

INTERNATIONAL ELECTION OBSERVATION Republic of Kazakhstan, Early Parliamentary Elections – 15 January 2012

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Astana, 16 January 2012 – This Statement of Preliminary Findings and Conclusion is a result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

João Soares (Portugal), Head of the OSCE PA Delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term observer mission. Elsa Papademetriou (Greece) headed the PACE short-term delegation. Miklós Haraszti (Hungary) is the Head of the OSCE/ODIHR Election Observation Mission (EOM) deployed from 13 December.

This assessment was made to determine whether the elections complied with OSCE commitments, as well as with national legislation. Local elections were held in parallel with the early parliamentary elections and were observed only to the extent that they have impacted on the conduct of the latter. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, in particular, the tabulation and announcement of results, and the handling of possible post-election day complaints and appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvement, some eight weeks after the completion of the election process. The OSCE PA will present its report at its winter meeting in Vienna. The PACE delegation will present its report to its Standing Committee in Paris on 9 March.

PRELIMINARY CONCLUSIONS

Notwithstanding the government's stated ambition to strengthen Kazakhstan's democratic processes and to conduct elections in line with international standards, the 15 January early parliamentary elections still did not meet fundamental principles of democratic elections. They were technically well administered and certain legal changes were passed, aimed at introducing at least a second party into the parliament; yet, the necessary conditions for the conduct of genuinely pluralistic elections, which are a prerequisite for functioning democratic institutions, were not provided for by the authorities. Parties were blocked from standing and candidates were deregistered. Reforms should be undertaken to protect citizens' fundamental rights, removing administrative barriers that limit competition.

The legal framework continues to include major inconsistencies with OSCE commitments and other international standards, including disproportionate restrictions to the freedom of assembly, the free flow of information and freedom of association. The exclusion of several political parties from the process undermined the competitiveness of the elections. There was limited public debate and media operated in an environment characterized by self-censorship. The violent clashes in Zhanaozen and ensuing emergency measures in the town became a campaign issue. While the limitations to citizens' campaign rights ordered by the emergency rule were prolonged, the President objected to the decision of the Constitutional Council and the Central Election Commission (CEC) decided to hold elections in Zhanaozen on the day.

Excessive restrictions of candidate eligibility, the prohibition for independent candidates to stand for elections and for parties to form electoral blocs remain in place. Amendments to the legal framework

since the 2007 parliamentary elections include some positive developments as well as changes that conflict with Kazakhstan's international commitments. While the aim of multi-party representation in the parliament is commendable, other legal measures, such as lowering the seven per cent threshold, should be considered to assure genuine multiparty representation.

Some parties remain unregistered by the Ministry of Justice. Another party had its activities suspended by a court, which prevented it from standing in elections altogether. Closer to election day, the CEC deregistered the candidate list of another party, as well as a number of candidates from various party lists. The party deregistration demonstrated unequal treatment. The de-registration of candidates for tax reasons did not respect due process.

It appears that those political parties that were permitted to compete were able to campaign largely without interference by local state authorities. *Nur Otan's* campaign was, by far, the most visible. Official announcements of the elections and advertisements for Kazakhstan's 20th independence anniversary were almost identical to *Nur Otan's* campaign materials. This effectively blurred the distinction between the State and the party.

Media's self-censorship resulted from continuing criminalization of defamation and exorbitant damages claimed in civil defamation cases. Media representatives stated that information on political alternatives on television is only available during the campaign period. The OSCE/ODIHR EOM media monitoring showed that reports of campaign events and paid advertisements dominated the coverage of the elections. Interviews were largely absent. The contesting parties participated in one televised debate. This compromised the media's ability to provide a robust and open exchange of opinions about matters of public concern and about political alternatives, which, thus, curtailed the possibility for voters to make an informed choice.

The CEC handled the technical preparations for the elections well and met legal deadlines. In a number of instances, the CEC took decisions before a collegial vote, which was contrary to the law. OSCE/ODIHR observers reported that in many cases members of lower-level commissions nominated by other parties or public associations were in fact *Nur Otan* party members and that, overwhelmingly, commission chairpersons hailed from *Nur Otan*.

The Election Law does not provide guarantees for pluralistic representation on election commissions. This led electoral stakeholders to question the neutrality of lower-level election commissions.

The legislation does not define a single hierarchical structure for the resolution of electoral disputes and their adjudication was inconsistent and not entirely transparent. The time for the resolution of complaints submitted to the CEC and prosecutors' offices often exceeded prescribed legal timeframes. A number of electoral contestants and civil society observers expressed a lack of trust in the independence and impartiality of the election administration, courts and prosecutors' offices when adjudicating electoral disputes.

The international observers noted that there could be a better participation of women in political life.

It is commendable that the law provides for international as well as domestic observation. A number of domestic groups actively participated in monitoring the elections. CEC accredited 819 international observers from a wide variety of organizations, which promoted transparency in the electoral process.

Opening and voting in polling stations was assessed positively by observers, however, the counting and tabulation processes were significantly lacking in transparency and respect for procedure, with cases of electoral fraud noted. As a result, in many instances, it was not possible for observers to determine whether voters' choices were honestly reflected.

PRELIMINARY FINDINGS

Background

The calling of early parliamentary elections for 15 January 2012 by the President followed an appeal by 53 deputies to dissolve the *Majilis* (lower parliamentary chamber).¹ They cited an expected global economic downturn in 2012, during which, in their opinion, the government should focus on solving economic challenges rather than on preparing for elections as one among other reasons for the dissolution.²

Ten political parties are currently registered with the Ministry of Justice (MoJ). The MoJ has refused registration to several other political parties for a number of years.³ The Communist Party of Kazakhstan was suspended by a court in October 2011 and thus unable to stand in these elections.⁴

The last parliamentary elections took place on 18 August 2007, during which the *Nur Otan* party took 88 per cent of the vote.⁵ No other party passed the seven per cent threshold at that time to gain representation in the parliament.

Election System and Legal Framework

Kazakhstan has a bi-cameral parliament comprising a 107-member lower house (*Majilis*) and an indirectly-elected 47-member upper house (Senate).⁶ Ninety-eight *Majilis* deputies are directly elected for a five-year term through a proportional system with party lists in one nationwide constituency. Nine members of the *Majilis* are elected by the Assembly of the People of Kazakhstan (APK).⁷ The Constitution stipulates an imperative mandate: deputies lose their mandate if they leave or are excluded from their party, or if the party ceases its activity.⁸ Independent candidacies and the formation of electoral blocs are not permitted.⁹ Candidate lists are arranged in alphabetical order, but it is only after the announcement of the final results that the governing bodies of the parties that

¹ According to the Constitution, the president can dissolve the parliament at any time. The 2012 elections were the third consecutive set of elections to be called early.

² <http://www.parlam.kz:80/Parliament/ru/mazhilis/news-details/id391/2/1>.

³ The registration of *Alga* has been refused since 2005 on the basis of ‘technical’ problems with the application documents. *Alga* last applied for registration in 2009, but its application was rejected on the basis of inaccuracies in the list of members. Two other parties, *Khalykh Rukh* and *Ata Meken*, have been previously denied registration on the basis of similar problems with their members lists. The merger of the All-National Social Democratic Party (OSDP) and the Democratic Party *Azat* has been rejected by the Ministry of Justice due to technical issues with the dissolution of the latter.

⁴ The activities of the Communist Party were suspended for six months by a court decision on 4 October 2011. The suspension of the party was due to the participation of the party leader in the activities of an unregistered political association, the *Khalykh Maidany* (National Front). The 4 October 2011 decision of the district court on suspension of the activities of the party was upheld by the appellate court in Almaty on 24 October.

⁵ Voter turnout was announced at 68.4 per cent.

⁶ *Maslikhats* of each of the 14 regions of the country, as well as of the cities of Astana and Almaty, elect two senators each. In addition, the president appoints 15 senators.

⁷ This contradicts Paragraph 7.2 of the 1990 OSCE Copenhagen Document which provides for “all seats in at least one chamber of the national legislature to be freely contested in a popular vote.”

⁸ This conflicts with Paragraph 7.9 of the 1990 OSCE Copenhagen Document which requires that participating States “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.”

⁹ This is at variance with paragraph 7.5 of the 1990 OSCE Copenhagen Document which states that “participating States will [...] respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”

passed the threshold decide upon which candidates will take up the mandates.¹⁰ As per a 2009 amendment, if only one party passes the threshold, the party getting the second highest number of votes will also be allocated at least two seats in the *Majilis*.¹¹

Elections are primarily regulated by the Constitution, the Constitutional Law on Elections (Election Law), as well as regulations of the Central Election Commission (CEC).¹² The changes to the legal framework since the 2007 parliamentary elections include a slight easing of the conditions for political party registration,¹³ removal of a requirement that international observers have prior observation experience, and several amendments concerning liability for defamation.¹⁴ Despite these legal changes, a number of key OSCE/ODIHR recommendations remain to be addressed.

Moreover, some amendments conflict with Kazakhstan's international commitments. In particular, a 2009 change introduced additional candidate eligibility requirements. As a result, people with a criminal record that has not been expunged and those who have been found guilty by a court of corruption-related crimes or administrative offences cannot stand for office. In both cases, the restriction applies regardless of the gravity of the crime or violation.¹⁵

The legal framework continues to be inconsistent with Kazakhstan's OSCE commitments, as it contains undue restrictions on freedom of assembly and freedom of expression.¹⁶ There is a ten-year residency requirement to run for parliament; residency requirements are at odds with Kazakhstan's commitment.¹⁷ The legal framework also contains provisions that allow for disproportional non-registration and deregistration of both political parties and candidates.¹⁸ The Election Law also does not guarantee due process during the review of complaints and appeals, nor does it guarantee pluralistic representation on election commissions.

¹⁰ This mechanism raises concerns as to its compliance with Paragraph 7.9 of the Copenhagen Document. See footnote 8.

¹¹ The maximal number of seats is dependent on two variables: the total number of parties competing and the number of votes gathered by each party.

¹² Other election-related legislation includes the Law on Political Parties and the Law on Peaceful Assembly.

¹³ A number of party members needed for registration was reduced from 50,000 to 40,000. In addition, the Law on Political Parties as amended in 2009 provides that if the party has presented a sufficient number of valid signatures, the number of invalid signatures will not be used as a reason for denial of registration. Furthermore, the deadline for submission of documents for party registration was extended to 4 months. Despite these modifications, the number of the registered parties has not increased since 2007.

¹⁴ Criminal liability for defamation and insult can now be imposed only in case of repeat violations, and moral damage claims against media can only be brought by individuals and not legal entities.

¹⁵ This practice is at odds with the principle of proportionality, as provided in Paragraph 24 of the 1990 OSCE Copenhagen Document: "any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law."

¹⁶ Among other things, the requirement of a 10-day advance approval to hold public assemblies, restrictions regarding their permitted locations, broad powers for the authorities to permit assemblies or alter their location/time, provisions on the protection of the honour and dignity of individuals (including the potential deregistration of candidates on this basis vis-a-vis other candidates), special protection regarding honour and dignity provisions granted to the President and other public officials, criminal defamation provisions. These restrictions are at odds with Paragraph 9.2 and Paragraph 9.1 of the 1990 OSCE Copenhagen Document, respectively.

¹⁷ Paragraph 15 of the UN Human Rights Committee General Comment 25 states, in part, that "any restrictions on the right to stand for election...must be justifiable on objective and reasonable criteria. 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."

¹⁸ For example, the Law on Political Parties (Article 13) allows for suspension of a political party for up to six months in case of violation of the legislation by the party without specifying the gravity of the violation. Similarly, the Election Law (Article 89) allows the CEC to deregister a party list in case of early campaigning or in case of violation by the party of the rules for nomination of the party list, without specifying whether this should constitute serious misconduct. In practice, the application of these and similar provisions before and during these elections has led to the exclusion of some parties and candidates from the competition.

Election Administration

The elections were administered by four levels of election commissions. The election administration consisted of the CEC, 16 Regional Election Commissions (RECs),¹⁹ 207 Territorial Election Commissions (TECs), and 9,764 Precinct Election Commissions (PECs). The CEC established 56 special PECs for out-of-country voting in diplomatic representations in 46 countries. Each election commission has seven members, appointed for a five-year term. The CEC is a permanent body,²⁰ while lower-level commissions are only active during election periods. Current election commissions were appointed in April 2009.

The CEC handled the technical preparations of the election well and met legal deadlines. The CEC and lower-level election commissions were generally co-operative towards the OSCE/ODIHR EOM and forthcoming with information. CEC sessions were open to observers and the media. However, in a number of instances, the CEC took decisions before the respective session and voting by the commission took place. This undermined the public nature of sessions and the collegiality of decision-making provided for by law. In these cases, sessions were reduced to a procedural formality, thus decreasing transparency and openness.

Lower-level commission members were appointed by corresponding *maslikhats* (local councils) based on nominations from political parties or alternatively from public associations or higher-level election commissions. Higher-level election commissions can appoint temporary members to lower-level commissions during the pre-election period. Each registered party is eligible to nominate one candidate (not necessarily their party members) to each commission. This rule does not apply to the CEC, which is composed of members appointed by the president, Senate, and the *Majilis*. OSCE/ODIHR EOM observers reported that in many cases, members nominated by other parties or public associations, in fact, belonged to *Nur Otan*.²¹ This, combined with the overwhelming representation of *Nur Otan* members among commission chairpersons, undermined the neutrality of lower-level commissions in the eyes of electoral stakeholders.²² In some regions, the distinction between local executive bodies and election commissions was not always clear.²³ Numerous interlocutors reported a general lack of trust in the election administration to perform their duties impartially.

Since the appointment of election commission members in 2009, there have been numerous resignations, including after the announcement of early elections.²⁴ However, the replacement

¹⁹ One REC in each of the 14 *oblasts* (regions), in the capital of Astana, and in Almaty city. While RECs are also referred to as TECs in the Election Law, in practice they represent a higher tier.

²⁰ The CEC chairperson and two CEC members are appointed by the president, while the Senate and the *Majilis* each appoint two members.

²¹ Such cases were reported from Almaty city, Almaty, Karaganda, Kostanai, and Pavlodar regions.

²² As reported by OSCE/ODIHR EOM observers from Karaganda, Kostanai, Kyzylorda, North Kazakhstan, Pavlodar, and Zhambyl regions. Concerns over neutrality also were reported in cases when the majority of PEC members were employees of the same institutions (especially schools).

²³ Training sessions were, at times, conducted by the local administration in Karaganda region. Election commissions were often located in the *akimat* buildings in the cities of Almaty and Astana as well as in Almaty, Akmola, Karaganda, Mangistau, North Kazakhstan, Pavlodar regions. Election commission members were often employees of *akimats* and *maslikhats* in Astana city, Akmola, Almaty and Kyzylorda regions. *Akimats* provided voter education in Zhambyl region and the city of Taraz. The REC in Kyzylorda received financial support from the regional *akimat* to organize a seminar for PEC chairpersons.

²⁴ During 2011, replacements amounted to approximately 50 per cent of staff in Almaty city, 10 – 30 per cent in Almaty region, approximately 20 per cent in Atyrau region, 20 – 30 per cent in Karaganda region, approximately 25 per cent for some TECs in Akmola region.

process was not implemented consistently, nor was it fully transparent.²⁵ Political parties without representation on election commissions could appoint non-voting representatives for the election period. The CEC, however, reaffirmed its previous position that this provision does not apply to the CEC, itself, but only to lower-level election commissions.

While the CEC issued guidelines on procedures, the EOM noted a lack of detail on some aspects related to voting, counting and results tabulation. While the CEC prepared video and printed guidelines on electoral procedures, formal training instructions were not issued. TECs were responsible for organizing cascade training for the lower-level commissions. OSCE/ODIHR EOM observers noted that techniques and effectiveness of trainings varied among the regions.

Voter Registration

Voters are entered into the voter lists based on their registered place of residence. While *akimats* (local executive bodies) were responsible for compilation of voter lists, the CEC checked the voter lists for errors on the basis of a nationwide electronic voter register. Further verification of voter lists was conducted by the PECs starting on 30 December. Voters verified their data and polling location largely by visiting a respective PEC or calling the hotlines established for that purpose. To a lesser extent, verification was conducted through e-mail or the government's web portal, and door-to-door visits. As noted by OSCE/ODIHR EOM observers, voter lists were not displayed for public scrutiny in a number of PECs visited.²⁶ In total, 9,305,106 voters were registered before voter lists were handed to the PECs for verification. Voters who were planning to be away from their domicile on election day could apply for an absentee voting certificate at their PEC until 18:00 on the day preceding election day.

Party and Candidate Registration

The candidate nomination process for these elections commenced on 16 November and ended on 5 December. Of the ten registered political parties, eight submitted candidate lists and all were registered by the CEC within the legal deadlines.²⁷ The *Rukhaniyat* party list was subsequently deregistered by CEC decision on 28 December, based on alleged violations of the prescribed rules for the nomination of electoral candidates.²⁸ A district court upheld the decision of the CEC upon appeal. The CEC confirmed that no other parties have been subjected to probes into their nomination processes. Furthermore, a number of candidates, including one of the leaders of OSDP, were deregistered by CEC decisions of 6 and 10 January, based on alleged discrepancies in their tax declarations.²⁹ These deregistrations took place on the basis of the statements by the tax authorities,

²⁵ From those processes observed by the OSCE/ODIHR EOM, commission members either appointed replacements themselves, were appointed by the higher-level election commissions, or by the *maslikhats*. The CEC could not provide data on the number or political affiliation of temporarily appointed members.

²⁶ In Akmola, Almaty, East Kazakhstan, Karaganda, Kostanai, and North Kazakhstan regions.

²⁷ The People's Democratic Party *Nur-Otan* (127 candidates), Party of Patriots (20), *Rukhaniyat* Party (27), Democratic Party of Kazakhstan, *Ak-Jol* (60), OSDP (54), Communist People's Party of Kazakhstan (CPPK) (21), Social Democratic Party *Auyl* (18), and Democratic Party *Adilet* (59) were all registered by 15 December.

²⁸ Charges were brought by the Prosecutor's office based on lack of a quorum in the Republican Committee of the Party necessary for calling the Extraordinary Convention for nomination of the party list, and the failure of the party's regional chapters to hold sessions for nominating delegates to the Extraordinary Convention. *Rukhaniyat* acknowledges that some technical failures took place, but argues that no party could properly comply with the prescribed rules in the short time frame allowed by the early elections to the Majilis.

²⁹ This affected four candidates from *Nur-Otan*, five from *Ak-Jol*, six from OSDP, two from *Auyl*, four from *Adilet*, and three from the Party of Patriots. The CEC acknowledges that the decision on deregistration was based solely on the assessments by the tax authorities. The deregistered candidates were neither notified about the identification of inaccuracies in their tax declarations, nor given opportunity to present their arguments and objections to the tax authorities or to the CEC. The OSCE/ODIHR EOM also has information regarding the widespread deregistration of candidates for local elections, also based on alleged inaccuracies in tax declarations.

while the concerned candidates were not provided with the right to respond. The manner in which deregistration of a political party list took place also raises concerns about whether due process has been fully observed.

Campaign Environment

Although campaign activities increased slightly in the last two weeks before election day, overall the campaign was subdued, especially in rural areas. Winter weather conditions, festivities to mark 20 years of national independence as well as New Year's celebrations have limited the time and public attention devoted to the campaign. While the limitations to citizens' rights ordered by the emergency rule were prolonged, the President objected to the opinion of the Constitutional Council and the CEC decided to hold elections in Zhanaozen on the day. Limited political competition coupled with a truncated choice among political alternatives, led to a lack of pluralistic and genuine electoral debate.

Positively, the OSCE/ODIHR EOM received no reports of major impediments to the campaigns of those parties' permitted to contest these elections. *Nur Otan's* campaign was, by far, the most visible. Campaign materials for *Ak Jol*, CPPK, and *Adilet* were also evident, but to a much lesser extent. The campaigns of the remaining parties were considerably less active and visible. The campaign was mainly conducted through the use of billboards, banners, posters, and leaflets with New Year wishes, as well as through the media and small-scale meetings with voters. Some parties engaged in door-to-door canvassing in the last two weeks prior to election day. Several rallies took place in the final week of the campaign.

The campaign centered on themes of social and economic development, growth and welfare in light of an anticipated economic crisis, environmental concerns, development of the political system, as well as issues of regional economic integration. *Nur Otan* presented the President and the ruling party as guarantors of stability, prosperity, and inter-ethnic accord. Official announcements of the elections and advertisements for Kazakhstan's 20th independence anniversary were almost identical to *Nur Otan's* campaign materials. This effectively blurred the distinction between the State and the party.

The start of the campaign coincided with country-wide celebrations of the 20th anniversary of Kazakhstan's independence. On 16 December, deadly clashes between law enforcement personnel and energy sector workers, who had been on strike for several months, took place in Zhanaozen.³⁰ A state of emergency was declared for the town from 17 December to 5 January, and the town was quarantined. The limitations imposed during the state of emergency led to a significant restriction of the freedom of expression, freedom of assembly and freedom of movement in the locality. The extension of the state of emergency on 4 January until the end of the month remained publicly unexplained. The Constitutional Council initially issued an opinion that the *Majilis* elections cannot be held in Zhanaozen, but the President objected and the CEC rescinded its cancellation of the *Majilis* elections there. Nevertheless, the limitations of other civic rights remained in place.

The 16 December events in Zhanaozen and the subsequently imposed state of emergency became a national campaign issue. *Nur Otan* publicly stated its decision to adjust its electoral programme to draw more attention to social issues. The OSDP cancelled its campaign in Mangistau region. The *Rukhaniyat* leadership stated that their criticism of law enforcement agencies' handling of the situation there resulted in the party's deregistration. The unregistered *Alga* party also said that two of

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As of 22 December, the Prosecutor General's office confirmed 16 people had died as a result of the violence.

its leading members were detained for criticizing the Government's handling of the situation in Zhanaozen.³¹

Media Environment

Criminal penalties for defamation and the special protection afforded to the president and public officials limit the constitutional guarantee of freedom of speech and the prohibition of censorship. Exorbitant damages claimed for defamation and absence of a limitation period in the Civil Code further contribute to self-censorship among journalists.³² According to numerous political party, civil society, and media representatives met with by observers, the lack of editorial freedom and the predominance of entertainment programmes on television, make political pluralism virtually absent in broadcast media between election cycles. Despite legal restrictions³³ and the blocking of access to websites by the authorities,³⁴ the Internet increasingly displays a degree of pluralism of opinions and news sources.

On 28 December 2011, the Senate passed the new Law "On television and radio broadcasting". The Law raised serious concern among international and national media experts by potentially increasing government control of electronic media, in particular over foreign based satellite TV stations, thereby further restricting pluralism.³⁵ The newly-adopted law "On National Security", signed by the President on 6 January, raises concerns as potentially providing the ground for arbitrary restriction on freedom of expression in circumstances considered as threats to national security.

The Election Law obliges state-owned and commercial electronic and print media outlets to provide an equal amount of coverage of contestants in all formats.³⁶ OSCE/ODIHR EOM media monitoring results showed that campaign coverage of contestants on state-owned TV was more balanced than on commercial TV.³⁷ On state-owned *Kazakhstan TV* and *Khabar*, 25 per cent and 21 per cent of the campaign coverage respectively was devoted to *Nur Otan*. In comparison, *Adilet*, *Ak Zhol*, *Auyl*, CPPK, OSDP and the Patriots Party received between 10 and 14 per cent on *Kazakhstan TV*, while *Khabar* devoted between 12 and 15 per cent to the abovementioned parties. Astana TV and Channel 7 displayed a significant bias towards *Nur Otan*, giving it 81 per cent and 52 per cent of its campaign coverage, while the other commercial television stations displayed a more balanced approach. Coverage of *Nur Otan* in a negative tone was virtually absent (up to two per cent on Channel 31) from the monitored television stations.

³¹ The chairman of the *Alga* Astana branch was detained in Astana on 29 December. The chair of the *Alga* Almaty branch was arrested on 6 January in Aktau.

³² Damages awarded against media outlets led to bankruptcy of media outlets. At the end of 2011, two defamation lawsuits were filed against the *Public Opposition* newspaper seeking 500 million KZT (some 2.5 million EUR) and 50 million KZT (some 253,000 EUR), respectively.

³³ The 2010 Law "On changes and additions to some legislative acts of the Republic of Kazakhstan on issues related to information-communication networks" equates all forms of Internet content, including forums and blogs, with media outlets, making them subject to existing criminal, civil and administrative legislation. The law was criticized by the OSCE Representative on Freedom of the Media (RFoM), see <http://www.osce.org/fom/51086>.

³⁴ According to official information from the Prosecutor General's office, access to over 400 websites was blocked in 2011. On 16-18 December, during the events in Zhanaozen, journalists were not allowed to enter the town, mobile phone lines were cut and websites were blocked in Zhanaozen itself. According to the Prosecutor General's office, access to the social media platform Twitter was unavailable in the entire country during the two days following the events via the Kazakhtelekom communications operator due to technical problems.

³⁵ The same day the OSCE Representative on Freedom of the Media (RFoM) called on the President to veto the law. See press release of the OSCE RFoM at <http://www.osce.org/fom/86713>

³⁶ See Article 27, Paragraph 7 of the Election Law.

³⁷ The OSCE/ODIHR EOM conducted quantitative and qualitative media monitoring of six TV stations during the entire campaign period: Channel 31, Astana TV, *Kazakhstan TV*, *Khabar*, KTK and Channel 7.

However, two parties were covered in a negative light on state-owned *Kazakhstan TV* and *Khabar* news programmes.³⁸ A significant amount of coverage, in particular on the state-owned TV stations, devoted to the achievements during the 20 years of independence, and the additional institutional coverage of government officials gave the ruling *Nur Otan* party a distinct advantage.³⁹

Further, according to OSCE/ODIHR EOM media monitoring results, five out of seven parties contesting the election purchased airtime for paid political advertising. Political parties' representatives complained that prices were twice as high for prime-time airtime during the campaign period. Reports of campaign events and paid advertising dominated the election coverage. Interviews were largely absent. All contesting parties participated in one televised debate two days prior to the elections. This compromised the media's ability to provide a robust and open exchange of opinions about matters of public concern and about political alternatives and a possibility for voters to make an informed choice.⁴⁰

Complaints and Appeals

The Election Law does not define a single hierarchical structure for the resolution of electoral disputes. It allows for filing complaints regarding violations of election legislation simultaneously with election commissions, courts, and prosecutors.

In these elections, complaints were primarily addressed to the CEC and the Prosecutor General's office, or simultaneously to both. Before election day, the CEC had received 52 complaints in connection with the *Majilis* elections, out of which only 3 complaints were reviewed collegially in an open session.⁴¹ In cases where further investigation was necessary, the CEC referred complaints to prosecutors' offices or other relevant bodies to determine the facts. In some instances, the CEC referred the complaints to lower-level election commissions for the latter to take decisions in accordance with their competence.⁴² All other complaints were reviewed by CEC legal staff in absentia of the interested sides; responses were issued in the form of letters.

A total of 64 complaints on violation of electoral legislation were filed to prosecutors' offices throughout the country, out of which 22 were to the Prosecutor General's office. The Prosecutor General's office predominantly issued warnings. The OSCE/ODIHR EOM is aware of eight complaints and appeals related to the *Majilis* elections filed to courts. These were related to cancellation of party list registration, violations of campaign provisions, the right to be elected, and the de-registration of candidates.

Generally, OSCE/ODIHR EOM observers noted an inconsistent understanding of legal provisions for electoral disputes resolution by all electoral stakeholders, including political parties. Adjudication

³⁸ *Ruhaniyat* was covered negatively in 61 per cent of coverage during the entire campaign, while OSDP received negative coverage in 14 per cent, starting from 7 January

³⁹ The figures above refer to the political parties' campaign coverage. When including the actors' coverage of institutional events the predominance of the ruling *Nur Otan* becomes evident: 45 and 46 per cent respectively of total coverage on the state-owned TV stations was devoted to the ruling party. In total, 9 hours of coverage devoted to the achievements of the 20 years of independence were broadcast on state-owned television.

⁴⁰ See the OSCE 1990 Copenhagen Document, paragraph 7.7; the 1994 Budapest Document, paragraph 36; and the Joint Statement on the Media and Elections by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFoM and the ACHPR Special Rapporteur on Freedom of Expression and Access to Information, <http://www.osce.org/fom/37188>.

⁴¹ Two complaints were filed by regional branches of OSDP and concerned the short timeline for nomination of non-voting representatives to the election commissions. The CEC satisfied the complaints and granted additional time to all political parties to nominate their non-voting representatives. The third complaint was filed by *Ak Zhol* against actions of a chairperson of Kyzylorda TEC.

⁴² In some cases when the CEC referred to the lower-level commissions, it has suggested the solutions, citing relevant legal provisions.

of electoral disputes was inconsistent and not entirely transparent; it was largely characterised by an absence of well-reasoned decisions and due process. A number of interlocutors expressed a lack of trust in the independence and impartiality of the election administration, courts and prosecutors' offices in adjudicating electoral disputes. Consideration of complaints submitted to the CEC and prosecutors' offices often exceeded prescribed legal timeframes for their review.⁴³ This also limited the effective resolution of electoral disputes in light of the shortened timelines during these elections.

Participation of Women

Although women are actively involved in public life (mostly in civil society groups and to a lesser extent in political parties), they are not well represented at higher decision-making levels. Women held 17 of 107 seats in the outgoing parliament. Two of the 47 Senators and 2 of the 18 government ministers are female. In these elections, women comprised 21 per cent of candidates. Within the election administration, two of seven CEC members are female. They are, however, better represented at the PEC level, since many of them work in the public sector, especially in schools and medical facilities where PECs are located.

National Minority Participation

According to the 2009 census, 63 per cent of the population is Kazakh. Russians, who are the largest minority, account for 24 per cent of the population. Other minorities include Uzbeks (2.9 per cent), Ukrainians (2.1 per cent), Uyghur (1.4 per cent), Tatars (1.3 per cent), Germans (1.1 per cent), Koreans, Belarusians and Poles.⁴⁴ According to the Constitution, the Russian language can be officially used on equal grounds with the Kazakh language in state institutions and local self-administrative bodies. Election and campaign materials were provided in both Kazakh and Russian.

The nine candidates for the nine reserved *Majilis* seats to be elected by the APK on 16 January represented 8 of the more than 100 minority groups living in Kazakhstan, as well as the Kazakh majority. Following their nomination, these candidates campaigned for ten days among APK members. OSCE/ODIHR did not follow this part of the process.

Domestic and International Election Observers

The law provides for international as well as domestic observation. Domestic observers may be nominated by either political parties or public associations. Although there is no formal accreditation procedure in place, these observers are required to present a formal letter from their nominating organization. The 'Public Commission for Control of the Early Parliamentary Elections', the Republican Network of Independent Monitors and a NGO coalition 'SAILAU' fielded observers prior to and on election day. Additionally, some 20,029 party observers were registered by TECs, of which 18,734 represented *Nur Otan*.

International observers are accredited by the CEC. For these elections, the CEC accredited international observers from OSCE/ODIHR, OSCE PA, PACE, the Commonwealth of Independent States, the Shanghai Cooperation Organization, the Cooperation Council of Turkic Speaking States, the Organization of Islamic Cooperation, and Parliamentary Assembly of Turkic-speaking countries

⁴³ The timeframe for adjudicating complaints related to the violation of electoral legislation is five days, and for complaints against decisions, (in)action of election commissions is three days from receipt of the complaint. State bodies and the CEC interpreted the legal timeframe to start anew each time an election commission or other state body received the complaint for the first time, not taking the date of its initial submission as the reference point.

⁴⁴ See http://www.eng.stat.kz/perepis_nasl/Pages/n1_12_11_10.aspx.

as well as bi-lateral election commissions and officials. In total, 819 international observers were accredited to monitor these elections.

Election Day

Election day was calm throughout the country. A turnout of 75 per cent was reported by the CEC, and it announced preliminary results at 12:00 on the following day.

Opening and voting in polling stations was assessed positively by observers, however, the counting and tabulation processes were significantly lacking in transparency and respect for procedures, with cases of electoral fraud noted. As a result, in many instances, it was not possible for observers to determine whether voters' choices were honestly reflected.

Opening of polling stations was assessed positively in most polling stations observed, despite such procedural irregularities as failing to count ballots before voting started (17.6 per cent of polling stations observed) or to produce an opening protocol (14 per cent). Voting was positively assessed in 91.4 per cent of the polling stations visited and procedures were generally followed. However, 8.6 per cent of bad and very bad evaluations indicated serious and systematic shortcomings. Procedural irregularities observed included voters being permitted to vote without proper ID (5.6 per cent), group voting (7.5 per cent), and voting for someone else (2.6 per cent). Voters did not always mark ballots in secrecy (9.7 per cent). Cases of ballot boxes not being sealed properly (6.8 per cent) and series of seemingly identical signatures on the voter lists (10.8 per cent) also raised concerns during the voting. In a significant number of PECs, observers noted indications of ballot box stuffing (22 cases).⁴⁵

In 109 polling stations, observers were restricted from observing during voting and often prevented from reviewing voter lists. Observers reported that transparency was lacking in 9.1 per cent of polling stations observed, as they did not always have a clear view of voting procedures (8.4 per cent).

Women accounted for 76 per cent of PEC members and 48 per cent of polling stations observed by international observers were chaired by women. Party observers were present in most polling stations visited (89 per cent) with *Nur Otan* best represented (77 per cent), followed by OSDP (31 per cent) and *Ak Jol* (28 per cent). Observers from domestic civil society organizations were present in 46 per cent of polling stations visited during voting.

Counting was observed in 129 polling stations and was assessed as bad and very bad in 54 cases. Significant procedural shortcomings were noted. Among them, the number of people who had voted was not determined from the voter list (46 observations) and this meant that there was a lack of control over associating the number of ballots in the ballot box with the total number of voters. There was also a failure to count the number of ballots in the ballot boxes before separating them by party (78 cases), thus endangering the control procedures. Additionally, in some places, commissions did not count all the ballots, but merely subtracted the sum of votes received by other parties from the overall number of ballots to determine the number of votes for *Nur Otan*. In some cases, ballots for other parties were found in the *Nur Otan* pile and since they had not been counted, observers could not determine how many of them may have been mis-allocated.

Transparency of the counting process was severely undermined, as observers were not allowed close enough to the counting table to see the marks on the ballots (52 cases). Moreover, PECs did not

⁴⁵ Some media outlets reported on a number of irregularities, and also posted footage of cases of alleged ballot box stuffing online. Footage posted on <http://www.azattyq.org> and <http://www.kplus-tv.net> (accessible on Youtube only).

usually announce the voter's choice for each ballot (94 cases). As a result, in many cases, it was not possible to see whether voters' choices were honestly reflected and recorded in the results protocols. In 12 cases, observers reported indications of ballot box stuffing during the count.

During counting, party observers were present in 109 polling stations, with the majority of them representing *Nur Otan* (102 counts observed), followed by OSDP in 49 and *Ak Zhol* in 42 polling stations. Other parties were much less present during counts. Domestic observers from civil society were present in 46 polling stations.

Observers provided 196 forms on tabulation of PEC protocols at the TECs. In some cases PEC protocols were completed at TEC premises (observed in 48 TECs) and PEC officials were observed correcting their protocols (37 observations). Severe problems with the reconciliation of PEC protocols were noted in 76 observations. The observed tabulation processes were assessed as being transparent overall, but with some notable exceptions. In some cases, long delays in transporting the materials to TECs were reported, and observers often were not permitted to view the data input process.

On election day, international observers reported cases of complaints submitted by domestic observers not being accepted by the respective PECs. The complainants were required to fill in a formal act, which could only be submitted if confirmed by signatures of other observers and a PEC chairperson or a secretary. A number of PEC chairpersons refused to sign and register these acts.⁴⁶ This practice impeded due process guaranteed by the law.

In line with legal requirements, the CEC intended to publish national election results on its website, disaggregated at the regional level (by REC) but not at the polling station level. Although according to the CEC the law does not require, results protocols for individual polling stations and aggregation tables at the TEC level to be published, this decision of the CEC also limited transparency of the tabulation process.

***The English version of this report is the only official document.
Unofficial translations are available in Kazakh and Russian.***

⁴⁶ PECs 187, 157, 218, 196, 300, 55 in Almaty city; PEC 170 in Astana city, PEC 492 in West Kazakhstan, PEC 989 in South Kazakhstan.

Mission Information & Acknowledgements

Astana, 16 January 2012 –The OSCE/ODIHR Election Observation Mission (EOM) opened in Astana on 13 December with 21 experts in the core team based in the capital and 28 long-term observers deployed to 13 regional centres. Members of the EOM come from 41 OSCE participating States. On election day, the International Election Observation (IEO) deployed some 361 short-term observers from 41 OSCE participating States, including 44 members of the OSCE PA delegation, and 15 from the PACE. The IEO observed voting throughout the Republic of Kazakhstan in some 1,173 polling stations out of a total of 9,764, and counting was observed in some 129 polling stations in 93 electoral districts. The tabulation was observed in 91 TECs.

The observers wish to thank the authorities of the Republic of Kazakhstan for their invitation to observe the elections and the CEC and the Ministry of Foreign Affairs for their assistance. They also express their appreciation to other state institutions, political parties and civil society organizations for co-operation. The observers also wish to express appreciation to the OSCE Centre in Astana and other international institutions for their co-operation and support.

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