order to ensure that the representative nature of the results is maintained and to prevent distribution of mandates to candidates who did not gain sufficient voters' support, consideration could be given to introducing a provision prescribing verification that a minimal eligibility quota of votes had been obtained or repeat elections for those seats will be held.

RECOMMENDATION B.

If the electoral system remains as proposed, the model of the replacement of the vacant seats in the parliament should be reconsidered to ensure that the results remain representative, and the elected candidates enjoy public trust and support. This could be achieved through instituting bi-elections for vacant seats.

RECOMMENDATION C.

Consideration could be given to reviewing the system for determination of the winner in case of a tie. To ensure the equality of the vote and representative elections results, the mechanism when the winner is determined based on the date of submission of candidacy nomination documents should be substituted with criteria reflecting the voters' choice; consideration should be given to providing for a repeat voting among the candidates with the equal results.

RULES ON ELECTORAL DISTRICTS

37. The draft amendments provide for 30 electoral districts, each created as a single contiguous unit. The Law requires the number of eligible voters across districts to be approximately equal, with a possible deviation of up to 10 per cent from the nationwide average number of voters (Article 13 of the Draft Act). The reduction of the permissible deviation is a positive development and in line with good electoral practice.[32] However, the Law does not specify any criteria for the permissible deviations among electoral constituencies, nor does it outline any justifications for any exceptional cases. **To ensure legal certainty, the Draft Act should be amended to include regulations on permissible deviations among electoral constituencies and justifications for exceptional cases.**

38. The Draft Law does not prescribe consideration of the national minorities' settlements patterns in the delineation of electoral districts, which is called for by international good practices.[33] **To ensure that boundary delineation complies with international standards, consideration should be given to clarifying the rules on deviations among constituencies, and ensuring that the situation of national minorities is duly considered**.

39. Article 13 of the Draft Act maintains that the Central Election Commission (CEC) delineates the boundaries of electoral districts within seven days after the announcement of the elections. The frequent change of constituency boundaries impacts the ability of political parties and candidates to prepare for the elections and risks the changes being perceived as political. The drawing of new constituency boundaries after elections have been called would be a significant change to a fundamental aspect of the election and as such, run counter to the principle of stability of electoral law. International good practice pertaining to democratic elections prescribes stability of electoral boundaries for multi-member constituencies, and recommends a periodic reallocation of the number of seats without a redrawing of boundaries "at least every ten years", preferably outside of the electoral cycle.[34] **The provision on constituency delineation, therefore, should be reconsidered to provide for a balance of periodic reviews of constituency magnitude, without changes of boundaries in an election period that could be perceived as politically motivated, in line with good practice.**[35]

40. Moreover, the Venice Commission Code of Good Practice on Electoral Matters provides guidelines as to the composition of the agency in charge of constituency delineation. It recommends that delimitation of the electoral constituencies' boundaries should be conducted by an independent committee, which "should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of

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32 Section I.2.2.iv of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that "The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)".

33 The 2005 Venice Commission Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries states that "When a territory where a minority is in the majority is recognised as a constituency, this helps the minority to be represented in the elected bodies, especially if a majority system is applied."

34 See paragraph I.2.2 2.vi of the 2002 Venice Commission Code of Good Practice in Electoral Matters that states "With multi-member constituencies, seats should preferably be redistributed without redefining constituency boundaries, which should, where possible, coincide with administrative boundaries."

25 The 2002 Venice Commission Code of Good Practice in Electoral Matters in Electoral Matters states that "in order to avoid passive electoral geometry, seats should be redistributed at least every ten years, preferably outside election periods, as this will limit the risks of political manipulation" (para I.2.2.vi of the Code and para 16 of the Explanatory Report), and "[…] In multi-member constituencies electoral geometry can easily be avoided by regularly allocating seats to the constituencies in accordance with the distribution criterion adopted. Constituencies ought then to correspond to administrative units, and redistribution is undesirable."

national minorities". [36] Ensuring that the composition of the entity in charge of delimitation of electoral constituencies is perceived as professional, inclusive, and independent will contribute to general public trust in the electoral process. The inclusion of a professional expert component into the composition of the entity will ensure that the results of the constituency delineation adequately reflect the demographic and social characteristics of the society, necessary to safeguard the representative nature of election results.

41. Inclusivity and transparency in administering key election-related procedures, including delimitation and revision of electoral constituencies, are key to ensure public trust in election results and the credibility of the elected institutions. Public consultations and transparency in the determination of election constituencies would guarantee public ownership of the process. To this aim, meaningful public consultations with the participation of civil society, political parties, and representatives of national minorities are recommended. **The Draft Act does not ensure compliance with international good practice in the delimitation of electoral districts and would benefit from revision. Consideration should be given to ensuring that the process is conducted in an open and transparent manner, within a public consultation format**.

RECOMMENDATION D

The regulation on procedures and methodologies for constituencies delineation would benefit from revision to bring it closer in line with international good practice. In particular, the electoral districts shall be determined by an impartial committee through a participatory public process with the participation of members of national minorities and other stakeholders, with their opinions and interests duly considered. The boundaries of electoral districts should be defined outside of the electoral cycle. The frequency of periodic revision of electoral districts should ensure adequate reflection of the demographic situation, and equal voting power, but should not diminish the legal stability, or undermine public trust with perceived politically motivated manipulation.

CANDIDACY REQUIREMENTS AND CANDIDATE NOMINATION

Eligibility requirements

42. Article 37 of the Constitution guarantees the right to stand for parliamentary elections to the citizens of the Kyrgyz Republic. Article 38 of the Constitution exempts holders of dual citizenship from this entitlement. [37] Article 58 of the Election Law clarifies that to be eligible to stand, candidates should be at least 25 years of age. Article 59 of the Law further limits the passive electoral rights to those with a higher professional education, which is at odds with international standards as it constitutes an undue discriminatory requirement under Article 25 in conjunction with Article 2 of the UN ICCPR. The Draft Act does not provide an explanation as to what constitutes a "higher professional education". Further, the new requirement for higher education in conjunction with an age requirement of candidates limits youth representation in parliament. The law maintains blanket deprivation of voting rights for prisoners, regardless of the severity of the crimes, as well as to those with unexpunged

[36] See paragraph I.2.2 2.vii of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that "an independent committee in charge of drawing the electoral constituencies' boundaries be established" and that "this committee should preferably include a geographer, a sociologist and a balanced representation of the parties and, if necessary, representatives of national minorities".

[37] See ODIHR and Venice Commission 2020 Joint Opinion on the Amendments to Some Legislative Acts Related to Sanctions for Violation of Electoral Legislation, CDL-AD(2020)003, paragraph 32 that recommended "giving due consideration to minimizing and eventually abolishing limitations on holding public office for citizens with dual nationality".

criminal conviction; and suffrage limitations based on disabilities.[38] These restrictive criteria are not compatible with the international standards and run contrary to a long standing ODIHR recommendation to eliminate restrictive candidacy requirements.[39]

43. The amended Article 59.4 introduces a five-year residency requirement for candidates. Although some exemptions in the calculation are proposed, including allowances for absences up to six months related to business, scientific, or other essential activities, the general rule of a five-year length residency period can lead to discrimination and does not correspond to international electoral standards. In particular, paragraph 15 of the UN ICCPR General Comment No.25 states that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". According to section I.1.1.c.iii of the Venice Commission's Code of Good Practice, "length of residence requirement may be imposed on nationals solely for local or regional elections".

RECOMMENDATION E.

Eligibility to stand for elections should be brought in line with the ODIHR recommendations made on the basis of international standards, including reconsideration of restrictions based on disability, education, and criminal record. Introduction of the new five-year residency requirement for candidacy is at odds with international standards on democratic elections and should be reconsidered.

44. Article 60.1 of the Draft Act stipulates that political parties nominate one candidate per electoral district. The limitation of candidates to 30 results in no single party holding more than one-third of the seats in parliament. While it may be aimed at promoting pluralism and may facilitate coalition-building, as proposed it unduly restricts the participation of political parties, the free expression of the will of the people and equal suffrage.[40] The ODIHR and Venice Commission previously considered that the admissibility of the measures that limit participation or representation of political parties is conditional to their temporary nature, to serve as a transient condition to ensure emergence of pluralistic parliament.[41] Taken into consideration the characteristics of the electoral system proposed by the Draft Act, in particular, that its design intrinsically favours large political parties, the introduction of limitations could be seen as an attempt to ensure pluralistic representation and may encourage parties to broaden their message across the country to ensure they get 30 seats. Still, while political parties may be required to nominate a reasonable minimum number of candidates,

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28 See Article 3 of the Election Law. Paragraph 48 of 2014 General Comment No. 1 to Article 12 of the CRPD states that "a person's decision-making ability cannot be a justification for any exclusion of persons with disabilities from exercising […] the right to vote [and] the right to stand for election". See also Article 29 of the CRPD. Paragraph 7.3 of the 1990 OSCE Copenhagen Document provides that participating States will "guarantee universal and equal suffrage to adult citizens", while Paragraph 24 provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law".

39 See the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan, including on page 12 with respect to youth representation.

40 See paragraph 7.9 of the 1990 OSCE Copenhagen Document and Article 25 of the 1966 International Covenant on Civil and Political Rights. See also the 2014 ODIHR and the Venice Commission Joint Opinion on the Draft Electoral Law of the Kyrgyz Republic that stated "The limitation on the number of mandates a party is allocated should be based on the will of the voters expressed through voting and the actual election results." See also the 2011 ODIHR and the Venice Commission Joint Opinion On the Draft Law on Presidential and Parliamentary Elections, the Draft Law on Elections to Local Governments and the Draft Law on the Formation of Election Commissions of the Kyrgyz Republic, paras. 14-16.

41 See the 2011 ODIHR and the Venice Commission 2011 ODIHR and the Venice Commission Joint Opinion On the Draft Law on Presidential and Parliamentary Elections, the Draft Law on Elections to Local Governments and the Draft Law on the Formation of Election Commissions of the Kyrgyz Republic, para. 16.

generally parties should be granted the possibility to determine the number of candidates they wish to nominate and thereby allowing voters to fully express their will.

45. The formulation of the proposed Article 60 is not clear, as it does not allow to determine with certainty whether there is a requirement for political parties to nominate candidates for each of the 30 multi-member districts, or the political parties may submit nominations for some districts only.[42] The requirement to nominate candidates in all electoral districts could pose challenges, including financial burden, for smaller political parties, and geographical restrictions on parties with a specific regional focus, including those representing national minorities and may discourage their electoral participation. **The wording of Article 60 would benefit from clarification to ensure legal certainty as to the number of candidates the parties are obliged to nominate.**

46. Self-nominated candidates may only run in one electoral district. The amendments maintain similar registration requirements for candidates in multi-member districts as those applicable to single-member district candidates under the majoritarian component of the current electoral system. Self-nominated candidates may *de facto* have party affiliations, but could still win and secure seats without a nomination by a political party. In the previous electoral system such goals were served by the provisions limiting the number of mandates that one political party can win through the proportional competition, which was criticized, however, for detracting from the principle of proportionality.[43]

47. One of the considerations pertinent to majoritarian contests is vote buying. The most recent 2021 ODIHR EOM noted a number of allegations of vote buying, in particular, through family networks.[44] The introduction of a fully personalized system could further deepen the problem by encouraging vote buying, with candidates relying on direct relations with voters rather than broad party support. Furthermore, the fact that candidates can secure a seat with a predetermined and relatively small percentage of the vote provides incentives for clientelist practices and the entrenchment of patronage systems, wherein candidates target specific interest groups. The introduction of the candidate-centric system poses the risk of exacerbating the existing problems. In this respect, it remains key to give consideration to addressing the ODIHR recommendation on developing safeguards against vote-buying.

RECOMMENDATION F.

Consideration could be given to clarifying Article 60 and the corresponding provisions to ensure legal clarity and uniformity of interpretation of the number of candidates political parties may nominate. While political parties may be required to nominate a reasonable minimum number of candidates, generally parties should be granted the possibility to determine the number of candidates they wish to nominate.

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42 The requirement to nominate in all 30 districts is supported by the legally prescribed fixed amount of the deposit for candidate list nomination, amounting to 30,000 calculation units. This amount is equivalent to the amount prescribed for one self-nominated candidate multiplied by the total number of districts.

43 See, for example, the ODIHR and Venice Commission 2011 Joint Opinion on the Draft Law on Presidential and Parliamentary Elections, the Draft Law on Elections to Local Government and the Draft Law on the Formation of the Election Commissions of the Kyrgyz Republic, CDL-AD(2011)025, paragraph 15.

44 In the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan, ODIHR reconned that "[c]ontinued efforts are needed to address the issue of vote-buying and pressure on voters, including through a civic awareness campaign, in order to promote confidence in the electoral process".

Electoral deposit

48. Similarly to the previous requirements for candidate registration, the Draft Act provides that political parties and self-nominated candidates are required to pay an electoral deposit, refundable if the candidates obtain at least five per cent of the votes.[45] The amount of the electoral deposit for self-nominated candidates is 1,000 "calculation units" (unchanged from the current system). Political parties are required to pay 30,000 "calculation units", which is commensurable to the amount of the deposit for an independent candidate multiplied by the total number of electoral districts. The Draft Act does not foresee an adjustment of the deposit amount in case the political party nominates candidates only to some electoral districts.

49. Under the current electoral system, the amount of the electoral deposit for political parties nominating the candidate list is 10,000 "calculation units", and the Election Law limits the number of candidates in the party lists to 54. Therefore, the amendments provide for a three-fold increase of the deposit in comparison to 2021, which is considerable and may have a dissuasive effect. While for the well-established parties such an increase of the size of deposit may be acceptable, smaller or recently emerging parties could struggle to secure financing to put forward candidate lists.[46] The purpose of the electoral deposit for a political party putting forward candidates is not to create obstacles for political participation. In this regard, the increase of the electoral deposit should be established in consultations with smaller parties.

50. The February 2025 amendments to the Election Law in force reduced the electoral deposit for candidates with disabilities, which represents a welcome measure aimed at facilitating the political participation of persons with disabilities. However, the proposed amendments eliminate the provision from the Election Law, without offering a similar mechanism. This development eliminates a positive step towards fulfilment of the OSCE commitment and international obligations, including under Article 29 of the CRPD, by which States undertook the obligation to ensure the right of persons with disabilities to "stand for elections, to effectively hold office and perform all public functions at all levels of government." Article 29 also prescribes that States Parties should actively promote "an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs," including in "the activities and administration of political parties".[47]

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45 The drafters of the amendments have subsequently introduced a proposal to make the electoral deposit non-refundable. As the proposal was introduced while the ODIHR opinion was finalised, it is not commented on. However, on the refundability of electoral deposits, ODIHR invites to consult ODIHR and Venice Commission 2020 Joint Guidelines on Political Party Regulation, and reminds that the electoral deposits shall be designed as a guarantee of the genuine intention to participate in the electoral process, and not to serve a purpose of a fee for accessing the ballot.

46 See paragraph 16 of the UN HRC General Comment No 25 to Article 25 of the UN ICCPR, stating that '[c]onditions relating to nomination dates, fees or deposits should be reasonable and not discriminatory'. See paragraph 195 of the ODIHR and Venice Commission 2020 Joint Guidelines on Political Party Regulation: "The ability for parties to gain access to a place on the ballot should be transparent, equal and free from discrimination. While monetary deposits may be required, depositary obligations that are excessive may be deemed discriminatory. Particularly if the deposit is paid by the individual candidate or his or her campaign organization rather than by his or her party, it limits the right of citizens without adequate financial resources to stand for election as protected under human rights instruments".

38 Article 29 of the United Nations Convention on the Rights of Persons with Disabilities. The 1991 OSCE Moscow Document that states should "take steps to ensure the equal opportunity of persons with disabilities to participate fully in the life of their society" and "to promote the appropriate participation of such persons in decision-making in fields concerning them". See the 1966 UN ICCPR, Article 25 in conjunction with Article 2.

RECOMMENDATION G.

Consideration should be given to reintroducing the financial measures facilitating access of persons with disabilities to political office, including revision of deposit amounts or its complete elimination.

RECOMMENDATION H.

The electoral deposit amounts should be determined in consultation with smaller political parties, with due consideration given to the economic conditions of the country and avoiding a discriminatory impact. Consideration should be given to reviewing Article 61.4 to allow a proportional decrease of the amount on the electoral deposit, in case the political parties nominate less than 30 candidates.

4. GENDER AND DIVERSITY CONSIDERATIONS

51. By design, candidate-centered electoral systems — such as the one proposed by the Draft Act—are not conducive to promoting women's political participation nor ensuring the representation of diverse groups. This challenge arises from the fact that voters cast a single vote for an individual candidate in multi-member districts, which can disadvantage underrepresented groups.

Gender Considerations

52. While Kyrgyzstan has made some progress in enhancing gender representation, only 19 women (21 per cent) were elected to the parliament in the 2021 elections, and only one was elected in a majoritarian contest.[48] Notably, the proposed amendments seek to address gender representation through several measures. First, Article 60.12 establishes that no more than 70 percent of candidates nominated by a political party in multi-member constituencies may belong to the same gender. The efficiency of the measure is weakened, however, with the possibilities of nominated candidates to withdraw after the nomination is completed. Second, Article 63.3 reserves 30 parliamentary mandates for women candidates. Furthermore, other provisions stipulate that in the event of a women candidate vacates her mandate, it shall be transferred to the next woman candidate with the highest vote in the district.

53. ODIHR has repeatedly recommended to increase the gender quota for party lists and provide for additional mechanisms to retain the quota between registration and election day, to enhance equal representation of women in parliament. Political parties could introduce internal mechanisms for mainstreaming a gender perspective in parties' rules, policies and practices, including but not limited to, increasing the number of women candidates and enhancing the support they receive for standing as candidates.[49] The introduction of special measures valid not only at the time of nomination but also during distribution of seats, in line with previous ODIHR recommendations, is a positive step.

54. At the same time, several aspects of the proposed solution require further consideration. While reserved seats serve as an incentive for political parties to nominate women candidates, there is no guarantee that in case the mandate is vacated by a woman MP, there will be another

[48] The 2024 CEDAW General Recommendation No. 40 prescribes States parties to "amend the Constitution and legislative frameworks to institutionalize 50:50 parity between women and men in all spheres of decision-making".

[49] See the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan, recommendation 15. See the 2024 CEDAW Committee General Recommendation No. 40 On the equal and inclusive representation of women in decision-making systems, paragraphs 39, 45 and 51, inter alia "supporting the creation and strengthening of women's sections in political parties, including through earmarked funds" (para. 51 (e)).

woman candidate to substitute. Moreover, the current wording of the amendments may be misinterpreted as limiting the women's representation to only 30 mandates. Although this structure guarantees a minimum level of representation for women, it falls short of ensuring equal opportunities and may produce the effect of impeding gender parity. **Consideration should be given to reconsidering the rules on gender representation within candidates lists and the parliamentary representation quota to 50 per cent, to achieve gender parity.**

55. Gender quotas are effective tools to ensure representation of women, but there is a data suggesting that gender quotas should be used in conjunction with other measures facilitating meaningful participation of women in politics, as otherwise the gender quotas could be considered "a way to appease, and ultimately sideline, women".[50] In order to promote political participation and parliamentary representation of women, it should be considered to stipulate a wider scope of measures.[51] Such measures could include publicly funded financial incentives, for example, introducing public funding conditional on a minimum level of representation of women in party leadership positions, or to introducing and effectively implementing party gender action plans. Additional public funding or in-kind resources, including additional free campaign airtime or facilities, could be foreseen for facilitating campaigning by women candidates. Additional measures could target the establishment and capacity building of women's associations within political parties or similar entities, promoting women's participation. Capacity-building activities could include trainings and educational programmes for women candidates, which could be supplemented with wider awareness-raising public campaigns and educational programmes, and additional measures to combat discrimination and violence against women in politics. [52]

Diversity Considerations

56. Under the current electoral system, for the proportional component, each party should include at least two persons with disabilities in the candidate list; one of them should be among the first 25. At least 15 per cent of candidates on a list must belong to national minorities, and 15 per cent of candidates must be younger than 35 years of age, and no more than 70 percent of candidates nominated by a political party may belong to the same gender. While the Draft Act proposes a mechanism to partially address the issue of gender inclusion, the quotas for national minorities, persons with disabilities and youth currently provided in the Law, are not foreseen.

57. The difficulty in ensuring representation of underrepresented groups in parliament under the SNTV system constitutes one of the serious concerns that need to be considered before the amendments are adopted. The efficacy of such affirmative instruments as e.g. quotas for persons with disabilities, young people, and national minorities remains more difficult to

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50 The 2016 OSCE Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region states that "Quotas and other temporary special measures, while necessary instruments and good starting points, on their own are not going to achieve the desired changes. They need to be complemented with other measures", p. 32.

51 See paragraph 22 of the CEDAW Committee General Recommendation No. 25, on Article 4, paragraph 1 of the CEDAW on temporary special measures, the term "measures" encompass "a wide variety of legislative, executive, administrative and other regulatory instruments, policies and practices, such as outreach or support programmes; allocation and/or reallocation of resources; preferential treatment; targeted recruitment, hiring and promotion; numerical goals connected with time frames; and quota systems.

52 See, for example, measures in paragraph 48 of the 2024 ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns, "establishment or enhancement of women party caucuses, associations or other similar structures as well as training for women candidates, programmes related to women's empowerment, relevant public awareness-raising and educational campaigns, promotion and support to women candidates' campaigning, measures to combat discrimination and violence against women in politics, etc"; see also ODIHR Preliminary Opinion on the Law on Political Parties of Mongolia (2025), para. 73, which mentions gender considerations applicable to indirect public support, for instance minimum media coverage requirements for women candidates.

achieve through the proposed system, compared to the proportional system.[53] As this could lead to underrepresentation, the drafters should consider introducing special measures to facilitate the participation of these groups. As noted above, in determination of electoral districts, the interests of national minorities and the patterns of their settlements should be taken in consideration to improve their chances for being duly represented in the Parliament. Furthermore, the 29 January 2025 amendment to the Election Law of the Kyrgyz Republic that reduced the electoral deposit for candidates with disabilities may serve as a positive example, which, however, is eliminated with the new amendments. In order to facilitate political participation, in line with the OSCE commitments, similar measures should be considered for other underrepresented groups, particularly national minorities.[54] Additionally, political parties nominating candidates from these groups could be allowed to pay a reduced deposit.

RECOMMENDATION I.

Consideration should be given to reviewing the rules on the distribution of mandates under the gender quota to prevent a potential restrictive interpretation of the law, which would limit the number of mandates available for women to the 30-quota mandate.

RECOMMENDATION J.

To ensure political pluralism and respect of the rights of underrepresented groups, consideration should be given to developing affirmative measures that would facilitate the right to be elected for members of such communities. The measures could include, but should not be limited to, the introduction of an explicit requirement that the borders of electoral districts shall be determined taking into consideration the settlements of national minorities; further, to ensure representation of various groups, meaningful candidate nomination quotas, reserved parliamentary mandates, decreased electoral deposits for representatives of such groups could also be considered.

5. CAMPAIGN FINANCING

58. The Election Law currently grants all financial decision-making and administrative powers to the political parties that nominate the candidates. The Draft Act introduces a change to allow candidates nominated by political parties to manage their campaign financing separately from the nominating political parties, which could ensure a wider financial independence of candidates. Articles 41 and 62 of the Draft Act allows party nominated candidates to individually open the dedicated campaign bank accounts, and to conduct independent fund-raising activities for their campaign. While is generally positive, it also allows party nominated candidates to benefit from the resources in their own accounts as well as party campaign resources. As a result, it is conducive to creating a wider financial gap between independent candidates and those nominated by political parties, as for the former

[53] Paragraph 35 of the 1990 OSCE Copenhagen Document states that "The participating States will respect the right of persons belonging to national minorities to effective participation in public affairs". The 2005 Venice Commission Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries states that "[t]he more an electoral system is proportional, the greater the chances dispersed minorities or those with few members have of being represented in the elected body."

[54] Paragraph 35 of the 1990 OSCE Copenhagen Documents states that '[t]he participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities."

the individually accumulated funding is not reinforced with the financial support by a political party, which may affect the equality of opportunity among candidates.[55]

59. The Draft Act maintains the entitlement of political parties to recruit 10,000 campaign activists, while candidates are entitled to recruit 500 campaign activists. Taking in consideration that with the Draft Act these caps shall be considered in conjunction, the difference in campaign opportunities of party nominated candidates and self-nominated candidates is further increased due to a wider access to human resources.

60. One of the stated aims of the draft is combating corruption. Through its observation of elections in Kyrgyzstan ODIHR identified gaps in the campaign finance legal framework pertaining to the audit procedures, timelines, and the publication of financial reports; these gaps remain unaddressed. In the absence of effective safeguards for accountability of financing of electoral campaigns the stated aim of the draft to combat corruption cannot be achieved. The change in the electoral system increases the importance of the matter, considering that a candidate-centred electoral systems are particularly vulnerable to the undue influence, including financial, and does not on its own guard against undue intervention of business interests at the local level.[56] A robust regulation of campaign finance reporting, oversight and audits would serve provide an important safeguard against such risks. Additionally, despite a previous ODIHR recommendation, the legal framework still lacks dissuasive sanctions for violations of campaign finance rules, which needs to be addressed.[57]

RECOMMENDATION K.

Consideration should be given to ensuring that the campaign financing rules do not disproportionately affect the equality among candidates.

6. IMPLEMENTATION OF ODIHR RECOMMENDATIONS

61. ODIHR has most recently observed elections in Kyrgyzstan in 2021.[58] In its final report, ODIHR underlined the need to revise the electoral legal framework to ensure compliance with OSCE commitments, international obligations and standards for democratic elections.[59] It recommended addressing identified shortcomings, including on voting rights, independence of election administration, campaign finance, media and election observation through an inclusive, consultative, and transparent process well in advance of the next elections.

62. ODIHR wishes to reiterate its recommendations related to fundamental freedoms, including freedoms of assembly and association. As the draft law is amending fundamental aspects of the election process, ODIHR encourages consideration of all outstanding recommendations

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55 Paragraph 7.5 of the 1990 OSCE Copenhagen Document requires the participating States to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination". See also, United Nations Human Rights Committee General Comment No. 25 on Article 25 ICCPR: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service. Paragraph 185 of the ODIHR and Venice Commission 2020 Joint Guidelines on Political Party Regulation states that "Independent candidates should therefore be permitted to run for elections according to the same conditions applicable to candidates nominated by political parties."

56 See Vote Buying: International IDEA Electoral Processes Primer 2.

57 See recommendation 17 in the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan.

58 See previous reports of ODIHR election observation activities in Kyrgyzstan.

59 See the 2021 ODIHR Final Report on Parliamentary Elections in Kyrgyzstan.

related to the holding of democratic elections including the removal of undue limitations on voting rights, ensuring pluralism through empowerment of political participation of disadvantaged groups, revising the legal framework limiting freedom of assembly, association, of expression and the media, and creating additional safeguards against vote-buying and voter intimidation.[60]

63. ODIHR has also previously recommended reconsidering the composition of the CEC to ensure a more balanced representation (ODIHR priority recommendation 4). It is important to recall that only an independent and impartial election administration can guarantee the fair implementation of electoral rules, foster public trust in the electoral process, and safeguard against weaknesses through the fair application of electoral sanctions.[61]

7. LEGISLATIVE TECHNIQUES AND IMPACT ASSESSMENT

Gender-neutral Legal Drafting

64. The Russian version of the Draft Act published for public consultations does not coherently incorporate the use of gender-sensitive language. Regardless of the language in which laws are drafted, legislation should avoid the use of language that refers explicitly or implicitly to only one gender (gender specific language) or group, or that they do so only when it serves the effectiveness of the law or a specific reason (for example, the law addresses a specific gender). Consideration should be given to revisiting gender-specific formulations, rephrasing them with gender inclusive formulations in line with the international guidelines.62 The Draft Law should ensure, through inclusive alternatives, the use of gender-sensitive language, in line with the international guidelines.63 For example, opting for gender neutral reformulations, collective nouns, or plural neutral forms of nouns, adjectives and pronouns, which are gender-neutral in the Russian language is advisable, instead of the respective singular forms.

Impact Assessment

65. The legal drafters have prepared an Explanatory Statement to the Draft Act, which lists a number of reasons justifying the contemplated reform, but does not mention the research and impact assessment on which these findings are based. Given the potential impact of the Draft Act on the exercise of human rights and fundamental freedoms, an in-depth regulatory impact assessment, including on human rights compliance, is essential, which should contain a

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60 In this respect, the findings and recommendations made by ODIHR in several opinions related to fundamental freedoms should be taken into account; see in particular ODIHR, Urgent Interim Opinion on the Draft Law on Non-Profit Non-Governmental Organizations and Draft Amendments on "Foreign Representatives", 12 December 2022, calling upon the authorities not to adopt the proposed amendments, to be read together with ODIHR and OSCE Representative on Freedom of the Media (RFoM)'s joint statement of 7 February 2024 calling upon to reconsider the adoption of similar amendments. See also ODIHR - OSCE Representative on Freedom of the Media Interim Joint Opinion on the Draft Law of the Kyrgyz Republic on the Mass Media (as of 13 May 2023).

61 See also Explanatory Report to the 2002 Venice Commission Code of Good Practice in Electoral Matters, Section II.3.1. that states "[o]nly transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results".

62 See 2024 ODIHR Guidelines on Democratic Lawmaking for Better Laws, para. 133; 2020 ODIHR Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective, pars 105-107; and 2017 ODIHR publication "Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation", page 63. See also See UN Guidelines for Gender-Inclusive Language in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context.

63 See ODIHR, Guidelines on Democratic Lawmaking for Better Laws (2024), para. 223; and UN Guidelines for Gender-Inclusive Language in Arabic, Chinese, English, French, Russian or Spanish English, to reflect the specificities and unique features of each language, recommending remedies that are tailored to the linguistic context.

proper problem analysis, using evidence-based techniques to identify the most efficient and effective regulatory option.[64] In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly.

66. In light of the above, the public authorities are encouraged to ensure that the Draft Law is subjected to inclusive, extensive and effective consultations, including with civil society and representatives of national minority communities offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament and the institution responsible for delineation of electoral districts. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.

[END OF TEXT]

Draft Constitutional Law "On Amendments to the Constitutional Law 'On the Election of the President of the Kyrgyz Republic and the members of *Jogorku Kenesh* of the Kyrgyz Republic'"