



## DELEGATION TO KAZAKHSTAN'S SEPTEMBER 19, 2004, PARLIAMENTARY ELECTIONS

*Almaty, July 23, 2004*

This statement is offered by a five member international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation, which includes members from Europe and the United States, visited Kazakhstan from July 18-23, 2004. The purposes of the delegation were to express the international community's interest in and support for democracy in Kazakhstan, to assess electoral conditions and the political environment in which the 2004 parliamentary elections will take place and to offer an accurate and impartial report on the pre-election situation.

The delegation has conducted its assessment on the basis of international standards and comparative practices for democratic elections. NDI does not seek to interfere in the election process, nor does it at this point intend to render a conclusive assessment of the process. Ultimately, it will be the people of Kazakhstan who determine the meaning and validity of the 2004 elections. The delegation wishes to emphasize that it is early in the electoral process and therefore, the observations offered are of a preliminary nature, and no final judgments can be offered.

The delegation included: Sam Gejdenson (U.S.), former Member of Congress and member of NDI's Board of Directors; Alexander Longolius (Germany), former President Pro Tem, Berlin House of Representatives; Peter Eicher (U.S.), independent elections consultant and former diplomat; Robert Wilcox (U.S.), information technology expert; and Thomas Barry (U.S.), Senior Program Manager, NDI-Washington, DC.

### **I. SUMMARY OF FINDINGS AND OBSERVATIONS**

In light of serious problems with past elections, it is incumbent on the authorities of Kazakhstan to take extraordinary steps to restore public confidence in the conduct of elections. The government has taken a number of positive measures and has pledged to adhere strictly to a considerably improved election law. Kazakhstan clearly has the knowledge, skills and resources to conduct elections based on international standards. The upcoming elections provide the opportunity to demonstrate that it also has the political will to do so.

The delegation considers that the recently amended Constitutional Law on Elections represents a substantial improvement over the previous law in important respects. If impartially implemented, it should greatly improve the quality of the election process in comparison with previous elections.

The delegation identified media imbalance as the single greatest impediment to political pluralism and competition in Kazakhstan. Recent libel charges against an independent newspaper are the latest manifestation of official harassment of the media. A pledge by the new Minister of Information to improved media balance during the election campaign is encouraging. However, urgent steps should be taken to eliminate media bias in news coverage of candidates and parties, in order to ensure robust political competition.

Although the new election law provided for the inclusion of political party members on election commissions, its implementation failed to provide politically balanced membership. Election commissions at all levels will have to act in a fully transparent and impartial manner if the upcoming election is to enjoy public confidence.

There are credible allegations of official intimidation of opposition political activists. One opposition leader is in prison and another is facing criminal and civil charges. The authorities at all levels must take steps to ensure a free and open political process in which all parties and candidates can operate without fear of reprisal.

Plans to introduce electronic voting are undermining public confidence in the election process. With voting less than two months away, the system continues to undergo software development and no decision has been made on where, or in how many, polling stations electronic voting will take place. The delegation strongly recommends that electronic voting not be used except as a pilot project in on a very limited basis in a very few constituencies.

While the ongoing compilation of an electronic, national voter register by the CEC is a commendable effort, there has been some confusion among voters about how the system will work and whether they must obtain bar codes to be able to vote. The CEC should make clear that voters will not be turned away if they have not obtained a bar code. The voter lists should be made available for inspection by political parties and others.

The amended election law provides important guarantees and protections for election monitors. To ensure the law's effective implementation, clear rules and regulations should be developed in consultation with NGOs and should be widely publicized.

A pledge by the CEC Chairperson to promptly publish and post on the CEC website the results of the election, by polling station, should greatly increase the transparency of the tabulation process, particularly if it can be done within 24-48 hours.

## II. THE ELECTION CONTEXT

Although the government of Kazakhstan has made efforts to address the abuses seen in 1999, the 2004 parliamentary elections will take place against a backdrop of these past irregularities and fraudulent practices. There were also by-elections for parliament in 2002 and maslikhat elections in 2003 that raised concerns about irregularities and undermined public confidence in elections. This remains a crucial factor in Kazakhstan's electoral context and was the source of deep skepticism of the government's actions among many of those with whom the delegation met.

**Election Law:** Amendments adopted in 2004 provide protections for election monitors, prohibit interference in the election process by executive authorities and other state officials, detail the rights of the news media to report on the election process, provide for transparency in the counting and tabulation of election results, and seek to provide broad political representation at all levels of territorial, constituency and local election commissions. The government, the parliament and the CEC should be commended for including political parties, nongovernmental organizations (NGOs) and the international community in the process of drafting the law. However, the Constitutional Law on Elections still has shortcomings and does not in and of itself provide sufficient safeguards to restore public confidence. The quality of the 2004 elections will depend on its fair and impartial implementation.

**Media:** The delegation identified media imbalance as the single greatest impediment to effective political pluralism and competition in Kazakhstan. The printed press is diverse but has a limited circulation, which places a greater burden on broadcast media. Most journalists, political parties and NGOs reported that there is virtually no independent reporting of news on television, and there is a strong bias in favor of pro-government political parties and candidates. This was disputed by pro-government parties. Reporters Without Borders ranked Kazakhstan 116 out of 139 countries in their 2003 index of press freedom.

There have been incidents of threats and pressure against some journalists and media outlets. The most disturbing recent example of intimidation is the court case instituted by the staff of the President against the Assandi Times newspaper for libel, which places pressure due to the attendant potential substantial financial liabilities. Such cases also send a signal to other publications. Self-censorship out of a fear of reprisal is also a serious problem. In addition concentration of media ownership is problematic; according to the 2003 U.S. Department of State Country Reports on Human Rights Practices for Kazakhstan: "Most independent media observers believed that members of the President's family and close circle of friends controlled all of the large media outlets through holding companies."

Providing accurate and balanced news coverage of political competitors in and outside electoral periods is essential, and effective steps to achieve this are needed in the immediate period ahead. Providing a block of television time to each candidate during the campaign period is useful but not a substitute for this balance.

The Minister of Information, Mr. Altynbek Sarsenbayuly has publicly pledged to end intimidation against the news media. We commend him for this pledge and look forward to its implementation.

**Composition of and Confidence in Election Commissions:** The new law attempted to limit past bias in election administration by selecting commission members from among all registered parties. However, implementation through politically biased maslikhats has failed to provide for balanced representation.

In the cases of the 67 single mandate election commissions, 362 seats were given to pro-government parties, and only 29 were given to opposition parties. In oblast commissions nationwide and city commissions in Almaty and Astana, 106 seats were given to pro-government parties, and only 6 were given to opposition parties. In rayon election commissions, 953 seats were given to pro-government parties, and only 106 were given to opposition parties.

The continued failure to provide balanced representation on election commissions has undermined the credibility of the election process at this early and critical stage.

**Intimidation:** An election cannot meet international standards unless the authorities create conditions in which candidates and their supporters can campaign freely, without official interference, harassment or intimidation, and citizens can cast their votes without fear of reprisal. Many of those who met with the delegation asserted that intimidation is widespread and that opposition political activists routinely face harassment. The continued imprisonment of an opposition political party leader and institution of criminal and civil charges against another are deeply troubling.

**Voter Registries:** The CEC is undertaking an important effort to computerize the voter registries. However, there are concerns over the new system of electronic voters lists. The system as described by the CEC could undermine the ability of participants, including political parties and civic organizations, to verify the accuracy of the new voters lists.

**Electronic Voting:** Electronic voting was introduced in order to make the election process more effective and to increase public confidence in the process. However, both pro-government and opposition parties, as well as other observers, have expressed very serious concerns about the system.

There is a concern about the closed decision-making process. The decision to adopt electronic voting was made without adequate consultation with the public, political parties and civil societies. Provisions on electronic voting were substantially increased during the third reading of the law on elections. The CEC has demonstrated the system to members of the parliament, the press and other interested parties, but demonstrating a system after the fundamental decisions have been made is not a substitute for consulting with voters, parties, NGOs and the media in advance of making a decision.

There is also a concern that the combination of a voter registration system with the system for recording each individual's vote on the same computer presents a potential

threat to the secrecy of the voter's ballot. The CEC says that the programmers developing the system assure them that they have kept the voter identity and secret ballot separate, but with computer systems, the voter has no way to see if this is true or not.

The CEC has developed an educational pamphlet, distributed in advance of the election to each voter, noting the location of their polling place and instructions on electronic and paper voting as well as voter registration. However, there is confusion among voters about how the system will work.

Given the challenges associated with introducing new electronic technologies, which always include the need to eliminate "bugs", and the substantial time needed to develop public confidence in any new systems, there is a fundamental concern that the CEC is implementing a massive voter registration and electronic voting system, which continues to undergo software development two months in advance of the election.

We commend the CEC for its desire to be innovative and modern. The system the CEC is developing also includes some positive technical security innovations. The CEC is interested in participating in the development of electronic vote counting in the Organization for Security and Cooperation in Europe (OSCE). The delegation recognized that the OSCE Supplemental Human Dimension Meeting held on July 15-16 noted the need for maximum openness when developing electronic voting systems, that broad public consultation and confidence building was needed to be built over time in such systems, and that the OSCE should further examine how secrecy of the ballot and transparency can be maintained with electronic voting. Research is underway worldwide to develop the principles by which computer based voting systems can duplicate the transparency of paper ballot based systems. We look forward to the contributions of the CEC to worldwide efforts to develop improved elections systems.

However, technical security innovations cannot by themselves create voter confidence in the system. Confidence in the election process that may have been created by new legal provisions designed to limit the potential for fraud has been undermined by the manner in which electronic voting technology is being hastily presented to the voters. Last minute efforts will not be sufficient to assure voters of the reliability, confidentiality, and accuracy of the technology.

**Impunity Versus Accountability for Electoral Offenses:** Despite past examples of electoral interference, fraud, and manipulation by officials, there have been no public trials for these election related offenses. Accountability for such acts must be established to ensure electoral integrity and to establish public confidence in elections.

**Citizen Monitoring of Elections:** In past elections, many election observers faced harassment and intimidation by executive authorities. Recent amendments to the election law help address this problem by spelling out the rights of both partisan and nonpartisan observers. However, it is essential for public confidence in the process that there be no hindrances or interference to the full exercise of these rights. Election commissions should welcome, support and facilitate the work of monitors.

**Transparency of Election Results:** A serious shortcoming of the last parliamentary election was the failure of the CEC to publish detailed results, down to the polling station level. This greatly undermined public confidence in the results. A significant deficiency of the Constitutional Law on Elections is the absence of a requirement for the CEC to publicize results immediately although the law does not prohibit such disclosure.

In a very important development, the CEC chair pledged to the delegation that the CEC would publish the results promptly, placing each precinct result on the CEC website. This will provide a significant measure of transparency that was missing in the last parliamentary election.

### **III. THE DELEGATION AND ITS WORK**

The delegation's observations are based upon an extensive series of meetings with: candidates and political party leaders and representatives of the government, nongovernmental organizations, news media and international organizations. A list of the delegation's meetings is attached.

NDI first began supporting democracy development programs in Kazakhstan in 1992 and has maintained an office in the country continuously since 1999. NDI conducts educational and training programs for political parties across the political spectrum as well as civil society organizations.

NDI has conducted more than 60 international election observer delegations and more than 100 pre-election delegations around the world. These activities are conducted independently of other programs that the Institute may be undertaking in the country and are done in strict conformance with best practices for election observation and domestic law.

### **IV. RECOMMENDATIONS**

Based upon NDI's global experience and in the spirit of international cooperation, the delegation offers the following recommendations in hopes of assisting those striving to achieve genuine democratic elections. Many of these recommendations support those recently offered by others in the international community.

**Media:** The Minister of Information's public commitment to media reform creates an opportunity for the CEC and the Ministry of Information to use their authority with the media to ensure accurate and balanced coverage of all political contestants. Immediate and effective steps should be taken to ensure accurate and balanced news coverage on broadcast media. Freedom of political expression necessary for robust political competition should be ensured, and there should be no unnecessary restrictions.

The delegation commends the televised debates sponsored by the CEC in 1999 for providing an important forum allowing candidates to speak directly to voters. The delegation encourages the government to do so again on a frequent basis.

The delegation also recommends that political parties and Kazakhstani nonpartisan election monitors observe media behavior leading to the elections and report to the CEC, the Minister of Information, and the public concerning their findings.

**Intimidation:** The authorities should urgently take steps to ensure a free and open political process in which all participants can operate without interference or fear of reprisal. Recognizing that a vibrant opposition is essential to a democratic system, national, regional and local authorities could build confidence by dropping or discouraging spurious civil and criminal charges against party leaders, ensuring that during the election period all requests for rallies and meetings are routinely approved, guaranteeing full freedom for the campaign, and generally encouraging rather than impeding opposition activities.

**Electronic Voting:** Authorities lost important opportunities to assure the public and participants in the election process of the accuracy, transparency, reliability, and confidentiality of the electronic voting process. As a result, use of this technology on any significant level could seriously undermine public confidence in the outcome of the election, set back the pace of democratic reform, and produce confusion on election day. There is inadequate time to overcome these problems before the election. The delegation recommends the new system only be used on a minimal basis sufficient to test the technology and reassure the public of its reliability. Widespread electronic voting should not be introduced until elections begin to meet international standards and public confidence in the electoral process is well-established.

**Election Commissions:** Current law draws commission members from political parties. Any system designed in this way should have a balanced and equal representation of parties if commissions are to have the confidence of the public and political parties. In many cases, the current commissions are not balanced and do not enjoy this confidence.

Given these circumstances it will be essential for commissions at every level to act in a fully transparent and balanced manner. There must be no sign of favoritism and all decisions must be made in public and be impartial.

Current law gives the president exclusive authority to select members of the Central Elections Commission. In the future, alternative selection procedures which would increase public confidence in the independence and balance of the CEC should be instituted.

**Voter Registries:** The CEC should publicize and post in all polling stations: written instructions stating that voters may vote even if they have not received bar codes; descriptions of the forms of alternative voter identification permissible; and the steps voters who are turned away from precincts should take to seek redress of their grievance on election day. These instructions should be available to registered monitors and observers and the news media not later than 14 days before election day.

To allow for the verification of the accuracy of voter lists, the CEC should make available to candidates, political parties and NGOs access to the final voter registry no

later than 14 days before the election. Simply allowing access for individual voters to check their inclusion on the computerized data base is not sufficient. The registry should be available to these participants in electronic form in a medium such as a CD-ROM or on the internet. Although the delegation understands that to preserve the privacy of individual voters it may be necessary to remove some confidential voter information from the publicly available lists, sufficient information on each voter should be provided to verify the accuracy of the lists. The need for privacy must be balanced by the need for a level of transparency that will encourage confidence in the political process.

**Citizen Monitoring of Elections:** The law provides important rules protecting the rights of nonpartisan, political party and candidates monitors. Rules and regulations implementing the law should be developed in consultation with NGOs. These rules and regulations should be publicly issued to all levels of election commissions specifying the legal rights of observers and limiting observers to those who have followed the registration process outlined by the law. Further, these written instructions should be provided to observers.

**Transparency of Election Results:** The CEC pledged to arrange for the prompt publication on the CEC website of detailed election results down to the polling station level. This welcome undertaking will contribute to transparency and voter confidence, particularly if it is done within 24-48 after the end of voting. Such detailed information should be made available to party agents, observers and the media in hard copy immediately at the CEC in case there are problems with the Internet or the CEC website.

**Accountability for Electoral Offenses:** The government should publicize the penalties for violation of the laws related to the election process. Alleged violations by officials should be promptly investigated and prosecuted, and the results distributed widely to participants in the process and through the news media.

## V. CONCLUSION

The delegation would like to express its appreciation to everyone with whom it met. Without their taking time and sharing their knowledge and insights, the delegation would not have been able to accomplish its work

Kazakhstan stands at a critical juncture in its history. The period ahead will determine whether the country will move forward democratically or stagnate. If the population accepts the upcoming elections as fair and credible, based on free voting and open competition, it will be clear that democratic progress is authentic. It is undeniable that the country has the capacity to hold genuine elections. Should it fail to achieve its obligations to respect this fundamental right, those who seek to govern will do so without a clear popular mandate and its attendant legitimacy. Kazakhstan thus will seriously jeopardize its potential for integration into the community of democracies. The delegation hopes that those presently holding governmental power, as well as those who seek it, will meet their responsibility to the people of Kazakhstan and take decisive steps in the period immediately ahead to ensure that the people's desire for and right to democracy is realized.