

INTERNATIONAL ELECTION OBSERVATION MISSION Republic of Kazakhstan – Parliamentary Elections, 10 January 2021

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 10 January parliamentary elections in Kazakhstan lacked genuine competition and highlighted the need of the announced political reforms. They were technically prepared efficiently amid the challenges posed by the outbreak of the COVID-19 pandemic. While five parties participated in the electoral process, and their candidates were able to campaign freely, limits imposed on the exercise of constitutionally guaranteed fundamental freedoms restrict the political space. Frequent revisions were made to the legal framework since the last parliamentary elections, some of which partially addressed a few previous ODIHR recommendations. Still, the legal framework is not yet conducive to holding elections in line with the OSCE commitments as long-standing systemic shortcomings remain. Notwithstanding some increasing scope for a plurality of opinions online, a subdued campaign further narrowed voters' ability to make an informed choice. Concerted measures in the run up to elections prevented some domestic observers from an effective oversight. While voting itself was generally organized efficiently, many procedural aspects on election day lacked full transparency.

The electoral legal framework still remains inconsistent with many international commitments concerning the holding of democratic elections, despite frequent revisions since the last parliamentary elections. Some of the previous ODIHR recommendations, including on reducing the number of members required to register a political party, changing the procedure for holding public gatherings, decriminalizing slander and introducing special measures to enhance participation of women as candidates, were addressed, albeit only partially. Also, the amendments to the Election Law aimed to enhance participation of voters with disabilities. Many long-standing ODIHR recommendations remain unaddressed, including those related to fundamental freedoms, impartiality of election administration, eligibility to vote and stand for elections, voter registration, the media, and publication of election results. The exercise of constitutionally guaranteed fundamental freedoms is significantly restricted by different laws, and the space for civil society and alternative voices to flourish is limited by legal provisions and their implementation by the authorities.

Electoral preparations were efficiently administered by the election commissions in line with the legal deadlines. The Central Election Commission (CEC) held regular public sessions and published decisions in a timely manner. Nevertheless, decisions were made in advance of formal sessions, diminishing the transparency of election administration. The appointment and composition of commissions at all levels raises concerns about their independence. The CEC voter information campaign held both in Kazakh and Russian focused largely on the verification of the voter lists and the date of elections.

Almost 12 million voters were registered. Citizens declared incapacitated by court based on intellectual and psychosocial disabilities and all prisoners were not eligible to vote, which is not in line with international standards. Voter lists were available for public scrutiny. Contrary to international good practice, voters could be added to the voter lists on election day at polling stations without administrative or judicial control, which opens up the possibility of multiple voting.

Candidate registration is marked by excessively strict requirements for the right to stand, which run counter to international standards. The five contesting parties nominated a total of 312 candidates,

and only two parties chose to nominate a sufficient number of candidates to compete for a majority in parliament. Information on individual candidates within the party lists was not easily accessible for voters. Despite recent legal changes, considerable barriers to exercising the freedom of association remain, and the range of political options is limited, with no new parties registered since 2013 and several applications pending.

The campaign was not competitive, and contestants did not substantially challenge their rivals on their political platforms. All contesting parties expressly supported presidential policies, limiting the choice for voters. The online and in-person campaign was low-key, the latter also due to the COVID-19 pandemic. Systemic limitations on freedoms of assembly and expression impacted the scale of campaign activities.

The law regulates sources and ceilings for contributions to the party campaign funds. The CEC, as the campaign finance oversight body, published aggregate data on income and expenditures of parties during the campaign. The CEC does not conduct substantive auditing of the campaign finance.

Legal provisions, in particular related to defamation, extremism and the incitement to hatred, disproportionately criminalize speech contrary to international law. While the Constitution guarantees the freedom of expression, arrests and detentions on the grounds of these provisions, including for activities on social media, *de facto* limit this freedom. Nevertheless, there is an increasing space for plurality of news and opinions online, while television is largely controlled by the state through ownership and financial subsidies. Monitored TV stations provided limited coverage of the campaign, falling short of informing the choice of voters.

Women are underrepresented in public and political life. For these elections, 28.8 per cent of the nominated candidates were women. The newly introduced 30 per cent quota of women and/or youth on the candidate lists does not necessarily result in increased representation of women as it is not binding for parties in the allocation of parliamentary seats. Women constitute a majority of the lower-level commissioners, while only two of the seven CEC members are women. Gender equality was a marginal campaign topic. Media focused almost exclusively on male candidates.

The law provides for the right of election stakeholders to seek legal remedy, but very few complaints were reported. The Supreme Court dismissed on formalistic grounds all complaints against the CEC, thus failing to ensure effective redress. Many ODIHR LEOM interlocutors from civil society expressed the lack of trust in election dispute resolution.

Independent citizen observers reported concerted efforts of the authorities to prevent their effective observation of these elections. These included multiple tax investigations on NGOs initiated shortly before elections, a new CEC resolution providing for a wide discretion of precinct election commissions in dismissing citizen observers, and the late introduction of obligatory COVID-19 testing. A considerable number of government-associated observers was deployed on election day.

The IEOM did not observe election day proceedings in a systematic or comprehensive manner. While voting itself was generally organized efficiently and in line with COVID-19 precautions, many aspects of the process on election day lacked full transparency. When international and citizen observers were granted access, meaningful observation was often not possible, also due to COVID-19 measures. Important procedural safeguards were often skipped during counting and tabulation, raising some doubts about the accuracy of announced results. The election day was generally calm; however, the overwhelming presence of police in several cities effectively prevented preannounced peaceful demonstrations.

PRELIMINARY FINDINGS

Background and Political Context

On 10 January, the elections for 98 directly elected seats of the lower chamber of parliament (*Majilis*) were held (hereinafter parliamentary elections).¹ These were the first parliamentary elections held under the presidency of Kassym-Jomart Tokayev who was elected in June 2019. The elections took place against the backdrop of the COVID-19 pandemic and related measures, which appeared not to have a significant impact on election administration and the campaign.

The Constitution confers extensive powers on the executive.² The political landscape is heavily dominated by the ruling *Nur Otan* party; the distinction between it and the executive branch is often blurred. The country's first president, Nursultan Nazarbayev, accorded the title of the Leader of the Nation, remains politically active in a number of official capacities, including as chairperson of *Nur Otan*, chairperson for life of the Security Council of Kazakhstan, life-long member of the Constitutional Council, and an honorary life Senator and Chairperson of the Assembly of the People of Kazakhstan (APK), which appoints nine members of the *Majilis*.

Since the 2016 parliamentary elections, the political party landscape has remained largely unchanged. Five out of six officially registered parties participated in these elections.³ Other than *Nur Otan*, contesting parties see themselves as “constructive opposition” to the government and broadly support the president's agenda.⁴ Despite at least nine attempts since the 2016 elections, no new political parties have been registered.⁵ Systemic restrictions in law and practice undermining fundamental freedom of association limited the pluralistic nature of the contest, challenging paragraphs 3 and 7.6 of the 1990 OSCE Copenhagen Document.⁶

The president, since coming to power, has announced a series of political and economic reforms. However, the ability of citizens to participate in political life, although protected in the Constitution, continues to be constrained by the restrictive legal framework and its overzealous implementation by the authorities.⁷ Though some changes to the rules on the freedom of assembly and association have been recently made, public dissent, including on social media, can result in sanctions, prosecutions and detentions. This deters alternative voices throughout the country and impacts on citizens' behaviour, although there is an increased political debate online.

¹ Elections for local councils (*Maslikhats*) at regional and district levels were held concurrently.

² The president issues binding decrees and resolutions, determines domestic and foreign policies, appoints ministers and regional *akims* (governors) and plays a key role in appointment of judges and other high-ranking officials, including 15 out of 49 Senators.

³ These are the three parliamentary parties *Nur Otan* (84 seats), the Democratic Party *Ak Zhol* (7 seats) and the People's Party of Kazakhstan (PPK, formerly known as the Communist People's Party, 7 seats), as well as the People's Democratic Patriotic Party *Auyl* and *Adal* Party (previously *Birlik*). The Nationwide Social Democratic Party (NSDP) decided to boycott these elections.

⁴ On 30 December, in summing up the work of the *Majilis* in 2020, the Speaker [stated](#) that “All the work of the deputies was focused on the implementation of the strategic tasks of the First President of Kazakhstan [...] as well as the initiatives and instructions of the Head of State Kassym-Jomart Tokayev”.

⁵ The last party to gain official recognition was *Birlik* in 2013. The Ministry of Justice confirmed to the ODIHR LEOM that there were nine applications filed in 2019-2020, six of which were denied, and others were pending.

⁶ In Paragraph 3 of the 1990 [OSCE Copenhagen Document](#), the OSCE participating States recognized “the importance of pluralism with regard to political organizations”. Paragraph 7.6 refers to “the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations”.

⁷ See the [2016 Concluding observations on the second periodic report of Kazakhstan by the UN Human Rights Committee](#) (CCPR).

Women are under-represented in the political life, having received only 25 per cent of the seats in the last parliamentary elections, and holding only 1 out of 17 *akim* and 2 out of 22 ministerial positions.

Electoral System and Legal Framework

Kazakhstan has a bi-cameral parliament consisting of a 107-member *Majilis* and an indirectly elected 49-member upper house (Senate). Ninety eight *Majilis* members (MPs) are elected in a nationwide constituency on the basis of a closed list proportional system. The remaining nine MPs are elected by the APK.⁸ Despite previous ODIHR recommendations, this provision remains in place, at odds with Paragraph 7.2 of the 1990 OSCE Copenhagen Document, which states that all seats in at least one chamber of the national legislature are directly elected.

Parties receiving at least seven per cent of all votes cast are allocated seats in the *Majilis*. If only one party passes the threshold, the party receiving the second highest number of votes is given at least two seats. The mandates are awarded to candidates by each party, and parties are not bound by the order of candidates on their list. The Constitution stipulates an imperative mandate; those who leave or are excluded from their party, or whose party ceases its activity, lose their mandate. This conflicts with Paragraph 7.9 of the 1990 OSCE Copenhagen Document.⁹

The parliamentary elections are primarily regulated by the Constitution, the Constitutional Law on Elections (Election Law), and regulations of the Central Election Commission (CEC).¹⁰ The legal framework continues to be inconsistent with Kazakhstan's international commitments related to the holding of democratic elections due to a number of undue restrictions on fundamental freedoms and on the suffrage rights, in violation of paragraph 4 of the 1990 OSCE Copenhagen Document.¹¹

The Election Law constitutes a technical basis for the conduct of elections. However, it contains a number of shortcomings, such as provisions that allow for wide discretion on party and candidate registration and deregistration, a lack of effective safeguards against multiple voter registration, opaque campaign finance audit rules, and insufficient due process guarantees during the review of complaints and appeals in lower-level election commissions.

The laws regulating the conduct of elections were subject to considerable changes since the last parliamentary elections, but several ODIHR LEOM interlocutors expressed concerns about the lack of meaningful consultations preceding the reforms. Positively, the safeguards for participation of voters with disabilities were strengthened, addressing a previous ODIHR recommendation. The reforms did not fully address most ODIHR electoral recommendations, including those related to

⁸ The APK is an advisory body appointed by the president with the main goal of representing the diversity of Kazakhstan's multiple ethnic groups.

⁹ The OSCE participating States, in Paragraph 7.9 of the 1990 OSCE Copenhagen Document, committed to "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". See also the Council of Europe's Venice Commission [Report on the Imperative Mandate and Similar Practices](#).

¹⁰ Other relevant laws include the Law on Political Parties, Law on Peaceful Assemblies, Law on Mass Media, Law on Broadcasting, Law on Communications, the Criminal Code and the Code of Administrative Violations. Kazakhstan is a party to key international conventions related to democratic elections.

¹¹ The OSCE participating States, in Paragraph 4 of the 1990 OSCE Copenhagen Document, committed to "ensure that their laws, regulations, practices and policies conform with their obligations under international law". International organizations have repeatedly stated that the civil and political rights provided for by the Constitution and international treaties signed and ratified by Kazakhstan, including those related to the right to participate in the conduct of public affairs, are constrained by laws. See, for example, paragraphs 51-54 of the 2016 CCPR Concluding observations on the second periodic report of Kazakhstan and the [2020 Report of the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism \(UN Special Rapporteur\)](#).

fundamental freedoms, independence of election administration, candidacy requirements, voter registration, the media, and publication of election results.

Election Administration

The election administration is permanent and three-tiered, comprising the CEC, 232 Territorial Election Commissions (TECs) and 10,060 Precinct Election Commissions (PECs), including 66 polling stations in embassies and consulates to conduct voting abroad.

The president appoints the CEC chairperson and two other members. The *Majilis* and Senate each appoint two other CEC members. Given the predominance of the ruling party in these institutions and the lack of genuine political differentiation between the parties represented in the *Majilis*, the composition of the CEC is not politically diverse, potentially challenging its independence.¹² Commissioners at all levels are appointed for five-year term. Two of the seven current CEC members and 67.7 per cent of the lower-level commissioners are women.

Local councils (*maslikhats*) elected lower-level commissions in January 2019, based on nominations from registered political parties. In case the number of party proposals is not sufficient, *maslikhats* may consider nominations from other public associations and superior election commissions.¹³ *Maslikhats* are not bound by the nominations of any of the proposing bodies and may accept or reject individual proposals through a vote. Nominated individuals do not have to be members of the proposing organization. While the Election Law allows a maximum of one nominee from a political party per election commission, some TECs and PECs visited by the ODIHR LEOM had in practice more than one member affiliated with *Nur Otan*.¹⁴

Technical preparations for the elections were administered efficiently and in line with legal deadlines. The CEC sessions were open to and regularly attended by party representatives and observers. Due to the COVID-19 pandemic, media were present in CEC sessions only with their respective camera teams to transmit the sessions live. The CEC resolutions as observed by the ODIHR LEOM were adopted unanimously, but were decided on in advance, undermining the public nature of the sessions, therefore decreasing transparency of decision-making. Positively, resolutions were published on the CEC website in a timely manner, and the CEC members routinely participated in press briefings after the sessions.

The Ministry of Health, in co-ordination with the CEC, adopted measures to contain the spread of COVID-19 with respect to the processes of candidate nomination, campaign and election day. Some civil society interlocutors informed the ODIHR LEOM that the late imposition of some of these health-related election day requirements and the costs associated with the required tests, disrupted the deployment of their observers.¹⁵

Nationwide cascade training of lower-level commissioners was conducted both online and in person. The amended Election Law aims to enhance participation of people with disabilities in the electoral process and provides, among other things, for unimpeded access to all polling stations and voting, as

¹² Paragraph 20 of the 1996 UN CCPR General Comment No.25 to the ICCPR requires that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”. The States parties to the 2002 [CIS Convention](#) committed themselves “to ensure establishment of independent, impartial electoral bodies to organise the conduct of democratic free and fair, authentic and periodical elections”.

¹³ According to the CEC, 66.2 per cent of commissioners were nominated by political parties, 30.5 per cent by public associations and 3.3 per cent by higher-level election commissions.

¹⁴ This is the case, among others, in Almaty and Mangystau regions.

¹⁵ See *Citizen and International Observation and Election Day*.

well as the possibility of assisted voting by a person of choice. The CEC introduced simultaneous sign-language translation of all its sessions and provided a digital “Interactive Accessibility Map” indicating polling stations accessible for voters with disabilities.

The CEC voter information campaign conducted through television (TV) and radio broadcasts, was largely limited to the verification of the voter lists and the date of elections, with specific information on COVID-19 related measures provided close to election day. The CEC posted more information about elections, including in different formats, on their website. Ballots and voter education materials were produced in both Kazakh and Russian.

Voter Registration

Citizens of at least 18 years of age on election day are eligible to vote. The Election Law continues to disenfranchise citizens imprisoned for a criminal act by a court, irrespective of the gravity of the crime.¹⁶ Citizens declared incapacitated by a court decision on the basis of intellectual and psychosocial disabilities, are also ineligible to vote and stand for elections, contrary to international obligations.¹⁷

Voter registration is passive. The nationwide electronic voter register is maintained by the CEC and includes eligible voters. Local executive bodies (*akimats*) compile voter lists based on data from the state database on population and submit the lists to respective TECs twice a year. The TECs cross-check the lists with the data from the CEC. If any discrepancies or duplications are found they are forwarded to *akimats* for their consideration.

The voter lists were forwarded by *akimats* to relevant PECs by 20 December and made available from 26 December at polling stations for public scrutiny upon request. Voters were able to verify their records and request corrections either in person at polling stations or through call centres established at the local administration. As of 10 January, the number of registered voters was 11,915,903.

Voters who intended to vote away from their place of permanent residence could request a temporary change of registration until 10 December. Additionally, within 16 days before the election day, voters could apply for an Absentee Voting Certificate (AVC), allowing them to vote on election day in any polling station across the country. According to the CEC, 39,768 voters applied for a temporary registration and 10,599 received AVCs.

Contrary to prior ODIHR recommendations and international good practice, eligible voters not in the voter lists could be added by relevant PEC to the voter list on election day, provided they prove their residence within the precinct, without administrative or judicial control.¹⁸ Although ODIHR LEOM interlocutors did not express major concerns regarding the accuracy of the voter lists, the potential for multiple voting remains.

¹⁶ Paragraph 24 of the 1990 OSCE Copenhagen Document states that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law”. Paragraph 14 of CCPR General Comment No.25 to the ICCPR states that grounds for deprivation of voting rights should be “objective and reasonable”.

¹⁷ According to Articles 12 and 29 of the 2006 UN Convention on the Rights of Persons with Disabilities, “State Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life” and ensure their “right and opportunity [...] to vote and be elected”. See also paragraph 7.3 of the 1990 OSCE Copenhagen Document.

¹⁸ According to section I.1.2.iv of the Venice Commission’s [2002 Code of Good Practice in Electoral Matters](#) (2002 Code of Good Practice), “polling stations should not be permitted to register voters on election day itself”.

Party and Candidate Registration

Eligible voters aged 25 or older who have resided permanently in the country for at least 10 years before election day are eligible to stand.¹⁹ The Election Law further excludes those with an unexpunged criminal record and those found guilty of a corruption offence. Independent candidates and the formation of electoral blocs are not permitted. Only registered political parties may nominate candidates who must be members of the nominating party.²⁰ Overall, candidate registration is marked by excessively strict requirements for the right to stand, which run counter to international standards.

The 2020 amendments to the Law on Political Parties reduced the minimum number of members required to register a political party from 40,000 to 20,000. Nevertheless, other remaining administrative barriers and restrictive actions by the authorities effectively prevent the registration of new political parties.²¹

Parties are allowed to nominate 30 per cent more candidates than the number of seats available, allowing a total of 127 names on their list. In order to be registered by the CEC, parties that had received less than seven per cent of votes in the previous parliamentary elections had to pay a monetary deposit of KZT 637,500 (some EUR 1,250) for each candidate on their list.²² Only two parties, *Nur Otan* and PPK competed for a majority of the positions available, with 126 and 113 candidates on the lists respectively. *Ak Zhol*, *Auyl* and *Adal* chose to nominate 38, 19 and 16 candidates respectively, which made it impossible for any of them to claim a majority in parliament.

For the first time, a quota was applied to the nomination of candidates, which requires at least 30 per cent of each list to be composed of women and/or youth.²³ Of all 312 candidates, 90 (28.8 per cent) were women representing an increase from the 20.1 per cent in the previous parliamentary elections. Only one party, *Ak Zhol*, had more than 30 per cent of female candidates. However, the quota does not bind the party in its decision to award mandates to these groups. All five parties nominated candidates from national minorities, including some 13.8 per cent ethnic Russians and 6.4 per cent from 10 other ethnicities.²⁴

Party lists included 34 incumbents from the outgoing *Majilis*. *Nur Otan* made a feature of their primary elections which were held for the first time to select 77 of their 126 candidates. Other parties employed a mix of branch nominations and central quotas for their candidate lists. While the CEC posted their decisions on registration of individual candidates, the lists of candidates were neither easily accessible in the public domain nor available at polling stations. This, combined with parties' decisions on allocation of individual mandates only after the elections, limits the right of voters to make an informed choice, contrary to good practice.²⁵

¹⁹ Paragraph 15 of the 1996 CCPR General Comment No. 25 to the ICCPR 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”.

²⁰ The CEC informed the ODIHR LEOM that it received three applications from self-nominated candidates. Paragraph 7.5 of the 1990 OSCE Copenhagen Document provides for “the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

²¹ The non-registered opposition movement Our Right informed the ODIHR LEOM that they were prevented from holding their founding congress in March 2019 due in part to the detention of three of the movement's leaders. The non-registered Democratic Party of Kazakhstan (DPK) informed the ODIHR LEOM that in February 2020 hundreds of its supporters were detained shortly before the congress was due to be held.

²² EUR 1 equals some KZT 510 (Kazakhstani *Tenge*).

²³ Youth refers to those who are between the minimum registration age of 25 and 29.

²⁴ See [CEC press release](#) from 10 December.

²⁵ Paragraph I.3.3.1.b.ii of the 2002 Code of Good Practice provides that “the public authorities have a number of positive obligations; inter alia, they must enable voters to know the lists and candidates standing for election, for example through appropriate posting”.

On 27 November, following the call of the Democratic Choice of Kazakhstan (DCK)²⁶ to citizens to vote for the NSDP, the latter decided to boycott the elections. Among the stated reasons were the perceived likelihood of an unequal campaign environment and electoral fraud, based on previous experiences, as well as the risk of association with the DCK posed to the NSDP.²⁷

Electoral Campaign

The campaign ran from 10 December to 8 January, with a campaign silence on 9 January and election day. Generally, the campaign was low-key, with the few campaign events being further limited due to the winter weather, COVID-19 restrictions, and the electorate's perception of the relative unimportance of the *Majilis* elections.²⁸ Some ODIHR LEOM interlocutors, including from political parties, believed that the election results were pre-determined, rendering voting a low-stakes activity.

None of the contesting parties convincingly challenged the dominant position of *Nur Otan*. They all claimed to support the reform agenda of the president and to encourage further reforms. As a result, the campaign was not competitive, and voters were presented with few discernible political alternatives. Parties' campaigns were highly centralized with most attention given to party leaders, who in the case of *Nur Otan*, was not a candidate.

Nur Otan's campaign had a significant preponderance of billboards across the country. Parties made use of the poster space provided by local authorities and organised small-scale meetings in person and also online, in addition to door-to-door campaigning.²⁹ The main topics of the campaign were social and infrastructure development, and economic prosperity. Despite the global pandemic and its health and economic implications, the parties generally did not address the government's response to COVID-19 in their campaign platforms, apart from *Nur Otan* in particular promoting their charitable activities.³⁰ The references early in the campaign by some Russian politicians to the historical status of the northern regions of Kazakhstan featured widely in the public sphere and appeared to increase support for Kazakh nationalism.

The tepid nature of the campaign was mirrored online. The most popular social networks used by contestants were Facebook, Instagram, Twitter and YouTube. *Adal*, followed by *Nur Otan*, had the most active but still low-key online campaigns.³¹ Parties oftentimes replicated the same post in Kazakh and Russian and occasionally addressed specific segments of society, including women and youth. Parties offered weekly reviews of past in-person campaign activities but did not announce in advance schedules of planned events, further weakening access of the electorate to their activities. The tone used was predominantly positive, with no reference to other contestants' political platforms. The main topics coincided with the messages promoted during in-person campaigns and focused on the delivery of social services and welfare. *Nur Otan* also included the fight against corruption as an online campaign topic. The NSDP, following an announcement that they would boycott the elections, ceased posting on social media.

²⁶ The political movement DCK was declared "extremist" and banned: in March 2018. *Koshe* Party, found by a court to be a front organization for the DCK, was banned in May 2020. The accused organizations claimed that they were not notified of the hearings and therefore were not legally represented.

²⁷ See the NSDP [press release \(in Russian\)](#).

²⁸ COVID-19 related measures allow for a maximum of 30 people to gather.

²⁹ The ODIHR LEOM attended 24 political party meetings.

³⁰ *Nur Otan* [established a charity](#) in March 2020, which distributed some KZT 33.9 billion to 650,000 families between March and October.

³¹ *Adal* featured on average 10 posts daily, while *Nur Otan* 6 posts.

Gender equality was not a prominent campaign topic. Although women appeared in electoral events, there were only a few women speakers.³² Notwithstanding the introduction of the new quota, parties did not actively promote women candidates, and women are not visible in party leadership positions. Some contestants informed the ODIHR LEOM that in addition to Kazakh and Russian, they printed their campaign materials in other languages used by minorities. Some put forward the development of the Kazakh language and identity as a campaign topic.

The 2020 Law on Peaceful Assemblies redefined the previous requirement for “permission” to “notification” for certain outdoor campaign-related assemblies. Nevertheless, freedom of assembly is undermined by the continuing *de facto* need for permission from local authorities and the limited number of pre-determined locations that tend to be far from city centres.³³ Local administrations can refuse a notification on minor technical grounds, and it is illegal to publicise an event while a notification is being reviewed.³⁴ Non-registered political movements informed the ODIHR LEOM that they had hundreds of notifications for demonstrations denied since the last presidential election.³⁵ Contestants also need to notify local authorities in order for individual campaigners to hand out leaflets outdoors. All five contesting parties told the ODIHR LEOM that they supported this mechanism and did not recognize it as restricting freedoms of assembly and expression.

Compared to the official electoral contestants, different opposition movements appeared much more active online. They openly criticized the political establishment. Different groups offered various protest tactics, including boycotting the elections, spoiling ballots, and demonstrating in different locations. At least 20 citizens were fined or detained for campaigning for *Ak Zhol* following a call by DCK to vote for the party.³⁶

The 2018 amendments to the Election Law limit the conduct of opinion polls only to organizations registered in the country with at least five years of relevant experience, which appears to be an excessive requirement. The law further prohibits exit polls and requires interested organizations to notify the CEC on planned polling activities; however, the CEC interpreted the legal framework in a way that authorisation was effectively required.³⁷ Few opinion polls were published before election day— in all of them, only *Nur Otan* exceeded the seven per cent threshold to enter parliament.

Campaign Finance

Parties can fund their campaigns from their own sources in the amount of up to KZT 212.5 million and from private donations in the total amount of up to KZT 425 million, with no caps for individual donations.³⁸ The law provides for separate ceilings for the concurrent local elections for each race.

³² With the exception of the PPK meetings, as observed at campaign events by the ODIHR LEOM.

³³ Several citizens were sentenced to administrative detention for participating, or calling for participation in, unauthorised demonstrations. On 16 December, while political parties in Almaty and other regions took part in commemorations, in Almaty the ODIHR LEOM witnessed two separate small groups of around 20 activists each from *Oyan Qazaqstan* and the unregistered DPK, surrounded by up to 100 uniformed police who prevented them from placing flowers at the Dawn of Independence monument.

³⁴ In practice, according to some ODIHR LEOM interlocutors, the decisions to authorise assemblies are often elevated to the higher-level regional authorities by the local authorities. The local authorities in Almaty informed the ODIHR LEOM that a spelling mistake could be grounds for rejection. Organizers need to provide detailed information, including the topics of discussion and the sources of financing the demonstrations.

³⁵ As Our Right movement informed the ODIHR LEOM, in 2019 their requests for a peaceful demonstration were denied 35 times before being permitted by the authorities.

³⁶ The citizens were charged for production or distribution of ‘anonymous’ campaign materials, campaigning on behalf of the party without written consent, and unauthorised assemblies (Articles 113, 118 and 488 of the Code of Administrative Violations).

³⁷ The CEC authorised 10 entities to conduct opinion polls. Of the parties, only *Nur Otan* sought accreditation.

³⁸ Any donations that put the party over the stated limits must be returned to the donors. Donations from foreign or anonymous sources as well as from state and religious organizations are forbidden.

Dedicated bank accounts for campaign incomes and expenditures were opened upon registration of party lists. In conformity with the law, the bank provided weekly reports to the CEC for verification.³⁹ According to the CEC, it implements oversight based on official reports from the bank and does not conduct substantive investigations to reveal non-disclosed income or expenditures. The Code of Administrative Offences provides for fines for failure to report campaign expenditures, as well as for funding the campaigns bypassing the designated bank account. There were indications of party spending potentially exceeding the stated limits.⁴⁰

In line with its regulation, the CEC published the aggregated amounts of contestants' campaign incomes and expenditures as of 30 December, without itemized details disclosing the identities of the donors, the amounts of individual donations, or specific expenditures, detracting from transparency.⁴¹ Parties are required to submit a financial report within five days from the announcement of the election results.

Breaches of campaign finance rules provided for in the Election Law may lead to deregistration of a candidate or party and, if detected after election day, to invalidation of election results. The law does not specify whether deregistration applies to serious breaches only and if there are possibilities for parties to rectify inaccuracies, thus containing no legal safeguards to prevent disproportionate sanctions.

Media

The rights to freedom of expression and access to information, as guaranteed by the Constitution and international law, continue to be undermined by undue provisions in the Criminal Code and other legislation. Although slander was decriminalized in June 2020,⁴² other provisions related to defamation, including on "insult" and "distribution of deliberately false information", remain in the Criminal Code, contrary to international commitments.⁴³

Special protection of the "honour and dignity" of the president, the first president and public officials is granted by the Criminal Code, while the Election Law prohibits media from discrediting the "honour and dignity" of candidates and political parties. The legislation lacks clear definition of these

³⁹ The Election Law provides for a list of eligible campaign expenditures. These include expenses on campaigning in accredited media, campaign events, production of campaign materials, campaign-related services, transportation, and production of party insignia (e.g. flags, symbols) to be distributed free of charge. Any other expenditures than those provided for in the list are considered by the CEC as ineligible.

⁴⁰ The ODIHR LEOM was informed by *Nur Otan* of some 15,000 paid campaigners across the country. The ODIHR LEOM was informed that a monthly remuneration could amount to between KZT 50,000 and 90,000 in addition to reimbursements for food, communications and transportation.

⁴¹ According to the CEC, as of 30 December *Nur Otan* has received some KZT 637 million, *Auyl* 310 million, *Ak Zhol* 267 million, *Adal* 315 million and the PPK 200 million. The parties have reportedly spent KZT 565 million, 255 million, 254 million, 273 million and 177 million, respectively. According to Article 12.4 of the CIS Convention, the signatory states "shall provide for an open and transparent nature of all money donations to candidates, political parties (coalitions), participating in elections, in order to avoid any prohibited donations...".

⁴² Instead of becoming a civil matter solely, as required by international standards, defamation is now treated as an administrative violation, still involving state authorities in the initiation of cases. The law provides for excessive fines for slander of up to KZT 2,187,750 and up to 30 days in administrative detention.

⁴³ According to Paragraph 47 of the [2011 UNHRC General Comment No.34 to the ICCPR](#) "States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty".

restrictions.⁴⁴ These prohibitions stifle genuine political debate and result in self-censorship of the media. In addition, the 2017 amendments to the Law on Mass Media oblige journalists to obtain the permission of individuals named in their coverage before publishing information involving “personal, family, medical, banking, commercial and other secrets protected by law”. Several journalists informed the ODIHR LEOM that these provisions made investigative journalism almost impossible.

International bodies have previously noted that overly broad and vague provisions in the Criminal Code on the incitement to hatred and extremism do not provide for legal certainty and are used to unduly restrict freedoms of religion, expression, assembly and association.⁴⁵ In the months leading up to the elections, media reported on arrests and detentions of citizens based on these broad provisions, including for activities on social media.⁴⁶

TV, the main source of political information, is either state-owned or largely state-subsidized. Some ODIHR LEOM interlocutors noted that majority of private national media outlets are owned by business people close to the government, and in particular to the family of the first president Nazarbayev. Many ODIHR LEOM interlocutors opined that the dependence of media, in particular TV, on considerable state subsidies undermines their editorial independence and distorts competition in a limited advertising market.⁴⁷ However, the public debate is shifting to the Internet which provides an increasing space for pluralism of news and opinions, despite previously reported interference with Internet freedom.⁴⁸ An attempt in December 2020 to oblige citizens to install a government-issued “root certificate” to all devices enabling access to Internet, was counteracted by international providers, including Apple, Google, Microsoft and Mozilla, by blocking the certificate on their browsers.

The Election Law generally obliges media to “objectively” cover contestants’ campaigns and provides for access to paid airtime and space under equal conditions. According to the Law on Mass Media, broadcasters, print media and all “Internet resources” are considered media outlets and are overseen by the Ministry of Information and Social Development (MISD). The MISD informed the ODIHR LEOM that although “network publications” such as social media accounts are subject to the

⁴⁴ Under international standards on freedom of expression, public officials should tolerate more, rather than less, criticism than ordinary citizens, since they are directly involved in matters of public concern. In addition, any restriction on expression or information must be prescribed by law. The law must be accessible, unambiguous and narrowly and precisely drawn so as to enable individuals to predict with reasonable certainty in advance the legality or otherwise of a particular action. See also paragraph 38 of the 2011 UNHRC General Comment No.34 [to the ICCPR](#).

⁴⁵ Including Articles 174, 179 and 405 of the Criminal Code. See Summary of the 2020 Report of the UN Special Rapporteur. The Office of the Prosecutor General [declared](#) that any statements, including sharing of posts or comments in support of the DCK on social networks, may result in charges based on Article 405 (organization of or participation in the activity of a prohibited extremist organization) or Article 182 (creation, management of extremist group or participation in its activity) of the Criminal Code.

⁴⁶ For instance, according to [media](#) and [NGO](#) reports, journalist and blogger Aigul Utepova has been under house arrest since 17 September reportedly “for her YouTube video and posts on social media critical of the government”; on 23 November she was forcibly placed in a psychiatric hospital, and on 11 December returned to house arrest. Diana Baimagambetova [was arrested on 12 December](#) and placed in administrative detention until 12 February 2021 for “participation in a banned organization”. Ms. Baimagambetova has spent earlier this year a total of 45 days under administrative arrest for participating in three unauthorized gatherings. [On 21 December, Alibek Moldin was sentenced](#) to a year of restriction of liberty for “participation in banned organization” due to his activities on social networks.

⁴⁷ In 2018, the NGO Legal Media Centre lost an appeal to the Supreme Court against the Ministry of Information and Social Development (MISD). The Ministry refused to provide information about media organizations receiving government financing.

⁴⁸ The MISD, the Prosecutor General and the National Security Committee are entitled to block websites and halt media outlet operations without prior court decision. See paragraph 27 of the 2020 Report of the UN Special Rapporteur.

same rules, during the election period they are not obliged to provide an equal amount of coverage and are not included into the quantitative monitoring by the MISD.

ODIHR LEOM media monitoring results reveal that the overall amount of coverage devoted to the election campaign on TV and online media outlets was limited.⁴⁹ Monitored TV stations generally followed their obligation to devote an equal amount of coverage to contesting parties in their news. *Khabar TV* devoted 22, 18, 19, 24 and 17 per cent to *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and PPK respectively, while *Qazaqstan TV* devoted 26, 18, 18, 15 and 23 per cent of its news coverage to respective political parties. On the First Eurasian Channel *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and PPK received 18, 18, 19, 28 and 18 per cent of campaign coverage respectively, while *KTK* devoted 20, 21, 19, 21 and 20 per cent to them.⁵⁰ Nevertheless, the news coverage including institutional events, demonstrated that *Khabar TV* devoted 17, 14, 15, 39 and 15 per cent of news coverage to *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and PPK respectively, while these parties received 20, 13, 13, 35 and 18 per cent respectively on Qazaqstan TV. On the First Eurasian Channel *Adal*, *Ak Zhol*, *Auyl*, *Nur Otan* and PPK received 11, 11, 12, 54 and 12 per cent of coverage, while *KTK* devoted 18, 19, 17, 28 and 18 per cent of news coverage to these parties. All news coverage was in a positive (some 70 per cent) or neutral tone.

Apart from news coverage, there was a substantial lack of critical journalistic analysis of the campaign and political parties' programmes. *Khabar TV* broadcast a live debate, organized by the CEC, on 30 December; two other debates were broadcast by *Qazaqstan TV* and *KTK*, with representatives of all contesting parties.⁵¹ In a welcome development, these debates, all held in primetime, provided an opportunity for all contesting parties to present their platforms and engage with each other. Ninety per cent of covered political actors on all TV stations were male. The coverage in online media, though limited, was more diverse.

Complaints and Appeals

The provisions on electoral disputes are dispersed in the Election Law, Civil Procedures Code, Law on the Administrative Procedures, and the Law on Procedures for Consideration of Petitions, resulting in ambiguities and legal uncertainty regarding the pertinent rules to be applied. Legislation does not provide for a specific procedure or due process safeguards for the review of complaints in lower-level election commissions.⁵² Election-related complaints may be filed by citizens and other stakeholders with the election commissions or courts, within 10 days of the alleged violation.⁵³

The CEC informed the ODIHR LEOM that by 8 January it had received 104 applications that were for the most part requests for clarification of the law.⁵⁴ The ODIHR LEOM was made aware that there were no complaints reviewed by the CEC and lower-level commissions before election day.

⁴⁹ Between 13 December 2020 and 8 January 2021, the ODIHR LEOM monitored five TV stations *Khabar TV*, *Qazaqstan TV*, First Eurasian Channel, *7 Channel* and *KTK*, and five online media outlets *tengrinews.kz*, *informburo.kz*, *vlast.kz*, *azattyq.org* and *kaztag.kz*.

⁵⁰ *7 Channel* does not broadcast newscasts.

⁵¹ The debates on *Qazaqstan TV* (22 December) and *KTK* (26 December) were marked as paid political advertising, paid for by the political parties.

⁵² While the Law on the Administrative Procedures contains certain safeguards regarding the process in the CEC, providing for the right of complainant to be notified of and personally participate in the hearing, there are no procedural rules and guarantees provided for the review of complaints in lower-level commissions.

⁵³ Election commissions have five days to consider complaints, and three days to review appeals against decisions of lower-level commissions. Complaints filed within five days before election day must be reviewed immediately. If a complaint is filed both to a commission and a court, the commission suspends the case.

⁵⁴ The law distinguishes applications from complaints where an application is defined as any written communication to state institutions by citizens and legal entities. The general deadlines of 15 to 30 days for responding to applications are established by the Law on Procedures for Consideration of Petitions.

Many ODIHR LEOM interlocutors from civil society explained the low number of electoral disputes by the lack of competitiveness of the elections and low trust in the effectiveness of election dispute resolution processes.

Complaints against the CEC are reviewed by a Supreme Court judge in the first instance whose decision can be further appealed to a Supreme Court cassation panel in the final instance. The Election Law provides that final results announced by the CEC can be appealed to the Constitutional Council, within 10 days of their announcement, but only by the president, prime minister, speakers of both houses or one-fifth of the total number of members of the parliament. The legislation is vague as to whether final results announced by the CEC can also be appealed to the Supreme Court. ODIHR LEOM interlocutors also demonstrated a lack of consistent understanding of legal provisions for electoral disputes.⁵⁵ The Election Law does not establish clear criteria for invalidation of results.

Some 44 complaints were lodged with the Supreme Court, most of these against the CEC resolution affecting citizen observation (See *Citizen Election Observation*).⁵⁶ All these complaints were dismissed on overly formalistic grounds or as filed beyond the legal deadlines, without a possibility for the appellants to rectify technical mistakes.⁵⁷ This fell short of providing effective redress, contrary to international obligations.⁵⁸

Citizen Election Observation

Election observers from independent civil society organizations reported concerted efforts to prevent their effective election observation. Several ODIHR LEOM interlocutors considered that this was in response to the protests that followed election day irregularities uncovered by citizen observers in the 2019 presidential election.

The Election Law provides for citizen observation of elections and does not require formal accreditation with the election administration. On 4 December, the CEC adopted a resolution limiting the right to observe to only those non-profit organizations which, in their founding declaration or statute, have a declared objective of “implementation and protection of the political rights and freedoms of citizens”.⁵⁹ The decision as to which organization meets the stated criteria was made by the respective election commissions, creating further uncertainty.

Some citizen observers claimed that for practical reasons and as a matter of principle, since they disputed the legality of the resolution, they would not change their charters. The CEC also regulated observers’ rights to make photos, video and audio recordings during the voting process and prohibited publication and dissemination of recorded material, with a stated aim to ensure protection of personal data of people at polling stations.⁶⁰

⁵⁵ While the Civil Procedures Code provides that decisions and actions (inaction) of the CEC can be appealed to the Supreme Court, there are no rules to regulate simultaneous appeals against the results lodged in both the Constitutional Council and the Supreme Court. In the meeting with the ODIHR LEOM, the Supreme Court hesitated to confirm whether it was eligible to adjudicate appeals against election results.

⁵⁶ Hearings were held online to comply with COVID-19-related sanitary measures. Parties to the case, as well as those willing to follow the process, could get access upon registration at the Supreme Court’s website.

⁵⁷ The ODIHR LEOM was made aware of only three complaints lodged with district courts; all were subject to adjudication by the Supreme Court and hence denied.

⁵⁸ Paragraph 5.10 of the 1990 OSCE Copenhagen Document stipulates that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

⁵⁹ The Ministry of Justice informed the ODIHR LEOM that 94 organizations amended their statutory documents since 4 December.

⁶⁰ The recorded material can be used only as evidence material in civil, administrative and criminal cases, and no online video broadcasting from polling stations by observers is allowed.

The ODIHR LEOM was made aware of some 20 civil society organizations, including those that observed previous elections, being subject to tax investigations in the run-up to these elections. This severely impacted the ability of some organizations to conduct election observation.

At the same time, many ODIHR LEOM interlocutors regarded a number of well-resourced organizations planning to deploy observers as closely aligned with the government, seeking to dilute and disrupt independent citizen observation.⁶¹ The late introduction of obligatory COVID-19 related testing for observers was perceived as a further step to hinder independent citizen observation as the additional costs for COVID-19 tests were not foreseen in their operational budgets.⁶²

Election Day

The IEOM did not observe election day proceedings in a systematic or comprehensive manner, and mission members visited a limited number of polling stations in 13 out of 17 regions. The election day was generally calm; however, the overwhelming presence of police and security services in several cities effectively prevented political movements from holding preannounced peaceful demonstrations.⁶³ In Almaty, the IEOM witnessed a group of some 20 activists surrounded by some 100 police officers for up to nine hours and released only after polling closed.⁶⁴ The media reported a number of detentions of activists. Internet slow-downs in Almaty and Nur-Sultan and shutdowns of some media websites were reported throughout the day.

Voting procedures were generally followed at polling stations observed by the IEOM. Nevertheless, IEOM observers noted strong indications of ballot box stuffing, lacking signatures on the voter list as compared with the high voter turnout announced by the PECs observed, multiple entries in the supplementary voter list signalling substantial issues with the accuracy of voter registration, ballot boxes not sealed properly, and unauthorized people present in polling stations. Following the instructions of the PECs observed to remain at a considerable distance, both party proxies and domestic observers, albeit present in high numbers, often had no clear view of procedures, particularly voter identification. Observers did not object.

Positively, the majority of the visited polling stations provided unassisted access to voters with disabilities; nevertheless, the information on accessibility of polling stations in the CEC “Interactive Accessibility Map” was not always accurate.

Mitigating measures against the COVID-19 were generally in place, and personal protective equipment (PPE) was available in all polling stations visited for commissioners, observers and voters. However, social distancing was not always respected inside voting premises, and the IEOM noted instances of overcrowding. In most polling stations visited, the PEC members limited the maximum

⁶¹ Paragraph 8 of the [Declaration of Global Principles for Non-partisan Election Observation and Monitoring by Citizen Organizations](#) states that “no one should be allowed to be a non-partisan citizen election observer or monitor unless she or he is free from any political, economic or other conflict of interest that would hinder that person from conducting her or his election observation and monitoring activities in a non-discriminatory, impartial accurate and timely manner”.

⁶² The Ministry of Health [Resolution No 69](#) of 29 December and the [Sanitary Requirements on Election Day](#) of 30 December obliged all observers and proxies in polling stations located in regions designated as yellow and red COVID-19 zones, to present a five-day valid negative PCR test. In order to be eligible for free PCR tests, observing organizations had to submit to *akimats* a number of registration documents by 3 January.

⁶³ This was observed in Aktobe, Almaty, Kyzylorda, Nur-Sultan, Oskemen and Shymkent.

⁶⁴ The ODIHR LEOM repeatedly contacted police but was not provided any information on the reasons of the stand-off.

number of people present and turned away observers, including from the IEOM.⁶⁵ Notwithstanding the requirement to have a negative PCR test in red and yellow zones, IEOM observers were not consistently asked to present these.

In almost all polling stations where counting was observed, the PECs did not consistently follow procedures, failing to announce voters' choice or the number of votes cast per party, and routinely skipping important reconciliation safeguards. The IEOM and domestic observers were requested by the PECs to remain at a large distance from the vote count, which considerably limited transparency of the process.

In 8 of the 12 TECs where tabulation was observed by the IEOM, the process was not transparent, and overcrowding did not allow to follow health protection protocols. In most cases, domestic observers and proxies were not present. Two TECs visited by the IEOM during the night were closed and no tabulation was on-going; other two TECs postponed the tabulation until the following day for no apparent reason.⁶⁶ The IEOM was never able to verify the entry of results into databases.

The CEC published turnout on its website throughout the day, eventually announcing the preliminary turnout of 63.3 per cent.

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

MISSION INFORMATION & ACKNOWLEDGEMENTS

Nur-Sultan, 11 January 2021 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour involving the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE Parliamentary Assembly (OSCE PA). The assessment was made to determine whether the elections complied with OSCE commitments and other international obligations and standards for democratic elections and with national legislation.

Kristian Vigenin was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term OSCE observer mission. Ambassador Jarosław Marcin Domański is the Head of the ODIHR LEOM, deployed from 8 December. Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation.

This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Standing Committee meeting in Vienna on 24 February 2021.

The ODIHR LEOM includes 11 experts in the capital and 24 long-term observers deployed throughout the country. On election day, 48 observers were deployed, including 41 observers deployed by ODIHR,

⁶⁵ The “Wings of Liberty” and the Youth Information Service of Kazakhstan (MISK) citizen observer groups also informed the IEOM that several of their observers were denied entry by the PECs.

⁶⁶ The former was the case in Atyrau and Mangystau regions; the latter in Shymkent and Aktobe.

as well as a 7-member OSCE PA delegation. There were 52 per cent of women among of observers who were drawn from 20 OSCE participating States.

The observers wish to thank the authorities for their invitation to observe the elections, and the Ministry of Foreign Affairs and the Central Election Commission for the assistance. They also express their appreciation to other state institutions, political parties, media, civil society organizations, and the international community for their co-operation.

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