

**ELECTORAL POLICY
AND LEGISLATION
IN KAZAKHSTAN**

**21 KEY RECOMMENDATIONS
FOR A NEW LEGISLATIVE
FRAMEWORK**

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**ERKIN QAZAQSTAN
REFORMS DEVELOPMENT AND
PROMOTION PLATFORM**



Erkin Qazaqstan is a platform for the development and promotion of political reforms. We aim to reform the authoritarian regime in Kazakhstan into a democracy. Erkin Qazaqstan (Free Kazakhstan) is a model of a state with a parliamentary system of government. In which the elected government is accountable to society, and an independent judiciary guarantees fundamental human rights and freedoms.

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We have prepared this concept paper in collaboration with a group of international election experts (political scientists and lawyers). The presented outlines of a new electoral system are based on the need to establish a stable and transparent electoral mechanism that could help effectively represent the interests of Kazakhstan citizens in the government. The paper relies on international standards and best practices for elections in a democratic society. We believe that a new electoral system should serve as a basis for a peaceful transition of power and ensure a dynamic political process in a free Kazakhstan of the future.



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RECOMMENDATIONS

1. In future constitutional reform, consideration should be given to establishing a parliamentary system of government in Kazakhstan. The post of the president should be a ceremonial office, elected indirectly by the parliament.
2. In future constitutional reform, consideration should be given to abolishing the Senate and increasing the number of MP's in the Majilis.
3. Consideration should be given to electing the parliament through a list PR system in multi-member districts (from 7 to 14 districts).
4. Consideration should be given to reduce the electoral threshold to 3% to guarantee access to the parliament to different political forces.
5. Any changes to the electoral system should enter into force only after the next regular parliamentary election if they are approved by the newly elected parliament.
6. Consideration should be given to elect maslikhat members through the FPTP system in single-member districts.
7. In future constitutional reform, consideration should be given to providing for the appointment of akims in oblast level by maslikhats and their direct election in the cities of republican significance through the two-round system and the FPTP in other municipalities.
8. The legal framework for elections should be reviewed to remove undue restrictions on the exercise of the right to stand for elections, such as residency requirement, language proficiency, work experience in public service and criminal records.
9. Revise the legislation and ensure the implementation of fundamental freedoms of expression, assembly and association.
10. Important to reduce the registration requirements for political parties up to 3000 signatures and allow independent candidates as a group of citizens with a list to stand for elections.
11. The legal framework should be revised to provide for an independent, transparent and impartial election administration at all levels.
12. The CEC composition shall be appointed by the Parliament from among independent and non-partisan lawyers (lawyers, legal consultants, human rights defenders and university professors).
13. Territorial and precinct election commission composition shall be drawn from an open list of citizens (volunteers) and lawyers trained and certified (including international standards of democratic elections) by an independent educational institution.
14. The chosen election administration system should also be protected from frequent change by the political majority of the day.

15. Any new voting technologies should be introduced through a gradual process that builds public trust in the technology. As the first measure, online streaming of voting and counting procedures should be introduced.

16. Priority should be given to technologies that address the most problematic issues, such as the absence of a reliable voter registration system, access to the key electoral data, including complaints record and prompt publication of voting results (with a copy of protocols from each polling station).

17. If new technologies are introduced into the balloting procedures, the paper ballot should be retained.

17.1. The CEC and territorial commissions shall be obliged to provide and publish on their websites voting results in disaggregated format by each polling station once voting results protocols are filled.

18. The rights of citizen observers must be guaranteed by law, they must be allowed to observe all stages of the electoral process.

19. Citizen observers shall be guaranteed unrestricted access to open sessions of election commissions at all levels.

20. To provide for transparent and effective observation of the voting day procedures, the law shall ensure:

20.1. the access of observers to polling and result tabulation premises

20.2. the right to take photos and record videos during the voting, counting and tabulation process.

21. The law must be amended to ensure the availability of protocols with voting results and other information at the request of observers in the precinct, TEC's and CEC.

ELECTORAL POLICY AND LEGISLATION IN KAZAKHSTAN

21 KEY RECOMMENDATIONS FOR A NEW LEGISLATIVE FRAMEWORK

INTRODUCTION

This concept paper explores options for electoral policies and reforms of electoral legislation in Kazakhstan. Its aim is to support and inform advocacy efforts and debates among the stakeholders on potential changes to electoral law and practice. Where relevant, considerations from related fields, including constitutional law, are mentioned, with an understanding that their in-depth analysis is not possible within the scope of a short concept paper.

Any attempt to offer a blueprint for reform must be undertaken with a degree of humility. The functioning of democratic institutions in each country is influenced by the economic, historical and cultural environment, and borrowing a successful model from one country does not guarantee the same performance in another. At the same time, comparative studies and research on electoral systems provide a basis for making better-informed decisions in this area. At the international level, consensus exists on the main principles of democratic electoral processes, allowing for the assessment of elections against these international standards. This paper will make references to international instruments, as well as academic works, as appropriate.

BACKGROUND

Elections held in Kazakhstan since its independence, declared in December 1991, have not been free and fair. While the initial polls, such as the early parliamentary elections in March 1994 and December 1995, were somewhat competitive and allowed limited space to political opposition, they were characterized by arbitrary denial of registration to opposition candidates, obstruction of their campaigns, multiple voting, and questionable ballot counts. These problems persisted in subsequent elections, exacerbated by the gradual suppression of independent media and harassment of opposition activists. By early 2010th political opposition to President Nazarbayev in the country was effectively suppressed, with all prominent critics of the government imprisoned or driven into exile. Elections have become only nominally competitive, as all registered political parties professed their support for Nazarbayev.

So far little has changed in this pattern following the resignation of President Nazarbayev from office in March 2019, when the presidency was assumed by Kassym-Jomart

Tokayev, speaker of the Senate. An early presidential election held in June 2019 and won by Mr Tokayev saw the continuation of restrictions on freedoms of expression and assembly, the lack of political pluralism, and insufficient safeguards against falsifications on election day. International observers from the OSCE Office for Democratic Institutions and Human Rights (ODIHR) repeated many of the same recommendations made in prior elections.¹

I. CONSTITUTIONAL ARCHITECTURE

Parliamentary and presidential republics

Debates on electoral reform ultimately seek to ensure that elections perform their intended purposes in democratic governance, including formation of representative bodies of government based the free expression of the will of the people and maintaining accountability of elected officials to their voters. When these purposes are not served and democratic governance does not function, the root causes of problems may well lead to the realm of constitutional infrastructure, which establishes the system of government.

Kazakhstan's 1995 Constitution with subsequent amendments establishes a presidential republic, with broad presidential powers. President forms the government, which is accountable to the president and cannot be brought down by the parliament without the president's consent. President holds a powerful legislative veto, which the parliament may override only with a 2/3 majority of each chamber (3/4 for constitutional laws). President may dissolve parliament at will.

Scholars who researched democratic transitions in presidential and parliamentary republics noted the tendency of presidential republics to produce governments that do not enjoy parliamentary majority (since governments are formed by presidents and do not depend on continued parliamentary support); to discourage the formation of durable parliamentary coalitions; and to bring about legislative deadlocks. Conflicts between presidents and parliaments, who both have popular mandates, have in the practice of different countries led to stand-offs that could not be resolved within the constitutional framework, resulting in presidents flouting the constitution and a higher risk of military coups.

In contrast to presidential republics, parliamentary systems of government entail the relationship of mutual dependency between the legislature and the executive. Parliament's power to pass a vote of no confidence in the government and the government's power to dissolve parliament operate as deadlock-breaking mechanisms, allowing to constitutionally remove from power dysfunctional executives and legislatures. Due to these reasons researchers found that parliamentary republics were more likely to successfully consolidate democratic transitions, while presidential republics were more likely to suffer relapse into authoritarian rule (Stepan and Skach 1993). It is notable that the world's best-functioning democracies today are

1 All recommendations are available at [ODIHR Electoral Recommendations Database](#).

overwhelmingly parliamentary republics (see table 1).²

Research into semi-presidential systems (where a directly elected president exists along with the prime minister who leads the government supported by parliament) has concluded that these systems also have a poor record in consolidating democracies: nascent democracies with semi-presidential systems have failed to consolidate much more often than they have succeeded (Elgie 2007).

Table 1. Type of government and Index of democracy*

Rank	Country	Type of Government	Regime Type
1	Norway	Parliamentary System	Full Democracy
2	Iceland	Semi-presidential System	Full Democracy
3	Sweden	Parliamentary System	Full Democracy
4	New Zealand	Parliamentary System	Full Democracy
5	Canada	Parliamentary System	Full Democracy
6	Finland	Semi-presidential System	Full Democracy
7	Denmark	Parliamentary System	Full Democracy
8	Ireland	Semi-presidential System	Full Democracy
9	Netherlands	Parliamentary System	Full Democracy
10	Australia	Parliamentary System	Full Democracy
11	Taiwan	Semi-presidential System	Full Democracy
12	Switzerland	Assembly-independent system	Full Democracy
13	Luxemburg	Parliamentary System	Full Democracy
14	Germany	Parliamentary System	Full Democracy
15	Uruguay	Presidential System	Full Democracy
16	United Kingdom	Parliamentary System	Full Democracy
17	Chile	Presidential System	Full Democracy
18	Austria	Semi-presidential System	Full Democracy
19	Costa Rica	Presidential System	Full Democracy
20	Mauritius	Parliamentary System	Full Democracy
21	Japan	Parliamentary System	Full Democracy
22	Spain	Parliamentary System	Full Democracy
23	South Korea	Presidential System	Full Democracy
24	France	Semi-presidential System	Flawed democracy
25	United States	Presidential System	Flawed democracy
26	Portugal	Semi-presidential System	Flawed democracy
27	Estonia	Parliamentary System	Flawed democracy
79	Ukraine	Semi-presidential System	Hybrid Regime
107	Kyrgyzstan	Semi-presidential System	Hybrid Regime

² The influential Democracy Index published by The Economist ranked the following countries among the world's 10 best-functioning democracies in 2020: Norway, Sweden, New Zealand, Denmark, Canada, Australia, and Netherlands. While some of these states are nominally headed by a monarch, they all practice the parliamentary system of government.

* In a semi-presidential system of government of Kazakhstan – the President plays a crucial role in forming, controlling, dismissal and oversight of the government. It is not similar to the semi-presidential systems of the EU countries like Iceland, Finland, Austria and Portugal, where presidents hold ceremonial roles.

Rank	Country	Type of Government	Regime Type
124	Russia	Semi-presidential System	Authoritarian
128	Kazakhstan	Semi-presidential System	Authoritarian
146	Azerbaijan	Semi-presidential System	Authoritarian
148	Belarus	Semi-presidential System	Authoritarian
155	Uzbekistan	Semi-presidential System	Authoritarian
159	Tajikistan	Presidential System	Authoritarian
162	Turkmenistan	Presidential System	Authoritarian

Source: Democracy Index 2020 - Economist Intelligence Unit; Elgie 2011; Elgie and Moestrup 2016; Robert Elgie (2016);

RECOMMENDATION

1. In future constitutional reform, consideration should be given to establishing a parliamentary system of government in Kazakhstan. The post of the president should be a ceremonial office, elected indirectly by the parliament.

Unicameral and bicameral legislatures

Kazakhstan's 1995 Constitution establishes a bicameral parliament with the lower chamber (Majlis) and the upper chamber (Senat). Majlis consists of 107 deputies, of whom 98 are elected and 9 are appointed by the People's Assembly (an advisory body appointed by Kazakhstan's president).³ Senat consists of 32 regional representatives and 15 members appointed by the president.

In general, bicameral legislatures are more common in federal and large states. A bicameral legislature may represent sub-national governments, act as a body of expert review of legislation, provide an additional check on the power of the lower house, and give additional representation for various socio-economic interests or minorities. At the same time, a unicameral legislature is often cheaper, simpler and more efficient. A single chamber of parliament helps avoid duplication and deadlock, while concentrating democratic responsibility in one elected body. Other mechanisms may ensure checks and balances on the unicameral parliament, without the need for a second legislative chamber (Bulmer 2017).

Interestingly, scholars who researched reforms leading to the introduction of second chambers of parliament around the world found that such reforms have been more common in dictatorships than in democracies. While the number of democracies with bicameral legislatures has declined since 1945, the number of non-democratic countries where second chambers have been introduced has increased more than twofold. One of the explanations for this growth is that the introduction of second chambers in non-democratic countries is employed to mask other constitutional changes, particularly flouting of presidential term limits by presidents who wish to extend their terms of office (Baturu and Elgie 2018).

3 This procedure is 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 should be directly elected.

RECOMMENDATION

2. In future constitutional reform, consideration should be given to abolishing the Senate and increasing the number of Mp's in the Majlis.

II. ELECTORAL SYSTEM

The following considerations are applicable to the lower chamber of parliament, the Majlis.⁴

A brief overview of electoral systems

An electoral system may be defined as a set of rules which translates votes obtained by candidates and/or parties in an election into seats in the elected body. These rules relate to the magnitude and the number of districts (constituencies) from which the body is elected, the choices given to voters in electing candidates, and the formulas used for allocating mandates. The choice of an electoral system thus has important consequences for organizing political competition and the formation democratic institutions.

Electoral systems are typically grouped into two main categories: majoritarian systems and proportional systems. Various combinations of these systems or their elements are also possible and are in use in some countries.

Majoritarian electoral systems award seats to the candidate (or party) with the most votes. If there is one seat to be filled in each district (a single-member district) and it goes to the candidate who obtained more votes than the others, this system is known as “first past the post”. If instead of giving the seat to the candidate with the most votes, a second round is organized between two or more highest-polling candidates, this system is known as the two-round system. Instead of voting for one preferred candidate, voters may also be given an opportunity to rank candidates in the order of preference (known as the “alternative vote” system). If there is more than one seat to be filled in each district (a multi-member district), voters may be given as many votes as there are seats to be filled and vote for the candidates of their choice (so called “block vote” system), or voters may vote for a list of candidates, and the list with the most votes wins all the district seats (known as “party block vote”).

Majoritarian systems may differ in their effect on the competition within and between political parties. For example, the block vote system is contributing to internal party divisions, while the first past the post system usually facilitates the emergence of two dominant political parties with broad support in the country. Most frequently cited advantages of majoritarian systems are: they are easy to administer and understand; they encourage stronger ties of the elected representatives to their constituency; they allow popular independent candidates to be elected; and they typically produce a clear

⁴ If a bicameral legislature is preserved in the future in Kazakhstan, the choice of the electoral system for the upper chamber should be made based on the main reasons for the existence of that chamber. It may, for example, provide for regional representation.

parliamentary majority for one party and a coherent opposition (International IDEA 2005).

Critics of majoritarian systems point out that they exclude smaller parties from representation in parliament and tend to produce a bonus of seats for the winning party, exceeding its actual share of the vote. These systems do not facilitate representation of women and ethnic minorities. They also contribute to the “winner takes all” mentality in political culture, which discourages dialogue and consensus-building. Close links of elected representatives with their constituencies may be a fertile ground for vote-buying and other corruption.

In contrast to majoritarian, proportional electoral systems are designed to ensure that seats in the elected body reflect the contestant's share of the vote. Proportional systems always require the use of multi-member districts (or one nationwide district) and voters are given the option to vote for parties, i.e. lists of candidates (“list proportional representation (PR) system”) or rank candidates in the order of preference (known as the “single transferable vote” system). Lists of candidates may be “closed”, which means that the order of candidates on the list is determined by the party (or another list submitter) and candidates will obtain seats in that order. If a list is “open” this means voters are given an opportunity to express preferences for specific candidates on the list, which may influence the distribution of seats.

Proportional electoral systems are often perceived as more fair by the political actors and voters because they better reflect the share of the vote obtained. They are also regarded as more inclusive and facilitate political representation of smaller parties, women, and minorities. They encourage power-sharing and coalition-building, since they make it more difficult for one party to obtain an absolute majority. Specific design elements, such as open lists, may encourage competition within political parties.

Disadvantages of proportional systems are, in many ways, the continuations of their strengths. By lowering the barrier to representation, proportional systems facilitate political fragmentation and proliferation of political parties. This often makes government formation protracted and difficult, forcing political parties with very different views to negotiate and compromise on their promises to voters. Small parties may yield oversized influence in government. Resulting coalition governments may be unstable and unable to implement coherent policies. Elected representatives, especially in closed-list systems, have weak ties to their voters and are overly dependent on party leaders. On a practical level, proportional systems may be more difficult to administer and to explain to voters.

Choice of an electoral system

A number of considerations should be taken into account in the choice of an electoral system. As noted earlier, electoral systems tend to differ in their effects on the representation of various groups, on the accountability of elected representatives and their relationship with the voters, on formation and stability of governments, on the political party landscape, and in other respects. It is worth bearing in mind, however

that an electoral system is part of the legal framework which sets the rules of democratic competition. The effects and consequences of different electoral systems discussed above largely relate to genuinely competitive elections. The absence of political competition deprives an electoral system of its *raison d'être*.

Since Kazakhstan's independence, different electoral systems have found their way into the country's legal framework. The first parliamentary elections were held in 1994 using first-past-the-post system. One year later, early parliamentary elections were held under the new Constitution, using the two-round system. In 1998, a mixed electoral system was introduced, with 10 seats elected through a list proportional system from the nationwide constituency. Since 2007 the lower chamber of parliament is elected through a list PR system, with the exception of 9 members chosen by the president's advisory body.

Is there an optimal electoral system for democratising states? Arend Lijphart, one of the world's leading scholars of electoral systems, recommended that new democracies adopt a list PR system in multi-member districts (see table 2). The districts should not be too large (in case of Kazakhstan, the number of electoral districts should vary between 7 to 14), in order to minimize the distance between voters and their representatives. Lists should be closed or nearly closed, in order to encourage the formation of stronger political parties. The electoral threshold should be low to 3 per cent to preserve minority access to representation. Lijphart and other scholars advised new democracies against majoritarian and mixed systems, on the grounds that new democracies often have significant ethnic, regional, religious, or other polarizing divisions which these systems may exacerbate. Non-proportional systems may lead to the exclusion of significant groups from power, increasing discontent and risk of unrest (Gallagher and Mitchell 2006).

Table 2. Party-list Proportional Representation by country

Country	Electoral Formula	Number of Districts	District Magnitude	Open List	Threshold	Assembly Size
Albania	DH	12	3-36	Yes	3%	140
Austria	LR & DH	1	183	Yes	4%	183
Armenia	DH	1	101		5%	107
Belgium	DH	11	4-24	Flexible	5%	150
Bosnia and Herzegovina	SL	3(5)	14(28)	Yes	3%	42
Bulgaria	DH	31	4-16		4%	240
Czechia	DH	14	5-25	Yes	5%	200
Croatia	DH	10(2)	8-14	Yes	5%	151
Denmark	DH & SL	12	2-29	Yes	2%	179
Estonia	DH	12	5-15	Yes	5%	101
Finland	DH	13	1-36	Yes	No	200
Latvia	SL	5	13-32	Yes	5%	100
Netherlands	DH	1	150	Yes	0.67%	150
Norway	SL	19	4-19	Yes	4%	169

Country	Electoral Formula	Number of Districts	District Magnitude	Open List	Threshold	Assembly Size
Poland	DH	41	7-19	Yes	5%	460
Portugal	DH	20(2)	2-48		No	230
Romania	DH	44	4-29		5%	330
Serbia	DH	1	250		3%	250
Slovakia	HB	1	150	Yes	5%	150
Spain	DH	50	1-35		3%	350
Sweden	SL	29	2-38	Yes	4%	349
Switzerland	HB	20(6)	1-34	Yes	No	200
Turkey	DH	87	1-35		10%	600
Argentina	DH	24	2-35		3%	257
Brazil	DH	27	8-70	Yes	5%	513
Chile	DH	28	3-8	Yes	No	155
Colombia	LR	33(3)	1-18	Yes	No	166
Peru	DH	27	1-35	Yes	5%	130
Cambodia	DH	25	1-18		No	125
Indonesia	SL	80	3-10	Yes	4%	575
Sri Lanka	DH	22	4-20	Yes	5%	225
Algeria	LR	58(1)	3-37	Yes	5%	407
Israel	DH	1	120		3.25%	120
Morocco	LR	92(1)	3(90)		6(3)%	395
Tunisia	LR	27(6)	4-10		No	217
South Africa	LR	9(1)	30-80(200)		No	400
KAZAKHSTAN	LR	1	98		5%	107
Kyrgyzstan	DH	1	120		7%	120

Source: IDEA (2020); Council of Europe Portal, Compendium of Electoral Data (2021); Political Database of Americas (2021); Bormann and Golder (2013); Acronyms: DH = D'Hondt; HB = Hagenbach-Bischoff; LR = largest-remainder; SL = Sainte-Laguë.

This advice holds largely applicable for Kazakhstan, with its considerable ethnic, religious and regional diversity. A proportional system would also make it difficult for any party or grouping to acquire a majority by itself, preventing monopolization of public resources and their misuse in elections. Government effectiveness, which is often seen as a weakness of proportional systems, could be addressed through reforms enhancing the capacity and quality of the public administration. Whichever electoral system is chosen, its stability is as important to democratic consolidation as the choice of the system itself. New democracies in the post-Soviet space have suffered from frequent changes to electoral systems for the political benefit of ruling majorities. It would be highly advisable to establish constitutional safeguards which prevent such frequent changes. For example, the constitution may provide that any changes to the electoral system would enter into force only after the next regular (not early) parliamentary election, if they are confirmed by the newly elected parliament.⁵

⁵ CDL-PI (2020)020 Venice Commission Reports concerning The Stability of Electoral Law noted that “stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters.”

RECOMMENDATIONS

3. Consideration should be given to electing the parliament through a list PR system in multi-member districts (from 7 to 14 districts).
4. Consideration should be given to reduce the electoral threshold to 3% to guarantee access to the parliament to different political forces.
5. Any changes to the electoral system should enter into force only after the next regular parliamentary election if they are approved by the newly elected parliament.

Election of Local self-government

Local representative bodies (maslikhat) are elected, while local executive officials (akim) except village level are top down appointed by Kazakhstan's president and his appointees. Accountable governance, which understands and responds to local needs, would be better served if akims were appointed by maslikhats or directly elected. With the further reform of the existing system of administrative-territorial divisions and self-government, akims of oblast could be elected by maslikhats. The constitution should include a deadlock-resolving mechanism if a local representative body cannot agree on the appointment of an akim in the oblast level. Akims of the cities of the republican significance and newly formed municipalities through direct elections by the population for 4 years term. In this case, consideration should be given to the use of an already familiar to the citizens two-round system for the election of akims in large (republican significance) cities and the FPTP for municipalities.

The electoral system for all local representative bodies could also adopt the FPTP with single-member districts for closer relationships between voters and their representatives elected for 4-year terms.

RECOMMENDATIONS

6. Consideration should be given to elect maslikhat members through the FPTP system in single-member districts.
7. In future constitutional reform, consideration should be given to providing for the appointment of akims at the oblast by maslikhats and their direct election in the cities of republican significance through two-round system and the FPTP in other municipalities.

III. ELECTORAL RIGHTS AND FREEDOMS

While undoubtedly important, the choice of an electoral system by itself does not ensure a free or a fair election. Other elements of the electoral legal framework should ensure the effective exercise of the right to participate in public affairs and guarantee the free expression of the will of voters in their choice of elected representatives.

Access to the ballot

Electoral law should facilitate the effective exercise of the right to stand for election. This requires removing existing barriers to the registration of political parties and eliminating discriminatory and unreasonable restrictions.⁶ In particular, while it is important that candidates are familiar with situation in the country, the current residence requirement of 10 years for parliamentary candidates is clearly excessive. A number of other requirements to candidates for elected offices currently contained in the legal framework are at odds with Kazakhstan's international legal obligations.⁷ Access to the ballot should also be provided for candidates who are not members of political parties, for example by allowing groups of citizens of a certain number to put forward lists of candidates.

The right to stand for election should be protected from disproportionate interference. The current legal framework provides broad grounds for the Central Election Commission to cancel the registration of candidates and parties standing for elections, including defamation of another party or candidate. Cancellation of registration effectively deprives eligible candidates of the opportunity to exercise their right to stand for office. It may be used only as a measure of last resort, if no other measures proved to be effective.

Election campaigns

In a democratic electoral process parties and candidates are free to communicate their views to the electorate and conduct their campaigns using their chosen means, from meetings and rallies to traditional, online and social media. These freedoms should be ensured in the legal framework and protected against interference (Guidelines n.153), 154).⁸ Any restrictions on the exercise of these freedoms should respect Kazakhstan's obligations under international human rights law.

RECOMMENDATIONS

8. The legal framework for elections should be reviewed to remove undue restrictions on the exercise of the right to stand for elections, such as residency requirement, language proficiency, work experience in public service and criminal records.

9. Revise the legislation and ensure the implementation of fundamental freedoms of expression, assembly and association.

10. Important to reduce the registration requirements for political parties up to 3000 signatures and allow independent candidates as a group of citizens with a list to stand for elections.

6 "The legislative requirements and onerous administrative procedures for the registration of political parties should be comprehensively revised..." See the OSCE/ODIHR 2021 Parliamentary elections Final Report, rec. 2.

7 See inter alia reports of OSCE/ODIHR election observation missions from the 2016 early parliamentary elections and the 2019 early presidential election.

8 "The legal framework should be comprehensively revised to lift the restrictions on fundamental freedoms of peaceful assembly, expression and association, in line with OSCE commitments and other international obligations." See the OSCE/ODIHR 2021 Parliamentary elections Final Report, rec. 3. See also CDL-AD(2007)020, OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.

IV. ELECTION ADMINISTRATION

Election commissions

Election administration bodies play a pivotal role in ensuring a free and fair electoral process. To enable their impartial performance, election administration bodies should be shielded from political interference and enjoy independence of action. In new democracies, there are two common approaches to the formation of election administration bodies. The first is to ensure the representation of political contestants in election administration bodies (known as “partisan” or “political” composition). The second approach is the “expert” or “professional” composition of election administration bodies, i.e. its formation through non-partisan appointments. Both approaches have advantages but also present certain challenges.

Partisan composition of election administration is meant to ensure the confidence of political parties in the integrity of the electoral process. However, this confidence is only ensured if parties are satisfied with their representation in the election commissions. Consequently, some political parties try to maximize their representation, while those parties who are less represented suspect and accuse election commissions of manipulations. Therefore, where partisan approach is used, it is important to ensure equitable representation for both parliamentary and non-parliamentary parties. If a large number of parties competes in the election, this task becomes more challenging and the resulting commissions may have too many members and unable to operate efficiently.

Non-partisan composition of election administration also needs to enjoy the confidence of political actors. However, instead of allowing political party representatives to be directly administering the election, in this approach the election is administered by non-political actors, while political actors are given the opportunity to observe all aspects of the process. Confidence is thus achieved through perceived impartiality of the election administrators. For example, in Poland until recently the central and regional election commissions have consisted only of current and retired judges. In Spain, the central and regional election commissions are drawn from judges and university professors, while the precinct commissions are staffed by voters selected by lottery. In Greece, chairs and secretaries of precinct election commissions are selected from among members of the bar association and appointed by the Supreme Court. Other members of the precinct commissions are randomly selected from among voters registered in the constituency.

In Kazakhstan, the independence and impartiality of election administration should be ensured, as it is key for maintaining trust in the electoral process. If the non-partisan approach is chosen, the Central Election Commission could be appointed by the parliament from among lists of nominees submitted by, for example, bar associations, chamber of legal consultants, universities, and other independent institutions, including human rights organizations. Members of lower-level election administration bodies could be drawn by lot from an open roster of volunteers, trained and certified by an independent training institution. The chosen election administration system should also be protected from frequent change by the political majority of the day, in a similar manner as the electoral system (see above).

RECOMMENDATIONS

11. The legal framework should be revised to provide for an independent, transparent and impartial election administration at all levels.

12. The CEC composition shall be appointed by the Parliament from among independent and non-partisan lawyers (lawyers, legal consultants, human rights defenders and university professors).

13. Territorial and precinct election commission composition shall be drawn from an open list of citizens (volunteers) and lawyers trained and certified (including international standards of democratic elections) by an independent educational institution.

14. The chosen election administration system should also be protected from frequent change by the political majority of the day.

V. NEW VOTING TECHNOLOGIES

New voting technologies may strengthen confidence in the electoral process if they are shown to be reliable and introduced through a gradual process that builds public trust in the technology (International IDEA 2011). Priority should be given to technologies which address the most problematic issues, such as the absence of a reliable voter registration system. The experiences of Mongolia and Kyrgyzstan should be given particular attention in this respect. If new technologies are introduced into the balloting procedures, preference should be given to solutions which retain the paper ballot, such as ballot scanners. Electronic voting systems, including Internet voting, are vulnerable to external and internal attacks, and their use in national elections remains limited. Where such systems are introduced, their security, reliability and transparency need to be ensured to uphold the international obligations and commitments for democratic elections.⁹

RECOMMENDATIONS

15. Any new voting technologies should be introduced through a gradual process that builds public trust in the technology. As the first measure, online streaming of voting and counting procedures should be introduced.

16. Priority should be given to technologies that address the most problematic issues, such as the absence of a reliable voter registration system, access to the key electoral data, including complaints record and prompt publication of voting results (with a copy of protocols from each polling station).

17. If new technologies are introduced into the balloting procedures, the paper ballot should be retained.

17.1. The CEC and territorial commissions shall be obliged to provide and publish on their websites voting results in disaggregated format by each polling station once voting results protocols are filled.

VI. OBSERVERS

The presence of observers, both international and national, is linked to maintaining the transparency and credibility of elections. Kazakhstan's law currently allows for the presence of both partisan and non-partisan observers at the meetings of election commissions and on election day. However, during the last parliamentary elections, “citizen observers from some non-profit organisations faced concerted measures to prevent their effective election observation” (OSCE/ODIHR 2021). In addition, the Central Election Commission limited observers' rights to make photo, video and audio recordings during observation of the voting and counting process. They also prohibited citizen observers from the publication and dissemination of recorded materials.

As we see, observers' rights must be strengthened to guarantee their access to the electoral process and information. In particular, on election day and especially during the counting process the procedures should be organised in a manner that enables observers to follow the work of the election commission – inter alia by demonstrating signed voters lists and ballots to observers during the counting process, providing them with the opportunity to receive a copy of voting results from polling stations, and enabling them to follow the tabulation process.

RECOMMENDATIONS

18. The rights of citizen observers must be guaranteed by law, they must be allowed to observe all stages of the electoral process.

19. Citizen observers shall be guaranteed unrestricted access to open sessions of election commissions at all levels.

20. To provide for transparent and effective observation of the voting day procedures, the law shall ensure:

20.1. the access of observers to polling and result tabulation premises

20.2. the right to take photos and record videos during the voting, counting and tabulation process.

21. The law must be amended to ensure the availability of protocols with voting results and other information at the request of observers in the precinct, TECs and CEC.

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