



Office for Democratic Institutions and Human Rights

REPUBLIC OF KAZAKHSTAN

REFERENDUM

5 June 2022

ODIHR Referendum Assessment Mission Final Report



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REPUBLIC OF KAZAKHSTAN
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ODIHR Referendum Assessment Mission Report¹

I. EXECUTIVE SUMMARY

Following an invitation from the authorities of the Republic of Kazakhstan to observe the 5 June referendum, and based on the recommendation of a Needs Assessment Mission, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Referendum Assessment Mission (RAM) from 24 May to 9 June 2022.

On 5 May, President Kassym-Jomart Tokayev called for a binding referendum on approval of 33 proposed constitutional changes seeking popular support for a “new Kazakhstan”, a proposal to rebalance the division of state powers with the stated aim to reduce the influence of the presidency and strengthen other institutions. The initiative for constitutional changes, which followed the political turmoil and violence of the ‘January events’ earlier in the year, was welcomed by many ODIHR RAM interlocutors. The referendum took place in an environment short of genuine political pluralism. There was an absence of an active ‘No’ campaign and lack of meaningful political debate on the substance of the proposals. The authorities provided comprehensive information on the voting procedures and the date of the referendum; however, voters were not offered balanced information about the proposals, which negatively affected their possibility to make an informed choice. The regular election commissions administered the referendum efficiently, and met deadlines.

The Constitution can be amended either through parliamentary procedures, or through a national referendum. If 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. While state officials highlighted the consultative nature of the drafting process in the run up to the referendum, other ODIHR RAM interlocutors questioned the inclusiveness and transparency of the process. The consultation process during the drafting of the constitutional amendments lacked overall inclusiveness and transparency. Numerous amendments were proposed on the basis of a single question, which is not in line with international good practice, a concern also raised by some ODIHR RAM interlocutors.

The legal framework for the holding of referendums, which had not been used since 1995, sets out basic rules for the process, but is not adequate as important aspects of the campaign, its coverage in media and online, campaign finance and citizen observation are not regulated. Applicable election-related legislation was subject to several changes in recent years, some of them in line with previous ODIHR recommendations. Nevertheless, most applicable ODIHR electoral recommendations remain partially or fully unaddressed, including those related to fundamental freedoms of peaceful assembly, expression and association, independence of the election administration, and publication of results, all relevant to the holding of referendums.

The Central Referendum Commission (CRC), along with territorial and precinct referendum commissions were appropriately resourced and worked efficiently in a timely and largely transparent manner. Welcomed measures were taken to provide accessibility of the referendum to the voters with disabilities. Two out of seven CRC members and over two thirds of lower-level commissioners were women. The law overall does not guarantee independent and impartial referendum management bodies.

¹ The English version of this report is the only official document. An unofficial translation is available in both Kazakh and Russian.

The CRC conducted a diverse and inclusive voter information campaign on the voting procedures and the date of the referendum. However, the CRC was not responsible for explaining to the voters the substance of the amendments and their consequences; this task was shared between a number of state institutions. Neither of these bodies provided information to voters in a balanced and impartial manner that would enable them to freely form an opinion on the merits of the constitutional amendments, contrary to international good practice.

Nearly 11.7 million citizens of at least 18 years of age were eligible to vote. However, Kazakhstan continues to disenfranchise voters serving a prison sentence, irrespective of the gravity of crime, and persons with intellectual and psychosocial disabilities, in contravention of international standards. The accuracy of the voter list was not raised as a major concern by ODIHR RAM interlocutors, but the President acknowledged the need for introducing further safeguards against multiple voting, potentially by creating a national electronic voter register. Previous ODIHR recommendations to introduce administrative or judicial review for election day voter registration remain unaddressed.

Overall, the campaign was low-key and generated little meaningful public debate on the content of the constitutional amendments. Although there were no clearly defined campaign sides to advocate for either of the referendum choices, the ‘Yes’ campaign was openly supported by parliamentarians from all three parliamentary parties and most state officials. Their involvement in the campaign in the absence of regulation raised concerns about the use of administrative resources. The ‘No’ campaign was virtually absent, limited to occasional posts on social networks. Some ODIHR RAM interlocutors opined that effective scrutiny of the proposals, including in the media, was significantly limited, not least due to the short one-month period.

The Referendum Law does not provide for regulation of campaign finances, resulting in the absence of transparency of the referendum campaign funding. Importantly, the law does not regulate campaigning by officials, neither does it explicitly prohibit the use of public funds in the referendum campaign, contrary to international good practice and the principle of equal opportunity.

The overall media environment is restrictive. Most traditional media are either state-owned or heavily state-subsidized, and ownership of private outlets is overall opaque. While the Constitution guarantees freedom of expression, many journalists and bloggers exercise self-censorship due to the continuing criminalization of ‘insult’ and the special protection of the ‘honour and dignity’ of the president and public officials. Social networks offer some degree of pluralism, but websites can be blocked or shut down without prior judicial oversight, which negatively impacts on the freedom of expression. The media are not subject to requirements for impartial and balanced reporting during the referendum campaign, and were not required to provide access to the proponents and opponents of constitutional changes. The restrictive media environment for the referendum campaign and the resulting lack of journalistic analysis meant that voters were not fully informed about their choice.

The Referendum Law provides for observation of referenda by representatives of public associations and foreign observers. There is no formal procedure for accreditation of citizen observers, and decisions on accreditation are left to the discretion of the CRC. Ten days before the voting day, the CRC made a decision on which types of public associations are eligible to observe, detracting from legal certainty and limiting opportunities. Several citizen observer groups raised concerns with respect to insufficient time and resources to organize meaningful training and observation.

The recently adopted Code of Administrative Procedures introduced positive changes with regards to the election dispute resolution mechanism, addressing some previous ODIHR recommendations. Voters had the right to file complaints with regards to all aspects of the referendum process. The

Constitutional Council and the Supreme Court are authorised to handle disputes with regards to the referendum results, but there is still lack of clarity in the division of their jurisdictions. The ODIHR RAM was informed that following the referendum day, the CRC and the administrative courts received six and three complaints, respectively, alleging violations on referendum day.

In line with the ODIHR's methodology, the ODIHR RAM did not observe voting day proceedings in a systematic or comprehensive manner, but visited a limited number of polling stations. Referendum day was calm. Opening, voting, and counting was organized efficiently in the polling stations observed by the ODIHR RAM. The tabulation of results at the CRC level was not open to observers or media; the ODIHR RAM was granted only limited access not allowing for meaningful observation. The CRC announced the voter turnout at 68.05 per cent and published the referendum results on 8 June, with no disaggregated data per polling station or district, thus limiting the transparency of the process.

This report offers 13 recommendations to support efforts to bring referenda in the Republic of Kazakhstan further in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations focus on the revision of the electoral and referendum legal framework, in particular of campaign and campaign finance regulations, provision of impartial and balanced information to voters, including through the media, rules of appointment of referendum commissions to ensure independence, and the publication of disaggregated voting results. ODIHR stands ready to assist the authorities to address the recommendations contained in this and previous reports.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the authorities of the Republic of Kazakhstan to observe the 5 June 2022 referendum, and based on the recommendation of a Needs Assessment Mission conducted from 11 to 13 May, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed a Referendum Assessment Mission (RAM) from 24 May to 9 June. The RAM was led by Tamás Meszerics and consisted of nine experts from nine OSCE participating States. The RAM was based in Nur-Sultan and visited 5 of the then 17 regions of Kazakhstan.²

The ODIHR RAM assessed compliance of the referendum process with OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation.³ In line with ODIHR's methodology, the RAM did not observe referendum day proceedings in a systematic or comprehensive manner but visited a limited number of polling stations in four regions.

The ODIHR RAM wishes to thank the authorities of the Republic of Kazakhstan for the invitation to observe the referendum, as well as the Central Referendum Commission (CRC) along with lower-level commissions, and the Ministry of Foreign Affairs (MFA) for their co-operation and assistance. It also expresses its appreciation to representatives of other national and regional state institutions, representatives of political parties, the judiciary, civil society, media and the international community for sharing their views.

² Akmola, Almaty city, Almaty region, Karaganda, and Nur-Sultan. As part of the President Kassym-Jomart Tokayev's package of reforms, which aim at decentralization and increased democratic accountability for regional and local government, three additional regions were formed on 8 June 2022.

³ See previous [ODIHR election observation reports on Kazakhstan](#).

III. BACKGROUND

On 29 April 2022, President Kassym-Jomart Tokayev announced that Kazakhstan would hold a referendum on amendments to the Constitution, which he stated was “a new state model, a new format of interaction between the state and the society”, dubbed as the Second Republic. On 6 May, the draft of the revised Constitution was published, and the President signed amendments to the Referendum Law passed by the parliament that day. In a subsequent step, the President called the referendum, the first held since 1995, for 5 June.⁴

The proposed changes included provisions to require the president (and some other senior officials) resign from his or her political party during their term of office, reduce from 15 to 10 the number of senators appointed by the president, and remove the presidency’s powers to repeal acts of regional governors. The amendments also proposed replacing the Constitutional Council with a Constitutional Court, formalizing the status of the human rights commissioner, and removing the death penalty and references to the first president from the Constitution. It was also proposed that the *Majilis* (lower chamber of the parliament) would become a fully directly elected chamber, and the fully proportional party list electoral system would move to a mixed electoral system in which 70 per cent of the *Majilis* deputies would be elected from party lists and 30 per cent - in single mandate constituencies. The introduction of a fully elected chamber in parliament is a change that would address previous ODIHR recommendations and OSCE commitments.

President Tokayev has held office since 2019 when he was elected following the retirement of President Nursultan Nazarbayev, who had led the country since before independence in 1991. The Constitution confers extensive powers on the executive, described by authorities as a “super-presidential system” which following the constitutional changes would become a presidential system. 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.

In early January 2022, demonstrations, initially caused by rising fuel prices, turned into nationwide demands for significant economic and political reforms.⁵ In the aftermath of the deadly unrest, leading political and security officials, including the Prime Minister and half of his cabinet as well as the first president who had served as head of the National Security Council, were removed from their positions.⁶

Following the January events, in a state of the nation speech on 16 March, the President outlined upcoming constitutional reforms and associated legislative and policy amendments.⁷ A Working Group on Constitutional Reform, (hereinafter “working group”), established on 28 March, drafted

⁴ During his [speech](#) at the Assembly of the Peoples of Kazakhstan, the President stated that initially the amendments were planned to be adopted through parliamentary vote. However, taking into account that changes would have a big impact on the future of the country, he proposed to hold a referendum.

⁵ The Ministry of Health [reported](#) that there were 225 deaths as announced by the Prosecutor’s Office, and an additional 2,677 injuries requiring medical treatment. Around 2,000 people were detained in relation to the protests; official investigations were still ongoing at the time of the referendum. A number of international bodies called for an independent investigation. See, among others, the [appeal of the UN Commissioner for Human Rights](#). According to official sources, several hundred criminal cases have been initiated, including 45 cases of terrorism, and some 585 people were still in custody at the time of the referendum.

⁶ The position and rights of the first president (*Elbasy* or leader of the nation, a distinct title for Mr. Nazarbayev) were reflected in the Constitution and in the Constitutional Law of the First President – Leader of the Nation. These provided for the first president’s office and immunities for him and his family. Since 2019, when he retired from the presidency, Mr. Nazarbayev had the position of head of the National Security Council.

⁷ See the President’s [state of the nation speech](#) from 16 March.

amendments to 33 articles of the Constitution, concluding its work on 24 April. The Constitutional Council subsequently confirmed, in general terms, that the draft amendments were in compliance with the Constitution.⁸ The draft constitutional amendments were not debated by the parliament since they were a presidential initiative put to the electorate. Some parallel debates on additional amendments, including increasing the importance of the Kazakh language, took place in the parliament. Nevertheless, these were not reflected in the final proposal.

Following the last parliamentary elections in January 2021, three parties entered the *Majilis*: the ruling party, *Nur-Otan* (76 seats), the Democratic Party *Ak Zhol* (12 seats) and the People's Party of Kazakhstan (10 seats).⁹ On 1 March 2022, *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.¹⁰ All three parliamentary parties supported the proposed constitutional amendments.

Women remain under-represented in political and public life. They currently hold 28 out of 107 seats in the *Majilis* (26 per cent), 1 out of 17 posts of *akims* and 2 out of 22 ministerial positions. The UN Committee on the Elimination of Discrimination against Women (CEDAW) has previously expressed concern about the low representation of women in decision-making positions and discriminatory gender stereotypes hindering the participation of women in political and public life.¹¹

According to official statistics, ethnic Kazakhs constitute 69.9 per cent of the population followed by Russians (17.9 per cent). Other sizable ethnic communities are Uzbeks (3.3 per cent), Uighurs (1.5 per cent), Ukrainians (1.3 per cent), Tatars (1 per cent) and Germans (0.9 per cent).¹² The Constitution and the Law on Languages provide that Kazakh is the state language; Russian is used on an equal basis along with the Kazakh language in state institutions and local self-administrative bodies, and other languages shall be promoted.

IV. LEGAL FRAMEWORK

The referendum is regulated primarily by the 1995 Constitution (last amended in 2019) and the 1995 Constitutional Law about the National Referendum (hereinafter Referendum Law, last amended in 2022). The latter also provides for the applicability of the 1995 Constitutional Law on Elections (hereinafter Election Law, last amended in 2022) to the referendum. Additional referendum-related legislation includes, among others, the Code on Administrative Procedures, Code on Administrative Offences, and the Law on Mass Media. Kazakhstan is a party to major international and regional instruments related to the holding of democratic elections.¹³ Previous ODIHR reports recommended bringing the Election Law in line with international standards and good electoral practice.

⁸ See the [conclusions of the Constitutional Council](#) from 4 May.

⁹ Some ODIHR RAM interlocutors stated that the procedures for party registration remain cumbersome and formalistic, notwithstanding the proposed further reduction in numbers of the required members announced in recent reforms. No new parties have been successfully registered in Kazakhstan since 2013.

¹⁰ Yerlan Koshanov, the speaker of the *Majilis*, became the new chairperson of *Amanat*.

¹¹ See CEDAW 2019 [Concluding observations on the fifth periodic report of Kazakhstan](#), Paragraphs 24, 29-30.

¹² The last [census](#) was conducted in 2021.

¹³ Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1965 International Convention on the Elimination of All Forms of Racial Discrimination, 1979 Convention for the Elimination of All Forms of Discrimination against Women, 2003 Convention against Corruption, 2006 Convention on the Rights of Persons with Disabilities (CRPD), and 2002 CIS Convention on Standards of Democratic Elections, Electoral Rights and Freedoms. Kazakhstan is also a member of the Council of Europe's Commission for Democracy through the Law (Venice Commission) and Group of States against Corruption (GRECO).

The referendum-related legal framework was applied in practice for the first time.¹⁴ The Referendum Law establishes a minimal framework for the conduct of referendums, but is outdated, and significant aspects remain unregulated. For instance, the law is silent or includes only broad provisions on important issues such as ensuring equal opportunities for the proponents and opponents of the referendum proposition, campaign finance and its transparency, campaigning by officials and the use of public funds, media coverage, observation, and referendum-related complaints.¹⁵ A number of aspects such as the referendum administration, voter registration, voting and counting of the votes, and complaints and appeals are partially regulated by the Election Law or CRC regulations.

The processes of adoption of two amendments to the Referendum Law, including the debates and voting in both chambers, were completed in two days on the eve of the scheduling the referendum, which reiterates long-standing concerns over the need to strengthen the role of the legislature in the law-making process. The limited meaningful, open and inclusive consultations that provide stakeholders with sufficient time to prepare and submit recommendations is contrary to OSCE commitments.¹⁶ One amendment harmonized voting rules in the Referendum Law with the respective provisions of the Election Law.¹⁷ The other amendment removed changing the status of the first president of the country from prohibited questions put on national referendum.¹⁸

The laws regulating the conduct of elections were subject to numerous changes in recent years. In 2020, the requirements for registration of political parties were eased, and in 2021 the legal threshold for entering the *Majilis* reduced from 7 to 5 per cent, partially addressing previous ODIHR recommendations. Also, the quotas for underrepresented groups such as women, youth and persons with disabilities were strengthened by ensuring that the quotas applied to mandates awarded rather than only candidates on party lists. Nevertheless, many other recommendations, including some also relevant for the conduct of referendums, remain unaddressed. These include those related to fundamental freedoms of peaceful assembly, expression and association, the media, and independence of the election administration.¹⁹

The referendum legal framework should be reviewed in order to eliminate the shortcomings identified in this and previous ODIHR reports through an inclusive consultative process, in accordance with OSCE commitments and good electoral practice. In particular, the Referendum Law should be amended to adequately regulate the referendum campaign and campaign finance.

¹⁴ Independent Kazakhstan's two previous referendums were both held in 1995 prior to the adoption of the Referendum Law.

¹⁵ For example, lack of provisions on referendum campaign finance did not allow for transparency of expenses made by officials campaigning for 'Yes' in the referendum. A lack of clear and consistent criteria for citizen observation in legislation left it to the CRC to regulate observation of the referendum shortly before the day of voting.

¹⁶ Paragraph 18.1 of the [1991 OSCE Moscow Document](#) states that "legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives".

¹⁷ According to the Election Law and the amended Referendum Law, a voter marks a ballot in favour of their chosen option. The previous rules of the Referendum Law stipulated that citizens should vote by crossing out the statement on the ballot paper that they did not agree with.

¹⁸ The previous text of Article 91.2 of the Constitution stated "The independence of the state, the unitary status and territorial integrity of the Republic, the form of its government, as well as the fundamental principles of the Republic, which were laid down by the Founder of independent Kazakhstan, the First President of the Republic of Kazakhstan - *Elbasy*, and his status shall be inviolable".

¹⁹ See Section II.2. of the Venice Commission's [2022 Revised Code of Good Practice on Referendums](#) (hereinafter Code of Good Practice on Referendums) stipulating that "Democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties". On restrictions of fundamental freedoms of association, peaceful assembly and expression see also Paragraphs 49-54 of the CCPR [2016 Concluding observations on the second periodic report of Kazakhstan](#).

The Constitution can be amended either through parliamentary procedures, or through a national referendum.²⁰ 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.

According to the Constitution only the president has the right to call a national referendum based on a proposal of the parliament, the government, an initiative group of more than 200,000 registered voters equally representing all regions, or as in this case, upon president's own initiative. The law provides for a referendum to be held within one to three months from the date of its calling. Some officials informed the ODIHR RAM that the decision to hold the referendum in one month was in order to move forward as soon as possible with the reform process initiated by the President. Other non-governmental interlocutors suggested that the short period was insufficient for effective discussion and scrutiny of the proposals.²¹

The referendum question read: *“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?”* Voters were asked to vote with a single ‘Yes’ or ‘No’ vote for 56 amendments to 33 articles of the Constitution. Good referendum practice does not preclude putting forward one single question on numerous amendments in cases of partial revision of a Constitution, but assumes an inclusive and transparent drafting process of the amendments that precedes putting such a question to a referendum.²² A number of ODIHR RAM interlocutors noted with concern the convoluted nature of the question and the explicit obligation to either accept or reject all proposed amendments in one go.

The constitutional amendments which became the subject of the referendum were drafted by the working group established by the President.²³ Working group members met by the ODIHR RAM stated that their goal was to give legal expression to the President's proposals, rather than substantial discussion of the revision of the Constitution. State officials told the ODIHR RAM that there was a consultative process in the run up to the referendum, involving experts and the general public. However, many non-state ODIHR RAM interlocutors regretted the lack of meaningful public or parliamentary consultations during the drafting process.

V. REFERENDUM ADMINISTRATION

The referendum administration is organized into a hierarchy of three levels. The permanent Central Election Commission performed the functions of the CRC, with seven members appointed for five

²⁰ The Constitution was previously revised five times, in 1998, 2007, 2011, 2017 and 2019, always through the parliamentary procedure.

²¹ Section I.7.3.2 of the Code of Good Practice on Referendums stipulates that “proposals put to a referendum should be as clear as possible and subject to detailed prior scrutiny, including by parliament, to ensure that they reflect voters’ concerns and express their wishes”.

²² Section III.2 of the Code of Good Practice on Referendums states that “except in the case of total revision of a text (Constitution, law), there must be an intrinsic connection between the various parts of each question put to the vote, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link; the revision of several chapters of a text at the same time is equivalent to a total revision”.

²³ The working group was chaired by the deputy head of the presidential administration, and included representatives of state bodies, both houses of the parliament, Ombudsperson, Constitutional Council, Supreme Court, General Prosecutor Office and academics, but no representatives of other than *Amanat* political parties or citizen groups.

years. The second level is comprised of 234 Territorial Election Commissions, defined for the purpose of the referendum as Territorial Referendum Commissions (TRC), present at different administrative levels, with seven members nominated for a five-year mandate.²⁴ The third level is represented by the 10,012 Precinct Election Commissions defined as Precinct Referendum Commissions (PRC).²⁵ The number of PRC members, appointed for five years, varies depending on the number of voters in the precinct.²⁶

The CRC is responsible for the overall conduct of the referendum, issues regulations, maintains the nationwide voter register and establishes the referendum results. The TRCs are responsible for the organization of the referendum in their territory, the consideration of complaints concerning referendum violations, and the tabulation of voting results. The PRCs notify voters about voting locations, verify voter lists, conduct voting and counting of votes, and handle referendum day complaints.

The composition of the TRCs and PRCs was based on the elections made in 2019 by local councils following proposals from political parties and public associations.²⁷ Some ODIHR RAM interlocutors expressed a lack of confidence in the independence and impartiality of lower-level commissions and opined that there is insufficient transparency concerning the nomination of PRC or TRC members.²⁸

As for the CRC, three members, including the chairperson, are nominated by the president, while the *Majilis* and the Senate each appoint two other members.²⁹ Given the lack of genuine political differentiation between the parliamentary parties there are concerns as regards the impartiality of the CRC.³⁰

Consideration should be given to revising the rules for the appointment of referendum (election) commissioners at all levels so as to ensure the independence and impartiality of the commissions as well as broad public confidence in their work. The commissions should work in a manner excluding any perceptions of political affiliation or bias.

Two out of the seven CRC members are women. Women are well-represented at lower levels of the election administration. According to the CRC, women account for 68 per cent of commission members nationwide; representatives from more than 50 national minorities were engaged in election

²⁴ Different layers of the TRCs may relate to a region, city or district, with lower level TRCs reporting to the 17 regional TRCs. Out of the seven members of the TRCs, two (usually the chairperson and the secretary) are employed permanently for their term, and the rest participate depending on the needs of the referendum cycle.

²⁵ A total of 544 special polling stations were created in military units, rest homes, health facilities, etc. For 11,350 registered voters residing outside of the country, 65 polling stations were created in 52 countries. Citizens ordinarily resident in Ukraine were given the possibility to vote in Poland.

²⁶ As per the Election Law, the PRCs should have an odd number of members and may consist of either 5 or 7 members to serve up to 2,000 voters or 7 to 11 members for polling stations with more voters.

²⁷ The boundaries of the referendum precincts and the composition of the relevant PRCs were published by 15 May, in accordance with the law.

²⁸ Neither the CRC nor TRC websites provide information on which members were nominated by which party or association. Commission members are legally permitted, but not required, to be members of the parties or associations which propose them.

²⁹ The chairperson, secretary and one other CEC member were replaced in February 2022. Positively, all CRC members have resigned from any party memberships they previously held.

³⁰ Paragraph 20 of the 1996 [UN CCPR General Comment No.25 to the ICCPR](#) (CCPR General Comment No.25) requires that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant”. The States parties to the 2002 CIS Convention committed themselves “to ensure establishment of independent, impartial electoral bodies to organize the conduct of democratic free and fair, authentic and periodical elections”.

commissions, with ethnic Kazakhs comprising 81 per cent, ethnic Russians – 11 per cent, ethnic Ukrainians – 2 per cent, and other minorities – 6 per cent.

The CRC, together with the lower-level commissions, administered all referendum preparations efficiently and in line with legal deadlines. The CRC adopted 23 resolutions to clarify organizational and logistical aspects of the process.³¹ The lower-level commissions visited by the ODIHR RAM in three regions prior to the referendum day were operational on time, adequately resourced and satisfied with the quality of the information and support received from the upper levels.³²

The CRC took measures to ensure transparency of the technical processes of preparation for the referendum, among others, holding regular meetings for government agencies and, through the media, for the general public. Journalists were invited to ask questions at the end of the meetings. The CRC meetings were in a hybrid format – both offline and online, streamed via the CRC website and provided with sign language translation, addressing prior ODIHR recommendations. The ODIHR RAM was invited to all meetings of the CRC. Positively, the CRC website, available in Kazakh, Russian and English languages, contains updated information.³³ The CRC also provided information via its own *Telegram* channel, albeit this had few subscribers.³⁴

The CRC conducted a national voter information campaign, in Kazakh and Russian languages, on the voting procedures and the date of the referendum. It used a variety of communication methods, including through mobile phone text messages, billboards, and adverts on television (TV) and social networks, oriented towards different groups of stakeholders, including women, persons with disabilities and youth. At the local level, the PRCs conducted door-to-door visits to provide citizens with printed invitations with the date and hours of voting and the polling station number.

The international good practice on referendums calls for an impartial body to be tasked with providing voters with balanced information. While a number of state institutions, including the CRC, the Ministry of Information and Social Development and the Ministry of Justice, provided voters with information on the substance of the amendments and their consequences, no state body provided balanced details on the proposals that would enable voters to make an informed choice as suggested by international good practice.³⁵ This negatively affected the ability of voters to freely form an opinion on the merits of the constitutional amendments.

To enhance voters' ability to make an informed choice, the state should provide impartial and balanced information on proposed amendments and their potential impact in a timely manner.

The ODIHR RAM was informed that the CRC had developed a nationwide cascade training programme for some 70,000 polling staff members. The e-Learning programme established in 2018 was updated based on the specificities of the referendum.

³¹ Adopted resolutions related among others to ensuring conditions for persons with disabilities during the referendum, voter education, establishing the number of ballots for voting, and storage of materials.

³² Akmola and Karaganda regions and Nur-Sultan City.

³³ On the other hand, the ODIHR RAM observed that the websites of the respective TRCs, hosted and managed by *akimats* (local executive bodies), are not regularly updated, and the level of available information, such as composition of the TRC, information on referendum and polling stations, varied.

³⁴ The channel had less than 1,000 subscribers as of 5 June. The CRC had no other official social network channels.

³⁵ Section I.3.1.a of the Code of Good Practice on Referendums states: “Administrative authorities must observe their duty of neutrality, which is one of the means of ensuring that voters can form an opinion freely”. Section I.3.1.e clarifies: “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”.

The CRC took necessary measures to facilitate participation of persons with disabilities in the referendum. According to the CRC, all polling stations were provided with *Braille* sleeves and instructions, and most polling stations were either situated on the ground floor or had wheelchair ramps for voters' ease of access. Voters with disabilities could request their *akimat* provide special transportation on the referendum day. The CRC also informed the ODIHR RAM that on request, sign language translation was available in multiple polling stations. The Election Law provides for assisted voting, allowing the voter to nominate a person of their choice to assist them.

VI. VOTER REGISTRATION

Voter registration for the referendum is regulated by the Election Law. All citizens over 18 years have the right to vote, except those declared incompetent by a court decision on the basis of intellectual and psychosocial disability, and those serving a prison sentence, irrespective of the gravity of the crime. These restrictions are in contradiction to OSCE commitments and other international standards.³⁶

The blanket deprivation of suffrage rights of citizens serving prison sentences and the restrictions on the basis of legal capacity should be revised in line with international obligations.

Voter registration is passive and based on the data from the state population register, maintained by the Ministry of Interior. Changes of address are notified to the Ministry of the Interior via the local police. The *akimats* are in charge of compiling the lists of voters based on their place of permanent residence. From 5 to 15 May, the *akimats* extracted the voter lists for each PRC; these extracts were further verified by the respective PRCs between 15 May and 4 June. The ODIHR RAM noted from a small sample of PRCs visited prior to referendum day that the verification of the lists was not consistent.³⁷ During the same period, voters were able to verify their records upon request at the PRCs and demand corrections.³⁸ On 4 June, the CRC informed the ODIHR RAM that 11,722,536 voters were registered. Although the accuracy of the voter list was not cited as a major concern by ODIHR RAM interlocutors, the President acknowledged the need for introducing further safeguards against multiple voting, potentially by creating a national electronic voter register.³⁹

The *akimats* gave the PRCs updated voter lists one day before the referendum. Contrary to previous ODIHR recommendations and international good practice, eligible voters who were omitted from the voter list but who were able to prove that they were on the state population register under a specific address were added by the relevant PRCs to the voter list on referendum day.⁴⁰ Previously, ODIHR

³⁶ Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will “guarantee universal and equal suffrage to adult citizens”, and Paragraph 24 states that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law”. 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 CCPR General Comment No.25 states that “conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence”.

³⁷ Some PRCs proactively checked institutions such as hospitals, police departments, etc., whereas others contacted households either in person or by phone, or waited for any potential complaints.

³⁸ Citizens were also able to check their registration [online](#). The CRC informed the ODIHR RAM that as of 30 May, some 1,500 citizens requested corrections of their records in the voter lists.

³⁹ In his 16 March state of the nation speech, the President said: “In order to eliminate the likelihood of double voting, as well as to allow voting at any polling station, it is necessary to consider the feasibility of forming a single electronic voter database”.

⁴⁰ According to the CRC, an additional 12,106 eligible citizens were added to the voter lists on referendum day.

recommended that there be a clear administrative or judicial control on the additions to the voter list made on election day.⁴¹

Voters who wished to vote outside of their place of residence had the possibility to request an Absentee Voting Certificate (AVC). Voters could apply for the AVCs between 20 May and 4 June at their original polling station. Upon receipt of the AVC, they were removed from the voter list and were allowed to vote at any polling station across the country.⁴² According to the CRC, the AVCs were retained by the PRCs upon presentation, preventing from multiple voting.

Efforts to improve the accuracy of the voter register and voter lists should continue by means of effective mechanisms of correcting potential mistakes, including duplicate entries.

VII. REFERENDUM 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 is prohibited. The law does not include any provisions on crucial aspects of the conduct of the campaign, including the use of administrative resources, or guarantees of equal opportunities for disseminating opposing opinions.⁴³ All campaign materials must contain data on production and circulation and may not be anonymous. Messages discriminating against different groups or calling for a violent change of the constitutional order and war are prohibited.

The proposed constitutional changes followed a series of incremental legislative reforms before and after the 2021 parliamentary elections, which were billed by officials as gradually opening up more democratic opportunities in the country.⁴⁴ According to many officials, the work in progress would transform Kazakhstan to a "listening state" responding to the democratic desires of the people and providing opportunities for economic development. On the other hand, ODIHR RAM interlocutors from civil society critiqued both the extent and the implementation of the reforms preceding the referendum. While acknowledging that the amendments to the Constitution were broadly positive, they found those changes merely declarative and insufficient to satisfy the people's needs for political reform.

Neither the 'Yes' campaign nor the 'No' campaign had formal structures. Overall, the campaign was low-key and one-sided and generated little debate on the actual content of the constitutional amendments. The campaign featured some discussion of the reasons behind the President's initiation of a referendum and the significance of the proposed changes. In the absence of clearly defined campaign sides to advocate for either of the referendum choices and explain the pros and cons of the proposals, voters lacked sufficient opportunity to make an informed choice.

Online platforms were also used during the campaign by multiple stakeholders. Some ODIHR RAM interlocutors voiced allegations that the authorities resorted to paying well-known influencers to share posts in favour of the referendum on their social network profiles, blogs and channels. A *Telegram* channel to which subscribers had originally signed up to receive COVID-19 related information during the pandemic, owned by the state-funded media agency *Kazkontent*, was renamed

⁴¹ 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".

⁴² Out of 21,465 AVCs issued nationwide, 14,538 were used on referendum day.

⁴³ Section I.2.2.a of the 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".

⁴⁴ See the President's state of the nation speeches of [1 September 2020](#) and [1 September 2021](#).

“referendum2022.kz” on 16 May 2022. This channel systematically spread content portraying politicians, government officials, artists and the CRC promoting the referendum as an opportunity for a positive change, as well as voter information content.

The ‘Yes’ campaign was openly supported by parliamentarians from all three political parties, as well as national and lower-level public officials. They visited all the regions conducting so-called “awareness-raising meetings” with local party branches, community activists, and labour collectives.⁴⁵ The ‘Yes’ supporters also campaigned under the slogan of a “New Kazakhstan”, a programme of political modernization offered by the President. The ODIHR RAM received some allegations of the possible misuse of administrative resources in the form of pressure on students and teachers to vote.

To ensure an equitable campaign environment, lawmakers should develop strict campaign rules, including on the misuse of administrative resources and official positions and introduce effective enforcement and sanctioning mechanisms.

Some non-registered parties and civil society organizations informed the ODIHR RAM that they abstained from launching an alternative ‘No’ campaign or an official boycott, due to restrictive political and legal environment, limited time, lack of resources, and their view that the referendum result was certain. They also noted that advocating for a ‘No’ campaign was not politically advisable as it might be misinterpreted as implying support for the previous regime of Mr. Nazarbayev. Other unregistered parties, through social networks, called on their supporters to vote ‘No’ and to protest on referendum day.

According to the law, all expenses related to the referendum are covered by the state budget and foreign funding is prohibited. Apart that, the Referendum Law does not provide for regulation of campaign finance, resulting in the absence of transparency concerning spending on the referendum campaign. Neither private, nor public financing of campaign activities are addressed, and the law does not set any contribution and spending limits. Importantly, the law does not regulate campaigning by officials, neither does it explicitly prohibit the use of public funds in the referendum campaign contrary to international good practice and the principle of equal opportunity.⁴⁶ In combination with the blurred line between information for citizens and campaigning in favour of the referendum proposal, the lack of regulation opened the door for the use of official positions and public funds by the referendum proponents, negatively affecting the equality of campaigning opportunities.⁴⁷

The legal framework should set comprehensive rules for financing the referendum campaign, including on the use of private and public funding, and requirements for reporting, auditing and related sanctions for violations. The use of public funds by authorities for campaigning for a particular choice should be prohibited.

⁴⁵ Section B 1.1.5 of the [2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#) states that “there should be a regulation put in place by a competent authority [...] identifying what activities are considered to be campaign activities and therefore forbidden to civil servants when acting in their official capacity”.

⁴⁶ Section I.3.1.b of the Code of Good Practice on Referendums notes, that “The use of public funds by the authorities for campaigning purposes must be prohibited”.

⁴⁷ Paragraph 250 of the [2020 ODIHR and Venice Commission Guidelines on Political Party Regulation](#) states that “the abuse of state resources is universally condemned by international norms, such as Article 9 of the United Nations Convention against Corruption. State resources, or administrative resources, are defined as “human, financial, material, *in natura* and other immaterial resources enjoyed by both incumbents and civil servants in elections, deriving from their control over public sector staff, finances and allocations, access to public facilities, as well as resources enjoyed in the form of prestige or public presence that stem from their position as elected or public officers and which may turn into political endorsements or other forms of support”.

VIII. MEDIA

A. MEDIA ENVIRONMENT

The Kazakhstani public have access to a multitude of traditional media, most of which are either state-owned or largely state-subsidized. Some ODIHR RAM interlocutors questioned their editorial independence and stated that national and regional authorities influence media through the distribution of public contracts. Despite previous ODIHR recommendations, transparency of media ownership is unregulated, and the ultimate ownership of commercial media outlets remains largely unknown to the public. Relevant disclosures of media ownership could provide the public with information about possible sources of economic and political influence and bias in the media.

TV remains a significant source of political information, but some ODIHR RAM interlocutors claimed a decline of public trust in all mainstream media due to their alleged biased coverage, especially following the ‘January events’.⁴⁸ The importance of social networks has visibly grown as online platforms have been increasingly perceived by the public and some independent journalists and activists as offering a space for greater plurality of news and opinions.⁴⁹ *Instagram* and *YouTube* are the most popular social networks, followed by *TikTok* and *Facebook*. Instant-messaging apps are also widespread, with *WhatsApp* leading in terms of users and *Telegram* increasing in popularity.⁵⁰

The Constitution guarantees freedom of expression, but this right is restricted in practice by undue prohibitions on defamation and publication of false information, at odds with international standards.⁵¹ Although slander was removed from the Criminal Code in June 2020, “insult” remains criminalized and special protection of the “honour and dignity” of the president and public officials is still granted.⁵² These provisions result in self-censorship by the media.

Criminal provisions restricting the freedom of expression offline and online, including those related to insult and spreading of false information, should be repealed in favour of proportionate civil remedies designed to restore reputational harm. The use of non-pecuniary remedies should be prioritized.

⁴⁸ Independent journalists informed the ODIHR RAM that they faced difficulties to cover the ‘January events’ due to detentions, violence, blocked communications and Internet cuts. Consequently, the pro-government coverage by conventional media was the main source of information during the Internet outage that lasted for several days. See [12 January 2022 statement](#) of the OSCE Representative on Freedom of the Media (RFoM) calling for freedoms for journalists and the restoration of Internet access.

⁴⁹ According to the [Bureau of National Statistics](#), 88 per cent of the population use the Internet.

⁵⁰ We Are Social, report [Digital 2022: Kazakhstan](#).

⁵¹ According to the Criminal Code, spreading false information is punishable with limitation of freedom or imprisonment from one to seven years. 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”. Paragraph 2 of the 2017 [Joint declaration on freedom of expression and “fake news”, disinformation and propaganda](#) by the UN, OSCE, OAS and ACHPR states: “General prohibitions on the dissemination of information based on vague and ambiguous ideas, including “false news” or “non-objective information”, are incompatible with international standards for restrictions on freedom of expression [...], and should be abolished. [...] Criminal defamation laws are unduly restrictive and should be abolished”.

⁵² According to the 2020 [Joint Declaration on Freedom of Expression and Elections in the Digital Age](#), public figures should tolerate “a higher degree of criticism and scrutiny than ordinary citizens”.

Based on the Law on Mass Media, all Internet resources, including websites and networking platforms, are considered as media outlets. Consequently, all web publishers could be held liable for the content they post, which may also contribute to self-censorship among bloggers and social network users.⁵³

Most ODIHR RAM media interlocutors mentioned the long-standing difficulties journalists face in order to obtain access to information from public sources.⁵⁴ The Ministry for Information and Social Development (MISD) and the National Security Committee are permitted by current legislation to block websites and halt media outlet operations, without prior judicial oversight.⁵⁵ Previous ODIHR recommendations calling for measures to ensure the effective exercise of freedom of expression and that Internet restrictions to be subject to judicial oversight and conform to strict tests of proportionality remain unaddressed. Despite constitutional provisions prohibiting censorship and ensuring the right to access information, concerns over arbitrary Internet shutdowns and blocking of websites and social networks by state bodies were raised by many ODIHR RAM interlocutors, echoing recent public statements made by several international organizations to deplore the restrictions to the freedom of information in Kazakhstan.⁵⁶ Overall, the referendum campaign took place in a restrictive media environment.

B. LEGAL FRAMEWORK AND COVERAGE OF THE REFERENDUM CAMPAIGN

Besides prohibitions to disseminate unduly labelled or anonymous campaign materials and call for violence, war and discrimination, there is no specific framework regulating media coverage during referendum, and no requirements for balanced coverage are specified.⁵⁷

To ensure a level playing field, the legal framework should introduce requirements of balanced coverage of referendum options, guarantee access of referendum proposal's supporters and opponents on equal grounds by state-funded media, as well as equal advertising access to privately owned media.

The MISD is vested with oversight of the media, including online content. On 3 June, the MISD reported that the legal framework for the media was generally respected, with no violation identified

⁵³ For instance, on 3 June, [an activist](#) of the banned and unregistered political group Democratic Choice of Kazakhstan (DCK), was sentenced to 10 days of administrative detention for sharing on her Facebook page a three-months-old post by the leader of the DCK Mukhtar Ablyazov.

⁵⁴ See OSCE RFoM [statement from 8 November 2018](#).

⁵⁵ In 2017 [Joint declaration on freedom of expression and "fake news", disinformation and propaganda](#) by UN, OSCE, OAS and ACHPR, General Principle f states: "State mandated blocking of entire websites, IP addresses, ports or network protocols is an extreme measure which can only be justified where it is provided by law and is necessary to protect a human right or other legitimate public interest, including in the sense of that it is proportionate, there are no less intrusive alternative measures which would protect the interest and it respects minimum due process guarantees." See also Paragraph 43 of the [2011 CCPR General Comment No.34 to the ICCPR](#). In a 2011 Report, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression acknowledged that "blocking measures constitute an unnecessary or disproportionate means to achieve the purported aim, as they are often not sufficiently targeted and render a wide range of content inaccessible beyond that which has been deemed illegal".

⁵⁶ The [UN High Commissioner for Human Rights urged](#) the authorities of Kazakhstan on 6 January 2022 "to ensure that Internet services are immediately and completely restored"; the OSCE RFoM [stated](#) on 12 January that "unrestricted access to information, offline and online, represents important elements of public security and should always be respected".

⁵⁷ Section I 2.2.b of the Code of Good Practice on Referendums states, that "In public radio and television broadcasts on the referendum campaign, equal access must be ensured to the proposal's supporters and opponents". According to Section I 2.2.c, "balanced coverage must be guaranteed to the proposal's supporters and opponents in other public mass media broadcasts, especially news broadcasts". Section I 2.2.f states, that "[...] legal provision should be made to ensure that there is a minimum access to privately owned audio-visual media, with regard to the referendum campaign and to advertising, for all participants in the referendum".

by its media monitoring activity.⁵⁸ However, no detailed methodology was shared with the public or the ODIHR RAM. The ODIHR RAM reiterates the importance of previous ODIHR recommendations on establishing an independent body in charge of monitoring the media coverage of campaigns.

Besides providing coverage through their newscasts and informative programmes engaging different experts and interviews, the state broadcasting corporations *Qazaqstan* and *Khabar Agency* used their online platforms to share referendum-related content with the audience. The MISD contributed to disseminating referendum-related informative content through state owned print media *Egemen Qazaqstan* (Kazakh language) and *Kazakhstanskaya Pravda* (Russian language), which also have an online version and are active on social networks.

Although the ODIHR RAM did not conduct comprehensive media monitoring, the mission did a content-based screening of clips found on these TV stations' webpages during the last 10 days of campaign. This analysis showed a lack of balance in these clips.⁵⁹ Serious concerns over the ability of the public to make a truly informed choice were raised by many ODIHR RAM interlocutors due to the shortage of journalistic analysis and limited variety of viewpoints presented.

IX. COMPLAINTS AND APPEALS

The legislation provides for administrative and judicial channels of referendum-related dispute resolution, and the Election Law is applicable in this regard. Complaints may be submitted to the relevant referendum commissions within 10 days of the decision, action or inaction in question. Departing from good practice, complaints can be simultaneously channelled to the referendum administration and the judiciary.⁶⁰ In case of concurrent filing of complaints with the referendum commission and the court, the judicial procedure prevails.⁶¹ In line with good practice, the legislation provides for short deadlines for consideration of complaints and appeals.⁶²

The 2020 Code on Administrative Procedures entered into force on 1 July 2021 and introduced significant change with regards to the election and referendum dispute resolution mechanism.⁶³ In line with previous ODIHR recommendations, the Code defines rules applicable to consideration of disputes by administrative bodies and courts, guarantees due process in administrative disputes, prohibits the abuse of formal legal requirements to deny citizens' rights and provides for the benefit of doubt in favour of citizens. The majority of ODIHR RAM interlocutors were positive about the introduction of administrative justice. According to the Supreme Court, three complaints on the validity of results were filed with the administrative courts after the referendum day, none of which led to invalidation

⁵⁸ The MISD monitored 61 state media (19 TV channels and 42 newspapers), 342 regional media (30 TV channels, 312 newspapers) and more than 130 popular Internet resources from 5 May to 3 June.

⁵⁹ The screening of 193 referendum-related clips by the ODIHR RAM between 23 May and 3 June, which had been uploaded on the online version of the TV channels *Khabar TV*, *Qazaqstan TV*, *KTK* and *7 Channel*, showed that 108 were neutral, 85 were in favour of voting 'Yes' in the referendum, and none expressed a critical view of the proposed reforms.

⁶⁰ Section II.3.3 of the Code of Good Practice in Electoral Matters recommends avoiding positive or negative conflict of jurisdiction, so that "neither the appellants nor the authorities should be able to choose the appeal body".

⁶¹ In this case, the referendum commission must suspend any proceedings until the court ruling enters into force.

⁶² Courts and referendum commissions must consider complaints within five days. On appeal, the decisions of courts and lower-level commissions should be reviewed within three days. Complaints have to be considered immediately if filed within five or less days before the voting day.

⁶³ According to the Code, disputes related to public administration, including on election and referendum administration, were transferred from civil courts to specialized administrative courts.

of voting results in the respective polling stations.⁶⁴ After referendum day, the CRC received six complaints alleging referendum violations, including complaints related to obstruction of observation.⁶⁵ The CRC rejected four complaints, and in two cases it established violations not impacting the validity of results.

In accordance with the Code on Administrative Procedures, the CRC decisions and actions can be appealed to the Supreme Court and the CRC final decision on the referendum results may also be challenged under these rules.⁶⁶ The Referendum Law also empowers the Constitutional Council, a quasi-judicial body, to rule on the ‘correctness of the referendum’. While it may deem the referendum as not complying with the Constitution, the law does not establish clear conditions or criteria for such a decision and the consequent invalidation of referendum results.⁶⁷ In addition, there is neither legal clarity as to the meaning of ‘correctness of the referendum’, nor in the division of the jurisdictions between the Supreme Court and the Constitutional Council.⁶⁸ Some ODIHR RAM interlocutors expressed the expectation that the ambiguity of jurisdictional rules could be resolved in the future through the adoption of the constitutional law regulating the activity of the Constitutional Court.⁶⁹

The legislation should clearly specify jurisdiction over referendum results-related appeals and ensure the right to effective remedy.

X. CITIZEN AND INTERNATIONAL OBSERVATION

The Referendum Law provides for observation of referendums by representatives of public associations, observers from foreign states and international organizations. Observers’ rights are defined by decisions of the CRC.

While the procedure of accreditation of international observers by the CRC is clear, there is no formal procedure for the accreditation of citizen observers.⁷⁰ The decision on which types of organizations could be considered as public associations and are thus eligible to observe was communicated 10 days before the referendum, detracting from legal certainty.⁷¹ Previous ODIHR reports recommended that any rules of participation of observers in the electoral process should be clear, announced in a timely manner and non-discriminatory.

The ODIHR RAM was aware of some associations with previous experience of independent observation who were interested in observing the referendum.⁷² In practice, their activities were limited due to insufficient time to gather resources and train their observers in a comprehensive manner, in part related to the late clarification of eligibility.

⁶⁴ Two complaints alleged violations of observers’ rights, while the third case was related to the violation of procedures for mobile voting.

⁶⁵ According to the CRC, it received 771 “applications” before referendum day, none of which were treated as complaints. Out of these, 734 applications were submitted by voters requesting to delete their data from the voter lists. Overall, the CRC received some 1,015 similar requests before, on and after the referendum day.

⁶⁶ This was confirmed to the ODIHR RAM by the Supreme Court.

⁶⁷ In this case, the CRC has to invalidate the results and order repeat voting at the precincts and territories affected.

⁶⁸ While the referendum results may be appealed to the Supreme Court by any citizen, only the president, speakers of both houses of the parliament, the prime minister or at least one fifth of the MPs can appeal to the Constitutional Council with regard to ‘correctness’ of referendum results.

⁶⁹ The constitutional amendments envisage the establishment of the Constitutional Court.

⁷⁰ According to the CRC, there were 38,064 observers from public associations and 316 international observers.

⁷¹ According to the CRC decision, only two documents were required from citizen observers for accessing polling stations: a letter certified by the public association, indicating the observer’s name, and their ID card.

⁷² Among others *Yerkindik Kanaty* (Wings of Liberty), *Q-Adam*, MISK, Independent Observers, and ECHO.

XI. REFERENDUM DAY AND POST-REFERENDUM DEVELOPMENTS

In line with established ODIHR methodology, the RAM did not systematically observe the referendum day proceedings. However, the mission visited a limited number of polling stations in four regions during voting and also observed counting and tabulation in Almaty and Nur-Sultan.⁷³

In the polling stations visited by the ODIHR RAM, preventive measures against the COVID-19 were in place, based on the recommendations by the Ministry of Healthcare. These measures had no restrictive impact on the voters or on the overall process.

Referendum day was calm, with no major incidents reported by the media, or to the mission. In the polling stations observed by the ODIHR RAM, polling officials appeared to be aware of and following voting procedures. However, it was noted by the mission, and reported by citizen observers and independent media that many voters used the opportunity to take pictures of themselves during voting.⁷⁴ In some cases, voters told the ODIHR RAM and media that this was to provide evidence of voting to employers.

In several polling stations, the ODIHR RAM was not allowed to scrutinize the signed voter lists, and during counting, was not provided with a clear view of procedures diminishing the opportunity for meaningful observation. Some citizen observers informed the ODIHR RAM that they were frequently unable to conduct comprehensive observation due to similar restrictions.⁷⁵ In each of the counts observed by the ODIHR RAM, the number of signatures on the voters list was either not announced, or even counted, in violation of the legal requirements.

Precinct commissions should be provided with comprehensive training and clear written instructions indicating step-by-step counting procedures.

During tabulation in the TRCs observed, the ODIHR RAM was not able to have a clear view of the entry of results into the database. In general, the tabulation at the CRC level was not open to observers or the media; the ODIHR RAM was granted only limited access and was not able to meaningfully observe the entire tabulation process.⁷⁶ The CRC expressed a lack of interest in opening the national tabulation of the results to observers and the media due to its purely technical nature, which is contrary to the principle of transparency and against good electoral practice.⁷⁷

The tabulation of results should be transparent at all levels and open to unhindered access by observers.

⁷³ The four regions were Akmola region, Almaty City, Almaty Region, and Nur-Sultan City.

⁷⁴ Some voters were seen photographing their votes in the polling booths, which in general either did not have curtains, or they were not used. Others asked bystanders or PRC members to photograph them near the ballot box.

⁷⁵ The CRC informed the ODIHR RAM that Wings of Liberty submitted four formal complaints with regard to obstruction of the observation of referendum process.

⁷⁶ Paragraph 8 of the 1990 OSCE Copenhagen Document stipulates that “the OSCE participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place”.

⁷⁷ According to Section I.4.2.c of the Code of Good Practice on Referendums, “Observers should be able to go everywhere operations connected with the referendum are taking place (for example, vote counting and verification). The places where observers are not entitled to be present should be clearly specified by law, and the reasons for such exclusion should be clearly stated”.

The CRC cancelled voting results in one polling station in Almaty city because of recorded evidence of ballot box stuffing. The CRC requested the General Prosecutor's Office to take the necessary measures for further investigation of the case as well as to conduct investigations of videos circulating on social networks indicating possible cases of ballot box stuffing and family voting in other polling stations.

The CRC announced the preliminary referendum results on 6 June based on the online transmission of the data from the 17 regions, and final results per region - on 7 June on the basis of the original paper protocols. Contrary to a prior ODIHR recommendation and international good practice, no disaggregated results per polling station or district were published, thus diminishing the transparency of the process.⁷⁸ The CRC announced the official turnout at 68 per cent with 77 per cent of voters casting their vote in favour of the referendum question and the constitutional amendments. The CRC did not provide sex disaggregated data with respect to voter registration process or voter turnout. Following the publication in the official gazette of the referendum results on 8 June, the changes to the Constitution were published on the official government website for legislation.⁷⁹

The Central Referendum Commission should publish a full set of comprehensive referendum results disaggregated per polling station, district and region, in order to ensure transparency and provide a safeguard for the integrity of results. The Commission should publish such data on its website immediately after submission of polling station voting results protocols.

XII. RECOMMENDATIONS

These recommendations, contained throughout the text, are offered to further enhance the conduct of referenda and elections in the Republic of Kazakhstan and to support efforts to bring them fully in line with OSCE commitments, other international obligations, and standards for democratic elections.⁸⁰ These recommendations should be read in conjunction with past ODIHR recommendations that Kazakhstan has yet to address. ODIHR stands ready to assist the authorities of Kazakhstan to further improve the electoral process and address the recommendations contained in this and previous reports.

A. PRIORITY RECOMMENDATIONS

1. The referendum legal framework should be reviewed in order to eliminate the shortcomings identified in this and previous ODIHR reports through an inclusive consultative process, in accordance with OSCE commitments and good electoral practice. In particular, the Referendum Law should be amended to adequately regulate the referendum campaign and campaign finance.

⁷⁸ Paragraph 20 of the CCPR General Comment No.25 reads: "There should be independent scrutiny of the voting and counting process [...] so that electors have confidence in the security of the ballot and the counting of the votes". Article 10 of the 2003 UNCAC states that State party shall take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes.

⁷⁹ The publication was made before the 10-day deadline for filing complaints and appeals expired.

⁸⁰ 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." The follow-up of prior recommendations is assessed by the ODIHR RAM as follows: recommendations 7 and 23 from the [ODIHR final report on the 2021 parliamentary elections](#) (2021 Final Report) were fully implemented. Recommendations 2, 5, 9 and 14 from the [ODIHR final report on the 2016 parliamentary elections](#) (2016 Final Report), recommendation 15 from the [ODIHR final report on the 2019 presidential election](#) (2019 Final Report) and recommendations 4, 10, 15 and 24 from the 2021 Final Report were mostly implemented. Recommendations 1, 4, 8, 12, 16-19 and 22 from the 2016 Final Report, recommendations 1, 6-9, 12-14, 18, 19, 23, 26, 29 and 31 from the 2019 Final Report, as well as recommendations 8, 9 and 12 from the 2021 Final Report were partially implemented. See also the ODIHR [electoral recommendations database](#).

2. To enhance voters' ability to make an informed choice, the state should provide impartial and balanced information on proposed amendments and their potential impact in a timely manner.
3. To ensure an equitable campaign environment, lawmakers should develop strict campaign rules, including on the misuse of administrative resources and official positions, and introduce effective enforcement and sanctioning mechanisms.
4. The legal framework should set comprehensive rules for financing the referendum campaign, including on the use of private and public funding, and requirements for reporting, auditing and sanctions for violations. The use of public funds by authorities for campaigning for a particular choice should be prohibited.
5. Consideration should be given to revising the rules for the appointment of referendum (election) commissioners at all levels so as to ensure the independence and impartiality of the commissions as well as broad public confidence in their work. The commissions should work in a manner excluding any perceptions of political affiliation or bias.
6. To ensure a level playing field, the legal framework should introduce requirements of balanced coverage of referendum options, guarantee access of referendum proposal's supporters and opponents on equal grounds by state-funded media, as well as equal advertising access to privately owned media.
7. The Central Referendum Commission should publish a full set of comprehensive referendum results disaggregated per polling station, district and region, in order to ensure transparency and provide a safeguard for the integrity of results. The Commission should publish such data on its website immediately after submission of polling station voting results protocols.

B. OTHER RECOMMENDATIONS

Referendum Administration

8. Precinct commissions should be provided with comprehensive training and clear written instructions indicating step-by-step counting procedures.
9. The tabulation of results should be transparent at all levels and open to unhindered access by observers.

Voter Registration

10. The blanket deprivation of suffrage rights of citizens serving prison sentences and the restrictions on the basis of legal capacity should be revised in line with international obligations.
11. Efforts to improve the accuracy of the voter register and voter lists should continue by means of effective mechanisms of correcting potential mistakes, including duplicate entries.

Media

12. Criminal provisions restricting the freedom of expression offline and online, including those related to insult and spreading of false information, should be repealed in favour of proportionate

civil remedies designed to restore the reputation harmed. The use of non-pecuniary remedies should be prioritized.

Complaints and Appeals

13. The legislation should clearly specify jurisdiction over referendum results-related appeals and ensure the right to effective remedy.

ANNEX: FINAL RESULTS⁸¹

		Percentage
Number of registered voters	11,734,642	
Turnout	7,985,769	68.05
Including voting with the AVCs	14,538	
Votes		
In favour	6,163,516	77.18
Against	1,490,470	18.66
Invalid	205,924	2.58
Ballots with 'Yes' and 'No' options marked	125,859	1.58

⁸¹ Source: Central Referendum Commission [website](#).

ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance and non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).