



Office for Democratic Institutions and Human Rights

# REPUBLIC OF KAZAKHSTAN

**REFERENDUM**

**5 June 2022**

**ODIHR NEEDS ASSESSMENT MISSION REPORT**

**11-13 May 2022**



Warsaw  
19 May 2022

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**ODIHR Needs Assessment Mission Report**

**I. INTRODUCTION**

Following an invitation from the Minister of Foreign Affairs of the Republic of Kazakhstan to observe the 5 June 2022 referendum, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 11 to 13 May. The ODIHR NAM included Alexey Gromov, ODIHR Senior Election Adviser, and Dr. Martina Barker-Ciganikova, ODIHR Election Adviser.

The purpose of the mission was to assess the pre-referendum environment and preparations for the referendum. Based on this assessment, the NAM recommends whether to deploy an ODIHR observation activity for the upcoming referendum, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, representatives of media, civil society, and the international community. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs and its Permanent Delegation to the OSCE as well as the OSCE Programme Office in Nur-Sultan for their assistance and co-operation in organizing the visit. ODIHR would also like to thank all its interlocutors for taking the time to meet with the NAM and to share their views.

**II. EXECUTIVE SUMMARY**

On 5 May, the President decreed the nationwide referendum on constitutional changes to take place on 5 June. Voters will be asked one “Yes” or “No” question on the approval of a package of constitutional amendments. The referendum package contains amendments to 33 Articles of the Constitution, and its declared aim is finalization of the transition from “a super-presidential form of government to a presidential republic with a strong parliament”. The referendum follows the initiation of widespread reforms by the President in the aftermath of deadly nation-wide unrest with economic and political demands in January 2022 that led to significant changes to the political establishment.

The Constitution can be amended either by the parliament or through a nation-wide referendum. If amended by a referendum, more than a half of registered voters should vote and more than 50 per cent of the valid votes should be cast in favour of the question. While the vast majority of ODIHR NAM interlocutors supported the decision to hold the referendum, some questioned the possibility for citizens to make an informed choice within such a compressed timeframe, given the extent of the proposed amendments.

While the legal framework for elections has been regularly revised and a few ODIHR recommendations were addressed in the process, according to many ODIHR NAM interlocutors the legal framework regulating the conduct of referenda is outdated and contains limited rules on such issues as campaigning, campaign finance, media and citizen observation. In addition, most ODIHR electoral recommendations remain partially or fully unaddressed, including those related to fundamental freedoms of peaceful assembly, expression and association, independence of election administration, and publication of election results all relevant to the holding of a referendum.

The referendum is administered by the Central Referendum Commission (CRC), 234 Territorial Referendum Commissions, and some 10,000 Precinct Referendum Commissions. Preparations for the referendum are ongoing; the CRC has developed a training programme for the lower-level commissions and other stakeholders, defined COVID-19 related protective measures with regards to the voting process, and is preparing a public awareness campaign about the time of the referendum. The CRC is neither responsible for nor conducting a voter education programme on the content of the constitutional changes being put to a referendum. The ODIHR NAM was informed that Ministry of Justice is responsible for educating voters on the referendum question and the potential subsequent constitutional changes. In line with international good practice, States should educate voters in a balanced and impartial manner. While no ODIHR NAM interlocutors raised concerns about the administration of technical aspects of the referendum, many pointed to electoral malpractices in the past, including on election days.

Voter registration is passive, and local executive authorities compile voter lists based on the state population registry. There are some 11.7 million voters registered in the nationwide electronic voter register maintained by the CRC. Citizens declared incapacitated by a court based on intellectual or psychosocial disabilities and criminally convicted prisoners, irrespective of the gravity of their crime, are not eligible to vote, which is not in line with international standards.

The conduct of the referendum campaign is not adequately regulated in the legislation; among others, provisions on the use of administrative resources, access to and campaigning in the media, guarantees of equal opportunities for disseminating opposing opinions, as well as any campaign finance regulations are absent. The ODIHR NAM was informed that the campaign was expected to be driven mainly by members of the parliament and representatives of other state institutions. So far, no group has openly called for a “NO” in the referendum. Some ODIHR NAM interlocutors expressed mistrust towards state institutions to fulfil their duty in conducting a balanced campaign in a free and fair manner.

Freedom of expression, media freedom and the right of access to information are guaranteed in the Constitution. Nevertheless, previous ODIHR recommendations related to effective exercise of freedom of expression, including with regards to defamation and the blocking of websites remain unaddressed. Further, some ODIHR NAM interlocutors referred to undue legal provisions undermining freedom of expression, including online, and stifling an open discussion of referendum options. The Referendum Law does not provide clear rules for the conduct of media, in particular regarding the requirements to provide impartial coverage of the referendum campaign, guarantee equal conditions for disseminating different opinions, or provide free-of-charge access to media resources. Television, the main source of political information, is either state-owned or largely state-subsidized. The public debate is gradually shifting to the Internet which provides an increasing space for pluralism of news and opinions.

Voters and public associations may challenge the actions, inactions or decisions of the referendum administration and state institutions, and the law provides for short deadlines for initiating and handling referendum disputes in referendum commissions and courts. Some ODIHR NAM interlocutors expect more effective referendum dispute resolution due to recent administrative justice reforms. At the same time, several interlocutors noted that they did not anticipate many complaints citing an expected lack of alternative opinions being presented during the upcoming referendum.

The Referendum Law provides for observation by representatives of public associations and foreign observers. The law is not sufficiently detailed, and provisions on eligible public associations or accreditation procedures are absent; on 5 May, the CRC issued a draft resolution to address these issues. Several citizen observer groups noted the lack of legal clarity and certainty with respect to observation mechanisms; nevertheless, some intend to observe the referendum.

All ODIHR NAM interlocutors underscored the need for an ODIHR observation activity for the referendum noting an added value of an independent assessment of election-related reforms and the potential benefit for the future review of referendum legislation. Representatives of state institutions reiterated their wish to strengthen co-operation with ODIHR in bringing electoral processes closer in line with international standards. A number of issues, such as the legal framework for referenda, equal opportunities for those in favour of the referendum and those opposed, voter education, the campaign and its coverage in the media, respect for fundamental freedoms and referendum day procedures, would benefit from specific attention.

Based on the findings of this report, the ODIHR NAM would have recommended the deployment of a Referendum Observation Mission (ROM) with both long-term and short-term observers, in addition to a core team of experts. However, due to the short timeframe between the announcement of the referendum and referendum day on 5 June the deployment of a ROM is not possible. ODIHR nevertheless sees merit in sending an observation activity for the 5 June referendum on the basis of ODIHR NAM findings, and thus recommends the deployment of a Referendum Assessment Mission.

### III. FINDINGS

#### A. BACKGROUND AND POLITICAL CONTEXT

On 29 April, President Kassym-Jomart Tokayev, while addressing the Assembly of the Peoples of Kazakhstan, proposed holding a national referendum on amending the Constitution. The President announced that Kazakhstan was moving to “a new state model, a new format of interaction between the state and the society”, dubbed as the Second Republic. Consequently, on 5 May, the President decreed the referendum to take place on 5 June.

In early January 2022, demonstrations initially caused by rising fuel prices in the west of the country, turned into nationwide unrest with economic and political demands. Following the protests, leading political positions, including the Prime Minister and half of his cabinet as well as the head of the National Security Council, were reshuffled. Hundreds were detained in relation to the protests and official investigations are still ongoing; a number of international bodies called for an independent investigation.<sup>1</sup> The referendum will also take place following of the COVID-19 pandemic.

The Working Group on Constitutional Reform was established on 28 March and drafted amendments to 33 articles (one third) of the Constitution. The Constitutional Council subsequently confirmed that the draft was in compliance with the Constitution.<sup>2</sup> On 4 May, all 98 deputies of the *Majilis* (lower chamber of the parliament) voted in favour of the draft amendments. The next day, the bill passed the Senate (the upper house of the parliament) and was submitted to the President for signature.

The package of amendments subject to the referendum was originally announced on 16 March during the President’s state-of-the-nation address. Proposals relate *inter alia* to increasing the balance of powers of the executive, legislative and judiciary, banning the involvement of the president in political parties, establishing the Constitutional Court, formalizing the status of the human rights commissioner,

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<sup>1</sup> See among others the appeal of [the UN Commissioner for Human Rights](#). According to the official sources, over 230 people have died as a result of the January events; in the aftermath, over 5,000 criminal cases have been initiated, including 45 cases of terrorism, and some 585 people are held in custody.

<sup>2</sup> See the [conclusions of the Constitutional Council](#) from 4 May (link in Russian).

introducing a ban on the death penalty, and changing the electoral system.<sup>3</sup> The stated aim of the reforms is to finalize the transition from “a super-presidential form of government to a presidential republic with a strong parliament and accountable government”.<sup>4</sup>

While a vast majority of ODIHR NAM interlocutors supported the decision to hold the referendum, some questioned the possibility for citizens to make an informed choice within such a compressed timeframe, given the high number of proposed amendments to the Constitution.<sup>5</sup> The ODIHR NAM interlocutors representing state institutions highlighted the consultative nature of the process to prepare the amendments, including the fact that citizens were able to comment on the proposed draft on a web platform. Nevertheless, other ODIHR NAM interlocutors stressed the initiative to substantially change the Constitution was rushed, their opinions had not been taken on board or responded to, no public hearings had been organized, and the draft proposals had been posted for too short a period of time before the announcement of the referendum.

President Tokayev has been holding the office since 2019 when he was elected with 70.9 per cent of the votes. The last parliamentary elections took place in January 2021, and three out of the six officially registered parties in the country entered the *Majilis*: the ruling *Nur Otan* party, then led by First President Nursultan Nazarbayev, received 76 seats, the Democratic Party *Ak Zhol* - 12 seats and the People’s Party of Kazakhstan - 10 seats.

Previous ODIHR election reports noted that the political landscape was heavily dominated by the ruling party and the distinction between the party and the executive branch of government was often blurred.<sup>6</sup> In January 2022, President Tokayev replaced Mr. Nazarbayev as chairman of the ruling party. On 1 March, *Nur-Otan* changed its name to *Amanat*, and on 26 April, in line with the announced reforms, President Tokayev renounced his chairmanship position and left the party.<sup>7</sup>

Women remain under-represented in political and public life. Women currently hold 28 out of 107 seats in the *Majilis* (26 per cent), 1 out of 17 posts of *Akim* (governor of region) and 2 out of 22 posts of members of government. The UN Committee on the Elimination of Discrimination against Women has previously expressed concern about the low representation of women in decision-making positions as well about discriminatory gender stereotypes hindering the participation of women in political and public life.<sup>8</sup>

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<sup>3</sup> The amendments propose a transition from a fully proportional to a mixed electoral system, with 70 per cent of the deputies of the *Majilis* (MPs) elected through closed party lists, and 30 per cent - through a majoritarian contest. In addition, in line with a previous ODIHR recommendation, all MPs shall be directly elected; the amendments also propose to reduce the number of senators appointed by the president from 15 to 10.

<sup>4</sup> Since his election in June 2019, President Tokayev has announced a series of political and economic reforms. The current Constitution confers extensive powers on the executive. The president issues binding decrees, determines domestic and foreign policies, appoints ministers and all regional *Akims* (governors), and plays a key role in the appointment of judges and other high-ranking officials, including 15 out of 49 senators.

<sup>5</sup> Section I.3.1.13 of the 2006 Venice Commission’s 2006 [Code of Good Practice on Referendums](#), states that public authorities “must provide a certain amount of necessary information in order to enable voters to arrive at an informed opinion. [...] Voters must be able to acquaint themselves, sufficiently in advance, with both the text put to the vote, and above all, a detailed explanation”. Section I.3.1e of the Venice Commission’s [2020 Revised Guidelines on the Holding of Referendums](#), “an impartial body must provide balanced information. This implies that the text submitted to a referendum and an explanatory report or balanced campaign material from the proposal’s supporters and opponents should be made available to electors sufficiently in advance”.

<sup>6</sup> See all previous [ODIHR election-related reports on Kazakhstan](#).

<sup>7</sup> Yerlan Koshanov, the speaker of the *Majilis*, became the new chairperson.

<sup>8</sup> See UN Committee on the Elimination of Discrimination against Women 2019 [Concluding observations on the fifth periodic report of Kazakhstan](#), Paragraphs 24, 29 and 30.

ODIHR has observed 11 elections in Kazakhstan. The ODIHR Limited Election Observation Mission found that the 2021 parliamentary elections “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 final report, issued in March 2021, contains 25 recommendations, including 6 priority ones, for the authorities to improve electoral process and bring it closer in line with OSCE commitments.<sup>9</sup>

## B. LEGAL FRAMEWORK

The referendum is regulated primarily by the 1995 Constitution (last amended in 2021), the 1995 Constitutional Law on Elections (hereinafter Election Law, last amended in 2022), and the 1995 Constitutional Law about the Republican Referendum (hereinafter Referendum Law, last amended in 2022). The Central Referendum Commission (CRC) issues regulations to provide further details on legal provisions. Kazakhstan is a party to major international and regional instruments related to the holding of democratic elections.<sup>10</sup>

The Referendum Law does not contain specific regulations on ensuring equal opportunities for the proponents and opponents of the referendum, campaigning, campaign finance, media and observation of referenda. On some aspects, including the referendum administration, voter registration, voting and counting of the votes, complaints and appeals, relevant provisions in the Election Law are applicable. The CRC has adopted regulations to clarify certain procedures, including on issuance of Absentee Voting Certificates, provisions for enhancing participation of persons with disabilities, and registration of voters. In general, many ODIHR NAM interlocutors noted that the legal framework for the referendum is outdated and identified a number of gaps.<sup>11</sup>

According to the law, only the president has the right to call a republican referendum based on the proposal of the parliament, the government, an initiative group of more than 200,000 registered voters equally representing all regions or upon his/her own initiative. The referendum shall be held within one to three months from the date of its calling.<sup>12</sup>

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<sup>9</sup> In paragraph 25 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”. See ODIHR Electoral Recommendations Database at [Paragraph25.odihr.pl](https://www.odihr.pl/Paragraph25).

<sup>10</sup> Including the 1966 International Covenant on Civil and Political Rights, 1979 Convention for the Elimination of All Forms of Discrimination against Women, 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 2003 Convention against Corruption, 2006 Convention on the Rights of Persons with Disabilities (CRPD), and the 2002 CIS Convention. Kazakhstan is also a member of the Council of Europe’s Commission for Democracy through Law (Venice Commission) and the Group of States against Corruption.

<sup>11</sup> The last referendum in Kazakhstan was held in April 1995, and the Referendum Law was never applied before.

<sup>12</sup> According to Section III. 9 of the Venice Commission’s [2020 Revised Guidelines on the Holding of Referendums](#), “the absolute minimum period between calling a referendum and polling day should be four weeks. A considerably longer period of preparation is desirable; however, particularly if the topic has not already been subject to widespread public discussions”.

The Constitution can be amended either through parliamentary procedures or through a nation-wide referendum. For the Constitution to be amended by a referendum, a threshold of 50 per cent turnout of all registered voters applies and more than a half of the valid votes should be cast in favour of the question in at least two-thirds of the regions.<sup>13</sup> The proposed question reads: “Do you accept the amendments and additions to the Constitution of the Republic of Kazakhstan set forth in the draft Law of the Republic of Kazakhstan “On amendments and additions to the Constitution of the Republic of Kazakhstan published in mass media on 6 May 2022?”<sup>14</sup> The result of the referendum is binding. A number of ODIHR NAM interlocutors pointed to the convoluted nature of the question and the implicit obligation to either accept or reject all proposed amendments in one go.

The laws regulating the conduct of elections were subject to numerous changes in recent years. In line with previous ODIHR recommendations, in 2021, the requirements for registration of political parties were eased, the legal threshold for entering parliament reduced, and the quota for underrepresented groups such as women, youth and persons with disabilities strengthened. Nevertheless, many ODIHR electoral recommendations remain unaddressed, including those related to fundamental freedoms of peaceful assembly, expression and association, independence of election administration, candidacy requirements, voter registration, the media, and publication of election results.<sup>15</sup>

### C. REFERENDUM ADMINISTRATION

The referendum is administered by the election commissions exercising the functions of referendum commissions, including the CRC, 234 Territorial Referendum Commissions (TRCs), and 10,013 Precinct Referendum Commissions (PRCs).<sup>16</sup> Commissions at all levels are appointed for a five-year term and, except for the PRCs, consist of seven members.<sup>17</sup>

The CRC is responsible for the overall conduct of the referendum, issues regulations, maintains the nationwide voter register and establishes the referendum results. The CRC chairperson and two members are appointed by the president, while the *Majilis* and Senate each appoint two other CRC members.<sup>18</sup> Two of the current CRC members are women.

The CRC informed the ODIHR NAM that it was reviewing the composition of lower-level commissions due to the withdrawal of some members.<sup>19</sup> According to the law, the boundaries of the referendum precincts and the composition of relevant PRCs should be published by 15 May. The TRCs are responsible for the organization of the referendum in their territory, consider complaints against relevant PRCs and tabulate voting results. The PRCs notify voters about voting locations, verify voter lists, conduct voting and counting of votes and handle referendum day complaints.

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<sup>13</sup> According to Section III. 7.a.i. of the Venice Commission’s 2020 Revised Guidelines on the Holding of Referendums, “it is advisable not to provide for a turn-out quorum (threshold, minimum percentage)”.

<sup>14</sup> On 6 May, the proposed text of the constitutional amendments was made available to the public, including in official newspapers and online.

<sup>15</sup> On restrictions of fundamental freedoms of association, peaceful assembly and expression see also Paragraphs 49-54 of the [2016 Concluding observations on the second periodic report of Kazakhstan by the UN Human Rights Committee \(UN HRC\)](#).

<sup>16</sup> The CRC plans to conduct out-of-country voting in 65 embassies and consulates and 480 polling stations established in hospitals, military units and other places of temporary stay of voters.

<sup>17</sup> All commissions have been established following the procedures defined in the Election Law. By law, the PRCs should have between 5 and 11 members depending on the size of the precinct.

<sup>18</sup> Three CRC members were newly appointed in early 2022, including the CRC chairperson and secretary.

<sup>19</sup> Most lower-level commissions were formed in January 2019 by local councils (*maslikhats*), based on nominations from registered political parties.



Preparations for the referendum are ongoing. The CRC has adopted a calendar plan of its activities, approved the text of the ballot, developed a combined online and offline training programme, including for the TRCs and PRCs, public associations, media representatives, and organizations representing persons with disabilities. . The Ministry of Health in co-ordination with the CRC have developed COVID-19 related protective measures with regards to voting procedures. The CRC informed the ODIHR NAM that all sessions are open for accredited media representatives and broadcast online.

The CRC is neither responsible for nor conducting a voter education programme on the content of the constitutional changes being put to a referendum. The ODIHR NAM was informed that Ministry of Justice is in charge of educating voters on the referendum question and the potential subsequent constitutional changes. In line with international good practice, States should educate voters in a balanced manner.<sup>20</sup> The CRC has instructed local executive bodies to ensure that conditions at polling stations be conducive for citizens with disabilities to exercise their voting rights.

While no ODIHR NAM interlocutors raised concerns about the administration of technical aspects of the referendum, many pointed to malpractices and a lack of transparency observed in previous elections, including on election days.

#### D. VOTER REGISTRATION

Citizens aged 18 or older have the right to participate in the referendum, except for those who have been declared legally incapable by a court decision, including on the basis of intellectual or psychosocial disability, and those serving a prison sentence, regardless of the gravity of the offence. These exceptions are at odds with OSCE commitments and other international standards.<sup>21</sup>

Voter registration is regulated by the Election Law and is passive, based on permanent residency. Voter lists are compiled by the *akimats* (local executive bodies) based on the state population register, and further verified by the TRCs and PRCs. By law, the *akimats* submit the voter lists to respective TRCs twice a year, and the TRCs cross-check the data against the unified electronic voter register maintained by the CRC. Subsequently, *akimats* prepare and deliver the preliminary voter lists to polling stations 20 days before the voting. Citizens will have the opportunity to verify their voter registration data in-person at polling stations starting from 20 May. Mistakes in the lists may be appealed by citizens to the PRCs. The CRC informed the ODIHR NAM that, as of 1 April, 11,695,439 voters were eligible to vote in the forthcoming referendum.

Within the last two weeks before voting day, voters may also apply for an Absentee Voting Certificate which allows them to vote in any polling station outside their permanent registration. Despite previous ODIHR recommendations, voters can be added to a supplementary voter list on voting day without judicial or administrative oversight, provided they prove their residence within the precinct.<sup>22</sup> No ODIHR NAM interlocutors raised serious concerns with the accuracy of the voter register.

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<sup>20</sup> Section I.3.1e of the Venice Commission's [2020 Revised Guidelines on the Holding of Referendums](#), "an impartial body must provide balanced information. This implies that the text submitted to a referendum and an explanatory report or balanced campaign material from the proposal's supporters and opponents should be made available to electors sufficiently in advance".

<sup>21</sup> Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will "guarantee universal and equal suffrage to adult citizens". Deprivation of the right to vote on the basis of mental disability is inconsistent with Articles 12 and 29 of the UN CRPD. Paragraph 14 of UN HRC [General Comment No. 25 to Article 25 of the ICCPR](#) states that grounds for deprivation of voting rights on the basis of criminal conviction "should be objective and reasonable". See also Paragraphs 50-51 of the UN HRC 2016 Concluding Observations.

<sup>22</sup> According to Section I.1.2.iv of the Venice Commission's 2002 [Code of Good Practice in Electoral Matters](#), "polling stations should not be permitted to register voters on election day itself".

## E. CAMPAIGN AND CAMPAIGN FINANCE

The Referendum Law guarantees the right to campaign to citizens and public associations in the form of meetings, rallies, citizens' gatherings and in the media. Campaigning on referendum day and the day preceding it is prohibited. The law does not include any provisions on crucial aspects of the conduct of the campaign, including the use of administrative resources, guarantees of equal opportunities for disseminating opposing opinions, as well as what constitutes possible violations and applicable sanctions.<sup>23</sup> All campaign materials must contain the data on production and circulation and may not be anonymous. Messages discriminating against different groups, calling for a violent change of the constitutional order and war are prohibited.

The ODIHR NAM was informed that political parties would not actively participate in the campaign. Instead, the campaign is driven by the members of parliament and representatives of different state bodies who tour all the regions, and conduct what was described as awareness-raising meetings with local party branches, community activists and local interest groups.

Some ODIHR NAM interlocutors expressed mistrust towards state institutions and their willingness to conduct a balanced campaign in a free and fair manner.<sup>24</sup> No party, association or organization is openly calling for "NO" in the referendum, and so far, no formal alternatives have been offered to the "YES" option. Some civil society organizations informed the ODIHR NAM that they would abstain from launching any alternative campaign due to limited resources and their belief that the results of the referendum are known in advance.

According to the law, all expenses related to the referendum are covered by the state budget and foreign funding is prohibited. Nevertheless, the Referendum Law is silent on fundamental aspects of a transparent and accountable campaign finance framework; provisions on campaign finance contributions and expenditures, campaign finance reporting and disclosure, oversight and monitoring, and on sanctions are absent.<sup>25</sup>

## F. MEDIA

Freedom of expression, media freedom and the right of access to information are guaranteed in the Constitution. Nevertheless, previous ODIHR recommendations related to effective exercise of freedom of expression, including with regards to defamation and the blocking of websites, remain unaddressed. Slander was removed from the Criminal Code in June 2020,<sup>26</sup> but other provisions related to defamation, including on "insult" and "distribution of deliberately false information", remain criminalized, contrary to international commitments.<sup>27</sup> Special protection of the "honour and dignity" of the president, the first

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<sup>23</sup> Section I.2.2.a. of the Venice Commission's [2006 Code of Good Practice on Referendums](#) states, that "equality of opportunity must be guaranteed for the supporters and opponents of the proposal being voted on".

<sup>24</sup> Section I.3.1.b. of the Venice Commission's 2006 Code of Good Practice on Referendums notes, that "the public authorities (national, regional and local) must not influence the outcome of the vote by excessive, one-sided campaigning. The use of public funds by the authorities for campaigning purposes must be prohibited".

<sup>25</sup> According to Section II. 4.4. of the Venice Commission's 2020 Revised Guidelines on the Holding of Referendums, "the general rules on the funding of political parties and electoral campaigns must be applied to both public and private funding, including the rules on transparency and limitation of spending and individual donations. An impartial body should control campaign financing".

<sup>26</sup> Instead of becoming a civil matter solely, defamation is now treated as an administrative violation, and state authorities still initiate the cases.

<sup>27</sup> According to Paragraph 47 of the [2011 CCPR 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".

president and public officials is granted by the Criminal Code.<sup>28</sup> Some ODIHR NAM interlocutors noted that these undue restrictions may contribute to self-censorship among journalists and bloggers.

The Referendum Law entitles citizens and public associations to express their opinions of referendum options, including in the mass media. Nevertheless, the law does not define any referendum regulations for the media, in particular regarding the requirements to provide impartial coverage in the news, guarantee equal conditions for the campaigns or provide any groups free-of-charge access to media resources.<sup>29</sup> The mass media legislation allows the media to sell airtime and print space for referendum campaign purposes, including to the state institutions.

The Ministry of Information and Social Development (MISD) is responsible for regulating print, broadcast and Internet media and granting broadcasting licences. According to the MISD, there are over 5,100 registered media outlets in the country, including 191 television (TV) channels, 84 radio channels, and 533 information agencies. TV, the main source of political information, is either state-owned or largely state-subsidized. The public debate is gradually shifting to the Internet, which provides an increasing space for pluralism of news and opinions.

The MISD controls the compliance of all media with the referendum-related legislation. It informed the ODIHR NAM that, besides prohibitions to disseminate unduly labelled or anonymous campaign materials or call for violence, war and discrimination, there are no specific rules regarding media coverage of referenda. The Ministry conducts monitoring of media and social networks for compliance with these requirements. According to the MISD, it may consider complaints on media-related violations and can also act *ex officio* in such cases, but the decisions on applying referendum-related sanctions are within the competence of the prosecutor office.

The MISD and the National Security Committee are entitled to block websites and halt media outlet operations, without prior judicial oversight.<sup>30</sup> The authorities blocked access to the Internet throughout the country during the January 2022 mass protests. Some ODIHR NAM interlocutors raised concern about the security of journalists, including while covering public events.<sup>31</sup>

The state broadcasting corporation *Qazaqstan* informed the ODIHR NAM that it had started daily programmes engaging different experts with the aim to explain to the audience the essence of proposed constitutional amendments and potential consequences. It also covers the referendum campaign in the news, including with sign language interpretation. Some ODIHR NAM interlocutors noted a limited viewership of *Qazaqstan's* programmes but highlighted emerging discourse on the referendum options online.

## G. COMPLAINTS AND APPEALS

Referendum-related complaints, including on the referendum results, may be submitted by all referendum participants and public associations to either the superior referendum commission or

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<sup>28</sup> The OSCE Representative on Freedom of the Media has [urged](#) the authorities to repeal a number of provisions in the Criminal Code, which refer to defamation and which may stifle freedom of expression (7 May 2020).

<sup>29</sup> Section I.2.2.b. of the Venice Commission's 2006 Code of Good Practice on Referendums states, that "In public radio and television broadcasts on the referendum campaign, it is advisable that equality be ensured between the proposal's supporters and opponents". See also Section I.2.2.c.

<sup>30</sup> In addition, the government has authorised the Prosecutor General, National Security Committee and Ministries of Interior Affairs and of Defence to halt or have prioritized access to communications in case of state of emergency, but also in a case of perceived threat, including of "social character".

<sup>31</sup> See also OSCE Representative on Freedom of Media [statement from 12 January 2022](#).

administrative courts, within 10 days of the decision, action or inaction in question.<sup>32</sup> Courts and referendum commissions must consider complaints within five days.<sup>33</sup> On appeal, the decisions of courts and lower-level commissions should be reviewed within three days. Reports of referendum offences can also be filed with public prosecutors, who may monitor the media and social networks to ensure compliance with the law, and bring cases of referendum-related violations to the courts.

The validity of the referendum process may be assessed by the Constitutional Council which is a quasi-judicial body.<sup>34</sup> It may deem the referendum process as not complying with the Constitution.<sup>35</sup> In this case, the CRC has to invalidate the results and order repeat voting at the precincts and territories affected.

Several ODIHR NAM interlocutors do not expect many complaints citing a lack of alternative opinions being presented during the upcoming referendum and a formalistic approach of courts and commissions to election disputes resolution in the past. At the same time, some noted, that the new rules and practice for administrative justice leaves less room for formalism and may increase the effectiveness of referendum dispute resolution mechanism.

## **H. CITIZEN AND INTERNATIONAL OBSERVATION**

The Referendum Law provides for observation by representatives of public associations and international observers during the conduct of the referendum. Accredited mass media are guaranteed access to events related to the holding of the referendum. Any further provisions are omitted from the law, including on a more detailed definition of eligible domestic organizations, accreditation procedures for and status of citizen observers.

On 5 May, the CRC issued a draft resolution stating that any public association wishing to deploy their representatives to polling stations shall be legally registered in Kazakhstan, and its observers shall present the required documentation to the relevant PRC. According to the CRC, the PRCs would also assess which organizations meet the stated criteria for observing the referendum proceedings. One observer per public association is allowed in a polling station at the same time. Several citizen observer groups informed the ODIHR NAM of their intention to observe the referendum, but pointed to a lack of legal clarity and certainty with respect to status of eligible organizations and observation mechanisms as well as to insufficient resources, including time for preparation, at their disposal.

## **IV. CONCLUSIONS AND RECOMMENDATION**

All ODIHR NAM interlocutors underscored the need of an ODIHR observation activity for the referendum noting an added value of an independent assessment of election-related reforms and potential benefit for upcoming review of the referendum legislation. Representatives of state institutions reiterated their wish to strengthen co-operation with ODIHR in bringing electoral processes closer in line with international standards. A number of issues, such as the legal framework for referenda, voter

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<sup>32</sup> Complaints against the CRC are reviewed by a Supreme Court judge whose decision can be further appealed to a Supreme Court cassation panel in the final instance. If a complaint is simultaneously submitted to a commission and a court, the referendum commission must suspend any proceedings until the court ruling enters into force.

<sup>33</sup> Complaints submitted less than five days before the voting day should be resolved immediately. The courts consider voter registration disputes within one day.

<sup>34</sup> Only the president, speakers of both houses of parliament, the prime minister or at least one fifth of the members of the parliament can appeal to the Constitutional Council.

<sup>35</sup> The law does not establish clear conditions or criteria for such a decision and consequent invalidation of referendum results.

registration, the campaign and its coverage in the media, respect for fundamental freedoms and referendum day procedures, would benefit from specific attention.

Based on the findings of this report, the ODIHR NAM would have recommended the deployment of a Referendum Observation Mission (ROM) with both long-term and short-term observers, in addition to a core team of experts. However, due to the short timeframe between the announcement of the referendum and referendum day on 5 June the deployment of a ROM is not possible. ODIHR nevertheless sees merit in sending an observation activity for the 5 June referendum on the basis of ODIHR NAM findings, and thus recommends the deployment of a Referendum Assessment Mission.

## **ANNEX: LIST OF MEETINGS**

### **Ministry of Foreign Affairs**

Roman Vassilenko, Deputy Minister  
Ussen Suleimen, Ambassador at Large  
Askar Abdrakhmanov, Chairman, International Information Committee  
Ruslan Uralalizin, Deputy Director, Department of Europe  
Adilet Chupekov, Attaché, Department of Europe  
Dana Kurmasheva, Chief, Office of the Special Representative of the President of Kazakhstan

### **Ministry of Information and Social Development**

Daniyar Kadirov, Deputy Minister  
Nurgul Mauberlinova, Deputy Minister  
Mikhail Komissarov, Head, Analysis and Monitoring Centre

### **Parliamentary Committee on Social and Cultural Development**

Sayasat Nurbek, MP

### **Central Referendum Commission**

Konstantin Petrov, Deputy Chairperson  
Mukhtar Yerman, Secretary  
Saule Kozubayeva, Head, International Department

### **Media**

Lyazzat Tanyzbay, Chairperson of the Board, *Qazaqstan*  
Ilham Ibragimov, Deputy Chairperson of the Board, *Qazaqstan*  
Yedil Olzhabay, Director, Department of Legal Support *Qazaqstan*  
Sangerim Zhakhina, Head, Distribution and Acquisitions Department  
Diana Okremova, Director, Legal Media Centre

### **Civil Society**

Galym Ageleuov, Head, Public Foundation Liberty  
Dimash Alzhanov, Co-ordinator, Movement *Oyan Qazaqstan*  
Arsen Aubakirov, Co-ordinator, New Generation of Human Rights Defenders Coalition  
Danila Bekturganov, President, Public Foundation “Civil Expertise”  
Anara Ibrayeva, Expert, Public Association “Dignity”  
Pavel Lobachev, Director, Public Foundation “Echo”  
Yelena Shvetsova, Chairperson, Public Foundation *Yerkindik Qanaty*  
Roman Reimer, Head, Legal Unit, Public Foundation *Yerkindik Qanaty*  
Aina Shormanbayeva, Expert, International Legal Initiative

### **International Community**

Ambassador Volker Frobarth, Head, OSCE Programme Office in Nur-Sultan  
Representatives of OSCE participating States in Nur-Sultan, the Delegation of the European Union  
and the United Nations Resident Coordinator