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# **Technical Election Assessment**

**Kazakhstan**

**March 1994**

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## INTRODUCTION

The Code on Elections in the Republic of Kazakhstan [hereafter, the "Election Code"; the "Code"] was adopted by Presidential Decree on December 9, 1993. Immediately thereafter Parliament was dissolved, approximately one year prior to the end of its normal term. A call for new elections to the Supreme Council was ordered as were the premature elections of new members to all oblast and local councils. The date for the elections throughout the Republic was set for 7 March 1994 at which time Supreme Council, as well as oblast and local council elections were held simultaneously. These elections represented a new wave in Kazakhstan's political thinking, and bolstered the momentum of the Republic's transition toward democracy in very real terms.

These elections represented a number of important firsts. These were the first really competitive multi-candidate elections in Kazakhstan's history. The former Parliament was elected in 1990 in what was basically an uncontested process which conferred the majority of seats to members of the Communist Party. In the 1994 elections 692 candidates competed for 135 single mandate seats. An average of 5 candidates appeared on each constituency ballot.

For the first time all members of the Supreme Council will be full time professional members who will be precluded from holding any other elected, administrative, commercial, or entrepreneurial post.

For the first time, the system of ballot access was opened to allow candidates to be nominated by public organizations, political parties and movements. It was also the first time that citizens could present themselves as self-nominated candidates. In fact, candidates in the 1994 Supreme Council elections were nominated by 3 political parties, 2 political movements and approximately 20 other public organizations.<sup>1</sup> Independent candidates numbered 331.

The election system incorporated provisions intended to provide equal opportunities for parties, public organizations, and candidates to effect their campaigns on an equal basis.

A formal administrative structure was established to oversee the conduct of elections in Kazakhstan. The Central Electoral Commission ["CEC"] was organized as a permanent agency independent of other government bodies or public associations.

These elections heralded Kazakhstan's conclusive emergence into the international community as a truly independent state. As the first elections conducted under a new Constitution, they also represented the beginning of a new era for a country emerging from dominance by Russia under the Soviet Union and a long history of one-party rule.

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<sup>1</sup> See Annex 1.

The enormity of the task facing officials in preparing for these historic elections cannot be understated. The fact that the Central Electoral Commission was able to conduct elections in a difficult transition period marked by a complex web of political, economic, and ethnic circumstances, and in the face of considerable commodities shortages, was a triumph in itself. The process involved the coordination of nearly 90,000 election officials in 10,224 polling sites to serve Kazakhstan's population of 17 million, a country that is 7th largest. Moreover, the time period between the actual enactment of the new Election Code and election day was just 90 days. Throughout the process there was a considerable degree of transparency. At the invitation of the President 125 independent representatives from 24 countries and 5 international organizations observed the course of the elections.<sup>2</sup>

In view of the magnitude of the challenges being undertaken and of the fact that a new Election Code was being implemented for the first time, it would have been unrealistic to assume that no problems or irregularities would be encountered along the way. However, throughout its stay the IFES team was impressed with the positive indications of the full, on-going commitment of the Central Electoral Commission and other participants to continue to build on the strengths of the new electoral system and to its weaknesses. It is in support of their efforts and in the spirit of continuing cooperation that the IFES team offers this report.

Throughout the report the team identifies the strengths of the system and the positive aspects of the process which should serve as the foundation on which the CEC and lawmakers can continue to build. The legal framework is discussed as it relates to each specific component of the process. The report includes discussions of the comprehensive manner in which the CEC prepared a strategy for carrying out the legal mandates of the Election Code and defined administrative procedures intended to fill in the gaps left unanswered by the Code itself. The positive aspects of administrative management and communications are identified, as is the openness and transparency with which the election was conducted.

The team has also tried to analyze some of the weaknesses of the electoral system which had not been anticipated when the Election Code was drafted, and which only came to the fore as officials attempted to implement the new code for the first time. Rather than placing an emphasis on the difficulties and irregularities which occurred, the team has tried to examine the factual aspects of the issues involved, and to analyze the factors that caused them. Wherever possible the team has also presented potential remedies for the consideration of officials who will continue their work in the further development of the electoral process.

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<sup>2</sup> See Annex 2.



As Kazakhstan continues to move forward in its democratization efforts, it is important to recognize that no democratic election system is static. It is a continually evolving process. The experience gained through the successes and, indeed, the failures of each "electoral exercise" provides a sound foundation on which an even stronger electoral process can be nurtured.

The 1994 elections have set an historic precedent. This profound achievement is a tribute to the commitment and competence of the thousands of people who contributed to the election's success and to the citizens of Kazakhstan who have forged a new beginning through the democratic process.

Throughout the weeks immediately preceding the elections, IFES team members had the opportunity to meet extensively with members of the CEC and lower level electoral commissions. The team also met with representatives of the parties, individual candidates, oblast and city administrators, civic and trade union activists, representatives of the legal community and the media, as well as members of various international delegations who were present in advance of the elections and who arrived to observe the elections themselves. In every instance and encounter, the IFES team was impressed by the candor and unselfish cooperation with which they were greeted. Time and information was generously provided, questions were answered promptly and candidly, and there appeared to be a genuine interest in the open sharing of views. The IFES team wishes to express its sincere gratitude to the members of the Central Electoral Commission, to all the election participants, and in particular to the citizens of Kazakhstan for their commitment, cooperation, and warm hospitality.





# Commonwealth of Independent States



## **GENERAL OVERVIEW**

The newly adopted Election Code of the Republic of Kazakhstan is a comprehensive document which reflects a new political climate, the move toward democracy and multi-partyism, and new directions in the overhaul of basic institutions and administrative structures in government. A number of provisions of the newly adopted Election Code speak directly to voting rights and guarantees commonly associated with democratic election systems.

1. The Election Code provides for the universal right of all citizens over the age of 18 to vote in the elections and guarantees voting rights regardless of their social or property status, race, nationality, sex, education, language, religion or occupation.
2. Provisions guarantee the "one voter, one vote" principle.
3. The Election Code provides that elections of the President, Deputies to the Supreme Council and local representative bodies are "direct" and that voters vote in secret.
4. The Election Code includes protections which guarantee that the person's exercise of free will in casting a vote is not to be controlled or abridged.
5. The Election Code directly stipulates that preparation and conduct of the elections is to be an open and public process.
6. The Election Code specifically provides for the presence of news media and representatives of the candidates to be present to "monitor" election procedures first hand. In addition, by Presidential Decree, the presence of international observers was encouraged and welcomed.
7. The Election Code provides for ballots and election materials to be printed in both Kazakh and Russian, and in any other language appropriate to the constituency.
8. Access to voting is liberally prescribed with implementation of a passive registration system requiring no affirmative action by the voter and which even allows for voters to register on election day.



9. A number of special voter services are provided including advance voting for those who will be away on election day and voting at home for those who are aged, disabled or for other reasons are not able to go to the polling place.
10. The Election Code allows for the establishment of polling sites in hospitals, institutions, on ships at sea and, as necessary, for citizens who are abroad.
11. The Election Code also provides for a system of adjudication of grievances whereby citizens and candidates dissatisfied with the decisions of electoral commissions can appeal to a higher commission or to the courts.

In addition to setting a tone which reflects democratic principles, the Code provides the basic structure for the conduct of elections, sets in place a network of electoral commissions charged with responsibility for their administration, and generally describes the process for delimitation and registration of voters. The Election Code also sets guidelines for the designation of polling sites and procedures at the polls, counting and recording of vote totals, and the manner in which candidates are nominated.

#### **Administrative Structure:**

Under the Election Code, elections are administered by a hierarchy of appointed electoral commissions supported by an administrative staff at the Central Electoral Commission, and by local executive authorities at the territorial and regional levels. At the top of the hierarchy is the Central Electoral Commission (CEC), a permanent body whose members, according to the Election Code, are appointed by the Supreme Council based on recommendations made by the President. Because of the dissolution of the Parliament, there was some question as to whether or not the current members of the CEC were actually approved by the Parliamentary body or were appointed exclusively by the President.

Once members have been appointed to the Central Electoral Commission, changes in its composition are made at the recommendation of the President. The Election Code also stipulates that Deputies of the Supreme Council or local representative bodies cannot serve on electoral commissions, nor can nominated candidates serve on electoral commissions. If a member of the Commission becomes a candidate, he is released from his post immediately upon registration of his candidacy.

The decision of the drafters of the Election Code to make the Central Electoral Commission a permanent body was a well founded choice not typical of other post-Soviet countries. In many of these countries the Central Electoral Commission is organized on a temporary basis resulting



in a situation whereby virtually every regular Parliamentary election is conducted by a newly formed commission. Through the creation of a permanent agency with the responsibility for elections, Kazakhstan has afforded itself the benefits that go with experience, continuity, and the development of institutional memory. Most experienced election administrators would agree that these factors are key ingredients to the continuing evolution of an election system that is efficient, accurate, and accountable.

The Central Electoral Commission is comprised of seven members including a Chairman, Vice Chairman, and Secretary. For the 1994 elections the Commission created an internal administrative structure. Within its membership, each member was assigned specific areas of responsibility. The main assignments focused on issues related to:

financial and logistic support;

documentation, decrees, and orders;

interagency coordination;

press and media relations, and public outreach;

communications, methodology and maintenance of the elections data base; and,

legal compliance and interpretation of law.

In addition, a number of the commissioners were also assigned to serve as primary liaisons to oversee election activities and requirements for separate regions of the Republic.

Generally speaking, the CEC serves as the central, policy-making arm for the electoral administrative structure. The CEC maintains primary responsibility for conducting the Presidential Elections, and elections of the Supreme Council. Among its major duties are the following:

1. control over the uniform application of the Constitution and the Election Code in the conduct of elections and providing interpretations and explanations of their provisions;
2. formation of electoral constituencies and publication of their descriptions;



3. preparation and submission of the nation-wide electoral budget to the Supreme Council for approval;
4. allocation of the budgets for lower electoral commissions and organization and coordination of logistic support;
5. review of applications and complaints about the activities and decisions of lower commissions;
6. design and approval of all forms and commodities used in the electoral process including ballots, protocols, ballot boxes, voters lists, registration and subscriber documents, and other required materials;
7. registration of candidates for President and Vice President, and candidates to the Supreme Council nominated by the President on the State List; and,
8. nation-wide summarization, validation and reporting of elections results, and certification of successfully elected candidates to hold their offices.

Several comments are warranted with regard to some of these functions. The first relates to the CEC's authority to form constituencies. Based on perceptions garnered during its stay in Kazakhstan, and based on the construct of several provisions of law working together, the IFES team believes that the CEC's authority in forming constituencies is, in practical terms, a cooperative effort. Constituencies related to the State List candidates for the Supreme Council, for example, are defined to coincide with the existing oblast boundaries. As far as the constituencies for the balance of the Supreme Council candidates, Article 24 of the Election Code requires that constituencies be formed by the CEC and Territorial Electoral Commissions. Once formed, the list of the constituencies, their borders and the locations of the Area Commissions are published by the CEC.

Involved in the production of ballots and printed materials, the acquisition process is decentralized. The role of the CEC is to provide procedural guidelines and samples of the forms which they have designed, but actual printing and distribution are the responsibility of local authorities. For example, samples of the form of ballot style and wording to be included is provided to the lower commissions by the CEC. The regional commissions must arrange for printing and local distribution of ballots and forms which will be necessary for the election within their boundaries.



The CEC is responsible for providing legal and technical guidance to all levels of electoral commissions. For example, the CEC provides the fundamental election calendar to lower commissions. The calendar delineates legal and functional deadlines. Procedural and regulatory documents are also prepared by the CEC and distributed to officials at the regional and constituency levels. In addition, the CEC provides legal advice regarding the interpretation and technicalities of the law, relying on counsel from the Supreme Council when necessary. During the 7 March 1994 elections, there was no Supreme Council on which to rely for legal interpretations as the law requires. However, the CEC did have the benefit of counsel from legal staff from the office of the Vice Chairman of the former Supreme Soviet.

In spite of the CEC's broad-sweeping authority, certain limitations contributed to a number of difficulties which were experienced in the course of the elections themselves. While Article 5 provides that the CEC "directs the activities of lower commissions" the Election Code was interpreted in a way which restricted such direction to giving guidance on administrative procedures and providing technical assistance. However, based on advice of legal counsel, the CEC was ultimately precluded from overturning decisions or overruling lower commissions in the conduct of their activities. Further, the structure of the Election Code as it was interpreted gave considerable autonomy to lower commissions. The result was that constituency commissions acted independently and established their own individual rules and standards on significant election issues, including the manner in which candidate nominations would be evaluated, and the grounds on which candidates would be rejected. Restrictions on the CEC's ability to have direct supervision over lower commissions created an environment that promoted a lack of uniformity in the way the Election Code was applied. The specific ramifications are discussed in more detail later in this report.

In order to overcome the problems caused by the lack of centralized authority, it will be very important for lawmakers to review the circumstances that led to these deficiencies and amend the Election Code to clarify the direct line of supervision. Responsibility for direct supervision of constituency commissions should unequivocally be vested in the CEC to ensure that all laws are interpreted and applied consistently, uniformly and equally throughout the Republic.

#### **Territorial, Area and District Commissions:**

Territorial Electoral Commissions ["TECs"] function at the oblast level and in the major cities of Almaty and Leninsk. The TECs provide administrative support for the Supreme Council Elections and directly supervise oblast and local elections within its jurisdiction borders. There are 21 Territorial Commissions - one in each of the 19 oblasts plus 2 others serving the cities of Almaty and Leninsk. Territorial Commissions are authorized to have from 9 to 15 members who serve for 5 year terms. Although IFES was unable to ascertain whether or not the TECs



were permanent standing bodies, they seemed to be active only for the purpose of providing support and supervision at the time of elections.

Area Electoral Commissions ["AECs"] administer elections at the constituency level. They carry the primary responsibility for organization for elections within the electoral district. It is the Area Commission, for example, that defines the precinct boundaries and establishes locations of the polling sites. Training and supervision of poll workers falls under the Area Commission's responsibility. One of their major functions is the registration of candidates and monitoring of their campaign activities. They also play a significant role in the facilitation of candidate campaign activities by preparing the candidate posters, arranging for public meetings where candidates can present their programs and approving the scheduling of media time allotted to the candidates. Area Commissions also serve for a term of 5 years and are comprised of 9 to 15 members. Once again, these commissions, just as those on the territorial level, seemed to be active only for the purpose of providing support and supervision at the time of elections.

District Electoral Commissions ["DECs"] are comprised of the poll workers who serve at the polling sites. The DECs facilitate voter registration and prepare the voter list for the area served by the polling station. Each DEC is responsible for the processing of voters on election day and the counting and tabulating of votes at the close of the polls. For the 1994 elections there were 86,380 commission members serving the 10,224 polling sites. The terms of District Electoral Commission members expire when the new Deputies to the Supreme Council are registered to hold the office to which they have been elected.

#### **Appointment of Commission Members:**

Under the provisions of law guiding the appointment of members for Territorial, Area, and District Commissions, decisions are supposed to be based on joint consideration by the respective executive authority and the locally elected representative body. However, due to the premature dissolution of local councils in December 1993, commission members for the 1994 elections were autonomously selected by administrative authorities in the corresponding jurisdiction with no input from a locally elected council. In fact, in a number of instances the IFES team was told that selections were made specifically by the heads of oblast administrations who were themselves presidential appointees.

Often, the members who were ultimately appointed to serve on the electoral commissions were employees or former employees of the local administration itself. These circumstances contributed to a number of concerns which were raised questioning the credibility of some local electoral commissions. A legitimate concern emerged, for example, about the degree of independence with which these commissions would operate, and the extent to which their



decisions were influenced by local administrative authorities. This situation was exacerbated in constituencies where an official within the local executive body had also become a candidate. Under such circumstances the confidence and trust of the public in the candidates and parties directly affected was seriously eroded due to concerns that bias or partisanship would taint the decisions and actions of the local electoral commission.

Even if allegations of impropriety are unsubstantiated, perceptions that opportunities for abuse exist or that irregularities are occurring are very damaging to the public trust in the election process. Hopefully, the CEC and lawmakers will consider options which will help alleviate the problem for future elections. One of the most effective ways to ensure that electoral commissions carry out their duties with the highest level of credibility, and are perceived to be conducting their activities impartially, is to involve a cross section of political parties and movements in the membership of each commission. By making sure that opposing interests are represented on the various electoral commissions, opportunities for self-monitoring are created which enhance the public's confidence in the neutrality and fairness of the process. This strategy has been successfully incorporated in the laws of several transitional democracies, including Albania and Hungary. In these instances, the fact that a cross section of parties was fully represented on the electoral commissions at all levels, and even in rural areas, helped nurture the public's confidence in the ultimate fairness of the process despite technical difficulties which they too experienced during their first multi-party elections. Such a solution is worthy of consideration for future elections in Kazakhstan. In the context of Kazakhstan's system of nomination, whereby candidates can be nominated by any registered public organization, political party, or movement, appointments could be based on all groups whose constituency candidates were elected in the last election.

### **Budget and Commodities:**

The Republic-wide budget for the 1994 elections was formalized in three separate decrees. The first was issued on December 25, 1993 by the Cabinet of Ministers of the Republic. A second decree issued by the Prime Minister was signed on the 29th of December, and the third decree was issued by the Central Electoral Commission. The CEC responsibility for overseeing budget and logistic issues was primarily vested in the Deputy Chairman. In determining the budget for the 1994 elections, an analysis was completed during which the costs related to prior elections were reviewed. The actual figures were based on costs related, to an individual precinct, then multiplied by the number of precincts within a constituency, and ultimately estimated for the Republic as a whole. The former figures were then adjusted to accommodate the inflated costs of materials and commodities to the extent that they could be accurately projected for the period surrounding the 1994 elections.





The total budget allocated for the conduct of the elections was approximately 36 million tenghe<sup>3</sup>, with 30,404,710 tenghe specifically earmarked for the regional administrations within the 21 oblasts. The funds were deposited into the accounts of regional executive authorities who were directly responsible for the administration of the funds based on requests and orders of Territorial, Area and District Electoral Commissions. Depending on their size, the allotments to the various oblasts ranged from 150 -170 thousand tenghe for the city of Leninsk to 2 million tenghe for the Southern Kazakhstan Region.

It was estimated that each polling site would incur costs estimated at 1,525 tenghe. Included in this figure were funds to cover the salary of one full-time member of the District Election Commission at 200 tenghe for one and a half months, plus the salary of a technical support staff member to be paid 150 tenghe for the same time period. An additional 1,000 tenghe was allotted to cover the estimated costs of printing polling site materials and purchasing supplies and commodities which would be needed for election day. A supplemental amount was built into the total allotment to cover incidentals.

Area Electoral Commissions were allotted approximately 6,620 tenghe which covered their expenses for a two month period. One full-time member of the Area Commission was paid a salary of 250 tenghe a month and a support staff technical worker earned 150 tenghe a month. Other budget items accounted for in the funding of each Area Commission covered expenses for rental and maintenance of the office, transport, telephone and telegraph and printing of the ballots.

Each Area was also funded in the amount of 6110 tenghe to support the authorized campaign activities for each candidate. Under the Election Code all campaign expenditures must be borne exclusively by the state. The 6,110 tenghe were allocated to pay all expenses for the production of candidate posters and other materials authorized for the candidates, and cover production and air time on radio and television provided by state controlled media. This figure also included expenses for pre-election canvassing, and candidate travel.

An extraordinary amount of paper was needed to accommodate the printing requirements for the 1994 elections. Two hundred tons of paper was needed to print ballot papers, posters, forms and protocols. In addition, 5.8 tons of typing paper was needed to supply Area and District Commissions. Two hundred thirty-three tons of fuel were allocated to cover local transportation for electoral officials as they fulfilled their duties. Thirty-five meters of cotton fabric was

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<sup>3</sup> The exchange rate of the Tenghe to the US Dollar was of 14/1 in March 1994 and at all times relevant to this report.

purchased for each of the 10,224 polling sites for construction of private voting booths. In addition, each polling site was supplied with 10 light bulbs, carbon paper, typewriter ribbons and sealing wax.

Distribution was arranged through a well-coordinated network of state agencies and holding companies. Regional branches of the Ministry of Trade, the state owned holding company, "Legprom", and Kazpotrebsoyuz distributed the materials through a non-cash settlement according to the official requests of Territorial, Area and District Commissions. The paper was arranged through a cooperative contract with "Kazkontrakt" directly on the order of the CEC. In an innovative move, the CEC made a concerted effort to enhance the efficiency and accuracy of the new election process through the application of more modern technologies. A contract was entered into with a private Kazakhstani company to write a computer program for the summarization of results and the compilation and analysis of statistical election data.

The logistics involved in preparing a comprehensive budget and coordinating the inter-agency distribution and transport of materials and commodities to over 10,000 polling sites put an extraordinary burden on the CEC and regional administrators. The overall strategy was well planned and implemented. Given the difficult economic climate in which these elections were held, and the very short time frame in which preparations had to be made, the success of their efforts is a tribute to the superior administrative skill and experience of the CEC as well as government and regional administrators.

### **System of Representation:**

The structure of the Supreme Council was altered by a significant reduction in the number of seats from 360 to 177. Of the total number, 135 candidates represent single-mandate constituencies which were created by combining the former 270 electoral districts into larger electoral districts. The additional 42 seats represent the cities of Almaty and Leninsk, and the 19 oblasts which were each designated as multi-mandate. In each of these latter districts, 2 Deputies were elected from a State List ballot comprised of candidates nominated directly by the President.

Under the new Election Code a majority system was adopted. For elections to the Supreme Council and local representative bodies, the candidate who has received more votes than any other candidate appearing on the ballots is elected. Voters mark their ballots by crossing out the candidates they reject and leaving the name of the candidate they want elected exposed. If only one candidate appears on the ballot, he or she is elected if the votes in favor are greater than the votes against the candidate.



In the case of elections for President and Vice President, an absolute majority vote is required. If no candidate receives an absolute majority of the votes cast, a run-off election is conducted to determine the winner between the two candidates who received the greatest number of votes.

For an election to be considered valid, a 50% turnout is required. The results of the ballot count at a polling place where fewer than 50% of the voters on the voter list participate are deducted from the votes counted for the constituency as a whole. Should deductions result in a turnout for the entire constituency of less than 50%, the election in that constituency is considered not to have been held and no representatives are elected. A new election must be called in which the same rules are applied.

### **The State List Ballot:**

The State List Ballot was the focus of considerable discussion, controversy and criticism not only within Kazakhstan but also from the international community. Under this mandate the President is authorized to nominate candidates to fill 42 of the 177 seats in the Supreme Council. This means that over 20% of the Deputies in the Supreme Council are hand-picked by the President himself. It should be noted that President Nazerbaev did ensure that the voters had some degree of choice in that he nominated at least 3 candidates to appear on each State List ballot from which two would be elected. However, there is no stipulation in the Election Code requiring that the ballot contain more than two candidates. Such an omission could potentially result in voters having no choice at all.

Proponents of the plan argue that the State List ballot provided a level of assurance that a diversity of ethnic interests would be represented in the Supreme Council especially from the smaller national groups such as Uigurs, Koreans and Germans. In addition, the President's nominations were promoted as a way of ensuring a base of professionalism which many believed would be critically important in maintaining stability within the newly elected body. Finally, supporters suggest that the State List provides an opportunity for renowned men and women in the arts, letters and sciences to be recruited to serve who would not ordinarily pursue political office.

Unfortunately, other concerns may overshadow the benefits proffered by supporters of the State List ballot. Critics point to the fact that the State List ballot is not provided for in the Constitution, and may in fact nudge against the sixth foundation principle of the Constitution which stipulates that State power is based on the division of legislative, executive and judicial powers that interact with each other through a system of checks and balances. The fact that the president can control the nominations and elections of nearly 1/4 of the legislative body can



easily be perceived as an encroachment of the separation of powers between the executive and legislative branches of government.

Another issue that deserves comment is that the State List also has the potential to interfere with the pluralistic balance within the legislative body by giving one party additional seats in the final make up of the Parliament that they may not have won through the regular constituency, single mandate type of election. The Union of People's Unity of Kazakhstan (a political party more generally known by its Russian acronym SNEK) is the party identified with the President. According to members of its leadership with whom the team met, 20 of its proposed candidates were subsequently nominated by the President for the State List ballot. In such a scenario the party which is able to have more of its candidates added to the State List ballot has the opportunity to garner extra leverage in the ultimate make up of the newly elected body.

It is interesting to note that the terms of the candidates nominated by a president can potentially extend beyond the term of the president who nominated them. Conceivably these circumstances could mean that at some point in time, future presidents could be faced with opposition legislatures left over from a prior president.

Clearly, these are issues which will deserve re-evaluation by new lawmakers as they contemplate the future direction of the Republic. It will be important for lawmakers to consider whether or not this will continue to have a valid place in a truly democratic system, or whether it should be repealed.

### **The Election Calendar:**

Throughout this report, references are made to the time constraints which negatively affected a number of the components of the electoral process. The period between the adoption of the Election Code and election day was a period of just 90 days. Throughout this period, the calendar of events prescribed in the Code itself had to be constrained even further to accommodate events and conditions as they occurred. These modifications in the calendar are identified and discussed in various sections of this report as are their impacts on the ability of officials and candidates to carry out their activities. On the pages that follow the legal deadlines contained in the Election Code are illustrated as are the administrative deadlines established by the CEC. The calendar also reflects the schedule for activities which are prompted by specific events.



**ELECTION CALENDAR  
REPUBLIC OF KAZAKHSTAN**

**Election of Deputies to the Supreme Council  
March 7, 1994**

| <b># of Days<br/>Prior to<br/>Election</b> | <b>Article #</b> | <b>Date by<br/>Order of<br/>CEC</b> | <b>Event</b>   |
|--|------------------|-------------------------------------|--|
| 110  | 24               |                                     | List of Constituencies and their borders & locations of Area Electoral Commissions published by CEC                                      |
|  |                  | 12/17                               | Nominations for Area Electoral Commission Members begins   |
| 100  | 13               | 12/27                               | Area Electoral Commissions formed (9-15 members) unless otherwise specified at the call of the election                                  |
| 90   | 60               | 12/27                               | Period for nomination of candidates begins   |
| 80   | 11               |                                     | Territorial Electoral Commissions are formed (9-15 members) unless otherwise specified at the call of the election                       |
| 60   | 60               | 1/25                                | Nominating period for candidates ends  |
| 30   | 25               | 2/4                                 | Electoral districts (precincts) are formed unless otherwise decided when elections called & district commissions appointed and published |
|  |                  | 2/8                                 | Registration of candidates is completed  |



| # of Days Prior to Election | Article # | Date by Order of CEC | Event   |
|-----------------------------|-----------|----------------------|---|
|                             | 36/61     | 2/9                  | Pre-election campaign begins  |
|                             | 32/61     | 2/14                 | Registration of candidates is published   |
| 15                          | 28        | 2/21                 | Voter lists posted for public familiarization   |
| 15                          | 65        |                      | Final date by which withdrawal of candidates could cause election in constituency to be postponed until 2 months after general electio if:<br><br>all candidates in constituency withdraw; or<br><br>enough candidates on state list withdraw to leave less than number of mandates |
| 14                          | 43        | 3/2*                 | Voters notified of date and place for voting  |
| 7                           | 43        |                      | Decisions regarding changes in polling hours must be made and publicized to voters  |
| 5                           | 25        |                      | Special electoral changes in polling hours must be made and publicized to voters  |
| 5                           | 28        |                      | Voter lists at special electoral districts (precincts) are prepared   |
| 3                           | 34        | 3/4                  | Ballots delivered to district electoral commissions   |



| # of Days Prior to Election | Article #   | Date by Order of CEC | Event  |
|-----------------------------|-------------|----------------------|--|
| 3                           | 46          |                      | Last day for a voter who will be unable to go to the polls to vote an advance ballot |
| 2                           | 39          | 3/5                  | Last day to campaign & campaign period ends  |
|                             |             | 3/7                  | ELECTION DAY (polling hours: 7:00 a.m. - 8:00 p.m.)                                  |
| +5                          | 65          |                      | District Commissions must report voting results to CEC                               |
| +7                          | 48/65<br>** |                      | Relevant electoral commissions must publish election results                         |
| +10                         | 65          |                      | CEC must publish overall nationwide results and list of elected candidates           |
| +60                         | 67          |                      | Repeat elections held if constituency election was nullified                         |

\* Date on Order May Be Misrepresented

\*\* Article 48 provides publication by relevant electoral commission will be within dates determined by CEC. Article 65 dictates the publication within 7 days of the election.



**DEADLINES DICTATED BY PRIOR EVENTS  
REPUBLIC OF KAZAKHSTAN**

**Election of Deputies to the Supreme Council  
March 7, 1994**

| Event  | Article | Deadline                 |
|--|---------|--------------------------|
| <b>COMMISSIONS:</b>  |         |                          |
| Following appointment, CEC convenes & meets at least once per month                                      | 17      | Within 14 Days           |
| Following appointment, lower commissions convene & meet at least once every 2 weeks                      | 17      | Within 7 Days            |
| <b>VOTER REGISTRATION:</b>   |         |                          |
| Applications for corrections to voter lists decided by District Commissions                              | 28      | Within 3 Days of receipt |
| Applications for corrections submitted less than 3 days before election decided by District Commissions  | 28      | Immediately              |
| Appeals of District Commission decisions submitted to local court decided                                | 28      | Within 3 Days of receipt |
| Appeals of District Commission decisions submitted to local courts day before or on election day decided | 28      | Immediately              |





| <b>Event</b>  | <b>Article</b> | <b>Deadline</b>                       |
|---|----------------|---------------------------------------|
| <b>NOMINATION OF CANDIDATES:</b>  |                |                                       |
| Public Organizations notify individuals of their nomination   | 60             | Within 2 work days of the Resolution  |
| <b>REGISTRATION OF CANDIDATES:</b>  |                |                                       |
| Candidate issued certificate of registration  | 32/61          | Within 2 days                         |
| District Electoral Commission submits report of registration of candidates to CEC   | 61             | Within 5 working days of registration |
| Relevant Commissions publish data on registered candidates  | 32/61          | Within 7 work days of registration    |
| Annulment of candidate registration may be appealed to CEC or court   | 61             | Within 3 work days of rejection       |
| <b>COMPLAINTS AND GRIEVANCES:</b>   |                |                                       |
| Issues brought before court by Electoral Commissions, citizens, representatives of legally registered public organizations, decided | 54             | Within 5 work days of submission      |
| Appeals of decisions made regarding infringement of laws during electioneering, decided   | 55             | Within 3 work days of appeal          |



**DEADLINES DICTATED BY PRIOR EVENTS, continued.**

| Event   | Article | Deadline   |
|---|---------|--|
| Appeals of decisions made regarding infringement of laws during electioneering brought on the day before or on electio day, decided | 55      | Immediately  |
| <b>CANDIDATE WITHDRAWAL:</b>  |         |  |
| Candidates may withdraw their candidacy   | 62      | At any time before election  |
| Public organizations asked to nominate new candidates if all candidates within constituency have withdrawn                          | 64      | After end of registration period but more than 15 days before election |
| President asked for nominations of new candidates if withdrawals from state list leave fewer candidates than # of mandates          | 64      | After end of registration period but more than 15 days before election |
| Separate election to be held 2 months after universal election based on sufficient number of withdrawals                            | 64      | If withdrawals occur less than 15 days before election                 |



## **PARTIES AND THE NOMINATION AND REGISTRATION OF CANDIDATES**

Under the new Election Code candidates for the Supreme Council fall into two categories: those who seek election from a constituency on an open ballot; and those who are directly nominated by the President to appear on the State List ballot.

Securing access to the ballot for either type of candidate in Kazakhstan is a two-phase process. The first phase involves the process of nomination. The second phase is the official registration of their candidacy. In the case of constituency candidates, registration is accomplished by the Area Electoral Commission which oversees the constituency where they are seeking office. Candidates nominated by the President for the State List ballots are registered by the Central Electoral Commission. It is only upon their formal registration that candidates are allowed to actually campaign. During the nominating period campaign activity is prohibited. Warnings may be issued to those committing such violations. A second warning of a campaign violation at any time afterwards leading up to the election itself can result in an individual being removed from the ballot.

The nomination period for candidates seeking access to the ballot that began on December 27, 1993 lasted only 29 days. Under Article 60 of the Election Code, the nomination period is supposed to end two months prior to election day unless an alternative schedule is specified at the time the election is set. Such was the case for the 7 March elections during which the time frame between the closure of the nominating period and election day was shortened by nearly 3 weeks with the cutoff set for January 25, 1994.

### **Role of Political Parties:**

Although the nominating procedures for the constituency and State List candidates have many elements in common, there are significant differences. Candidates seeking access to the constituency ballot may be nominated by a public organization. In Kazakhstan political parties are categorized among other public organizations and their formation and activities are governed by the same general body of law. Parties are authorized under the Law on the Organization of Public Associations, which also governs registration of any other public organization such as boys clubs, cultural associations, and civic groups. They are registered by the Ministry of Justice. Under that law, activities of an organization which has not achieved official status are prohibited. Only those organizations and parties that have been officially registered by the Ministry of Justice are eligible to nominate candidates. Additionally, to receive Republic-wide status, a registered organization must have chapters in at least 11 of the country's oblasts. At the time of the elections, there were 3 officially registered political parties and 2 registered political movements.



A concern that has been raised in a number of quarters is that the provisions regarding the registration of political parties are over burdensome and diminish the opportunities of some groups to succeed in their application for registration. At the very least the laws governing the organization of political parties provide a basis of control whereby the state can maintain a relatively tight rein over political activism. Of equal concern is that the requirements are written in a way which allows the Ministry of Justice to rescind registration at any time. In fact, a number of previously registered organizations have reportedly been de-registered since the law was originally passed in 1991.

A major portion of the application process is the submission of a comprehensive charter which defines the purposes, goals and activities of the party. One comment repeated by representatives of a number of registered and would-be political parties and movements was that the drafting of the charter was extremely difficult and required the assistance of legal counsel. At issue was the fact that once the party was registered all its activities have to fall within the provisions of the charter. Their on-going activities can be audited by the Ministry of Justice at any time. Any activity which the Ministry of Justice finds is not covered specifically in the charter can be grounds for rescinding the group's registration. In addition, once a charter for a political organization has been approved any amendment or change must be resubmitted and the registration process begins anew. Such review provides new opportunities for the group's registration to be rescinded.

Under the constraints of the law, formation or activities of public associations including political parties aimed at "harming the health or moral values of the populace" will be prosecuted. The vagueness of terms like harmful to "moral values" leaves a door open for the state to construe grounds on which an organization's official status could be taken away.

In order to qualify for registration, parties must have an official membership of at least 3,000 people. The IFES team was led to believe by more than one source that in order for a person to become a member of a political party, he must declare himself at his place of employment and receive an official stamped notice from the administrative office of the employer. The law guarantees that participation or non-participation in the activities of a public organization or party cannot be used as a basis for denial of rights or benefits, and cannot be considered as a condition of employment. Having to declare membership in a political party through one's work place could be intimidating, especially in view of the historic implications surrounding membership or non-membership in the former Communist Party. If, indeed, declaration of party membership through the employer is required, it is a practice which would best be discontinued. The work place should be depoliticized to remove the potential for undue pressure on citizens regarding expression of their political preference.



To promote a more dynamic and meaningful multi-party system in Kazakhstan, lawmakers should be encouraged to restructure the laws as they relate to the registration of political parties. First of all, political parties are not the same as boys clubs, cultural associations, and veterans and youth groups. Political parties have a very specific agenda and an explicit purpose as players in the political and legislative arenas. In view of their unique status in national affairs, consideration should be given to establishing a separate body of law to provide for their organization and registration. In addition, procedures for their nomination of candidates should be different from those established for other public associations and groups whose primary and chartered objectives may have little relevance to politics. In many established democratic systems registration of a political party is handled through a petition process similar to that required for candidates. The party maintains its official status as long as their party's candidates as a group continue to garner a minimum threshold percentage of the cumulative votes cast in the constituencies in which it fielded candidates. Typically, the percentage required is 1% to 5%. This kind of an approach would be similar to the established percentage of the votes each candidate must get to receive a refund of his or her pledge. If the party's percentage of the vote falls below the threshold it loses its official status and is required to resubmit a petition for reinstatement.

In addition, in most jurisdictions once a party has been officially recognized it is not usually required that candidates nominated by the party would have to submit a petition like those candidates who file independently. Usually the purpose of a petition requirement for candidates is to show that the candidate can promote a modicum of support. This requirement helps to show that the candidate is serious about the obligations of competing for elected office. In the case of candidates put forth and sponsored by a registered political party, the fact that the party has a proven membership and a proven degree of popular support is sufficient to show that its candidates will more than likely be viable. This type of streamlined access to the ballot is one of the intended purposes and privileges for going through the formal organization process to achieve official political party status. This approach would also be similar to the current provisions that allow the State List candidates access to the ballot without having to circulate a petition.

### **Process of Nomination:**

The Election Code makes it clear that public organizations are only allowed to nominate one candidate for Deputy to the Supreme Council within a constituency. Under a provision of Article 60 it is forbidden for a candidate to be nominated in more than one constituency. However, the Code is silent on some other specific details related to the nomination process which required the CEC to address various questions raised by candidates and area officials as the nomination period was under way. The CEC was continually faced with such decisions and



generally attempted to adhere to the most literal interpretation of the full context of the Election Code considering various subsections working together. In determining the allowability of a certain activity, the CEC frequently took a liberal view where the Election Code was silent on specific questions. And, in almost all cases, CEC decisions and interpretations were formalized by written order and publicized throughout the Republican press. For example, in the absence of specific legislative guidelines and in response to one question which arose, the CEC made a determination that candidates could run in any constituency they chose. They determined that the candidate was not required to have any ties through residency or employment to the constituency. Faced with a similar gap in the law, the CEC developed a parallel ruling that those candidates nominated by a public organization were not required to have any ties to the organization that nominated them.

In addition, questions were raised as to whether a person could be nominated to run for more than one office, e.g., Deputy to the Supreme Council and Deputy to an oblast council. Since no stipulation of law directly addressed the questions, the CEC ruled that absent a specific prohibition it was allowable. Their formal instruction on this issue reminded Area Officials, however, that ultimately a candidate would be prohibited from holding more than one office under Article 68 of the Constitution.

Public organizations and political parties who nominated candidates were required by law to hold congresses attended by a quorum of their members. Minutes had to be recorded documenting their nomination decisions, and their resolution approving the candidate's nomination had to be passed with a majority vote. Within two days of the nomination meeting, organizations were required to notify their proposed candidates of their selections.

Under former nomination rules, candidates were nominated by work collectives. Although critics would agree that the system of party registration is restrictive and burdensome, the introduction of party nominations is nonetheless reflective of the significant advances being made toward democratization.

Another positive indication of Kazakhstan's progress is the fact that for the first time in the country's history, the Election Code allows citizens to nominate themselves independent of an endorsement by any public organization. For the 1994 elections nearly 1/2 of all candidates registered for the 135 constituencies filed as independent candidates. Reasonable questions have been raised by various international organizations as to whether the fact that so many individuals were self-nominated is a symptom of the burdensome requirements of party registration, or reflective of the weak state of the fledgling opposition parties still struggling to establish themselves in the new political environment. Nonetheless, such provisions open up a broad



avenue of access for all citizens who may choose to become participants in a competitive and open election process.

Two other requirements applied to all candidates for the Supreme Council regardless of the manner in which they were nominated. First, all candidates including those accepting an organization's nomination, independent candidates, and those nominated by the President, are required under the law to submit a document indicating their willingness to campaign and appear on the ballot. This document also expresses the candidates' willingness to comply with Article 68 of the Constitution which, upon their election, precludes them from holding any other post, serving in any other representative organ, or participating in any kind of entrepreneurial activity. This provision was a significant departure from former practice where Parliamentarians only served in their official capacity as lawmakers on a sporadic and part-time basis throughout the year, while they maintained their every day posts in other fields of endeavor. For example, many were managers of work collectives or served on local executive bodies throughout their tenure as Deputies to the Supreme Soviet. Under the new Constitution, Deputies of the newly named Supreme Council will serve in a full-time capacity. Proponents applaud this new provision of the Constitution, and see the opportunities for creating a professional and fully deliberative legislative body.

### **Candidate Deposits:**

The second uniform requirement for all candidates relates to a filing deposit. Regardless of the type of nomination process by which a candidate seeks access to the ballot, all candidates are required to post a financial deposit which, under the Election Code, is an amount equal to 5 times their monthly salaries. The Code contemplates the unemployed candidate and specifies that for those without a full-time job salary, the pledge is 5 times the minimal wage defined by law. A document certifying that the deposit has been submitted must also be filed with the Area Commission. If the candidate fails to be registered, or fails to receive at least 5% of the total votes cast in his or her race, the deposit is forfeited. Those candidates receiving the requisite percentage of votes are sent a refund of their deposit, less a fee charged for the transfer of funds.

Once again, questions were left unanswered by the Election Code regarding payment of the deposit and the CEC was required to add further administrative clarifications. Such questions surrounded candidates who were non-working pensioners and workers with sporadic incomes. With regard to pensioners, the CEC determined that they should be required to comply with the same rule cited for the unemployed. The CEC ruled that sporadic workers, on the other hand, were required to pay 5 times the average monthly salary they earned during the prior year. Under these types of unusual circumstances, candidates were required to provide appropriate



work related documentation or proof of their unemployment to support their salary claims.

Given the economic difficulties being experienced by all citizens during Kazakhstan's economic transition, a legitimate concern has been expressed that the requirement of such deposits put an undue burden on would-be candidates. More than likely, this requirement actually precluded some interested individuals from entering the political arena at all. The money required were presumably to be paid from a candidate's personal savings. The Election Code is very clear that candidates cannot secure funds from any other source except from the state for the expressed purpose of supporting their campaigns. The problem was severely compounded by the fact that it had been only a few months before, in November 1993, that Kazakhstan introduced its own national currency, the tenge. In the summer of 1993 invalidation of the Soviet ruble left Kazakhstan holding billions in the old currency. At that time, there was also an intense influx of rubles not only across the border from Russia, but also from China further fueling the trend toward hyperinflation. Additionally, conversion of the currency had an adverse effect on many citizens whose life-savings in rubles were suddenly and significantly diminished.

While the requirement of a filing deposit for candidates is not an unusual practice in established democracies, there is room to question whether an amount equalling nearly a half year's income may be too high.

This issue had particular significance for the 7 March elections given the economic circumstances in Kazakhstan at the time of the election, the very recent conversion to the new currency, and the total ban on financial or campaign support from other sources imposed on candidates by the Election Code. As lawmakers review the Election Code for future amendments, consideration might be given to: 1) reducing the amount of the required deposit; and 2) making the amount a uniform sum to be applied to all candidates seeking the same kind of office. This latter recommendation would help to alleviate the complexities of the collection of different sums from different people based on different employment criteria which caused some difficulties for Area Commissions in the 7 March elections. Easing the financial burden caused by the filing deposit could also be achieved by an amendment to the Election Code to allow candidates to accept financial support for legitimate campaign expenses from outside sources. Under the current Code, financial or material support is prohibited, even support from the political parties who may have nominated them. Under the current Code, all campaign expenses must be borne by the state.





## **Nominating Petitions:**

The major difference between the nomination requirements imposed on constituency candidates and those imposed on State List candidates relate to the necessity of submitting a petition showing voter support. Under the Election Code candidates for the constituency ballot, regardless of whether they were nominated by a public organization or were self-nominated, had to submit a petition signed by at least 3,000 voters residing within the boundaries of their constituencies. Candidates nominated by the President for the State List ballot are not required to gather signatures to a petition under the current Election Code.

The petition process and the legal debates which surrounded the results of candidates' efforts became one of the most controversial and confrontational aspects of the election process. It was also one of the most difficult tasks to be achieved by the candidates given the time constraints, and their lack of full understanding of the Election Code and rules which would apply. From the beginning, time became a critical element for the entire electoral process. With a new Election Code only put into effect on December 9, 1993, just 19 days before the nomination period was set to begin, potential candidates had little time to absorb the full meaning of the specific measures that affected their nominations. In spite of extensive efforts of the CEC to publicize its contents, the Election Code remained a technical document that few fully understood.

The short time frame gave insufficient opportunity for even some of the practical requirements to be fully operational by the time the nominating period began. For example, even as late as January 6, at the special training conference held in Almaty for Territorial and Area Commissions, as well as senior officials of regional administrations, ministries and departments, CEC officials acknowledged that not all the forms which were to be used by candidates to gather the required voter signatures had been printed on time for the December 27 start of the petition phase. In order to allow candidates to start their signature gathering efforts as soon as possible some had been given permission to prepare their own forms.

Under Article 37 of the new Election Code candidates were allowed to form support groups of citizens to assist them in organizing the collection of signatures and to assist the candidate in their campaign activities. The number of members of the support group could be determined by the candidate, who was required to register each member with the Area Commission. Each support group member received a certificate from the commission. Candidates were also free to modify the list as the nomination and campaign periods progressed. Organization of the support group was extremely important given the very short time period allowed for this phase of the process. Some candidates with whom IFES met expressed their difficulties in gathering the signatures on such short notice in view of the fact that most people are away from home



during the day. That meant that most of the work had to be done during evenings and weekends to catch people at home.

One specific question addressed by the CEC related to the ability of circulators of petitions to gather signatures at market places, parks, theater's, etc. It was suggested by the CEC that since ID or passport numbers were required, it would make more sense that signatures of voters be solicited at their homes where it was more likely they would have their passports available.

In a similar vein, questions arose as to whether signatures could be gathered at government administrative offices, and specifically by officials who provide direct government services to citizens. Unconfirmed allegations were made, for example, that some candidates used administrative workers on their support committees who acquired voter signatures at their places of employment as citizens came to collect pension's or allotments. It was alleged that in some instances voters were asked to sign a candidate's petition before they received the service to which they were entitled. In at least one instance, a candidate was shown on television gathering signatures of administration officials at their offices which some claimed violated the restrictions within the Election Code. It will be critically important for officials to review these issues to determine how the Code or regulations might be strengthened to close the door on opportunities for such questionable activities in the future.

#### **Required Contents of Nominating Petitions:**

Article 31 of the Election Code specifies the required content of the signature sheets provided to candidates for this purpose. Every sign-up sheet was to include a column for sequential numbering of the signatures, last, first and middle name of the voter signing the petition, the voter's ID number, as well as the date, month and year of the voter's birth and the voter's "personal" signature. Each sheet was also prescribed to include the first, middle and last name of the candidate as well as that of the person collecting the signatures. According to the dictate of law, the ID number of the collector was to be present on each sheet as was the collector's signature. However, according to a specific instruction given by the Secretary of the CEC at the January 6 training session, the person collecting signatures only had to sign the end of every fourth page in the subscriptions lists.

The Election Code required that space had to be provided on each sheet where the name of the area in which the petition was being circulated could be identified. According to a specific instruction given by the Secretary of the CEC, the location description was to include a street name in towns with more than one election constituency. The forms were not specifically designed to include the address of the voters subscribing to the petition, although at least one Area Commission with whom the team met added space for this information on their own



initiative. Only some of the candidates in this constituency received this version of the form, while other candidates received the original version. Consistent use of address information would have proved very helpful in view of the some of the litigations which resulted during the candidate registration process. In these cases the authenticity of some subscriber signatures was challenged. However, without specific address information on the petition it became difficult for candidates or their support groups to return to those individuals whose signatures were being challenged to have them appear in court to attest to their signing of the petitions.

A petition was also required for candidates for Deputy of local representative bodies. For local races candidates were required to submit signatures of voters equal to 3% of the number of voters in the local constituency. The nominating period for local representative races was set in law to begin 70 days prior to the election and end 35 days before the election. Local candidates submitted their petitions to the Area Commission in their jurisdictions. The same forms used for Supreme Council candidates could also be used for local candidates.

### **Registration of Candidates:**

During the period from January 26 to February 8, 1994 the attention of officials was focussed on the process of registering the candidates. At the conclusion of the nomination period Area Commissions were allowed approximately two weeks to complete the "check" of candidates' petitions and other required documents to determine their eligibility to be registered as candidates. Not unexpectedly, by the end of the registration period on February 8, a significant number of candidates had been rejected throughout the Republic. In fact, according to data publicized by the CEC, out of 910 candidates who originally stood forward for nomination in the 135 constituencies, 692 were eventually registered. In other words, nearly 1/4 of all candidates who initially sought nomination failed to succeed in meeting all the requirements.

It should be noted that many of those who were denied registration simply failed to submit the required documents or failed to meet the pledge requirement. In some instances, candidates failed to submit even the minimum threshold of signatures required on their petitions. Denial of registration in these instances was generally accepted by the candidates involved without protest. According to data provided by the Central Electoral Commission 25 parties and organizations were successful in proposing candidates who were ultimately registered to appear on the ballot. A review of the comparative numbers of candidates who were proposed and those who were ultimately registered would indicate that the candidates from all groups experienced difficulties in fulfilling the requirements. It will be important for officials to try to compile and analyze data regarding the reasons which caused candidates to be rejected. Such an analysis could be instrumental in helping officials and lawmakers make future decisions regarding ways to overcome barriers created by the requirements. This kind of investigation could also help



election administrators to identify inadequacies of the instructions or guidance to officials and candidates which may have contributed to misunderstanding and controversies.

In the majority of cases candidates were rejected on clear cut grounds which precluded any realistic argument. However, in a number of significant cases denial of registration became a source of contention that threatened to undermine candidate and public confidence in the fairness of the election process. It was in this arena that serious allegations were raised that unequal treatment disadvantaged "opposition" candidates while favoring "sanctioned" candidates, and that the decisions of election officials were being unduly influenced by local executive authorities. It was also during the appeal process that certain deficiencies in the system whereby grievances could be adjudicated through administrative channels came to light, as did weaknesses in the legal system itself. Serious issues were raised as to whether the filing requirements were used specifically in some jurisdictions to disenfranchise "unfavorable" candidates and remove them from contention based on technicalities which were not imposed on "favored" candidates.

**COMPARISON OF PROPOSED CANDIDATES  
AND THOSE ACTUALLY REGISTERED**

| Party or Public Organization                 | Registered | Proposed |
|--|------------|----------|
| People's Unity of Kazakhstan:                | 78         | 120      |
| Federation of Trade Unions:                  | 57         | 100      |
| People's Congress of Kazakhstan Party:       | 39         | 78       |
| Socialist Party of Kazakhstan:               | 35         | 55       |
| Republican Party of Kazakhstan:              | 21         | 45       |
| Peasant Union of Kazakhstan:                 | 20         | 59       |
| Youth Union of Kazakhstan:                   | 13         | 33       |
| Lawyer's Association of Kazakhstan:          | 16         | 30       |
| Union of Industrialists and Employers:       | 8          | 23       |
| Union of Writers:                            | 9          | 27       |
| Public Slavonic Movement (LAD):              | 10         | 15       |
| Trade Unions of Prosecutor's Office Workers: | 7          | 19       |



|   |   |    |
|---|---|----|
| Union of Defense Lawyers:                 | 7 | 7  |
| Aral-Asia-Kazakhstan Committee:           | 7 | 15 |
| Democratic Committee on Human Rights:     | 6 | 8  |
| "Dynamo" Sport Society:                   | 5 | 9  |
| Council of Women's Organizations:         | 6 | 6  |
| Center of National Revival "Zhangirn:"    | 4 | 29 |
| Organization of Kazakhstan Veterans:      | 3 | 9  |
| Union of Architects:                      | 2 | 7  |
| Trade Union of the Public Health Workers: | 2 | 2  |
| Society of Uiger Culture:                 | 2 | 6  |
| Union of Cinematographers:                | 2 | 6  |
| Union of Artists:                         | 1 | 3  |
| Union of Composers:                       | 1 | 3  |

The most controversial reason cited for those candidates' whose nominations were rejected centered on deficiencies within their petitions. Central to the issue were determinations of Area Electoral Commissions regarding the validity or legitimacy of signatures contained in the petitions. Based on evaluation procedures conjured at their own discretion election officials rejected some candidates on the basis of their personal conclusion that the signatures contained in petitions were duplicated, written by persons other than the individual voters whose names were represented, or were fraudulently obtained. Consistent with traditional practices, candidates or their supporters who gathered the signatures allowed people not only to sign their own names, but also allowed those same people to sign the petitions on behalf of their family members. Up until these elections it had been a widely accepted practice that a husband, for example, presenting the passports of other members of his household could not only sign election registers for them, but could also vote ballots on their behalf. The practice had never been officially challenged, but was openly tolerated. In fact, such practices are reportedly common in applying for or receiving a number of government services and benefits. In addition, it is also a common convention in the daily conduct of business affairs that older or infirm citizens confer legal authority to other members of their family to sign documents and represent them in the broad scope of routine transactions.



The structure of the new Election Code adopted December 9, 1993 appears to have precluded such a practice in matters related to elections. It speaks to the issue very clearly in Article 46 as it relates to voting, for example, providing that "Each voter votes personally. Voting for other individuals is not acceptable." In terms of the petition process the provisions are not quite as specific. However, the word "personal" is replicated as it relates to the signature of the voter required on the petition next to the person's information. Under Article 31, the "personal signature" of the voter subscribing to a petition is required.

Given the fact that the Election Code was introduced only weeks before the nomination period began, it is likely that candidates were simply not aware of the significance of the new demands of the law. It is also likely that their supporters who circulated the petitions were not as well educated about the petition process as they might have been. At the very least the new provisions were not adequately understood and the limited time frame in which the signatures had to be garnered contributed to the urgency of getting signatures as quickly as possible. In some cases the strict requirements may not have been taken seriously by a number of candidates in view of the traditional practices with which they were familiar.

#### **Inconsistencies in the Registration Process:**

The main difficulty which confounded the registration process is that Area Commissions did not fulfill the registration process with any consistency or uniformity. There were no formal and definitive guidelines or instructions prepared as to specific procedures which were to be followed by officials as they evaluated candidate documents. Nor were there formalized instructions regarding the specific grounds on which a candidate's nomination could be rejected. Officials had only the Election Code itself on which to rely for guidance, and clearly the law left many specific questions unanswered. As a result, Area Commissions were left to their own devices as to how they would individually interpret the Election Code. The absence of definitive guidance from the CEC was a common concern expressed by Area Commissions and criticized by the courts deliberating the challenges filed by candidates disadvantaged by the lack of definitive instructions and uniform interpretation of the Code. Without formalized procedures on which to rely, the result was that there were 135 different sets of procedures devised for the same process.

The degree of scrutiny and the rigidity with which candidates were treated depended on the constituency in which he or she happened to file for office. Unfortunately, it sometimes also depended on the degree to which local administrative authorities exerted their influence of the decisions of Area Electoral Commissions. In a number of constituencies in which candidates identified with "opposition forces" were rejected, suspicions of such intervention were



specifically raised when "favored" candidates who were registered happened to also be officials within the local executive authority itself.

The approaches taken by Area Commissions in evaluating the eligibility of nominees to be registered ranged from liberal to extremely conservative. Some officials with whom IFES met indicated that their review of the petitions had been superficial. They regarded their responsibility in evaluating petitions submitted to them as merely administrative. These officials, for example, only verified that the documents were sufficient on their face, and that an adequate number of signatures had been included. If any further review was undertaken, it was only random and no more thorough than to check that there were no glaring errors such as the same name showing up more than once on the same petition, or that a birth date given by signers had shown them to be less than 18 years of age. In addition, some officials indicated that they relied on the signature of the circulator which appeared at the bottom of signature pages, citing that under the Election Code, these individuals were "legally responsible for the authenticity of the collected signatures..."

Some Commissions reported that they evaluated the petitions on a random basis by using administrative records to determine the addresses of some signers and visiting their residences to verify that they had actually signed the petition. In these instances the random selection did not appear to be based on any kind of pre-determined statistical formula. Other Commissions, however, took a much harsher view. It was in these areas that more candidates were rejected. In many of these constituencies, commissions reviewed every signature, looking for anything that might have appeared suspect. For example, they rejected those in a cluster that appeared to be in the same handwriting or those where one signature was repeated on behalf of several different names on the list. Others were rejected when it appeared that the identification number was entered in a different handwriting or in a different color of pen which might have suggested the number was entered at a different time.

Even in regard to these kinds of considerations, there were inconsistencies as to how Area Commissions ruled on the registration or rejection of the candidate. In some instances a commission rejected a candidate when the invalidated signatures caused the number of signatures left to fall below the required 3,000. In another constituency it was reported that a candidate who had submitted 7,000 signatures had 5 names invalidated. A like situation involved a petition in which 10 signatures were challenged. However, in these cases the entire petitions were rejected when the commissions ruled that the invalid signatures represented a violation of the Election Code and, therefore, that the candidates were ineligible regardless of how many valid signatures remained. This was reportedly the approach local authorities took in Karaganda, for example, where conflicts over the failure of the Area Commission to register candidates commonly recognized as the "opposition" resulted in threats of hunger strikes. Members of the



CEC actually traveled from Almaty to Karaganda and attempted to intercede on behalf of at least one candidate.

Denial of registration based on conclusions that some signatures on a petition may be invalid should not be permitted as long as a candidate has the requisite 3,000 remaining. There are three considerations which should be taken into account:

1. Given the very short time frame for the petition process, it would be very difficult for candidates to review each and every name and determine its validity. Candidates do not have access to the information contained in civil records maintained by executive authorities that Area Commissions can refer to as they complete their evaluations.
2. Often, the errors contained in petitions are beyond the immediate control of the candidate. The harsh approach taken by some Area Commissions potentially disenfranchises legitimate candidates for errors which their supporters and private citizens may have made unintentionally, and without the candidate's knowledge. In justifying their negative findings some officials pointed to Article 56 of the code which speaks to "violation, fraud, menace, bribery or other means" of infringing on the Election Code as grounds for prosecution under the law. They argued that invalid signatures represented such a violation. However, while Article 38 makes candidates responsible for violations deliberately committed by their "accredited representatives", there is nothing in the law which makes the actions of "supporters" the direct responsibility of the candidate.
3. Another important consideration is that the candidate is not the only person who is disenfranchised. Every voter who signed the petition properly is also disenfranchised.

#### **Deadlines for Submission of Nominating Documents:**

The absence of another procedural detail caused problems for candidates and officials. The deadline for filing nomination documents was also inconsistently applied. According to the calendar established for the elections by the CEC, the nomination period was to end on January 25, 1994. However, there was no specific deadline formally established by which all nomination documents and pledges were to be submitted by the candidates. In some constituencies commissions considered the January 25th date to also be the final deadline by which all materials and fees had to be received. In other constituencies officials determined that only the petitions were required by that date. They chose to accept petitions, pledges, declaration documents and





proof of employment status in pieces well into the time period allotted for the completion of registration procedures. Under their interpretation as long as all required elements were submitted prior to the final date for completing registration, the submission was considered timely.

In some instances reported in court cases filed by rejected candidates, testimony was given that officials actually refused to accept some documents when candidates attempted to deliver them asking the candidate to return at a later date. Unfortunately, in the most troubling of these same cases the candidates' delay in submitting documents until after the January 25th cut-off for nomination were cited as additional grounds for their not being registered.

In attempting to make improvements to the system to ensure uniform and equal treatment for all candidates, it will be important that this omission in the Election Code be corrected. Deadlines should be clearly defined so that all candidates and officials have the same understanding as to when documents should be filed. In addition, all documents and fees should have to be filed at the same time to alleviate questions as to what documents are missing from which candidates.

Another possible amendment worthy of consideration is provision of a supplemental period whereby a candidate might be given a short interval of time to correct deficiencies in his or her petition. One of the complaints made by candidates is that officials did not notify them of problems with their documents even though there was still unexpired time in the nominating period and even though they knew that deficiencies had become evident. In some established democracies, provisions are in place by which a candidate is notified of any deficiencies and is then allowed a short period of time to overcome them as long as the petition is sufficient on its face. It is not uncommon that there are restrictions as to when a supplemental period is allowed. For example, the original submission should be required to at least contain a sufficient number of signatures to equal the 3,000 threshold requirement at the time it is initially submitted. If, after formal review by the Area Commission the petition is found to contain some signatures which have to be invalidated causing the petition to fall short of 3,000 valid signatures, the candidate could be notified and allowed one week to acquire a number of additional signatures needed to overcome the deficiency.

This approach is considerably more liberal than the current system in Kazakhstan. However, it might also help to alleviate some of the inequities and perceptions of inequalities which jeopardized the public's confidence in the election system. The availability of a supplemental period would also help to avoid the time-consuming litigations which not only disadvantaged candidates, but also distracted officials from their regular duties at a crucial time of preparation for election day. If guidelines for a supplemental period were formalized in law, it would also reduce the vulnerability of officials to allegations of partisanship and bias.



### Outcome of the Registration Process:

In spite of the irregularities and problems experienced by candidates and by officials in the 1994 elections during the nomination and registration process, it is critical that recognition be given to the fact that in the final analysis voters in Kazakhstan had the benefit of the most progressive and competitive elections in their history. In fact, there were an average of 5 candidates in each constituency giving voters viable alternatives in the voting booth. Altogether 692 candidates competed for 135 seats on the constituency ballots. Sixty-four candidates competed for 42 seats from the State List ballot. Altogether, 756 candidates were registered.

While more work must be done to refine the process and rectify the failings in the Election Code, and efforts should be dedicated to improve the training of officials and education of candidates, the 1994 elections marked an important beginning for democracy in Kazakhstan. According to preliminary, unofficial data provided by the CEC on February 21, 1994 there appeared to be a broad diversity among the candidates who were ultimately registered.

### **CANDIDATE CHARACTERISTICS-AS OF FEBRUARY 21 (Including Both Constituency and State List Candidates)**

#### **SEX**

|        |     |
|--------|-----|
| Male   | 666 |
| Female | 90  |

#### **LEVEL OF EDUCATION ACHIEVED**

|                             |     |
|-----------------------------|-----|
| Higher Education            | 735 |
| Unfinished Higher Education | 6   |
| Special Secondary School    | 11  |
| Secondary School            | 4   |

#### **AGE**

|                   |     |
|-------------------|-----|
| Between 25 and 30 | 11  |
| Between 31 and 40 | 177 |



|                   |     |
|-------------------|-----|
| Between 44 and 50 | 345 |
| Between 51 and 55 | 106 |
| Between 56 and 60 | 86  |
| 61 and older      | 28  |

### SOCIAL POSITION

|  |     |
|--|-----|
| Leaders of Enterprises, Firms & Commercial Organizations                   | 171 |
| School Administration Workers and Teachers                                 | 97  |
| State Institution Workers  | 84  |
| Heads & Deputies of Administration & Leaders of Departments & Subdivisions | 60  |
| Employees of Law Enforcement Agencies                                      | 56  |
| Trade Union Laborers   | 41  |
| Writers, Journalists, Representatives of the Press                         | 39  |
| Employers, Engineers, and Economists                                       | 38  |
| Temporarily Unemployed   | 35  |
| Public Health Workers  | 33  |
| Scientists   | 20  |
| People of the Arts   | 10  |
| Workers  | 9   |
| Military Officers  | 6   |
| Retirees   | 3   |
| Leaders of Civic Organizations   | 54  |



**COMPARISON OF PROPOSED AND REGISTERED  
CANDIDATES TO LOCAL REPRESENTATIVE ORGANS  
(Maslikhats)**

| Candidates | Those in Regional Maslikhats | Those in City Maslikhats | Those in District Maslikhats |
|------------|------------------------------|--------------------------|------------------------------|
| Proposed   | 1929                         | 2556                     | 6031                         |
| Registered | 1746                         | 2325                     | 5802                         |

**ADJUDICATION OF GRIEVANCES**

A positive aspect to the new Election Code is that it provides the basis for a system of adjudication of grievances for individual voters and for candidates seeking access to the ballot. Article 17, for example, provides for a process whereby decisions and actions of electoral commissions can be appealed to higher ranking electoral commissions. Someone aggrieved by a decision of a District Electoral Commission at the precinct level, for instance, can appeal to the Area Commission for remedy. Article 28 provides every citizen an opportunity to appeal to District Commission regarding errors in the voter list, including omission of a voter's name. This Article supplies a basis on which errors and omissions negatively affecting a voter's eligibility to vote on election day can be remedied. Article 37 stipulates that a refusal by an Area Commission to register a candidate's support group can be appealed to the court. It is commendable that the Election Code contemplates that officials and agencies of government are not infallible and that citizens and candidates should have rights to appeal to a higher, independent authority for relief when circumstances warrant appropriate remedy.

**Grievances Related to Candidacy:**

Under Article 61 of the new Election Code a candidate has the right to appeal a decision of a lower commission denying his or her registration to the Central Electoral Commission or to the court. The appeal must be filed within 3 working days of the registration waiver. The lack of further clarification in this section of the Code and the absence of written procedural guidelines regarding the evaluation of candidate petitions proved to be serious impediments to the successful resolution of grievances and appeals as the process unfolded during the 7 March elections.

The same article requires Area Commissions to provide notification and certificates of registration to qualified candidates within two days after they have been registered. However,



there is no stipulation in law as to a deadline by which candidates must be notified of their rejection. The omission of this small technicality can put rejected candidates at a serious disadvantage because delays in notification affect the opportunity for timely appeal and resolution of their cases.

Candidates cannot begin to campaign until they are officially registered. Any delay in the appeal process seriously reduces their opportunities to conduct a campaign in an already constrained time period before the election, even if they are ultimately successful in their appeal. A specific example of such a circumstance related to one candidate who presumed she had been registered but noticed that an announcement of her registration was not published within 7 working days as required by the law. Only upon her personal inquiry after that date had passed did she discover that she had been rejected. By this time nearly half of the campaign period had already passed. Because of the condensed time period in which these elections were held, there were only 26 days during which candidate campaigns could be conducted. For those candidates who were rejected these 26 days were swiftly eroded away as they attempted to exercise the right of appeal through the CEC, the lower courts, and as necessary through the higher courts.

Critics of the system also make an interesting point. By virtue of the fact that Area Commissions currently have total autonomy in deciding the fate of candidates and their access to the ballot, and that the appeal process can take time away from candidates' opportunities to campaign, a window for potential abuse is created. Without uniform guidelines to which all Area Commissions must adhere, the rejection of petitions could easily be used as a tool to intentionally disrupt equal campaign opportunities among candidates thereby tipping the scales in favor of one candidate over another. Only through the formulation of strict written guidelines prepared in advance and made available to both officials and candidates, and through uniform and consistent compliance with the laws and regulations can this kind of opportunity for abuse be eliminated.

Because of the complexities of the issues involved it would be very difficult to set the same kinds of time restrictions on the courts to make their rulings in disputes regarding a candidate's access to the ballot, as are set in law for simpler questions such as a voter's name being omitted from the registration list. However, it is critical that some resolution be devised. The current system and the very narrow window for campaign activity virtually eliminates the opportunities for fair competition for any candidate who is rejected even if they ultimately prevail in their appeals.

One solution which is commonly instituted in other democratic systems is that critical cases regarding election issues are automatically directed to a higher level court for immediate hearing. These courts are specifically designated to hear election related cases and are therefore more likely to be better prepared to deal with the specialized issues at stake. It also provides for a



more timely resolution so that the valuable pre-election period is not totally eroded away as lower court decisions are challenged and appealed up a long and time consuming ladder.

### **Authority of the CEC in Adjudicating Grievances:**

The fact that a candidate may appeal his or her denial of registration to the Central Electoral Commission instead of the court reasonably implies that the CEC is in a position to adjudicate the grievance and provide an administrative remedy which is binding on lower commissions. Unfortunately, based on advice of legal counsel, the Election Code was interpreted in a way that limited the CEC's authority in such matters. Application of this interpretation during the 7 March elections dictated that while the CEC had the authority to direct the activities of lower commissions and develop policy, they had no authority to overturn the decisions made by lower commissions. The basis of this limitation of the CEC's authority in these matters was difficult to understand in that several articles of law seemed to directly contradict this theory. In particular, various sections of Article 10 specifically state that the CEC:

"carries out, on the territory of the Republic of Kazakhstan, the [...] implementation of the regulations of the Constitution regarding elections and the present code, [and] provides [for] their explanation and uniform application [...];"

"directs the activities of lower commissions;" and

"considers the applications and complaints regarding the activities of the electoral commissions."

In addition, presidential Decree No. 1469 published on 21 December 1993 reinforced the provisions of the Election Code by stipulating:

"The CEC is independent from other state organs and public associations in the resolving of problems related to the preparation and conduct of elections;"

"CEC decisions made within its competence are binding upon state organs, public associations, enterprises, institutions and officials, which are [all] obliged to assist [the CEC] and render [to it any] required work, information, and materials."

"Acts issued by the CEC within the limits of its competence are binding on all the electoral commissions [...]"

Based upon these stipulations it would appear that had the CEC formally dictated the procedures for evaluating candidate petitions in advance through an order or decree, lower commissions may



have been bound to comply. However, absent such a formal order or decree, lower commissions were authorized to follow their own path which could not then be overturned by the CEC.

Ultimately, the IFES team came to believe that the seeming contradiction about the ultimate authority of the CEC to intercede lay in the fact that the Election Code uses almost identical wording with regard to the responsibility of the Central, Territorial and Area Commissions to exercise "control" over the implementation of the regulations of the Code regarding elections, and provision for their uniform applications. In addition, virtually identical language is used in describing the authority of each commission to "consider applications and complaints." The duplication of language was apparently construed to confer separate but equal authorities as they related to certain policy and procedural questions within their separate jurisdictions.

Perhaps a more compelling rationale for interpreting the Election Code in a way that limits the authority of the CEC to overturn the decisions of lower commissions might be found by comparing the former Election Code with the new one. According to members of the CEC the old code specified their authority and direct control over lower commissions more definitively but the specific wording was taken out of the new code. The IFES team did not have an opportunity to compare the two laws. However, if language giving broader and more specific control to the CEC was indeed eliminated from the new code, it would make it easier to understand their taking a more passive role than would be expected.

In the face of these philosophic contradictions, it appeared that when candidates submitted appeals to the CEC, the Central Electoral Commission did not directly decide the issue but sent letters or otherwise contacted lower commissions making their recommendations and requesting that they re-review their findings. In some cases the lower commissions followed the recommendations of the CEC, however in other cases, the lower commissions rejected their advice.

The IFES team believes that it is critically important that the line of authority between the CEC and lower commissions be clearly and unequivocally defined in law. It is equally important that when it comes to matters of procedure, policy and uniform compliance with law relating to the actual conduct of elections there should be no confusion as to whether the controlling authority over lower commissions comes from the Central Electoral Commission or local executive authorities. The involvement of local executive authorities should focus on administrative, financial and logistic support. However, matters of implementation and interpretation of provisions of the Election Code that relate directly to the policy and procedures governing the actual conduct of elections should be the province of the CEC. As the Commission charged with the ultimate authority to oversee elections in Kazakhstan and to oversee uniform compliance with the law, it is imperative that the CEC be given direct jurisdiction over the actions and decisions



taken on election issues by lower commissions. Ultimately, under laws giving them authority to review complaints and hear appeals their rulings in such actions should also be binding on lower commissions.

### **Appeals to the Court:**

As the process unfolded it seemed that even the courts had difficulty resolving the issues with consistency in view of the absence of clear laws and a lack of any prior judicial history on which to rely. The lack of uniformity in reasoning of the courts was demonstrated in a constituency in Almaty where two rejected candidates filed similar appeals but sustained different results in the lower courts. In this constituency there were 5 candidates, 3 of whom were rejected. The third candidate's rejection was based on fundamental failings to fulfill the basic requirements and the candidate accepted the findings of the Commission without argument.

In the first of the cases filed the candidate had submitted a petition in which the Area Commission alleged that some 800 signatures appeared to have been in the category of those where a person signed on behalf of his or her entire family. In this case the invalidation of even half that number would have resulted in fewer than 3,000 valid signatures remaining. The candidate appealed the rejection of his petition directly to the local court.

Initially, IFES was led to believe that other candidates and courts were holding off their hearings to await the decision in this case which would set the precedent. However, it became apparent that waiting could potentially extend beyond the statute of limitations which requires that an appeal be filed within 3 working days. While this candidate had filed his appeal within that time frame, by the time the court ruled in his case it was too late for others to file their appeals.

This candidate raised three issues. First, while he acknowledged there may have been some invalid signatures on his petition, he questioned whether there are anywhere near as many as the Area Commission claimed. He also raised the issue as to whether invalid signatures should cause a candidate to be rejected if there are at least 3,000 valid signatures remaining. At the preliminary hearing, the judge seemed to agree with him on this point, although the final ruling in this case did not ultimately cover this issue specifically.

This candidate also pointed out to the judge that the Chairwoman of the Area Commission had been an employee of the Vice Chairman of the local executive authority who also happened to be a candidate in the same constituency where she served. That candidate's petition was accepted. He was registered and was thereby officially authorized to start his campaign while the denied candidate proceeded through the appeal process.

His most significant argument questioned whether or not the Area Commission had any right to reject any signatures at all. He pointed out that the law is silent on the issue of signature verification and that they had overstepped their mandate by attempting to judge which signatures





are valid and which are not authentic. He suggested that their authority relates only to the "form" of the petition but not to judgments beyond their expertise. With regard to this issue the Chairwoman of the Area Commission expressed her belief that the Election Code itself required her to play a more involved role in evaluating the sufficiency of the signature sheets included in the petition. In support of her decision she cited a paragraph of Article 60 which references the responsibility of the Commissions "who after checking its correctness, drafts the relevant reports." While it was not brought up in court even when a member of the CEC was called in to testify about any specific guidance which might have been available to lower commissions, no one seemed to recall the fact that rudimentary instructions were given by the Secretary of the CEC during the January 6 Republican teleconference in which she discussed the importance of accurate work by Area Commissions during their review of nominating petitions.

Ultimately, the court upheld the decision of the Area Commission and agreed that the signatures contained in the petition had to be the personal signature of the voter whose name was represented on the list of subscribers. The signatures of family members were not sufficient for the purposes of the petition process. The number of signatures rejected in the petition were sufficient to reduce the total number of accepted signatures below 3,000 and denial of the candidate's registration was upheld. In this case, the candidate appealed to a higher court where the unfavorable ruling was upheld again.

To illustrate the confusion and lack of consistency within the court system itself, one need only to look at the circumstances involved in the second case appealed to the court in this same constituency. In the case of the second candidate virtually the same kinds of issues were raised. His petition had also been rejected on the basis of the Area Commission's review and invalidation of signatures contained on the signature sheets. Based on the Commission's evaluation a number of signatures were considered invalid because they appeared to be signed by the same person. Even more compelling was the fact that in this case the Area Commission pointed to several pages in the petition on which the identical listing of names in the same order from earlier pages in the petition were actually copied and repeated on later pages in a different handwriting. In this case, there could be little question that the copying of names appeared to be deliberate. The commission had rejected all the signatures that appeared to be signed by the same person, as well as those which were simply duplicates copied from prior pages.

In spite of the similarities of the issues between the two cases, in this case the court apparently agreed with the concept fostering a more administrative role for the Area Commission. Perhaps the candidate's presentation of the arguments carried more weight than in the prior court action because the candidate was an attorney. Regardless of the full rationale behind the court's judgment, the significant fact was that the resulting court decision in this case completely contradicted the ruling in the first case by going in favor of the candidate. In this case the Area Commission refused to comply with the court's ruling and still did not register the candidate.



Instead the Area Commission filed its own appeal in the higher court where the decision of the lower court was ultimately overturned.

### **General Observations Regarding the Legal Infrastructure:**

The fact that the Election Code includes specific provisions for adjudication of grievances and for intervention by the courts speaks well for the intentions of lawmakers to provide for a level of independent review throughout the electoral process. Elections do not occur in a vacuum. Integral to the success of any democratic process is a legal system equipped to handle its complexities in spirit and application.

As election administrators who have experienced various levels of legal review and litigation regarding elections in their own jurisdictions, the team was prepared to observe Kazakhstan's legal system at work with at least a small degree of educated insight. The team's observations are offered in this context because if left unresolved, it will continue to be difficult for candidates and election officials to come to resolution of disputes in an orderly and timely way, and in a way that is perceived to be equitable and fair to both parties.

As outside observers with only superficial knowledge of the specific character of the legal system in Kazakhstan, it appeared to IFES team members that the legal system is designed in a way that serves the interests of the state rather than the interests of the citizens. The mechanism of the process appeared to put individual citizens at a disadvantage when challenging state institutions. A number of conditions fostered this impression.

1. Candidates were not represented in court by legal counsel. Most of the candidates whose trials were witnessed by IFES team members had to represent themselves. Without the benefit of proper representation by an attorney or legal counsel familiar with the principles of law, the candidates were completely disadvantaged.
2. The division between plaintiff and defendant became very unclear. Additionally, the difference between civil issues and criminal issues became muddled. Initially as plaintiffs, candidates filed their actions to challenge the decisions of Area Commissions on civil grounds. However, it appeared through the course of the trials that they themselves became the defendants. In a number of instances, rather than testing the civil issues involved, the case became a forum where the candidate was put on trial as to whether he or she had violated the Election Code.
3. The rulings of the court apparently were not binding. Even when a candidate prevailed, there was still no assurance he or she would be registered. In a



number of instances Area Commissions simply refused to follow the dictate of the court. The candidate then had to appeal the Area Commission's failure to comply with the court's ruling to a higher court. On at least two occasions IFES team members witnessed arguments between Area Officials and judges. In one instance the Area Commission actually told the judge that if the court wanted the candidate registered they could do it themselves. In other instances Area Officials appealed decisions of lower courts in favor of the candidate to higher courts.

4. Sometimes the logic of legal arguments seemed flawed. For example, in one case a handwriting expert was called in to determine if the Area Commission's decisions regarding signatures in a petition were accurate. When the expert witness was challenged regarding the absolute accuracy of her assessment of the signatures, the response presented by the witness and supported by the procurator was that it was impossible for the witness to be wrong because she would be criminally liable for an analysis that wasn't 100% correct. There is a degree of absurdity in this kind of reasoning, especially in view of the sometimes very subjective opinions involved. For example, regarding a specific signature the expert witness suggested that it couldn't possibly have been the signature of the voter whose name was listed. She reasoned that the handwriting was too nice to be that of someone as old as the birthdate on the petition indicated.
5. It became apparent that election officials, as agents of the state, were not held to the same level of accountability as candidates. With regard to being responsible for fully understanding the provisions of law, candidates were held to a much higher standard than were the officials. In a number of instances officials plead that because it was a new law being implemented for the first time, they could not be expected to know every provision. In addition, several Area Commissions argued that the Election Code was vague on many points and that they had received inadequate guidance from the CEC. However, in spite of the defensive arguments they raised on their own behalf, the officials contended that candidates should be expected to understand and comply with every provision perfectly. In one case, a judge ruled against a candidate, indicating that the candidate was responsible for understanding the provisions of the new Election Code precisely, and that if he didn't, he probably wouldn't make a very good Deputy anyway. In other contexts, it is not unusual that, when the law itself is unclear, when agents of the state provide inadequate guidance, and when there are insufficient procedures to promote uniform compliance, cases are decided in favor of the individual. This does not appear to be the case in Kazakhstan.



6. In another example of the impunity of the state (as represented by election officials), it appeared that there was no mechanism by which Area Commissions could be challenged with regard to possible bias or partisanship which might have tainted their decisions about the registration of some candidates and the rejection of others. One of the questions posed at a meeting with procurators by IFES team members following the decision in one particular case, was whether or not a candidate would have been allowed to request that all petitions of both registered and rejected candidates in the constituency be presented as evidence in court. The purpose of bringing in the petitions of all competing candidates would be to determine whether all candidates were treated in the same manner. The Bench's answer was negative, that the petitions of other candidates would have been irrelevant and were, therefore, inadmissible. A comparison of all petitions could, however, have been of crucial relevance. A key issue regarding candidacy in a democratic election system is equal and unbiased treatment of all candidates. One of the specific allegations in the 7 March elections was that certain "favored" candidates were treated preferentially. Only a review of all petitions could have helped courts determine if the same evaluation procedures and degree of scrutiny had been applied to all candidates. If evidence had indicated that some candidates were subjected to more stringent criteria than others, or that compliance with certain provisions of law was put aside for some candidates while required of others, then clearly such a finding should have figured heavily in the court's deliberations. In no instance that the IFES team is aware of was an Area Commission held accountable to substantiate that all candidates were treated equally. Allegations of partisanship or bias on the part of electoral officials should be considered legitimate issues to be brought before the court.
  
7. It was not clear how the rulings in one court case might bear on those of another court dealing with the same circumstance. For example, one of the issues that was interpreted by area officials differently in separate constituencies was whether or not a candidate should be rejected even if 3,000 valid signatures remained after duplicates or faulty signatures were deducted. The Judges appeared to lack adequate background in the specific realm of election law and often found insufficient legal basis in the Code and directives to resolve the issues being raised before them. These deficiencies and the inconsistencies with which various courts ruled on the same issues, gave critics reason to question whether some rulings might have been politically motivated or the result of undue influence by executive authorities. In order to provide some consistency with which issues are treated in all like circumstances, the CEC should review and analyze court decisions to assist them in coming to procedural solutions that encourage uniform application of the law.



Despite the difficulties, officials, candidates and courts experienced over these issues during the 1994 elections, it is important to recognize that the system was tested to its limits. It is also important to understand that in approximately 1/2 of all cases appealed to the court, the candidate prevailed. In the process, all the major weakness within the law itself and the failings in the procedural elements of the system came to light. In addition, the fact that serious inequities occurred in the interpretation and application of the law should not lead readers to conclude that the ultimate decisions rendered in the cases of most of the candidates who challenged the system were incorrect. It is likely that in most cases where the CEC upheld decisions of Area Commissions to reject candidates on the grounds of technical deficiencies in their petitions, the same decisions would have been made in other established democracies. This is certainly true in the specific cases in which members of the IFES team had the opportunity to review the actual petitions involved.

The most important question which remains is how the experiences gained in this last election will be used by election officials and lawmakers to overcome the system's deficiencies in the future. The lessons learned during the 1994 elections provide fertile ground on which to continue to build the truly free, fair and accountable election system to which Kazakhstan aspires.

## **PRE-ELECTION CAMPAIGNS AND THE MEDIA**

### **Voter Education Campaign**

Virtually every election participant with whom the IFES team spoke stressed the critical importance of voter education for a public that most agreed had little understanding of the new Election Code, and even less understanding about how new elections would contribute to successful resolution of the social and economic conditions impacting everyone's daily life. First and foremost was the concern that public disillusionment and apathy would keep people from participating in the elections. Failure to promote a participation by at least 50% of the eligible voters would result in the elections being declared null and void.

In addition, the time period from the date of enactment of the new Election Code to election day was very short. Given the suddenness with which the Supreme Soviet had dissolved and with which the new Election Code was enacted, the general public had virtually no opportunity to fully understand the significance of the changes in the electoral system or the new political philosophy it represented. Finally, political parties and potential candidates had little opportunity to organize or to become familiar with the new laws regarding nominations, registration or campaigning.



In view of these conditions, the development of a comprehensive public outreach campaign presented formidable challenges to the Central Electoral Commission. This was especially true because of the competing demands on them during this short time period in terms of the administrative organization, policy and procedural development and strategic planning that would be necessary to carry this election off. In spite of the difficulties, the CEC dedicated a major portion of its efforts to implement a nationwide strategy for the dissemination of public information based on a commitment to providing as high a level of transparency about the election process as possible.

The process was made even more complex by the structure of the Election Code itself which placed election administrators in the key role with direct involvement in both of the distinctive and philosophically opposed components of public outreach normally associated with elections. In substance the components cover:

1. general public education about the election process normally disseminated by the government from a totally neutral position, designed to inform and motivate voters to participate; and,
2. political education usually promulgated by parties and candidates, expressing their partisan views, and intending to influence voter opinion.

The difficulty, and indeed the delicacy, of balancing the requirements of both components cannot be understated.

#### **General Voter Information:**

The complexity of launching and implementing a successful institutional, non-political voter education program was particularly challenging because there was so much new information that needed to be conveyed. The entire election process was being overhauled all at one time with little advance warning. Not only were basic procedural changes being made, but much of the structure of government itself was being transformed. For example, the structure of the Parliament was being dramatically modified. The entire system of representation was being altered with the significant reduction in the size of the Parliamentary body. Introduction of the State List ballot needed to be understood by voters, as did the new system of nomination that allowed candidates to emerge from political parties, public organizations or through self-nomination. The petition process whereby voters could support the nomination of candidates needed explanation.

A number of technical details directly affecting voters also needed to be conveyed such as the fact that voters were not allowed to vote on behalf of another person. And, of course, all the



usual information also had to be made available such as the date of the election, location of polling sites, the voter registration process and the availability of the voter list for public review, locations of Area Commission offices and identities of local election officials.

An extensive program was put in place which focussed on publicizing the elections, the Election Code and information about the process that was being implemented for the first time. One of the main thrusts of the public education program was the publication of the Election Code in its entirety. The full text of the Code was widely published in the state owned and independent press, as were many of the CEC's official decrees and orders written to provide formalized guidelines and interpretations of the laws. The primary avenue by which public information provided by the CEC was disseminated was through the state controlled press and broadcast media.

If there were any shortcomings in the publicity generated by the CEC for these elections they were not related to the quantity and detail with which information was provided. However, in reviewing some of the press releases and official notices published by the CEC it became apparent that the Commission utilized a very formal style typically found in legal notices. The tone of public information which was disseminated was generally institutional in nature. From comments made by citizens with whom the team came in contact, the information that was provided had been so lengthy, technical and tedious that the average person found it difficult to absorb.

A concern was expressed that private citizens may have stopped tuning in or paying attention. This situation may have been aggravated by the electronic media. Specifically, on television most of the election related programming was by law scheduled during designated periods of the broadcast day, and specifically during the evening hours. While the intent was to reach people during the heaviest viewing hours, election-related programming may have lost out to entertainment programming on independent stations in the major cities or to broadcasts generated from outside Kazakhstan, particularly from Russia.

In preparation and scheduling of election notices and announcements there is room for more creative approaches which can result in messages which are easier for the average person to understand, and which are able to sustain the public's interest. A more creative approach can also help to motivate people to participate. In the interests of providing full technical disclosure, the CEC may have inadvertently made it difficult for voters to actually digest the information as successfully as was intended. For example, repeated publication of the full text of the Election Code may not have been as successful in communicating its full meaning as repeating a number of short messages about specific provisions affecting voters directly. Additionally, while efforts focussed on full disclosure of technical information and generating the public's awareness of the elections, little of the official information presented appeared to be designed



with the specific intention of inspiring the public's enthusiasm or confidence in the new election system.

In discussing such opportunities with members of the CEC, it became apparent that there was a real interest in the possibility of a more creative type of public education campaign. Most likely, the time constraints caused a greater reliance on traditional practices. Innovations which had been considered by some members of the CEC were put on the back burner. However, CEC officials and directors of state broadcasting facilities were very open about exploring new options and expressed their interest in a few ideas suggested by the IFES team. With their generous approval and support, the team worked with Republican radio staff to produce a number of 30 second and 60 second public service announcements ["PSA"] to direct focus on a few issues that had not yet been emphasized in voter outreach efforts up to that time. In particular, the messages of the PSAs centered on the importance of voting, the secrecy of one's vote, and the significance of individual choice in the democratic process. The announcements were produced in both Russian and Kazakh and were presented to the CEC as examples of some alternative kinds of messages that might be possible. During the period immediately prior to the elections, the CEC gave its approval for the Republican radio network to air the announcements throughout the remaining days before the election.

Hopefully, prior to the next elections there will be time available for the CEC to explore some of the opportunities and innovations that time and circumstance did not permit them to pursue for the 7 March elections. One audience that will need special attention is younger voters. Among all observer delegations with whom the team met after the election, there seemed to be a shared concern that younger voters were noticeably absent from the polling places on election day. Encouraging their participation should be an important objective as election officials work to find new ways to nurture public faith and confidence in the democratic process.

### **Political Campaigns:**

A significant part of the public education equation, of course, is the education of voters about the programs and personalities of the competing candidates and parties. In the interests of "equalizing" the opportunities of candidates, the Election Code places severe restrictions on the campaign process, not only on campaign financing, but also on the time during which a candidate can engage in campaign activity, and the manner and frequency with which candidates may present themselves.

A number of Articles of the new code working together set the parameters that strictly limit the opportunities of candidates to define the strategy for their own campaigns. Instead, most aspects of the campaigns are controlled and defined by the state.





1. At the foundation of the statutory scheme is Article 40 which stipulates that elections are funded exclusively from the resources of the Republican budget. It further stipulates that state financing must provide equal opportunities for all candidates. Finally, it specifies that non-state financing of elections, as well as any direct or indirect participation is prohibited. In a conforming provision, Article 35 mandates that each candidate must be provided with an equal amount of financial state resources to carry out his or her pre-election campaign.
2. Article 42 dictates that control over the spending of resources allocated for the electoral campaigns of the candidates rests with the respective electoral commissions.
3. Article 36 sets the stage for further control over the specific kinds of campaign activity in which a candidate may engage, and reinforces the requirement that each of these authorized activities must be totally funded from the allocation of state resources provided to the candidate. This section appears to preclude parties and public organizations from providing outside support, and even seems to limit the candidate expending his own resources.
4. Under Articles 35 and 36 taken together, the only activities that are a specifically authorized include:
  - a. presentations through the print and other means of mass media including radio and television;
  - b. oral presentations to the voters by the candidates or by their accredited representatives; and,
  - c. campaign posters.

Even use of the electronic media is restricted under the Election Code to the limited hours of the broadcast day between 19:00 and 23:00. Each candidate is guaranteed the right to at least one presentation on television.

5. Under Article 36, candidates have the right to campaign "from the moment of registration and until the end of the pre-election campaign". This provision is reinforced under Article 52, which states that candidates are eligible to participate in an election campaign, "immediately after they have been nominated and registered." Any activity prior to the actual registration of the candidate is considered a violation of this provision. Article 56 gives local electoral



commissions authority to issue a warning to a candidate for any violation, and provides that a repeated instances or warning results in cancellation of the candidate's registration.

Because the campaign period was so short, candidates were released from their regular employment so that they could work on organizing their groups of authorized supporters and accredited representatives, and to work on their public outreach campaigns. Under the Election Code, their salaries were offset by funds paid from the electoral budget. In addition, candidates were provided free use of public transportation for the campaign period.

It is interesting to note that, in spite of the widely held understanding that candidates could not accept any material or financial support from sources other than the state itself, the Code seems to offer the possibility of certain exceptions. All officials, candidates and representatives of the parties with whom the IFES team met concurred that even the parties or public organizations could not contribute funds or produce any materials on behalf of their own candidates. Indeed, according to Article 40, "[n]onstate financing of the elections [...] is prohibited." However, the wording of Articles 35 and 36 seem to offer the possibility of some options. In Article 35, citizens are guaranteed the right to freely "campaign for or against this or that candidate". In the second provision, it is stated that "all campaign print materials should have information about organizations and individuals responsible for their issuance. The distribution of anonymous campaign materials is prohibited."

It can be argued that these provisions allow for materials to be produced by individuals or organizations above and beyond those prepared by the state out of state resources. While the options implied by such wording were not considered viable for the 7 March 1994 elections, they should be reevaluated to provide new opportunities to citizens, organizations and candidates for future elections. Allowing such outside support would help to overcome some of the difficulties experienced by many candidates who expressed concern that the strict limitations of the Election Code left them with inadequate means to communicate their programs to the public.

### **Strategy for Implementation:**

The legal provisions placed the CEC and local electoral officials in the unenviable position of having to formalize a strategy for translating these laws into practical application. The CEC expended a great deal of effort in trying establish a feasible budget and to lay out a workable plan, while at the same time trying to anticipate what kinds of materials and formats would best serve the interests of the candidates. Their efforts were constrained not only by the restrictions of the Election Code itself, but by the amount of funding available, and practical limitations in the time and material resources available through the state media to serve the total number of candidates which at the outset was projected at approximately 15 per constituency. Given the



limited amount of newspaper space in the state operated press and the limitations on available air time on radio and television the challenge of providing all candidates equal access was formidable.

In trying to put the pieces of the puzzle together, the CEC worked closely with directors of the state operated media to determine the logistics for putting a plan in effect. Working within the limitations set by the Election Code the CEC issued formal resolutions outlining the basic campaign elements to which each candidate would be entitled. Under the plan, each candidate was provided 100 lines in the printed press, 10 minutes on television and 5 minutes on radio. Typically, candidates were also provided posters equal in quantity to 1,000, or 1/4 of the electorate depending on the constituency. The posters which were provided by the local authorities were printed in exactly the same size, color, paper stock and layout for all candidates within the same constituency.

In addition to arranging equal campaign opportunities to candidates, the CEC and state controlled broadcast stations tried to accommodate the public organizations which had actually nominated candidates. Organizations were entitled to an additional 30 minutes on television to promote their programs. The CEC also made an effort to give individual candidates who were self-nominated additional access to the media and authorized them to have an additional 5 minutes on radio. Scheduling was arranged by media officials and approved by the local electoral commission responsible for the constituency.

The candidates themselves prepared the text and could choose the language in which it was to be presented. While each candidate was responsible for the text of the presentation, Area Commissions were authorized to review their material to ensure that it didn't violate Articles 33 and 56 which define subjects and themes which cannot be part of a candidate's or party's program.

Each candidate's total campaign allotment was limited to 6,110 tenge which was about \$550 at the time the amount was determined. From the outset it was not altogether clear how candidates would actually receive their allotments. At one point the CEC had indicated to the IFES team that each candidate would be issued a voucher for the amount from which he or she would pay his own expenses. As it turned out, in virtually all constituencies the funds were retained by the local authorities who would pay for the production of campaign materials directly. The primary use of the funds was dictated by the actual costs to the local authorities to produce the specific elements and materials dictated under the CEC's order. Based on the most common request, the CEC ruled that candidates would be authorized to use any unexpended funds for miscellaneous expenses such as on fuel for their own automobiles for transportation.



In attempting to deal with limited time and space available for campaign information in the state press and broadcast media, the CEC devised a plan whereby Republic-wide media would focus primarily on campaign programs of the parties and public organizations whose messages would be of interest to the entire nation. On the other hand regional and local media would focus on campaign programs of the individual candidates whose messages would relate most specifically to the voters within their own constituency.

Above and beyond the use of mass media, candidates were strongly encouraged to emphasize personal appearances and one-on-one contact with their constituents in their campaign strategies. Toward that end, the CEC ordered local authorities to provide meeting halls and publicity about such public presentations to candidates without charge. Although the appropriateness of such recommendations by election officials might be questionable, in several contexts officials specifically instructed candidates that the most effective means by which candidates could campaign was through door-to-door contact.

In real terms, an expectation that any candidate could adequately reach his or her constituents by such means may have been unrealistic given a campaign period of less than a month in duration. To illustrate how difficult this would be, if a constituency had 50 polling sites with an average of 2,000 voters on each voter list, it would mean that the candidate and his supporters would be expected to reach over 3,000 voters a day. And, during week days while most people are working or away from their homes, there are only about 3 useful hours available. Certainly, personal contact with voters is very important. However, given the time constraints and the impact of uncommonly inclement weather, the likelihood that candidates could effectively launch a massive one-on-one, voter outreach campaign was diminished significantly.

It is important to point out that even with the set strategy in place, situations-which could not have been anticipated in advance continued to pose new challenges on a day to day basis. For example, as late as February 21, just two weeks before election day, some Area Commissions reported that they were unable to print the posters for the candidate in their constituencies. Apparently paper shortages, limitations in the capacity of regional print shops, and interruptions of normal transport options due to unusually severe weather conditions contributed to the problem. In response, the Chairman of the CEC instructed these local commissions to bring all the candidates in their constituencies together at one time to negotiate an alternative solution which would satisfy all candidates equally.

In another development which could not have been anticipated, some candidates were so apprehensive regarding appearances on television they requested not to participate. Candidates and parties alike also asked if their allotted time had to be used all at once or if they could choose to break the total time into smaller increments. The same question arose concerning the 100 lines authorized for publication in the newspaper. In an attempt to satisfy these requests on



an equal and fair basis, the CEC ruled that candidates could use their time and space in shorter segments but greater frequency, as long as the total time did not exceed the limits set by the CEC's decree. But, clearly, changes in the original strategy placed an additional burden on local officials responsible to monitor campaign activity and on the media. However, in every instance the CEC's commitment to maintaining the principle of equal treatment was sustained. The message regarding maintaining equal treatment for all candidates was stressed to lower commissions and media representatives at every opportunity<sup>4</sup>.

### **Special Circumstances Involving the Media:**

Above and beyond the restrictive approach lawmakers and election officials have imposed on the competing candidates and parties, other circumstances and events threatened to further limit opportunities for the public to be prepared and motivated to participate in the March 7 elections.

First, the shortages of commodities not only affected administrators, they also jeopardized the media, especially the lack of paper, ink and energy resources. Such shortages caused concern about reductions in mass media production. In addition, the rate of inflation continued to erode the buying power of the allotments awarded to produce and print or broadcast each candidate's materials. According to information provided by one broadcast director, the amount of time allotted for the presentation of each party's presentation had to be cut from the original 30 minutes suggested to just 20 minutes because of the increased costs involved.

Of even greater concern was that the central printing facilities for the country's major state operated newspapers as well as for most independent newspapers was all but closed due to what was attributed to be a decision of the building or fire inspector who apparently found substandard conditions in the facilities. Only two presses were reportedly left running so that even the state's daily newspapers were reduced to publishing three times a week. In addition, the IFES team was told that there were also delays of up to 5 or 6 days from publication to actual delivery.

Some independent newspapers reliant on the state printing shop were not able to print at all. Karavan, a weekly commercial paper which is Kazakhstan's largest independent newspaper resorted to printing its paper in Bishkek, Kyrgyzstan, and thereby printed and distributed its 300,000 circulation without interruption. However, as of February 10, Karavan's own presses which print its other magazines and provide services to other independent publications was also closed based on some other unclear legal or technical reason related to the building in which they rented space. The electric power was cut off to one of the independent broadcast stations. Closure of these media facilities and limitations on publication of established newspapers for the month directly preceding the elections did not go unnoticed, although it would be inaccurate to

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<sup>4</sup> See sample printed campaign material on following page.



the media itself there seemed to be at least a resigned acceptance although the independent newspapers were more critical in voicing their frustration.

It was also significant that even though the decrees of the Central Electoral Commission demanded that all press treat all candidate's equally, such treatment was not guaranteed. The position taken by the predominant independent press was that their role was to stimulate interest in the elections by promoting certain candidates over others. Another instance that illustrates the predicament was that Kazakhstanskaya Pravda, a Russian language daily newspaper limited to publishing just three times a week, ran a story about the CEC's decree regarding the 100 lines to be allocated to each candidate, and the media's mandatory role in treating all candidates equally. At the end of the article the newspaper disavowed its obligation and indicated that they would not necessarily comply with the conditions of the decree. In one conversation with a journalist from that paper, a member of the IFES team was told that they simply could not print all candidate materials but would most likely be selective in those they chose to print. Obviously, under the media strategic plan, this newspaper would not have been asked to print the statements of the candidates which would have been designated to the regional or local newspapers. However, it does point to a lack of deference for the equality provisions of the Election Code which many simply believed was unworkable and impractical, and the lack of binding authority of the CEC in implementing its requirements.

There is also room to question whether the press in Kazakhstan has kept pace with the new demands which democratization will continue to make on them. It is interesting that even the state-operated press seems to enjoy a degree of independence in editorial policy. Several points of view seemed to make themselves evident in the press. However, editorial policy does not appear to make a distinction between news and commentary which are commonly commingled in the same article. Any pressure from state authorities to inhibit editorial freedom does not appear to express itself in overt terms, although subtle pressures disguised in administrative terms may be in play. Certainly, some might suggest that closure of the presses during the crucial pre-election period may be manifestations of such pressures. It would, however, be imprudent to arbitrarily draw conclusions that the closures related directly to government interference with the elections.

There is room to question whether the closures of independent press and independent television were directly tied to issues surrounding the elections or candidates at all. Rather, a common opinion expressed not only by a number of election officials, but also by some representatives of the media was that these closures were related to specific conflicts between the independent medium directly affected, and the administration of the city in which they occurred. In at least two of the cases, the closures were timed immediately following the publication or broadcast of critical reports against the community's leadership. Whether or not this is actually the case deserves scrutiny by appropriate authorities. Integral to a free and democratic system is a free



press. In a healthy democracy, disagreement with government and disciplined criticism and debate is not only tolerated but often considered an important element of checks and balances in the public interest.

### **General Observations:**

Attempts by lawmakers and the CEC to superimpose restrictions intended to equalize candidate pre-election campaign activities and access to the media were not likely to be totally successful from the start. While dedication to a policy which fosters equal opportunities for all candidates is laudable, maintaining such strict control over all aspects of the campaign periods may actually have sustained some inequalities in spite of best intentions. The difficulty is that the basic premise might arguably be flawed, for in truth certain inequalities are inevitable regardless of the rigidity and control of the rules imposed. For example, incumbent candidates or high ranking officials who have held positions in the local executive will have the advantage of name recognition and experience. Some parties will have a stronger base of popular support which will usually help new candidates they nominate who may not be well known themselves. In these instances rules which restrict innovation and creativity of lesser known candidates may actually perpetuate the advantage enjoyed by their opponents and weaken principles of fair competition.

Enforcing such narrow parameters precludes opportunities for any candidate to determine his own spending priorities and control his own campaign. Rather, the state intervenes and dictates his choices for him. While providing equal opportunities for all candidates should be part of any Election Code, the candidate should be allowed some discretion in determining for himself how best to present himself and his programs to the electorate. In this regard, there is also a danger that the voting public may not be well served. The tight control by the state which provides total conformity in the style, format and placement of a candidate's program can minimize the public's ability to identify real differences between candidates. For example, in preparing the posters for each candidates, it was decided that everyone's poster would look exactly alike. Because they looked identical, it is unlikely that posters for individual candidates got the public attention they deserved.

Another area that caused concern was related to provisions of the Election Code which left candidates vulnerable to what they believed could be subjective and arbitrary enforcement by election officials. Many of the candidates and parties with whom the IFES team met commented that the way the Election Code was structured, there was almost nothing substantive that a candidate could say during his campaign that might not be construed as a violation of the provisions of Articles 33 and 56 of the Code. These provisions define the subjects and themes which cannot be expressed during the campaign. Any presentation considered to be in violation of these provisions could result in their registration as candidates being rescinded. They



specifically cited Articles 33 and 56. Under Article 33, for example, a program cannot promote ideas of racial, national, religious, or social "exceptionality," contain appeals or slogans alluding to violent change in the existing constitutional system or violation of the territorial integrity of the Republic, human rights and freedoms, or taking other action "contradicting" the Republic's Constitution or laws.

More suspect is Article 56 which dictates that in the course of campaigning, a candidate or his accredited representative cannot propagate information about another candidate "involved in discrediting their reputation and dignity." Similar laws preclude any campaign which "insults the dignity of the President." The concern is that the wording of these provisions is too vague. Obviously, there should be prohibitions against knowingly presenting false information, or defaming an opponent by holding them up to ridicule or disrespect. However, there is no criterion which formally defines what constitutes discrediting someone's reputation. For example, if a candidate challenges the general performance or actions of an opponent, or accuses him of misrepresenting facts on important issues, could an official interpret it as an attempt to discredit the opponent's reputation?

On a number of occasions IFES team members heard election officials indicate that candidates should only speak about their own experience or program and not focus on that of their opponents. However, it is often the presentation of rational criticism, sincere disagreement and healthy debate which provides the electorate with the most valuable information on which to make informed decisions. Depending on the attitudes of officials and the manner in which they interpret the restrictions, such debate could be interrupted. With enforcement being left up to the subjective judgement of individual electoral officials many candidates expressed concern that an avenue for abuse is created.

Finally, observers could not help but notice that efforts to provide absolute equality to all candidates in their campaigns simply could not be enforced. As a matter of fact, one of the major issues is the inconsistency with which rules were being applied. There seemed to be little uniformity in determining what constituted legitimate campaigning and what was considered a violation of the election code. Two examples come to mind. First, the pre-election campaign period officially opened the day following the deadline for registering candidates. However, during their solicitation of signatures on their nominating petitions, a number of candidate hopefuls were warned of violations of the pre-election campaign laws when they used biographical brochures to introduce themselves to voters whose signatures they were soliciting. The campaign period had not started and so they were warned that their activities were violations of the code.

On the other hand, there were a number of articles in the paper featuring specific candidates and their platforms which appeared prior to the opening of the campaign period. Some of them





included pictures of the candidate and an interview format. In others, the candidate, fully credited with authorship, had written an article about his views on some socio-economic or political topic. However, these candidates were not considered to be in violation of the code, even though their appearance in the paper exceeded the 100 line limit, and predated the beginning of the campaign period. Other individuals, who were actually introduced as candidates, also had interviews or made presentations on television in advance of the official campaign period. However, they were not cited for violating the code either. Such exposure certainly benefited certain candidates in their quest for public recognition. The potential for arbitrary enforcement will certainly continue to lead to controversies and allegations of bias and partisanship on the part of electoral officials.

### **Alternatives for Consideration:**

It is important for government to take steps that provide equitable opportunities for fair competition between candidates seeking election. These were certainly the primary objectives reflected in the Election Code and administrative procedures implemented by the CEC for the 1994 elections. However, it could prove beneficial for lawmakers and officials to review the experiences of the 1994 elections in view of some key questions that deserve consideration.

First, officials should evaluate whether or not the candidates were actually well served. Many participants and observers expressed concern that the short time frame, limited funding, and restricted number of opportunities and avenues by which a candidate could campaign impeded the candidate's ability to effectively communicate his or her message to a sufficient number of voters. It should be considered whether those officials were themselves well served. Enforcement responsibilities involved in directly managing the campaign process overburdened officials while administrative election tasks competed for their time and attention. Their direct involvement in the campaign process, which by its very nature is based on adversarial competition between contending opponents, placed electoral officials at the center of controversies and allegations about bias and partisanship. Finally, it is important to consider whether even the voters were well served, given the strict constraints under which campaigns were controlled by the state. Some would question whether or not voters really had full opportunity to become familiar with the personalities and programs of parties and candidates, and just as importantly to understand the differences between them. In most established democracies the campaign process remains relatively free from control by the state. The subjective judgments about candidates and their programs are left to the electorate.

A few options might be worthy of consideration as lawmakers and officials seek ways to improve the election process while still providing equal opportunities. One suggestion would be to retain the concept of a certain equal amount of state funding being allotted to each candidate for his or her campaign. It might also be worthwhile to continue to provide a



prescribed amount of air time on state-owned radio and television to which each candidate would be equally entitled. However, it is also suggested that candidates be allowed to use additional funds to support other campaign activities and media options of their own choosing. For these purposes, they should be allowed to use their own funds or contributions from other sources. In particular, political parties should be able to support their own candidates.

These allowances do not mean that certain limitations and requirements cannot be imposed. In some democracies a limitation is put on the amount that can be received from other sources. For example, in one relatively new democracy a limitation was set that contributions could not be greater than 3 times the amount allotted from the state. Many democratic structures require that the candidate fully disclose the source of all funds and place limitations on the maximum contributions that can be accepted from any one origin. A provision could also stipulate that a candidate report how all campaign contributions are spent. These kinds of options still provide equal opportunities and a degree of control over the campaign process. However, they also provide candidates greater discretion in establishing their own spending priorities and determining the best campaign strategies that will allow them to present themselves and their programs to their constituents.

## **REGISTRATION OF VOTERS**

Another positive aspect of the electoral process in Kazakhstan is that the citizens of Kazakhstan are allowed liberal access to the voting. The Constitution, Election Code and the procedures devised by the CEC are designed to allow all age-eligible citizens of the Republic the right to vote except those who have been sentenced for crimes or who have been adjudicated incompetent through the courts. The registration is a passive process which requires no special application process for the voters. Registration is virtually automatic except when unusual circumstances require the voter to take some initiative in getting their names added to the list. The procedures also try to provide special assistance to voters who are unable to go to the polls, and to a limited extent make provisions for absentee voters who will be away from their place of residence on election day. There are even provisions which allow voters to be added to the list on election day should their names have been inadvertently omitted.

District Electoral Commissions are responsible for preparing the voter list of the individuals eligible to vote who reside within the boundaries of their precinct. Under Article 25 of the Election Code the lists are made on the basis of data on voters provided by the local executive bodies. However, according to some reports much of the registration process for the 7 March elections was accomplished through a door-to-door canvas of the residences in the area served by the polling site. In a number of districts visited by members of the IFES team, election officials had a map of their precinct on which all residential buildings were identified. According to these officials these maps assisted them in covering their territories.



The door-to-door canvas also allowed officials to identify those eligible voters who, because of illness, age, incapacity or other reason would not be able to go to the polls on election day. While the Election Code makes allowance for voting at home, the specific procedures for accommodating these voters is not formally defined. Rather, the Code provides that the "district election committee at their request should organize voting at the place of stay of these voters." According to the procedures described by officials with whom members of the IFES team met, the names of these voters were added to a separate voter list which would accompany the election officials when they went to the voters' homes with the ballots and portable ballot boxes on election day.

In the case of voter lists for military installations, information on the eligible service men and women and their families was provided by commanders of their units. Similar procedures were implemented with regard to preparations of the lists of voters for sites established in sanatoriums, hospitals and other in-patient clinics and ships where the heads of the institutions and ship captains provided the basic information to election officials. Regardless of their normal place of residence, these voters were added to the lists of the districts in which they were stationed or institutionalized.

District officials were given some discretion as to how their lists would be organized. Some districts maintained an alphabetical listing while others chose to organize their lists by residence address. At many locations the voter lists were typed, while in other areas they were handwritten.

#### **Publication and Amendment of the Voter List:**

The Election Code provides that the voter lists are to be made available to the public at least 15 days before the election. Article 28 stipulates that citizens are given the opportunity to review the lists and to check the correctness of the data included on the registry. Should a voter find that they have not been included in the list or that the information provided is incorrect, they can apply to the District Electoral Commission to have the error corrected. Once an application is made, the commission must respond within 3 days. If the error is noted on the day before the election or on election day, a ruling or correction must be made immediately. If the voter is refused registration, the Commission is required to justify the rejection in writing.

Based on the calendar established for the election, the work of local commissions to prepare the voter lists deserves commendation. The lists of over 10,000 polling sites had to be created in just over two short weeks. The deadline established for forming the electoral districts or precincts was February 4, 1994. The lists were required to be available for public review by the 21st of February according to the administrative order published by the CEC. In most instances the preliminary lists were available to the public by the deadline established by the



CEC. However, there were delays in some areas where voter lists were still being worked on after the deadline.

In another example of the CEC's efforts to monitor compliance with the law and to keep lower commissions on target with the election calendar, the Chairman of the CEC included this issue on his agenda for a nationwide teleconference conducted on the 21st of February. A procedure was established that the CEC was to receive a full list of all the precincts which included the number of voters on the registration list for each site as of the cutoff date for public presentation of the list. From that data the CEC was aware of those which were still incomplete. At the teleconference the Chairman focussed his attention on those areas where registration was falling behind and stressed the importance of meeting the established deadlines.

### **Supplemental Voter Lists:**

If, after the voter list has been prepared, a person changes his place of residence, that person can apply to the District Electoral Commission to be added to the list for his or her new area of residence. Upon presentation of his identification to the district official, the voter is issued a "Right to Vote" document. A notation is made on the master voter list. On election day, upon presentation of the "Right to Vote" form the voter's name is written onto a Supplemental Voter List at the polling site serving his new residence.

The Supplemental List is also used to add people to the rolls on election day who may have been inadvertently omitted during the preparation of the voter list. The system provides for election day registration. Any voter who brings in the appropriate identification documents proving his or her residence within the boundaries of the area specified for the polling place is added to the Supplemental List and is allowed to vote. This procedure is a testament to the liberal opportunities for qualified voters to have access to voting even if errors or omissions cause their names not to be placed on registers during the compilation of the voter list.

Typically, polling sites appeared to have about 20 to 60 names on the Supplemental List. However, in some polling sites the supplemental lists contained the names of as many as 200 to 300 voters bringing into question whether the registration exercise in those districts worked as efficiently as it might have. Based on door-to-door canvas process, it would appear that blocks or certain apartment buildings may have been missed altogether. On the other hand, if district officials relied solely on data for the regular voter list provided to them by administrative authorities as suggested in the Election Code, it focusses attention on the deficiencies which may exist in official records. With the liberalization of free movement for all citizens and growing privatization of home ownership in Kazakhstan, it will be important for authorities to develop refinements to the registration system to accommodate a more transient population.



At the other extreme there were unconfirmed allegations that the addresses identified for some voters listed, simply did not exist. It is possible that in these instances there were clerical errors misidentifying the buildings or residences. More than likely the short time period caused rushed circumstances which resulted in these deficiencies. However, these kinds of problems should be reviewed in order that officials can find ways to improve the accuracy of the voter lists for future elections. The difficulty is that a supplemental list with such a high percentage of election day additions raises uncomfortable questions about the efficiency of the process, and even more importantly creates the opportunity for fueling mistrust and promoting allegations of impropriety even if they are unfounded.

### **Citizenship and Voter Registration:**

The new Constitution and conforming legislation in the new Election Code guarantee "universal," "equal," and "direct" electoral right by secret ballot. Any citizen over the age of 18 is allowed to vote unless the person has been ruled incompetent by a court, or is serving a term in prison.

The issue of citizenship had particular significance for the 7 March elections in view of the ethnic and social environment in which these elections took place. The question will continue to figure heavily in the nurturing of Kazakhstan's developing identity as an independent nation. The purges and forced relocations under Stalin and russification through years of domination by the Soviet Union resulted in an almost equal population of ethnic Kazakhs and ethnic Russians in Kazakhstan. Estimates indicate that each ethnic group makes up between 38% and 40% of the Republic's diverse population. A mixed population shares most of the urban centers, however, concentrations of ethnic Russians dominate sections of the northern territory while predominate groups of Kazakhs reside in the agricultural areas of the southern part of the country. Among the other more prominently represented population groups are Tatars, Uigurs, Belorussians, Germans, Ukrainians, Uzbeks, Poles, and Koreans.

The issue of citizenship was decided on when the Law on Citizenship of the Republic of Kazakhstan was adopted on March 1, 1992. Under that law, citizenship was automatically granted to any person who was living on a permanent basis within the boundaries of the Republic on the date of enactment of the law. The concept of dual-citizenship was struck down in spite of a strong movement in support of this option primarily from the Russian speaking groups. The provisions of the newly established law allowed individuals to forgo Kazakhstani citizenship in favor of citizenship of another nationality and allowed a transitional period of one year before those individuals would be required to declare their preference. In response to the continuing concerns expressed by those who supported dual citizenship, the deadline for declaration of intent was extended until March of 1995.



With regard to the issue of citizenship as it related to the eligibility of voters, the CEC clarified the issue in a supplement to its decree issued on January 4, 1994. At issue was whether a person had to have the official stamp acknowledging his Kazakhstan citizenship in his passport. In its decree the CEC ruled that the absence of the citizenship stamp in the passport was not an obstacle for the voter's participation in the elections.

### **Invitations to Vote:**

Although there is no specific provision for it in law, voters in many areas were individually sent a special notice regarding the election which told them where their polling site was and gave them the sequence number of their placement on the voter list. Use of this "Invitation to Vote" is not obligatory, however, samples of the form were provided by the CEC to local officials who were free to determine whether or not they would be used. Their use appeared to be widespread. In fact, many voters brought these notices with them to the polls on election day. They served a very useful purpose in reminding voters of important information while confirming for the voter that his or her name was included on the voters' list.

### **BALLOT DESIGN AND PREPARATION**

For the 7 March 1994 elections in Kazakhstan, it was determined that for each type of ballot to be issued, polling sites would receive a number of ballots equal to the number of voters on the registration list, plus 10%. The surplus was intended to accommodate voters on the supplemental list as well as providing extra ballots to replace any which were spoiled or unusable because of printing irregularities. Polling site commissions were responsible for determining the quantity of ballots they were to receive based on the number of voters which were going to appear on the voter list prepared for their precinct. A protocol was maintained at each polling site on which the commission recorded the number of ballots received. Instructions issued by the CEC required that all ballots received be accounted for.

Voters in that election voted in both Republican elections for Deputies to the Supreme Council and in local elections. For Supreme Council elections each voter received 2 types of ballots:

a single-mandate constituency ballot from which one Deputy was to be elected; and,

a State List ballot on which two Deputies were elected from the nominees forwarded by the President.

Voters in Almaty and Leninsk, Kazakhstan's two largest cities, were given a 3rd ballot for election of Deputies to their city councils. Voters in the other 19 oblasts not only received a



ballot for election of Deputies to their individual oblast councils, but also received a 4th ballot on which to elect representatives to the local council in their city, village or aul.

In Kazakhstan, names of the candidates are listed alphabetically by surname, followed by first and middle names. For each candidate information is also printed which includes the candidate's professional qualifications, occupation, residence. Information was also provided as to whether the candidate was self-nominated or nominated by a public organization or party in which case the organization was identified.

An administrative procedure was adopted whereby each ballot type was printed on a different colored paper to make sorting and identification easier not only for issuing ballots to voters, but also for counting purposes at the end of the election day. In virtually all polling sites observed specifically by IFES team members and their associates from the American Legal Consortium, all ballots were placed in a single ballot box. The colored paper assisted greatly in the sorting process as counting got underway after the closing of the polls.

### **Language and the Ballot:**

Just as compelling as the issue of citizenship is that of language in the Republic. With the collapse of the Soviet Union, Kazakhstan's sudden independence, the volatile economic and political conditions which ensued eroded the public's confidence. The uncertainty caused many ethnic Russians to leave, while Kazakhs living outside the country returned. In attempting to legally redefine the Republic as an independent state, leaders adopted a new Constitution in January 1993 which proclaimed Kazakh as the state language. Russian was maintained as the language of international communication. In terms of its relationship to the electoral process, Article 34 requires that ballots be printed "in the state language and the language of international communication used by the population of the constituency." Officials interpreted this provisions liberally so that ballots were printed in Kazakh and Russian, and also in other languages used widely in a particular constituency such as Uigur.

It was interesting to note that in some constituencies the Area Commissions chose to print ballot text and the list of candidates in both Kazakh and Russian simultaneously on the same ballot paper, while in other constituencies two separate sets were printed with only one language on each set. In such locations, officials advised the team that estimates for the quantities which would be required for each language were determined by a review of the ethnicity of the names on the voter list for the polling site.



### **Printing and Distribution of Ballots:**

In Kazakhstan, the coordination of ballot printing is decentralized. Just as candidates for the constituency ballots were registered by the Area Commissions responsible for the constituency, the ballots for constituency elections were printed at the regional centers. While the format and content of the ballot was dictated by the CEC, regional authorities were authorized to modify the size of the ballot to accommodate a greater or fewer number of candidates.

As of January 6, 1994, according to a general directive issued at a conference conducted by the CEC at Almaty and attended by the heads of Territorial and Area Commissions, the ballots for the State List candidates were to be printed in Almaty. However, there were conflicting reports as to whether this initial plan was carried out. According to some reports the State List ballots may have been printed at regional centers as well.

Printing the ballots on time put a tremendous burden on the administrative infrastructure. First, the shortages of paper and other commodities had to be overcome. When, for instance, the issue of paper supply was discussed at the January 6 conference for Territorial and Area officials conducted in Almaty, local officials were advised that the full amount of paper needed for the printing of election materials had not yet arrived from Russia. The needed shipments were contingent on the payment of 300 million rubles to suppliers in Russia, an issue that, they were assured, was nearly settled. Local officials were asked to continue to use their own supply of paper for election materials and were assured that stores of paper would be replenished during the first 10 days of February. The already short time period for ballot printing was further threatened as court cases and appeals regarding denial of registration for certain candidates delayed the printing of the ballot in some constituencies even further. Yet, despite these difficulties, ballots were printed and distributed on time throughout the Republic.

### **Manner in Which the Ballot is Marked:**

Based on historic and traditional practice, the new Election Code retains the procedure whereby the voters mark their ballots by crossing out the names of candidates AGAINST whom they vote. The ballots for the 7 March 1994 elections included such an instruction. This method was entrenched in old practices when there was usually little or no real competition for elections and frequently only one candidate appeared on the ballot unopposed. With a single candidate the only choice the voter could express was to vote against the candidate.

After the ballots are printed, should a candidate withdraw or should their registration be revoked because of a campaign violation, polling site commissions are notified and instructed to cross the candidate's name off of each ballot under their control manually. The Election Code fails to stipulate a withdrawal cut-off date potentially making withdrawals possible all the way up to





election day. In addition, Area Commissions can also rescind a candidate's registration for campaign violations up through the day before the election. Because of the logistics, costs, and commodity shortages that would be involved, ballots are not reprinted in response to such withdrawals or changes in the ballot's slate. Adjustments are marked on the already printed ballots by hand.

### **Ballot Security:**

Ballots are provided to district commissions 3 days before the election. The office where the ballots are stored is kept sealed and guarded by the internal affairs authorities.

The ballots for the 7 March elections were not sequentially numbered and were not padded. The paper used provided no security attributes such as watermarks to guard against unauthorized duplication. Nor were they produced to include any kind of stub or counterfoil which could have been retained by the commission as an offsetting accountability record of each ballot issued. Special note should be made, however, that given the severe paper shortages throughout the country and the shortages of ink, fuel and other commodities, the fact that all ballots were printed and distributed on time was a triumph in itself.

The primary security measure implemented to ensure the accountability of officially issued ballots was the practice whereby each ballot issued to a voter had to be signed by the member of the commission who issued it. The CEC had issued a recommendation that prior to the opening of the polls the chairman of each polling site gather samples of the signatures of all officials who would be responsible for issuing the ballots on election day. Any ballot found in a ballot box which did not contain the signature of an authorized official was rejected and not counted. The signature was intended to signify that the ballot was formally issued by an authorized official at the polling site where it was voted. Additionally, the signature was intended to offer clear differentiation between issued and unused ballots at the end of the voting day.

Unfortunately, the procedure devised was not uniformly applied. Foreign observers who visited polling sites throughout election day noted that in some polling places officials had presigned all ballots in advance of the voting. In those instances where such a practice was implemented officials indicated that they wanted to make sure that no voter's ballot was rejected from the count because an official's signature was not affixed to the ballot when it was issued. While their concern was well intentioned, the pre-signing of all ballots virtually eliminated the only security measure available which the official's signature was intended to provide.



## **PREPARATIONS IN ADVANCE OF ELECTION DAY**

### **Selection and Organization of Polling Sites:**

For the 7 March elections, voters were served by 10,224 polling sites. Under special provisions polling sites may be established at military installations, on board ships which are on voyage on election day, hospitals and other inpatient institutions. Under the Election Code, the maximum number of voters which can be served by any single polling site is 3,000. In response to a specific question raised by small towns and villages, the CEC directed that because of the requirement specified in the Code, even in communities that had a number of voters only slightly in excess of 3,000 totaled, there had to be a division creating two polling stations. All in all, there were nearly 90,000 election officials who had to be recruited and trained for these elections. The fact that this many people could be mobilized, especially given the condensed time frame in which these elections were held, is a testament to the administrative capabilities of the CEC and the governmental authorities of Kazakhstan.

According to data provided by the CEC 6,510, or approximately 2/3 of the polling sites, were in rural areas. Servicing voters in rural areas, and especially in the 425 sites established in the stock breeding remote regions of the country posed their own set of unique logistical problems. Another 242 stations were organized in hospitals while 30 polling sites served voters in sanatoriums.

In addition, Kazakhstan officials organized 14 stations to accommodate citizens working abroad. Coordinating their efforts with the Ministry of Foreign Affairs, polling sites were organized at diplomatic missions in 13 countries including China, Egypt, Iran, India, Turkey, Belgium, France, Germany, Hungary, the United States, Russia, Uzbekistan and Kyrgyzstan. All in all, it was estimated that these sites would provide voting opportunities to about 2,500 voters. Individuals in each embassy were appointed to compile the results of the elections at these sites after election day. A special seminar was organized for the officials serving these sites on February 25, 1994. Additionally, polling sites were established in Ablaykhanovsky Constituency # 12 of the Council District of Almaty.

Most typically, polling sites within Kazakhstan were established in well known public facilities such as administrative buildings and schools. In general, the polling sites specifically visited by IFES team members were adequately equipped and furnished to accommodate voting. Polling sites seemed to have a sufficient number of tables and chairs, fundamental commodities and adequate space and lighting. In some locations it would have been helpful to have a few more voting booths, especially in those sites where over 2,000 voters were registered, but only three or four voting booths were available.



One helpful tool that can assist officials in determining how many booths will be needed is to apply a simple formula. By way of illustration, in one polling site where there were 2280 voters registered, there were only 4 voting booths. Based on the number of hours the polling site was open, there were 3,120 total minutes of available use for the 4 booths (4 booths x 60 minutes per hour x 13 hours = 3210 minutes.) This site had a turnout of 63% with 1438 voters. By dividing the number of minutes by the number of voters served, it meant that each voter only had an average of 2 minutes and 10 seconds to mark all four ballots. IFES observers noted that the average voter needed 3 to 4 minutes to mark their ballots while some actually needed 7 to 8 minutes. The result was that voters had to wait in line to get to use a voting booth. Instead of waiting, some voters were seen marking their ballots outside the booths on tables, in chairs or any other place they could write. Some voters even marked their ballots at the officials' table. Use of the formula based on an estimate of the turnout can help officials determine the number of booths which will be required to keep the process going smoothly.

It was noted that at some polling sites, arrangements had been made for music to be played throughout the day as voters cast their ballots. According to reports of a number of observer delegations, some polling sites were placed at locations where special bazaars and food markets were reportedly devised to attract voters to come and vote. At a few of these locations, people were restricted from shopping at the bazaar without a slip of paper proving that they had already voted. Hopefully, in the future these kinds of enticements will not be considered necessary to attract voters to participate in the process. This kind of activity could also have a very negative impact if it was perceived that the commodities being made available were supplied by a candidate, or by a political party or public organization supporting a specific candidate.

Generally speaking the voting rooms themselves were laid out appropriately and were adequately furnished and supplied to provide efficient traffic patterns and organization for the processing of voters. Most voting sites visited by IFES were housed in large rooms with adequate space to accommodate officials, voters and observers without causing over crowding or undue confusion when officials monitored the movement of voters efficiently. Of particular note was the fact that most polling sites had excellent signs identifying the site and directing voters in their movements.

Under the new code, campaigning is prohibited on the day before the election and on election day. However, posters which had been hung previously outside the polling place are allowed to remain posted. Although there may be legal questions about the appropriateness of such decisions given the specific text of the Election Code that posters "outside the polling place" could remain, some polling site commissions chose to display the candidate posters published by the state inside the polling place for voters to view while they waited in line. In each station visited by IFES observers where such a choice was made, it was clear that every candidate on



the ballot was represented with equal prominence. The team also noted that in several polling sites the full text of the Election Code was also posted. Notably absent were posters instructing voters on voting procedures such as how to mark their ballots.

There was a fairly standardized configuration whereby most voting rooms had two doors, one to serve as an entrance and one to serve as the exit for voters after they had cast their ballots. For the most part, long tables were set up to accommodate election officials on one side of the room, with a smaller table set aside for the Chairman or Secretary to oversee the process from a separate vantage point. In a good number of polling sites it was evident that the voter lists had been split up alphabetically, or numerically by the voter's numbered placement on the list, so that voters could approach the officials' table in shorter lines. The groupings were well identified with additional signs helping the voter determine the line in which he or she should stand.

Most frequently, observers and candidates' representatives were assigned to sit along the opposite side of the room from that occupied by the officials' tables. However, in some instances, authorized observers were segregated in such a way that their view of activity could only be through the doorway or archway. In other instances observers were forced to stay behind a barrier of some type such as a ribbon or rope across the opening to a room or a specific corner of the room. Movement within the polling sites by observers was generally restricted. Questions were also raised as to whether candidate representatives were free to leave the area and return. In general, however, observers and candidates' representatives with whom IFES team members spoke had relatively few objections about their view of voter activity throughout the day, except in isolated circumstances. In at least one polling site that the IFES team is aware of, authorities had to be called to quell a disturbance when a candidate's observer felt she was being unduly restricted from observing freely. Most serious questions about observer access focussed on issues which became more problematic at some locations during the counting of ballots.

In many polling sites the ballot box itself was segregated from the general center of activity but remained in full view of all electoral officials, observers, and voters present. Under Article 44, the ballot box is to be positioned in a place where "an opportunity for monitors and commission members to watch the box" is created. Interestingly, however, the wording of the Article, when it was interpreted literally, sometimes actually precluded an adequate degree of visibility of the ballot box. According to the Article, "voting boxes should be placed in such a way that the voters approaching them should obligatorily go through the cabins or rooms for secret ballot."

In some locations, application of this provision resulted in voting booths being stretched across the room wall to wall. Each side of the voting booth had a curtained opening. Upon receiving



the ballot, the voter entered the voting booth. When the person finished marking the ballot, the voter exited on the back side of the voting booth out of the view of officials and observers to deposit the ballot into the box on the opposite side. The ballot box stood alone on the far side of the barrier created by the row of voting booths so that it was not visible to the commissioners or observers. At locations where this set up was observed, one official had been assigned to sit in a position so that he or she could see the box. This person was the only one who could actually ensure that the box was not tampered with and that voters actually deposited their ballots before leaving the polling station. If this person was distracted or stepped away for a necessary break, it left the box totally unattended. It is suggested that this provision in the Election Code be amended to remove the apparent contradiction and that election officials at all sites be instructed to position the ballot box in a place where it can easily be observed by all officials, candidates' representatives and authorized observers.

### **Advance Voting:**

The Central Electoral Commission had instructed officials that all polling sites were to be open 3 days before election day to accommodate voters who learned they would be away on election day. Under the law, these voters are entitled to get a ballot at least 3 days before the election. The Election Code includes a conforming section under which ballots are required to be distributed to polling sites not later than three days in advance of the election. A voter voting in the advance period before election day was required to sign the voter list. The voted ballot was placed in an envelope which was then sealed with sealing wax and signed by the commission members. The sealed envelopes were retained by the commission until election day at which time they were placed in the ballot box to be counted at the end of the polling day.

### **PROCEDURES ON ELECTION DAY**

Under Article 43, regular polling hours are between 7 a.m. - 8 p.m. on election day. However, polling hours may be changed by the Area Electoral Commission at the suggestion of the local executive body as long as polling does not begin earlier than 6 a.m. or end later than 10 p.m. Some election officials did opt for a change in the hours of operation for their polling sites for the 7 March elections. One such area, for example, were those in the Zhambyl district outside Almaty. Such changes had to be announced to voters in the constituency not later than 7 days before the election.

The Election Code also allows polling stations to close early if every voter on the voter list has voted. IFES team members did not hear of any reports of early closings at regular polling sites, however, at one extended care facility observed by members of the team all voting was completed by early afternoon when all of the patients had cast their ballots. Counting was



completed immediately. Several issues were discussed with officials responsible for this polling site including the kind of assistance which was provided to patients who were incapacitated or unable to vote without assistance. Officials at this site appeared to be very careful about making sure that the officials themselves did not give assistance as voters marked their ballots which is prohibited under Article 47. Rather, they relied on other patients or hospital staff to give assistance as it was needed. A review of the voter lists indicated that it had been maintained conscientiously, and that each voter had been made to sign the register. In addition, this team of election officials were very careful in verifying the election results and counted the ballots a second time to ensure the results were reported accurately. It was interesting to note that the votes appeared to be very evenly spread among the candidates with no candidate receiving victory by an extraordinary margin. It is likely that, given the limited number of voters to be processed at such institutions other institutional voting sites were closed early as well.

### **Before Voting Begins:**

Before voting began on election day the Chairman of the polling site commission was responsible for ensuring that several tasks were completed before the first ballot was issued. Representatives of the candidates and the media were entitled to be present during these preparations.

CEC instructions recommended that all commission members provide a sample of their signatures before voting began since their signatures would become an integral part of the voting process throughout the day. Not only are officials required to affix their signatures as they issue ballots, they are also required to sign a number of official documents and protocols throughout the day.

Article 46 requires that the ballot boxes be sealed in the presence of commission members. Although it is not specifically stipulated in law, display of the empty ballot box to the other members of the commission and to the representatives of candidates and media who were present prior to it being sealed should be integral to this step of the process. For the March 7 elections, the ballot boxes were closed and twine was looped through the lock on the box. The twine was then sealed to the box with sealing wax which was then stamped with the special seal assigned to the polling site.

Each polling site also had one or more smaller ballot boxes which were used during the process of voting by homebound voters who cast their ballots at home. The process of inspection and sealing should also apply to these boxes, especially because these boxes actually leave the polling site during the voting day.



Prior to the beginning of voting, the Chairman was required to complete the review of each advance ballot which was voted to ensure that the envelope in which it was deposited remains sealed with the signatures of the commission members who issued it intact. The number of these ballots was verified against the list signed by the advance voters prior to the envelopes being dropped into the ballot box.

One Article of the Election Code provides that the Chairman is to identify to all those present the members of the commission who would actually be responsible for issuing ballots to voters throughout election day. At the sites observed specifically by IFES and American Legal Consortium representatives this step was not formally carried out. It became apparent that throughout the day the task of issuing ballots sometimes changed hands among members of the commission. One of the important changes in the electoral system is that for the 7 March elections all persons working as election officials and issuing ballots were duly appointed members of the commission. In past elections, people sent by organizations such as work collectives were permitted to assist electoral commissions in ballot counting and issuance. In the 7 March elections, however, this practice was, for the first time, disallowed.

Ideally, before voting begins, all ballots received by the polling site should be counted and reported on the protocol, as should the total number of voters on the voter lists. These elements serve as the foundation for all other accountability procedures that are accomplished throughout election day processing. The Election Code contemplates the recording of this kind of information on the protocol, however there is no directive as to when the protocol should be begun.

One suggestion is to amend Article 46 of the Election Code on opening of the polls. This amendment would include a requirement that the preliminary base information which initiates the accountability procedures should be entered onto a protocol as part of the poll opening procedure before voting begins. Most commonly this information would include the number and name of the polling site, number of voters on the voter list, and quantity of ballots received for each ballot type. Because of unique procedures established in Kazakhstan, the number of voters on the list of those who will be voting at home should also be entered as would the number of voters added to the supplemental voter list prior to election day. If the ballots were sequentially numbered at the time of their being printed, the number range of the ballots received would also be entered in addition to the quantity. These figures should serve as the base against which ballot usage and numbers of voters participating should be balanced against at the end of the day at which time the rest of the information on the protocol is entered.

Protocols completed by precinct commissions should also be written in ink as an additional security measure. During the 7 March elections some commissions completed their protocols



in pencil. In response to a specific question about the use of pencil, the secretary of one commission indicated that pencil was used so that the Area Commission could make changes that might be necessary.

The issue of adjustments being made at the Area Commission level deserves special attention. Except for simple addition errors, figures provided by a district commission should only be adjusted at the Area Commission level under strict guidelines. For example, changes should not be made to force figures to balance. Discrepancies sometimes do occur, however, they should not be hidden but should be reported with an accompanying explanation. Vote totals reported for individual candidates should not be subject to change without documentation justifying the change, or an actual recount of the ballots under authorized guidelines.

### **Processing Voters at the Polling Site:**

The fundamental procedures set in place for the processing of voters as they arrive at the polls to cast their ballots are basically sound and provide standard assurances and reasonable practices which would be commonplace in most traditional democracies. The basic procedures for processing voters on election day contemplated by the Election Code and in directives issued by the Central Electoral Commission involve the following steps.

1. Each voter is required to present his or her passport or other type of identification upon arrival to the polling place prior to voting.
2. The voter is asked to sign the voter register next to his or her name on the list. The member of the commission also places his or her signature next to that of the voter.
3. Once the voter and the official have signed the voter list the member of the commission issues the ballots to the voter. Each ballot issued must be signed by the official. Failure of the official to sign the ballot results in the ballot not being counted.
4. The Constitution and the Election Code guarantee that the ballot is cast in secret. Enclosed voting booths were provided to ensure that the voter's privacy was maintained. The presence of anyone except the voter inside the voting booth is prohibited under the Election Code, except when the voter is unable to vote without the help of another person because of illiteracy, handicap or other disability. If a person is unable to mark the ballot without assistance they can





request the help of any person whom the voter trusts. The assistant cannot be a member of the commission or representative of a candidate.

5. After the voter has completed marking the ballots they are deposited into the sealed ballot box by the voter before he or she leaves the polling place.

If voters recognize during the process of voting that they have marked a ballot incorrectly or contrary to their desired choice, they should be able to return the spoiled ballot to the commission and receive a new ballot. However there is no guidance under the Election Code, nor were there specific instructions on how this event would be handled. The best course would be for the commission to immediately void and segregate a spoiled ballot and issue the voter a new one. The spoiled ballots should be accounted for on the protocols prepared at the end of the day.

### **Voters Voting At Home:**

In addition to processing voters at the polling place, the Election Code includes special provisions for servicing voters who are unable to come to the polling place. These voters may request to have the ballots and a portable ballot box brought to them on election day so that they may vote at home. The need for these services is most commonly determined at the time district electoral commission members complete the door-to-door canvas while preparing the voter list although requests may be made to officials at any time. The actual wording of the provision under Article 46 is vague. It relates to voters who cannot come to the polling site "because of health or any other reason." Additionally, the Article gives virtually no guidance as to the specific procedures which should be followed in providing these services. The Election Code only stipulates that "the district electoral committee at their request should organize voting at the place of stay of these voters."

Even though the guidelines were not formally prescribed in the Election Code, there appeared to be a general uniformity in the way officials dealt with at-home voters. The names of voters who are to be served at home are maintained on a special list. On election day 2 to 3 members of the electoral commission count the number of voters whom they will visit and count out the exact number of ballots which will be needed to accommodate them. The ballots, the portable ballot box and the list are taken to the home of each voter who made such a request. The voter must sign the list at the time the ballots are issued. Their ballots are deposited in the sealed portable ballot box. It is not clear whether a special notation is made in the master voter list to indicate that the person has voted at his place of residence.



While there is always concern regarding a potential for abuse whenever unused ballots are removed from the polling station several steps in the procedures for accommodating voters at home provide some safeguards.

1. The number of voters involved is known in advance as are their identities;
2. The exact number of ballots needed to accommodate these voters is also known in advance;
3. Voters who vote at home are required to sign the special voter list.

To ensure that these procedures provide the level of security and accountability required it might prove worthwhile to add the following refinements. First, consideration should be given to amending the Election Code to provide some reasonable limitations as to the circumstances which would make a person eligible to vote at home. The purpose of setting some restrictions is to limit the number of votes which are cast outside the polling site and out of view of the observers and candidate representatives. Most commonly, for example, such laws include wording which limits the services to those voters who cannot come to the polls because of age, illness or disability. Secondly, the deadline by which voters can request to vote at home should be the day before the election so that the total number of names on the special list is set before the polls open on election day. In addition, to close opportunity for allegations of impropriety, instructions regarding the procedures should require officials to announce the number of voters who are on the special list, and candidates' representatives and observers should have the opportunity to watch as the number of ballots to be taken from the polling place is counted out. If for any reason not all of the voters on the special list vote, the unused ballots should be accounted for when officials return to the polling site.

#### **Issues of Concern:**

The fundamental procedures for processing voters at the polling site, and those for accommodating voters at home should adequately ensure basic controls and accountability to sufficiently safeguard the integrity of the election process when complemented by appropriate documentation and ballot security measures.

In spite of the reasonable guidelines provided, however, a number of deficiencies were experienced in the 7 March elections. Several of them were specifically criticized by various foreign delegations in Kazakhstan to observe the elections. It is important to note, however, that the problems which were encountered were not intrinsic to the procedures themselves, but resulted when established guidelines were not adhered to at individual polling stations. Equally



important is the fact that the shortcomings should be relatively easy to overcome with the development of refined procedures and the dedication of special emphasis on these issues during the training of local officials prior to the next elections.

The major problem areas deserving attention as officials and lawmakers contemplate refinements necessary to overcome the deficiencies experienced in the 7 March elections centered on three critical elements of election day processing:

1. handling of ballots and ballot security;
2. voters voting on behalf of others; and,
3. door-to-door solicitation of voters.

### **1. Handling of the Ballots:**

At some polling places maintenance and security of the ballots was more conscientiously attended to than at others. At many polling sites officials maintained greater control over the ballots and the manner in which they were issued. However, at other locations officials were not as meticulous about the ballots under their supervision. In the more lax locations, stacks of ballots were left on the front side of the officials' table where they could be handled by anyone who walked by. Rather than controlling ballots at one work station, there were stacks of ballots in front of commissioners all along the row of tables. At one polling site in particular IFES team members noted that officials did not actually hand out ballots. Rather, voters were allowed to pick up their own ballots off stacks that frequently became disorganized. It appeared that all ballots had already been signed by officials. In addition, media representatives were also allowed to pick up ballots to look at without interruption by officials. Under these circumstances, accurate accountability for the total number of ballots cannot be adequately maintained. There was no way to know if a voter picked up more than one ballot from a stack or if a ballot that was picked up simply to look at was ever returned. In addition, the ballots were positioned on the tables in a way which did not guarantee that a voter had signed the voter list before picking up his own ballots.

### **2. Voters Voting on Behalf of Others:**

A significant stipulation under the new Election Code is Article 46 which prescribes that "Each voter votes personally. Voting for other individuals is not acceptable." In the past it was common for a single member of a household to bring the passports of family members to the polls and to sign the voter register and cast ballots on their behalf. Old traditions die hard, and



during the 7 March elections it was clear that the traditional practice was still in play on a widespread basis. Reports from virtually all foreign delegations indicated that polling stations where commission members allowed voters to receive more than one set of ballots and to vote on behalf of other individuals appeared to be the norm rather than the exception. In fact, of all the polling sites visited by members of the IFES team and associate representatives of the American Legal Consortium in Almaty, Karaganda, Temirtau and Kuzembaev, only one polling station refused to allow voters to vote ballots other than their own. From the delegation's observations, it appeared that about 20% - 25% of the voters asked for more than one set of ballots.

In most instances, the voter was asked to produce the passports for all the people he wanted to obtain ballots for; however, there were some occasions when people were given more than one set of ballots who were not asked to provide the other voters' identification. In virtually all cases, the person was asked to sign the voter list for himself and the other people for whom he was voting.

Ironically, among virtually all election officials with whom the IFES team met prior to the election and on election day itself there appeared to be a clear understanding that this practice was specifically prohibited under the new Election Code. In addition, poll workers with whom members of the IFES team met acknowledged that they had received specific instruction about this provision in the Code and understood that they should refuse to allow anyone to vote on behalf of another person. In spite of this acknowledgement, some officials confided that they, too, had engaged in the practice, either voting on behalf of their spouses, or having their spouses vote for them.

A legitimate question raised by critics was whether this lapse in compliance with the Election Code represented an intentional attempt to manipulate the results of the election. The IFES team would be reluctant to advance such a conclusion as it might relate to results of the votes for specific candidates although the potential statistical implications should not be ignored. Rather, it appeared that the most compelling issue to poll officials was garnering the 50% turnout required if the election was to be considered valid. Even prior to election day there was a widespread concern that apathy or disillusion would keep too many people away from the polls. Officials at the precinct level seemed to feel the pressure of that burden and many indicated that if they did not allow voters to vote for other members of their families who were not present, the polling site might fall short of the 50% turnout requirement.

The voters themselves appeared to assume the practice was normal and legitimate. Quite frankly, due to the sheer numbers of voters who brought in multiple passports, it would probably



have been difficult for election officials to turn so many people away and might have caused some disruption at the polling sites.

In spite of whatever inconveniences may have been caused by adherence to the legal requirements, it is unfortunate that local officials allowed this violation to occur for it undermines one of the basic principles of a democratic process. Fundamentally, the practice violates the "one person, one vote" principle which underpins a democratic election system. It also relies on a presumption that husbands and wives, parents and children, and siblings always agree.

Just as importantly, this particular violation is symptomatic of other weaknesses that will deserve attention as officials continue to move forward in their democratization efforts.

1. The sheer numbers of voters who appeared at the polling place with multiple passports illustrates the fact that, in spite of the best efforts of the CEC and the media to inform the public about the new Election Code, this provision was not understood.
2. It suggests that much of the general population and many election officials themselves do not yet have an appreciation of the value of their right to vote, or the significance of their individual voice in a democratic process. During the period before the next elections it will be critically important for voter education programs to be implemented that nurture in the public a better understanding of the individual's role in furthering the success of democracy in Kazakhstan.
3. It points to the fact that officials are willing to turn a blind eye to the requirements of the law they are charged to uphold.

This last point had particular significance during the 7 March elections for it poignantly illustrated a double standard which should be totally alleviated in the future. It is ironic that this was the very same issue that caused the rejection of candidates and denial of their eligibility to appear on the ballot. In most cases the courts upheld decisions of Area Commissions who rejected candidates on the basis that their petitions contained signatures of individuals who signed on behalf of members of their families. Clearly, candidates were held to a higher standard than the officials responsible to implement the law itself. It was hard to ignore the paradox, for example, when one Area Commissioner expressed frustration at having to appear in court 15 times to justify the decision to reject candidates on these grounds. However, on election day when asked about polling sites under her authority allowing voters to vote on behalf of others, this same Area Chairman replied, "Well, sometimes we have to make exceptions."



### **3. Door-to-door Solicitation of Voters:**

In the past, when voters failed to appear on election day polling site officials went to their homes and compelled them to vote. Portable ballot boxes and ballots were taken from the polling place by election officials who went to the addresses of voters who had not yet appeared at the polls. It should be noted that such a practice is not contemplated in the Election Code. No articles in the Election Code provide for this kind of solicitation of voters.

Prior to election day, a number of local election officials expressed their intent to engage in these activities. Again, the compelling interest was to encourage voter participation if it appeared that the 50% turnout threshold was not being met on election day. Based on CEC instructions such activity would be inappropriate under the new election system. However, there was a dispensation according to which it would be alright for officials to leave the polling station to knock on doors to invite people to the polling station as long as they did not take any ballots with them.

Unfortunately, this restriction was either not effectively communicated to polling officials, or some officials were willing to ignore the directive. At a number of sites, officials indicated their intention to take ballots with them for the purpose of soliciting voters to participate.

The obvious problem is that once the ballots are taken away from the view of other commissioners, observers and candidates' representatives, a dangerous window for abuse is left open, whereby ballots can be fraudulently marked and stuffed into the portable ballot box for the purposes of manipulating the election results in favor of a specific candidate. Given the lax attitude about people being allowed to vote for others, and signatures contained on the voter list frequently being those affixed by someone other than the voter identified on the list, leaving such an opportunity for fraud is a perilous option which could seriously jeopardize the integrity of the entire process.

Additionally, the appearance of a two or three officials at their door potentially puts an undue pressure on voters who may or may not wish to participate. In a free democratic society, inherent in the right to vote is also the right not to vote. Even if the intentions of election officials are well motivated, this activity is inappropriate because it creates another situation which leaves election officials vulnerable to allegations of impropriety with well founded justification. Any practice which gives such valid cause to erode the confidence of the candidates, parties and the public alike should be avoided at all costs.



## **VOTE TABULATION**

Under the Election Code ballots are counted at the polls by the District Electoral Commissions after the polls close at 8:00 p.m. Voters who were present at 8:00 p.m. but who had not yet voted were allowed to vote so that in some instances voting extended after 8:00 p.m. Under directives issued by the CEC, candidates' representatives and authorized observers were entitled to be present at the count.

The new procedures also prohibited anyone other than an appointed commission member from participating in the actual count itself. In prior elections other individuals, such representatives of public organizations nominating members of the commissions, were allowed to "assist" with the counting. In spite of the new rules, in a number of instances, IFES and American Legal Consortium observers did encounter polling sites where individuals other than members of the District Commission participated in the counting of ballots. In a few instances candidate's representatives were invited to help. Obviously, this is a situation which should be avoided altogether.

### **Before Counting Begins:**

Before counting actually begins the commission members are required to prepare a protocol on which they account for all the ballots under their control. All the unused ballots were supposed to be counted and cancelled by the commission. In the districts specifically observed by IFES team members, unused ballots were "cancelled" when a corner was clipped off each one so that they were easily distinguishable from the issued ballots. The process of clipping the corners was intended to make it impossible for the extra ballots to be misused. At polling sites where the officially authorized procedure was followed, the process most likely provided an appropriate level of security and accountability for the total number of ballots issued. However, at some sites, the "cancellation" of the unused ballots was not accomplished before the ballot boxes were opened. At some sites, observers noted that the procedure was not accomplished until after the counting was completed. At other sites, including one specifically observed by IFES team members, the district commission was handling the unused ballots during the counting itself bypassing the reasonable security measures put in place by the CEC. Under ideal circumstances these less secure procedures should be avoided, first to eliminate the potential for actual misuse of unvoted ballots, and, just as importantly, to eliminate opportunities for allegations to be made about possible improprieties.

The protocol provided space for the number of unused ballots to be recorded. The district commissions also recorded the total number of voters on the voter lists, and the number of voters who actually received ballots on the protocol. As international observers noted in their



critiques, at many polling sites this number was exaggerated because a single voter was allowed to present the passports or invitations to vote for other members of their household and actually cast ballots on their behalf. In these instances, the number on the protocol did not actually represent the number of voters who received ballots, but the number of voters on the list for whom ballots were voted even when they themselves were absent from the polling site. Only after these preparations were completed were the district commissions authorized to open the ballot box. Opening the ballot box at any time prior during the voting day and prior to the close of the polls is prohibited under the Election Code.

### **Legal Foundation for Counting Rules:**

Based on discussions with members of the Central Electoral Commission, IFES learned that certain interpretations of law and technical decisions as to the method by which ballots were to be counted had been established based on the advise of legal counsel. It appears that there are 4 main Articles of law which, working together, served as the basis for the Commission's decisions related to the method of counting.

1. Article 5 of the Election Code provides that each voter has "one vote" which he can give to candidates for the Presidency, Deputies of the Supreme Council and local bodies of representation. This provision replicates Article 111 of the Constitution which also requires that "elections are equal" and that each voter has one vote.
2. Article 21 requires that 50% of the voters from the voters' list participate in the election to consider it having been held. It also provides for a relative majority system for Parliamentary elections by which a candidate is elected if he receives the majority of votes in comparison with those of other candidates. Finally, it provides that if only one candidate appears on the ballot, he is elected if he receives more votes for him than against him.
3. Article 47 provides that voters indicate their preference by crossing out the names of candidates against whom they vote.
4. Article 48 requires that vote tabulation be done at the polling place, and that the number of votes "for" a candidate, as well as the number of votes "against" a candidate be tabulated. This article also provides that a ballot of a nonapproved format or a ballot that is not signed by a commission member is invalid.





## **Rules for Counting:**

Based on these laws working together and on advice given by legal counsel, the Central Electoral Commission determined that the following counting rules would apply:

1. Virtually all ballots were to be counted according to the interpretation of the law. Based on strict interpretation of the law, the grounds for invalidating or rejecting a ballot were very limited. Under Article 48, a ballot was only to be rejected for the following reasons:
  - the ballot paper was not signed by a member of the commission;
  - the ballot was not an official ballot paper; or,
  - according to a subsequent instruction given by the CEC, the ballot was badly torn or crumpled.
2. Each and every name on the ballot left exposed would be counted as one vote "for" the candidate.
3. Each and every name which was crossed off would be counted as one vote "against" that candidate.

The result of these rules was that even a blank ballot that had not been marked at all was counted with each candidate on the ballot being given one vote. A ballot on which every name had been crossed off was also counted with each candidate being given one vote "against" him. In between the extremes, a ballot on which more than one name was exposed was also counted in a like manner.

With regard to the counting of votes "against", most commonly the number of votes "for" were simply subtracted from the total number of ballots counted to arrive at the negative number. The total votes "for" and the votes "against" a candidate were recorded and reported separately. Specifically, the votes "against" a candidate were not subtracted from the votes "for" that candidate to come up with a "net" result.

Ballots cast by voters at home, or cast in advance by voters who would be away on election day were processed in the same manner. If there were controversies regarding any aspect of the counting process or the validity of any ballot, decisions were to be made by a vote of the members of the district commission.



**TABLE 1: RULES FOR TABULATION OF VOTES  
7 MARCH 1994 ELECTIONS - KAZAKHSTAN**

| CIRCUMSTANCE  | EXPLANATIONS: HOW THE BALLOT SHOULD BE COUNTED OR INVALIDATED                       |
|---|---|
| Voter had crossed off all names but left one exposed.                         | Counted 1 vote FOR the name exposed. Counted 1 vote AGAINST each name crossed off.  |
| Voter crossed off some names, and left more than one name exposed.            | Counted 1 vote FOR each name exposed. Counted 1 vote AGAINST each name crossed off. |
| Voter crossed off every name on the ballot.                                   | Counted 1 vote AGAINST each name that was crossed off.                              |
| Voter left every name on ballot exposed.                                      | Counted 1 vote FOR each name that was exposed.                                      |
| Ballot was not in the approved format.  | INVALIDATED the ballot.   |
| Ballot was not signed by member of the commission                             | INVALIDATED the ballot.   |
| Ballot was badly torn or crumpled.  | INVALIDATED the ballot.   |
| Voter made big X or Z across face of ballot but did not make any other marks. | Counted 1 vote AGAINST each name listed on the ballot.                              |

**Legal Considerations:**

The Central Electoral Commission and their legal advisers made a concerted effort to interpret the law in the most precise terms. The difficulty which the IFES team believed faced the Commission lay in the fact that certain technical provisions of the Election Code appear to conflict with the spirit and intent of the general provisions of the Code and CEC decrees.

1. The contradictions resulted in a vote tabulation system which not only made counting more difficult but also more time-consuming.



2. The rules also had the potential to generate confusion and mistrust, especially when the number of votes given to candidates exceeded the number of voters who participated in the election.
3. There is also room to question whether the rules didn't actually create inequality in the system by allowing voters to cast more than the one vote to which they were entitled.

### **The "One Vote" Principle:**

The Commission cited the problem of interpreting the voter's entitlement under Article 5 of the Code to "one vote" as it relates to the State List ballot on which two candidates could be elected. The interpretation applied was that "one vote" means "one ballot," and that from the slate in each State List mandate, all president's nominees would appear on the same ballot paper, but that the top two vote getters would actually be elected. Each voter would be given only one ballot for each contest, even for the election on the State List.

The IFES team suggests that there is room to consider whether or not "ballot" and "vote" are interchangeable. The "ballot" is the instrument. However, the "vote" is the reflection of the voter's choice or preference. "One vote" most commonly means "one choice" for each mandate or on each question on which the elector is entitled to vote.

The Commission had also interpreted the provisions in Article 48 narrowly, to preclude any other causes for a ballot being declared invalid, except the two conditions cited directly in the statute. This interpretation allowed voters to "overvote", or to vote for more candidates than their constituency's mandate would have entitled them. One element of the rationale for such a decision was that since the Election Code allowed voters to sign the nominating petitions of as many candidates as they chose, it would be inappropriate to limit their choices or the number of candidates for whom they could express their preference on the ballot itself.

Looking at the argument from another viewpoint, however, requires a recognition that subscribing to a petition is not necessarily an accurate measure of the voter's intent to eventually vote for that candidate. It only signifies a voter's willingness to provide the opportunity for the candidate to compete for election. In the case of Kazakhstan's elections, the campaign period had not even begun at the point nominating petitions were being circulated. As a result of the campaign period, a voter who signed a petition supporting a candidate's opportunity to run may eventually choose to vote for another candidate altogether. These interpretations of the Election Code, and the decisions made as result of deliberations with legal counsel may have appeared practical in a literal sense, however, in combination, they do not address two important issues which are also principles founded in law.



1. By allowing virtually any ballot to be counted, even if more than one name or all names are left exposed, a voter is not limited to "one vote" provided for under the Election Code, but potentially to as many votes as there are candidates on the ballot.
2. Such allowances also permitted the voter to vote for a number of candidates that exceeded the number of representatives to which his constituency was entitled under the Election Code.

### **Intent of the Voter:**

Under commonly accepted international standards there is a fundamental principle which underlies vote tabulation decisions: can the intent of the voter be determined? Under the counting rules established for the 7 March election, there were circumstances in which votes were counted even when the intent of the voter was not clear.

1. In a constituency from which there was to be only one representative elected, if the voter left more than one name exposed, he did not make his intent clear. On the constituency ballot, only one candidate could become a Deputy in the Supreme Council, but who could really say which of the candidates the voter preferred? From the State List ballot, two candidates were to be elected to serve in the Supreme Council. Each of the State List ballots had three candidates. If the voter left more than two names exposed, who could say which two of the three left exposed he wanted to represent him?
2. In the case of a ballot on which no marks were made the voter's intent is even less clear. Participation in the election is not mandatory. There is no provision of law that requires a person to vote. For example, a blank State List ballot could have meant the voter had chosen not to participate in that election, even though he may have chosen to vote in the constituency and local elections. Was it any more likely that a voter left a ballot totally unmarked to indicate he wanted a vote counted for every candidate, than it was that he chose not to participate?

Counting votes when the intent of the voter is not clear ultimately means that in some instances, officials could have been making choices for the voter which were not consistent with his actual wishes.

### **Instructions to Voters:**

The IFES team had the opportunity to discuss a number of these issues with the CEC in the weeks prior to the election. The Commission rightfully indicated that it is too late to change the counting rules with election day so close at hand. A wide scope of electoral commission training had already taken place. However, there was an opportunity to change the text of the instructions which were to appear on the



ballot to help minimize the potential problem, and to help voters understand the appropriate way to express their genuine intent.

At the time of the team's discussions with the CEC about the issues related to vote tabulation, ballot printing had not yet begun. As a matter of fact, the registration of candidates period had not yet been completed. At that time, plans had called for a single voter instruction to appear on the ballot. That instruction told voters to vote by crossing out the names of candidates they were against. Given the complexities of the ballot counting rules already established, IFES believed that additional instructions could have helped to relieve some of the confusion which was anticipated in view of the fact that the multi-type ballot and system of representation was being implemented for the first time.

1. On the constituency ballot from which only one representative was to be elected, IFES suggested the following instruction:

"Only one representative may be elected from this constituency.

Mark your ballot by crossing out the names of all candidates AGAINST whom you vote. Express your preference FOR a candidate you want elected, by leaving that candidate's name exposed."

2. On the State List ballot where two representatives were to be elected the instruction might have read:

"Only two representative may be elected from the presidential list from this constituency.

Mark your ballot by crossing out the names of all candidates AGAINST whom you vote. Express your preference FOR the candidates you want elected, by leaving their names exposed."

3. On any ballot on which there was only one candidate the instruction could have read:

"Mark your ballot by crossing out the candidate's name if you vote AGAINST the candidate. Leaving the name exposed means you vote FOR the candidate."

These more complete instructions could have helped educate the voter as to the most appropriate way to express his will and intent, while not hampering the counting of votes under the rules which had



already been approved for the elections. However, by their wording the expanded instructions could have helped minimize the frequency with which voters left more than the appropriate number of names exposed or marking their ballot in a way that left their intent unclear.

Prior to the beginning of the printing of the ballots, the CEC did modify their original instruction to add a notation on the ballot about the number of candidates which would be elected from each specific ballot type. They chose not to add a statement which explained the result of leaving a name exposed. The general view expressed by certain members of the Commission was that such an instruction would be intrusive on the voter's free expression of his will to express support for more than one candidate.

As the CEC and lawmakers review the events of the 7 March 1994 elections, there may be room to consider some of these issues to determine if the Election Code and administrative procedures should be clarified in a way which allows the counting of votes to more assuredly reflect the will of each voter accurately while fulfilling the spirit of the "one vote" principle mandated by law.

### **Practical Considerations:**

In practical terms, the rules for tabulating votes for the 7 March elections had the additional effect of causing some difficulty for district commissions due to the vast variety of ballot markings which will have to be considered. The chart on Table 2 that follows illustrate that even in a contest where there are only three candidates, there are at least 8 different ways in which voters could mark their ballots and still have them counted.

With 4 candidates the options in marking the ballot jumps to 14. The addition of a 5th candidate on the ballot could result in over 30 different ways voters could choose to mark their ballots. It is difficult to imagine the number of separate ways a ballot could be marked when the number of candidates reaches 10 or 15, as was the case in a number of constituencies in the 7 March elections.



**SAMPLE VOTE TABULATION**  
(Imaginary Constituency)

**TABLE 1: VOTES COUNTED BASED ON MANNER IN WHICH VOTERS MARK BALLOTS**  
**Every Time Candidates Is Left Exposed = 1 Vote For**  
**Every Candidate Is Crossed Out = 1 Vote Against**

| MANNER IN WHICH BALLOTS ARE MARKED | # BALLOTS DIST. 1 | # BALLOTS DIST. 2 | # BALLOTS DIST. 3 | # BALLOTS DIST. 4 | # BALLOTS DIST. 5 |
|------------------------------------|-------------------|-------------------|-------------------|-------------------|-------------------|
| AAAA<br>BBBB<br>CCCC               | 200               | 165               | 148               | 304               | 192               |
| AAAA<br>BBBB<br>CCCC               | 150               | 206               | 201               | 176               | 184               |
| AAAA<br>BBBB<br>CCCC               | 90                | 175               | 146               | 219               | 175               |
| AAAA<br>BBBB<br>CCCC               | 35                | 65                | 12                | 26                | 6                 |
| AAAA<br>BBBB<br>CCCC               | 75                | 40                | 19                | 42                | 12                |
| AAAA<br>BBBB<br>CCCC               | 25                | 17                | 8                 | 13                | 1                 |



|                                  |     |     |     |     |     |
|----------------------------------|-----|-----|-----|-----|-----|
| AAAA<br>BBBB<br>CCCC             | 15  | 24  | 11  | 2   | 16  |
| AAAA<br>BBBB<br>CCCC             | 11  | 6   | 26  | 15  | 9   |
| TOTAL<br>BALLOTS<br>COUNTED 3263 | 601 | 698 | 571 | 797 | 596 |

Even more significantly, as Tables 2 and 3 illustrate, the more candidates there were on the ballots resulted in a widening gap between the number of voters who participated and the number of votes counted for and against candidates. As the chart shows, based on this imaginary constituency, with just 3 candidates, there were 430 more votes counted in favor of candidates than there were voters who voted. With the addition of each new candidate on a ballot the variance grows proportionately. The gap becomes even larger when votes against candidates are considered.

**TABLE 2: ELECTION RESULTS BASED ON BALLOTS COUNTED IN TABLE 1**

| VOTES COUNTED<br>FOR CANDIDATE | DIST.<br>1 | DIST.<br>2 | DIST.<br>3 | DIST.<br>4 | DIST.<br>5 | TOTAL<br>VOTES<br>FOR |
|--------------------------------|------------|------------|------------|------------|------------|-----------------------|
| AAAA                           | 315        | 246        | 186        | 361        | 221        | 1329                  |
| BBBB                           | 201        | 238        | 199        | 289        | 197        | 1124                  |
| CCCC                           | 251        | 276        | 257        | 235        | 221        | 1240                  |
| TOTAL BALLOTS<br>COUNTED FOR   | 767        | 760        | 642        | 885        | 639        | 3693                  |





**TABLE 3: SUMMARY OF VOTES AGAINST BASED ON VOTES CAST IN TABLE 1**

| VOTES COUNTED AGAINST CANDIDATES | DIST. 1 | DIST. 2 | DIST. 3 | DIST. 4 | DIST. 5 | TOTAL VOTES AGAINST |
|----------------------------------|---------|---------|---------|---------|---------|---------------------|
| AAAA                             | 286     | 452     | 385     | 436     | 374     | 1933                |
| BBBB                             | 400     | 460     | 425     | 508     | 398     | 2191                |
| CCCC                             | 350     | 422     | 314     | 538     | 374     | 1998                |
| TOTAL AGAINST                    | 1036    | 1334    | 1124    | 1482    | 1146    | 6122                |

**TABLE 4: COMPARISON OF # OF VALID BALLOTS TO # OF "VOTES" COUNTED**

| TOTAL VALID BALLOTS COUNTED | TOTAL VOTES COUNTED FOR | TOTAL VOTES COUNTED AGAINST |
|-----------------------------|-------------------------|-----------------------------|
| 3263                        | 3693                    | 6122                        |

**Method of Handling the Ballots for Actual Counting:**

Even sorting the ballots for counting presented new challenges. Contrary to what appeared to be the traditional practice, it was no longer feasible to simply sort the ballots into stacks reflecting favorable votes for each candidate and then count the number of ballots in the stack. First, ballots had to be sorted by ballot type (e.g. Supreme Council constituency ballots, State List ballots, oblast ballots and local ballots.) In an order disseminated by the CEC, district commissions were instructed to count the ballots for each candidate "individually". The implication perceived by most district commissions was that the "stack" method should be used for one candidate at a time, and that the process should be repeated until the votes for all candidates had been recorded. This process, in districts which actually followed this directive, resulted in the ballots being handled and resorted several times depending on the number of candidates on the ballot in the constituency.

In actual practice, observers noted that in spite of the directive of the CEC, this procedure was not used at all polling sites. Even well in advance of election day, some district commissions had already recognized the cumbersome difficulties which would ensue. One District Commission with which IFES met before election day indicated that they had decided that all ballots which left more than one name exposed would have to be set aside and counted separately. They decided that those ballots on which only one name was left exposed would be sorted and counted using the basic "stack" method. They acknowledged that for the other ballots on which more than one name was exposed they would devise a tallying method whereby all the



votes for or against candidates on a single ballot would be read from top to bottom while marks were made on a piece of paper to record all the votes cast on that ballot.

### **Attempts at Keeping a Written Record of Each Vote:**

Other polling sites chose to count all ballots using a tallying method, including one site specifically observed by members of the IFES team and representatives of the American Legal Consortium. At that site such a system was selected based on the commission's discussion of the difficulties which became apparent during the count itself as they attempted to accomplish the count for the 14 candidates on the constituency ballot. The IFES observers found this particular site to be generally well managed and efficient. It was the one precinct, for example, which adhered to the requirements of the election Code and did not allow any voter to vote more than his own ballot and refused to allow voting by one person on behalf of another.

In addition, at this site a concerted effort was also made to provide an avenue of agreement and cooperation with candidate representatives who were present throughout the voting and at the count after the polls had closed. For example, to accommodate the interests of the representatives present for the count, members of the commission agreed that the Secretary would read aloud the name of the candidates left exposed and receiving a vote on each ballot. Separate members of the commission were assigned to record each vote read for a single candidate. As any candidate whose name was left exposed on the ballot papers was read aloud the commission member assigned to keep the record for that candidate made a mark on a sheet of paper.

Most commission members used a marking method whereby a dot was made at each corner of an imaginary box. When four dots had been marked, additional strokes were made connecting the dots to make each side of the box. Subsequently the last two marks were made to connect the opposite corners creating an "X" inside the box. Each of these completed boxes represented 10 votes. However, at least one member was observed using straight strokes in a continuous line with no break or cross-stroke to represent a new set as a group of 5 or 10 votes were recorded. Her method made totalling the votes difficult as each stroke had to be counted in an unbroken sequence.

Within the first half hour, it became clear that the process of reading each candidate's name out loud one ballot at a time was going to take a very long time. Dissension among commission members resulted, and one member actually left the counting session and refused to return. After some discussion and with the reluctant acquiescence by the candidates' representatives, the ballots were split into smaller stacks and handed to individual commission members who looked at each ballot in their stack and made tally marks on a sheet of paper for any candidate receiving a vote on a ballot. Alternately, some members chose to count the full stack of ballot assigned to them before they counted actual votes, while other members counted votes first and then counted the total number of ballot papers in their stack.



The main objection perhaps rightfully raised by the candidates' representatives was that this system did not give them the opportunity to actually watch the commission members as they did their individual counting.

While there was nothing to suggest that individual counters at this precinct were counting improperly or in a way to manipulate the final results, the circumstances relating to the various methods which were being utilized point to a few issues which deserve consideration as Kazakhstan continues to mold its election system.

1. While there had been a general instruction given by the CEC as to the method which should be used to count the ballots, there was not a sufficiently clear instruction formalized to definitively outline the procedures which were to be followed consistently throughout the Republic. Nor, apparently, were such guidelines developed by Area Commissions for all the polling sites under their direct supervision. As a result, District Commissions were "shooting from the hip" and devising their own methods, frequently during the count itself. Uniformity in the way critical procedures are to be carried out can go a long way to limit the potential for improprieties, and, equally important, can alleviate general distrust of the system and the potential for allegations of abuse.
2. In its initial stage of development, the system of counting utilized in the 7 March elections did not provide a tangible audit trail or mechanism for substantiating the election results from each precinct. Except for actually recounting the ballots themselves, there existed no documentation which reasonably accounted for the vote totals recorded on the protocols. The CEC had provided well designed formats for protocols on which to record the vote totals and ballot usage. However, the system as it was implemented for the first time did not really include some of the commonly accepted checks and balances to offer validation of the reported results short of a full recount.
3. One of the general objections raised by a number of candidates' representatives on the night of the election and on the following day was that they were in one way or another precluded from actually observing the count in a meaningful way. In the precinct for which the tallying method was described above, observers and candidates' representatives could not actually see the tallying being done by individual counters, as they worked alone. They had no one, not even among their associates, to verify their work as each member was occupied with their own ballots to be counted. At another polling site observed by IFES team members, a ribbon was tied across the doorway and observers were only able to look into the room where counting was being done, but were not allowed to actually enter the room.

In other settings, the allegations were even more serious. In the most significant cases brought to the attention of the IFES team and the CEC itself, there were reports that district commissions had actually disbanded and removed the ballots from the polling site



before counting was completed and results were made known to the observers who were present.

It is always difficult to find adequate solutions to ensure that observers and candidates' representatives have adequate opportunity to observe the counting process with reasonable assurance that the results are accurately reported. Given the sometimes cramped space and the level of concentration that is required during this critical part of the process, it is important that observers and authorized representatives do not interfere with the process or create an intrusive disturbance or distraction which disrupts accurate counting. However, the level of transparency afforded the election in all other aspects of the process must be carried through the counting as well. Without adequate transparency it is impossible to engender the level of trust in the system that free and fair elections require.

### **Advantages of a Tallying Method:**

In spite of the inadvertent imperfections observed in the manner in which the precinct which decided upon the tallying method of vote tabulation carried out the task, the IFES team believes they were on the right track. Their method provided a level of efficiency which resulted in their completing the entire ballot count for all races by 11:30 p.m. even though they were in a constituency that had 14 candidates on one ballot. Results were reported to observers and authorized representatives prior to closing down the polling site after the completion of the count. In addition, while not relinquishing their autonomy, this district's commission was sensitive to the interests of candidates' representatives, and tried to accommodate them to the extent possible as decisions were made. Finally, if they also retained the sheets on which each commission member marked the votes that he or she counted, they created a written document which would substantiate the actual votes reported on the protocol.

The tallying method makes particular sense if the existing method of a voter casting his vote by marking out the names of candidates he rejects is ultimately retained by lawmakers reviewing the Election Code, and if voters continue to be allowed to express a vote for more than the number of candidates authorized to be elected in their mandate. However, even if the Election Code eventually is amended to call for an affirmative method of voting whereby a voter expresses his will by voting "for" an individual rather than "against" others, the tallying method offers an improved level of documentation supporting election results.

This method can be implemented in a variety of configurations which also allow for appropriate checks and balances and improved monitoring by authorized observers which were not afforded in the system implemented in the 7 March elections. An appropriate methodology calls for the creation of a written documentation of each vote cast, recorded on prepared forms designed for that purpose. The forms can be pre-printed with candidates' names in the same order in which they appear on the ballot, or they can be drawn up by the district commission itself.



An example of one such method calls for the district commission to be divided into smaller counting teams made up of four members with each team being given a portion of the ballots to be counted. Two members of each team sit on each side of the table. The assignment of duties among the counting team members for the counting of ballots include:

1. a pair of "readers" on one side of the table - one who reads the ballot out loud, while the partner confirms that the reader has announced the vote accurately; and
2. two members on the other side of the table who record the marks as each vote is called. One clerk makes marks on original forms, while the partner makes the same marks in a duplicate set of forms.

To improve the speed and efficiency of the process, certain preparatory steps are helpful. Other members of the commission may be assigned to count out the stack of specific ballots in groups of 25. By counting ballots in groups of 25, it would be easier for counters to verify the accuracy of their work along the way and to isolate errors to smaller increments.

In the actual counting, each time a vote is called for a candidate, a mark is made on the original form next to the candidate's name, and simultaneously by the second member, who makes a similar mark on the duplicate form. If the dot and line type marks are made completing a box in a way that represents 10 votes, each time a box is completed, the two markers should acknowledge their completion of a box to ensure that they have both made the same number of marks.

An additional helpful tool in streamlining the process is using two different colored pens with a switch in color of pen made between each group of 25 ballots. At the end of each group, a comparison of the original and duplicate forms being marked can point out any discrepancy in the total vote recorded. If at any time the two forms show different totals for any candidate the error will be found in the last group of 25 ballots counted and can be corrected immediately.

When counting is completed the totals can be entered onto the protocol. The marking forms provide a kind of audit trail which validates or substantiates the totals being reported. The original form could be sent in to the Area Commission with other materials and protocols, and the duplicate could be retained by the District Commission for a set period of time until final results are certified and any challenges or questions are resolved.

### **Reporting the Vote Totals:**

Each District Commission was required to summarize the results of the vote count on separate protocols provided for each ballot type. The protocols had to be signed by the Chairman and members of the commission. If the Chairman was absent, the rules required that the protocol be signed by the Deputy Chairman and the Secretary. The protocols were to be immediately



submitted to the Area Commission where they would be recorded and summarized with area-wide results prior to their being forwarded to the Central Electoral Commission.

Another important element is the publication of the election returns. Under Article 65 of the Election Code, summarized reports must be submitted to the Central Electoral Commission within 5 days of the election. Area Commissions are also required to published results in their jurisdictions within 7 days after the election.

## **ELECTION WORKER TRAINING**

The development and implementation of a comprehensive training program for nearly 90,000 election workers throughout a country ranking 7th in the world in terms of geographic territory would be a challenging task for even the most experienced election administrators. In Kazakhstan, the responsibility was made even more formidable by the circumstances surrounding the election itself. The Election Code under which the elections were to be conducted was only adopted on December 9, 1993, just 90 days before the date of the scheduled election. Major sections of the new code reflected a total departure from former practice and political philosophy. For many crucial elements of the new system there was no experience or institutional memory on which to draw as the CEC attempted to define and clarify practical solutions to the challenges posed by the new code. In addition, most of the CEC members, while they had extensive managerial or administrative competence, legal background or other specialized skills, had no specific prior election experience at all.

Condensed scheduling also meant that training had to be conducted during the same time that administrative demands competed for the attention of all officials throughout the country. Procedural issues were having to be resolved and formalized elements of the process were already underway. Regional and local officials were simultaneously trying to deal with the establishment of precinct boundaries and polling sites, the registration of candidates, preparation of voter lists, and acquisition of paper and supplies. In addition, Kazakhstan faced difficult economic conditions in which material and budgetary resources were limited and unusually severe weather conditions threatened normal transportation and communication options.

In spite of these difficulties, a considerable amount of time and effort was dedicated to providing explanations, instruction and training. Given the very difficult conditions in which these efforts were accomplished, the successes of CEC's programs are to be commended.

Fundamental to all training and instruction was disclosure of the full text of the Election Code itself. All supervising electoral officials were issued copies of the Election Code which they were expected to absorb in detail. The Election Code was also published in the press in an attempt to educate the public, public organizations and potential candidates about its new structure and the new requirements it imposed. The Election Code was also published in booklets in which official samples of the ballots, forms and protocols were compiled as were election related orders and decrees issued by the President and the CEC. Where there were



sufficient quantities, these booklets were made available to the press, observers and candidates, although actual distribution was not universal. Ultimately four such books were published with each subsequent book including new documents and explanations which were devised as new questions arose. Each book included versions of the materials in both Kazakh and Russian.

The CEC also arranged a number of major seminars and workshops for Area and Territorial Electoral Commissions, which were often attended by officials from governmental departments, and state media representatives. Sometimes the minutes to those training sessions were duplicated and provided to those in attendance for future reference. To the extent possible Area and Territorial Officials were given samples of materials in advance. For example, copies of all the protocols and forms were issued to officials to be referred to during the special training conference conducted on January 6 in Almaty. In a particularly innovative plan, a number of conferences were conducted by radio through the use of the railroad communications network that virtually reached the entire country. Area commissions throughout the Republic could participate interactively in question and answer sessions over the radio network.

In general, procedural training of election officials was conducted on a pyramidal basis. Territorial Commissions were responsible to direct the activities of Area Commissions who in turn were responsible to oversee the training of District Commissions at the polling site level. A number of District Commissions with whom IFES team members met indicated that they had attended meetings arranged by their Area Commissions at which specific procedures were discussed. However, in other districts it appeared that only the senior members of the commissions attended training sessions. The rest of the members of district commissions had to rely on on-site extemporaneous instructions given by the Chairman or Secretary on election day.

The attempt to provide much of the explanation and interpretation of the legal requirements in writing provided an important element to the overall preparedness of election officials throughout the country. One of the difficulties with this method was that information was necessarily introduced in pieces as new questions arose or as problems which had not been anticipated made themselves evident. Not only did it create a disjointed picture of the process as a whole, it made it difficult to ensure that all players were on the same page and line as they implemented the procedures.

In general it appeared that except for the full text of the Election Code, orders, decrees and explanations provided in writing, most of instruction about specific procedures for implementation were given orally. Territorial and Area Commissions had to pass critical information on to lower commission workers relying on their recall of the oral instructions and explanations given by higher authorities, embellished with their own interpretation of the Election Code as they understood it.



### **Overcoming Deficiencies:**

Many of these difficulties experienced in the 7 March 1994 elections reflect failures in the uniform application of law and adherence to set procedures rather than overwhelming deficiencies in the inherent design and intention of the legal and procedural systems themselves. Except for the refinement of details in specific procedures, the fundamental elements in exercises related to election day activity would generally be adequate to sustain an accountable and reliable election system if there were strict adherence to formalized guidelines. The most important element in ensuring that these problems are overcome in future elections will be improvements in the training of electoral officials.

### **Philosophy of Training:**

One aspect of the training should include a concentrated effort to strengthen the poll worker's understanding of the critical nature of their role in safeguarding the foundation of the democratic system. They are not only practitioners but their attitude and commitment must represent the standards of discipline and accuracy required for an accountable and reliable process. Not only must they maintain the highest levels of integrity and neutrality which underpin a free and fair electoral system, their actions and their attitude must foster a universal perception that the highest standards are being maintained. Inconsistencies in the manner in which procedures are applied or in the way voters, candidates or their representatives are treated, or setting aside some laws while strictly enforcing others, can erode the trust and confidence on which a democracy depends. Toward these ends, election officials must be educated:

1. to fully understand the importance of uniform and consistent application of the law as integral to ensuring an accurate and accountable election;
2. to realize that equal and unbiased treatment of all voters, parties and candidates is a necessary ingredient in a free and fair election;
3. to recognize and avoid situations which create opportunities for abuse and election fraud; and,
4. to understand that a perception of impropriety can be just as damaging to the public's confidence in the system and acceptance of election results as real instances of abuse.

### **The Need for a Pollworker Manual:**

There is no question that many of the procedural problems encountered could have been avoided had standardized pollworker training manuals been available for all district commissions. Written, step-by-step guidelines which clearly explained and illustrated individual elements of the election day procedures would have strengthened the system considerably.





Had time and resources permitted, the production and distribution of procedural manuals would have translated the general and sometimes confusing and conflicting provisions of law and general policies described in orders and decrees into practical, task oriented procedures. A manual would have given district officials a tangible and concrete guidebook to refer to as questions and problems were encountered on election day itself. The result would have been that even if district officials did not fully understand the provisions of law and their implications, by following step-by-step procedural guidelines, their compliance would have been ensured. Another major advantages, of course, would have been that all officials would have had the same information presented in the same way promoting consistency and uniformity in application throughout the Republic.

Ideally, a pollworker handbook would contain simply written sections covering a number of specific rules and procedures including:

the organization and set up of the polling station;

tasks to be completed before voting begins including the initiation of required protocols and ballot accountability procedures;

the process of voter identification and maintenance of the voter registers including the supplemental registers;

issuance of ballots and instructions to voters;

rules regarding secrecy of the voting and voter assistance;

procedures to be followed at the end of the voting day;

proper handling and disposition of unused or spoiled ballots and detailed procedures for counting voted ballots;

procedures for recording election results; and,

directions regarding the proper packaging and transport of ballots, protocols and materials.

In addition to procedural instructions, the handbook should also provide guidance for handling unusual situations, and include a section which answers most frequently asked questions. It would also be helpful if there were suggestions given on how to deal with circumstances which suggest that violations are occurring. Finally, a good handbook will provide officials with an outline of the legal rights of candidates, their representatives and other observers.



While time and resources prohibited adequate opportunity to prepare a comprehensive workbook for the 7 March elections, CEC officials advised members of the IFES team that such handbooks were utilized in the past. With the benefit of the valuable experience gained in this election and sufficient time to prepare for the next elections, there should be little difficulty in developing the materials necessary to improve the overall efficiency of the process for the future.

## **AUTHORIZED ELECTION OBSERVERS**

It is generally recognized that the presence of observers serves an invaluable purpose by creating a level of transparency that helps to safeguard the integrity of the election process. Through their observations, monitors can attest to the efficiency of the process and confirm the general integrity with which it is conducted. Observers can also identify irregular practices that appear to be deliberate and pervasive or which appear to be part of an organized scheme. The presence of observers can actually serve as a deterrent to such practices. Candidates' representatives play an additional role in that they provide a check and balance to ensure that the competing candidates are all receiving equal treatment and that no bias is exhibited on the part of election officials.

A positive aspect of the new Election Code is that it provides official status for authorized observers to be present throughout virtually all aspects of the election process. In addition, by Presidential Decree, President Nazerbaev added foreign observers to the list. Based on his directive letters were sent to 32 nations and 6 organizations inviting them to provide observers for the 7 March elections. A decree was also issued by the Central Electoral Commission which clearly outlined extremely liberal rights for foreign observers.

Both the Constitution of the Republic of Kazakhstan and the Election Code make references to the presence of observers, although the Code provides little guidance as to the procedures to be implemented in regulating their participation. There are virtually no guidelines established in law with regard the rights to which observers will be entitled. Nor are there any provisions which cite restrictions which may be imposed on such observers. It appears that the legal framework for allowance of observers relies on the following statutory references:

1. Article 117 of the Constitution provides that "preparations for elections are carried out openly and publicly."
2. Article 44 of the Election Code provides that the ballot boxes at the polling site should be set up in such a way that "monitors and commissions" should be able to watch them.
3. Article 46 provides that the district electoral commission should start opening the polling site before the beginning of voting, and that "one representative of each candidate on the ballot, print press and media representatives can be present" at the polling site during these preparations.



Other than these specific references, the Election Code is mute on the conditions, restrictions and privileges of observers. In order to fill the gaps the CEC prepared some guidelines which were to be applied. Candidate representatives had to be identified in advance and had to be registered by Area Commissions. Additionally, an order was published in the mass media establishing a February 21 deadline by which applications for a candidate's representatives were to be submitted. However, at a Republic-wide conference conducted through the railroad radio network on that date, the Chairman of the CEC reported that a number of candidates had not been able to submit their applications due to severe weather conditions and other circumstances. It was also apparent that many candidates would not be able to organize enough representatives to observe at each polling site within the constituency. In an attempt to ensure equal opportunities local commissions were instructed to extend the time period to afford candidates additional time to register their observers.

During the 7 March elections, observers and candidates' representatives were generally allowed full access to observe the activity and processing of voters at polling places without restriction. Some foreign observers reported that they were denied access to polling sites established in military installations. Officials responded that had they expressed their interest in visiting these sites in advance, special arrangements would have been made to allow them access to these sites which are usually restricted to visitors at all times. In isolated instances there were complaints that observers were unduly restricted in their movements or opportunity to raise questions or objections when violations were suspected.

Complaints were more frequent during the counting of ballots after the polls closed. As discussed in the section of this report on vote tabulation, often, the manner in which individual district commissions chose to count ballots made any meaningful observation impossible. In a few instances the actual count was reportedly moved to a different space altogether leaving observers out of the process.

The counting process is always of critical importance to representatives of the candidates who are very interested in the results. Because the summarization of results, even at the constituency level, takes several days to complete, it is important that candidates have access to the results from each of the polling sites immediately. Ideally, each representative should have the opportunity to record the final results from the official protocol as soon as it is prepared and signed by the electoral commission. It is not uncommon that in many countries representatives are actually provided a form for this purpose. Such a form would reduce concerns of vote total alteration during the transit of protocols to Area Commissions or during the summarization process.



In order to perform their role effectively, candidates' representatives and observers should have some understanding of the procedures. In Kazakhstan most aspects of the process were being implemented for the first time. It was clear that candidates' representatives were not sufficiently prepared in the technicalities of the new system, or in their rights and obligations. It would have been most helpful if candidates' representatives had been given some guidelines. An instructional pamphlet should be available as soon as they are appointed to help them understand their responsibilities as well as the restrictions which will govern their activity. In established democracies, instructions commonly include the following kinds of information which might also be appropriate for the CEC's consideration.

1. It is most helpful if representatives are given brief instructions as to how voters will be processed throughout the day. For example, they should know the basic rules which are to be followed such as requirements that the voter show proper identification and sign the voter register, and that the ballot must be signed by a member of the commission who must also sign next to the voter's name in the register. It is also helpful if the representative understands the procedures which will be followed for ballots voted in advance, and voting by incapacitated or ill persons who vote at home. The more informed the representative is about the rules, the less likely that he or she will raise questions throughout the day.
2. Representatives should be made familiar with rules of conduct which are expected at the polling place. For example, they are usually reminded that they should not disrupt or interfere with the voting, counting or other phases of the electoral process and further reminded that they are restricted from any activity which constitutes campaigning or attempts to influence the voters.
3. Representatives should be made familiar with the authority and manner in which the district commission will make decisions should questions or controversies arise in the course of the day.
4. It is common that representatives are advised to recognize that innocent mistakes might be made because of inexperience, or as the long day wears on and officials become weary or distracted. When these kinds of mistakes are noted, the representative is usually advised to politely bring the mistake to the attention of the Chairperson who is usually prepared to correct the problem immediately.
5. Representatives should also be advised on how and to whom more serious violations should be reported when satisfactory resolution does not appear to be possible at the district level. In order that serious problems might be resolved in



an orderly and reasonable way, representatives as well as officials play equally important roles. In order to ensure that observers are fully equipped to represent their candidates in a professional way, it is important that they be prepared to present their information in a way which allows officials to analyze their complaint and come to a reasonable resolution. Commonly, instructions prepared for observers advise them to be prepared to submit their complaints regarding serious violations in writing. Both representatives and officials are usually advised to make written notes about their concerns which describe the alleged violations and which include information as to the time, place, participants, and circumstances surrounding the incident. It is also helpful if observers and officials make note of witnesses who may be present. This kind of information will ultimately be helpful in coming to a resolution of the difficulty.

### **Domestic Observers:**

For the 7 March 1994 elections emphasis was placed on the presence of foreign observers to enhance the transparency surrounding the election process, and to increase the public's and the international community's confidence in the system and in Kazakhstan's commitment toward democratization. But, ultimately what will be more important is that confidence and public trust be nurtured in the people of Kazakhstan from within. Hopefully, as Kazakhstan looks forward and as the CEC and lawmakers contemplate improvements in the Election Code, there will be opportunities to consider how domestic observer groups can replace the need for foreign observer delegations. In most established democracies the laws provide for observations by non-partisan civic groups who monitor the process from a neutral point of view. In the United States, for example, one such group is the League of Women Voters who represent only non-partisan interests and whose sole purpose is to observe the campaign and election process, provide neutral voter education and encourage positive change in the interest of improving the system. Most democratized countries have similar organizations which are officially recognized. In Kazakhstan similar citizens groups may emerge. They may come from student groups, human rights groups, or non-political public organizations. Hopefully, in the future such groups may be given the similar recognition to fulfill the same purpose provided to foreign observer delegations for the March 1994 elections.



## **RECOMMENDATIONS:**

Members of the Commission, parties and candidates with whom IFES met and local officials were already anticipating that the Election Code would be undergoing amendment once this first election under the new Code was accomplished. IFES would make a few recommendations.

### **Appointments to Territorial, Area and District Commissions:**

1. Consideration should be given to requiring representation of a cross-section of political parties, movements and public organizations on electoral commissions at all levels. Eligibility for participation could be based on the groups who successfully nominated candidates who were elected at the last election. Involvement of a cross-section of political groups could help alleviate the concerns of partisanship on the part of electoral commissions by creating a basis for self-monitoring within the commissions themselves.

### **State List Ballot:**

1. The existence of a State List Ballot deserves re-evaluation by lawmakers as they contemplate the future direction of the Republic. The State List is not necessary in a truly democratic system and should be repealed.
2. Lawmakers are encouraged to consider redefining a separate law regarding the organization, registration and rights of political parties separate from those applied to non-political clubs, organizations and associations. The law should reflect their unique role in political and legislative affairs, and should provide special procedures by which they forward candidates for election more similar to those currently prescribed for Presidential nominees for the State List.
3. Articles of the Election Code related to the nomination and registration process should be reviewed to determine where provisions are unclear or ill defined so that appropriate amendments might be enacted to fill the gaps that resulted in confusion and controversy during the 7 March elections. Specifically, amendments which might be considered include:
  - a. a provision which clearly defines the specific grounds on which a petition may or may not be denied;
  - b. a definitive delegation of authority to the CEC to define the methodology by which petitions will be evaluated;



- c. a requirement that the same criteria and methodology will be applied uniformly in all constituencies;
  - d. a clarification of the specific deadline by which all nomination documents and fees must be submitted simultaneously;
  - e. a provision which stipulates that a petition in which some signatures are found to be invalid will not cause the entire petition to be rejected as long as 3,000 valid signatures remain.
  - f. a restructuring or lowering of the filing fees charged to candidates and reconsideration of the current restrictions which preclude candidates from accepting financial contributions from their parties, organizations or from other sources.
4. Consideration should also be given to allowing candidates a brief supplemental period to correct deficiencies ultimately found in a petition which was submitted on time, and which initially appeared sufficient on its face.
  5. A formalized handbook with specific detailed training for Area Commissions, guiding them through the process of review and evaluation of candidate petitions should be created and distributed.
  6. It would also be very beneficial if a special instruction booklet explaining the requirements for filing for office were given to candidates at the same time they are given copies of the forms and signature sheets to be used during the nomination and petition process. The instructions should advise them as to the requirements of related laws, and how they are being uniformly interpreted. An instruction should be included stipulating that each voter has to sign his or her name personally. The book should also provide a description of the forms, documents and fees which are required as well as the deadlines by which all nominating materials must be submitted. The handbook should clearly state the procedures which will be followed by officials during the evaluation process and the grounds on which candidacy petitions will be denied.

#### **Parties and Nomination and Registration of Candidates:**

1. Lawmakers are encouraged to consider redefining a separate law regarding the organization, registration and rights of political parties separate from those applied to non-political clubs, organizations and associations. The law should reflect their unique role in political and legislative affairs, and should provide special procedures



by which they forward candidates for election more similar to those currently prescribed for Presidential nominees for the State List.

2. Articles of the Election Code related to the nomination and registration process should be reviewed to determine where provisions are unclear or ill defined so that appropriate amendments can be enacted to fill the gaps that resulted in confusion and controversy during the 7 March elections. Specifically, amendments which might be considered include:
  - a. the addition of a provision which clearly defines the specific grounds on which a petition may or may not be denied;
  - b. a definitive delegation of authority to the CEC to define the methodology by which petitions will be evaluated;
  - c. a requirement that the same criteria and methodology will be applied uniformly in all constituencies;
  - d. a clarification of the specific deadline by which all nomination documents and fees must be submitted simultaneously;
  - e. a provision which stipulates that a petition in which some signatures are found to be invalid will not cause the entire petition to be rejected as long as 3,000 valid signatures remain.
  - f. a restructuring or lowering of the filing fees charged to candidates and reconsideration of the current restrictions which preclude candidates from accepting financial contributions from their parties, organizations or from other sources.
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### **Adjudication of Grievances:**

1. It is important that the CEC have the authority to provide administrative remedies which are binding on lower commissions. Local executive authorities should have no authority to countermand rulings of the CEC on election issues. Final decisions rendered by the CEC should only be appealable to a court.
2. Lawmakers may want to consider provisions which direct election cases automatically to a higher court for immediate review to eliminate delays which potentially deprive a candidate of the opportunity to campaign even if they ultimately prevail in their cases.
3. Election officials, as agents of the state, should be held accountable before the courts for their actions. Toward that end, petitioners should be allowed to bring in evidence which supports an argument that they were aggrieved by virtue of bias or unequal treatment by electoral officials, even if it means requiring officials to provide documents and forms related to other candidates.
4. Court rulings should be binding on election officials.

### **Pre-Election Campaigns and the Media:**

1. During the time before the next elections the CEC should continue to advance public education programs to nurture the public's understanding and confidence in the democratic process. Special attention should be focussed on younger voters to encourage their interest and participation in the election process.
2. Officials should explore creative opportunities by which important information could be presented in a way that attracts popular attention and in way that can be more easily absorbed and understood by the average citizen.
3. The limitations on campaign opportunities for candidates should be lifted to provide greater individual discretion in use of campaign funds and the type of campaign activity that the candidate can choose to engage in.



4. The time period in which candidates can actively campaign should be extended. At the very least, potential candidates should be allowed to prepare materials and engage in campaign activities to promote themselves and their programs during the nomination period.
5. Candidates should be allowed to accept contributions in support of their campaign activities, even if some restrictions and requirements are applied. In particular, political parties should be able to provide financial and material support, and campaign on behalf of the candidates they nominate.
6. The Election Code should be amended to reduce the involvement and potentially subjective interference by electoral officials in open and free competition between candidates. More reliance should be put on the electorate to make their own decisions about the integrity, character and competence of the candidates and the merits of the programs they represent.

### **Ballot Design and Security:**

In view of the economic conditions facing Kazakhstan during the time these elections were carried out and the nationwide shortages of paper and commodities, it is unlikely that some of the common security measures used in printing ballots around the world could have been applied for the 7 March elections. However, as Kazakhstan looks forward, there are a few improvements that should be considered as conditions progress. These printing enhancements could add significantly to the overall security and accountability of the ballots.

1. The paper used in ballot printing allows the potential for fraudulent duplication. One option which would reduce the risk of fraud is to use a quality of paper which includes an exclusive watermark. As an alternative, a faint special ink screen could be applied as background for the text at the same time printing is accomplished. Some techniques would allow the security screen pattern and the ballot text to be applied with one pass through the printing presses so that the cost would not be significantly increased.
2. Consideration should be given to ensure that ballots are bound or padded in uniform quantities to provide greater ease in packaging for distribution purposes. Standard packaging and padding of ballots would also provide officials with better control over the ballots under their supervision.
3. It would also be most helpful if ballots were sequentially numbered with a special range of numbers being assigned constituency wide. Sequential numbering of each ballot in a pad would allow Area Commissions to maintain a centralized accountability record which documents not only the quantity of ballots provided to



each voting site, but also the numeric range assigned to each site. As an additional measure, the list of ranges assigned to each site can remain secret until the ballots are actually distributed. The protocols used in accounting for the ballots used throughout the voting day could provide space to identify the sequence numbers of the ballots that are used, individual numbers of ballots which were damaged or otherwise unusable, and the sequence numbers of the ballots left unused.

4. The ballots should include a stub or counterfoil from which they can be separated at a perforation. Each time a ballot is issued, it can then be separated from the stub which remains attached to the pad. The numbered stubs of issued ballots could remain a part of the formal documentation of activity at each of the polling stations in support of overall results and accountability for the ballots originally issued to the polling site.

#### **Preparations in Advance of Election Day:**

1. Local officials should be encouraged to review the locations of the polling sites used in the 7 March elections to see how extensive access problems were. Every attempt should be made to accommodate voters in rooms at the ground level to provide the easiest access possible to the broadest number of voters.
2. The Election Code should be clarified and procedures formalized to ensure that ballot boxes are maintained in clear view by all electoral commissioners, candidates' representatives and authorized observers throughout the voting day. In addition, all portable ballot boxes should be maintained in plain view of those present at the polling place as well during all times they are not actually being used for assisting voters voting at home.
3. Whenever possible, officials should try to ensure that there are enough polling booths to accommodate the estimated number of voters expected and allow each voter a sufficient amount of time to mark their ballots.
4. Counting the advance ballot envelopes against the number of signatures of advance voters on the voter list should become part of the procedures completed before ballots are issued to regular voters on election day. Then, in front of the officials and representatives present, the envelopes could be opened and the folded ballots dropped into the ballot box before regular voting begins. The ballots themselves would then be commingled with other voted ballots preserving the secrecy of the vote of those voting in advance, while reasonable accountability is still maintained. The empty envelopes could be retained as part of the documentation record.



## **Procedures on Election Day:**

1. Upon opening the polls and prior to the beginning of voting, procedures should require electoral officials to initiate the ballot accountability protocol to identify the number of voters on the voter list, and the quantity of ballots which were received. These entries should serve as the base figures against which all subsequent ballot usage should be balanced. Information should be recorded in ink.
2. Any changes or corrections to precinct protocols which might have to be made at the Area Commission level should not obliterate the original findings of the commission responsible for the preparation of the original protocol. Original figures should remain intact so that specific corrections are identifiable and directly attributable to the individuals making the adjustments. These measures would help officials maintain a complete track record of accountability and provide the full chronicle of official activity to justify the final data which is ultimately reported.
3. Instructions regarding the sealing of the ballot box and the portable ballot boxes should specify that the ballot boxes be displayed so that those persons present can attest that the ballot boxes were empty prior to their being sealed.
4. Consideration should be given to amending the Election Code to specify the grounds on which a person is eligible to vote at home in order to control the number of votes which are cast outside the polling site and out of view of the observers and candidate representatives.
5. The deadline by which voters can request to vote at home should be set so that the total number of names on the special list is set before the polls open on election day.
6. Instructions regarding the procedures should require officials to announce the number of voters who are on the special list to candidates' representatives and observers before officials leave the polling site. Witnesses should have the opportunity to watch as the number of ballots to be taken from the polling place is counted out.
7. If for any reason not all of the voters expected to vote at home cast ballots, the unused ballots should be accounted for when officials return to the polling site.
8. In setting up the polling site and the work stations of the officials, there should be a set plan by which ballots are secured or set aside in a manner which ensures that excess ballots are not laying about until they are needed. Ballots should only be handled by authorized officials who should be responsible to issue them directly to each voter. Orderly and accountable maintenance of the ballots throughout the day should be a specific issue of discussion in training sessions for all election officials.



9. It will be very important that future training exercises for all officials emphasize the critical importance of their role in ensuring full compliance with all provisions of the law they are responsible to uphold.
10. No voter should be allowed to receive ballots for other individuals and vote on their behalf. This provision should receive special emphasis in voter education programs implemented in the future. The "Invitation to Vote" is a valuable tool to remind voters about the elections and should be retained as a required function in the election process. This notice would be a perfect vehicle for notifying voters of this stipulation in the Election Code and reminding them that the only ballot which they may vote is their own.
11. The practice of door-to-door solicitation of voters by election officials on election day should be curtailed. No unused ballots should be allowed to leave the polling place except those specifically set aside for voters identified in advance who, because of age, illness or disability, must vote at home.
12. The large number of voters who came to the polls with several passports and who requested to vote for other individuals suggests that much of the general population and many election officials themselves do not yet have an appreciation of the value of their right to vote, or the significance of their individual voice in a democratic process. During the period before the next elections it will be critically important for voter education programs to be implemented that nurture in the public a better understanding of the individual's role in furthering the success of democracy in Kazakhstan.

#### **Vote Tabulation:**

1. The system whereby voters express their will by voting against candidates should be reconsidered. IFES would recommend that a new method of marking the ballot be chosen whereby the voter expresses his choice by voting FOR a candidate rather than voting against candidates he rejects. Whether the affirmative action requires checking a box next to the candidate's name or circling it, an affirmative voting system would reduce voter confusion, help to eliminate the circumstances of over-voting and simplify tabulation.
2. An amended Election Code should more clearly define the "one vote" principle by entitling a voter to vote for only a number of candidates which is equal to the number of representatives which can be elected based on the specific ballot of his constituency.



3. Grounds for invalidating a ballot should be expanded to include exclusion of ballots in which the voter's intent is not clear, or on which the voter has exercised more than "one vote" by voting for more candidates than the number which can be elected on the specific ballot of the constituency.
4. The procedures for actually counting the ballots should be formally established in detail so that they are uniformly applied throughout the Republic with all polling sites conforming to the same process.
5. Consideration should be given to formalizing a tallying method for counting ballots to be used consistently and uniformly throughout the Republic. A method by which marks are made on a separate sheet of paper designed for that purpose as each vote is read and recorded provides a level of greater efficiency while at the same time providing an improved and tangible audit trail to substantiate the results which are ultimately reported.

#### **Pollworker Training:**

1. The training program designed for poll workers should include a component designed to strengthen their understanding of the critical nature of their role in safeguarding the foundation of the democratic system. Toward these ends, election officials must be educated:
  - a. to fully understand the importance of uniform and consistent application of the law as integral to ensuring an accurate and accountable election;
  - b. to realize that equal and unbiased treatment of all voters, parties and candidates is a necessary ingredient in a free and fair election;
  - c. to recognize and avoid situations which create opportunities for abuse and election fraud; and,
  - d. to understand that a perception of impropriety can be just as damaging to the public's confidence in the system and acceptance of election results as real instances of abuse.
2. Standardized pollworker training manuals should be made available for all district commissions. Written, step-by-step guidelines which clearly explain and illustrate individual elements of the election day procedures would strengthen the system considerably.



### **Authorized Election Observers:**

In an effort to streamline the process by which observers are authorized and improve their overall effectiveness there are a number of suggestions which might be considered.

1. In a future amendment to the Election Code, the Support Groups and Candidates' Representatives accreditation process outlined in Articles 37 through 39 could be simplified by allowing the original support group to continue their work not only through the nomination and campaign periods but all the way through election day at which point they could serve as the candidate's representatives.
2. It would be helpful if provisions allowed candidates and media representatives to have the flexibility to move from one polling site to another throughout the day rather than restricting each representative to only observe at one location. This would provide candidates with the broadest opportunity to make sure that a number of polling sites could be covered even if they had difficulty organizing and registering a sufficient number of representatives for the whole constituency.
3. Candidates should be able to register their lists of representatives for area-wide observations rather than identifying a specific name with a specific district. All district commissions throughout a constituency, for example, could be given a full list of all the candidates' representatives rather than just a single name designated to that polling site. Even if they were restricted to have only one representative present at any given time, it would be helpful if another representative were allowed to replace a representative who might need to leave for a rest period or meal break, or were to become ill or unable to serve for the full day.



**ANNEX 1: REGISTERED POLITICAL PARTIES, REGISTERED POLITICAL MOVEMENTS, AND OTHER PUBLIC ORGANIZATIONS INVOLVED IN THE 7 MARCH 1994 ELECTIONS**

**Registered Political Parties:**

People's Congress of Kazakhstan Party  
People's Unity of Kazakhstan Party ("SNEK")  
Socialist Party of Kazakhstan

**Registered Political Movements:**

Azat Civic Political Movement  
Public Slavonic Political Movement ("LAD")

**Public Organizations:**

Federation of Trade Unions  
Republican Party of Kazakhstan  
Peasant Union of Kazakhstan  
Youth Union of Kazakhstan  
Lawyer's Association of Kazakhstan  
Union of Industrialists and Employers  
Union of Writers  
Trade Unions of Prosecutor's  
Office Workers  
Union of Defense Lawyers  
Aral-Asia-Kazakhstan Committee  
Democratic Committee on Human Rights  
"Dynamo" Sport Society  
Council of Women's Organizations  
Center of National Revival "Zhangirn"  
Organization of Kazakhstan Veterans  
Union of Architects  
Trade Union of the Public Health Workers  
Society of Uiger Culture  
Union of Cinematographers  
Union of Artists  
Union of Composers





# Kazakhstan



**ANNEX 2: INTERNATIONAL ORGANIZATIONS HAVING SENT OBSERVERS TO THE  
7 MARCH 1994 ELECTIONS**

**International Organizations:**

The American Legal Consortium (ALC)

The Conference on Security and Cooperation in Europe (CSCE)

The International Foundation for Electoral Systems (IFES)

The International Republican Institute (IRI)

The National Democratic Institute for International Affairs (NDI)

