Date Printed: 11/03/2008

JTS Box Number:	IFES_13
Tab Number:	15
Document Title:	Election to the Oliy Majlis, Republic of Uzbekistan: A Technical Review of Law and
Document Date:	1997
Document Country:	Uzbekistan
IFES ID:	R01934

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ELECTION TO THE OLIY MAJLIS

REPUBLIC OF UZBEKISTAN

A Technical Review of Law and Process

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January 1997

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1

Introduction

The purpose of this analysis is to provide a brief overview of the Law on the Election to the Oliy Majlis of the Republic of Uzbekistan and to provide commentary on some of its strengths and weaknesses. The law has been reviewed as a stand alone document. Other laws also come into play during election cycles, such as the Law on Political Parties and the Law on Mass Media. In addition, administrative adoption of resolutions, orders and instructions can reflect how the relevant laws are being interpreted and how its mandates are being implemented.

In depth comparisons might have helped to shed light on the total legal framework from which a broader analysis might have been drawn. However, the objective of this report is to focus specifically on the law itself through the view of fresh eyes, and to offer food for thought as officials, administrators and election participants continue to evaluate the election process from within. The goal has been to try to identify potential pitfalls, explore ideas, share international experiences and offer some recommendations which might prove useful as lawmakers and election committees pursue legal and procedural improvements for the future.

General Overview

As written, the Law on the Elections to the Oliy Majlis is brief, direct and straightforward. Fundamentally, it appears to have drawn on many basic principles which would generally meet commonly accepted international standards for the conduct of democratic elections. The law is also designed to fully comply with the Law on the Election of Citizens' Voting Rights, a landmark document which underpins all laws related to the election process in Uzbekistan. To the degree that the law is implemented in full keeping with the spirit that is suggested by its tone, it would be reasonable to expect that elections to the Oliy Majlis could be conducted in a manner which maximizes opportunities for citizens to have a voice in their political future.

Several key features of the law speak to its democratic potential.

- The law provides general voting rights to any citizen over the age of 18, incorporating a passive registration system whereby voters are automatically

added to the voter rolls.

- Elections are direct with each voter entitled to only a single vote by secret ballot.

- The fundamental principle underscored in the law is that elections are to be held on a multi-party basis.

- Political parties are recognized as legal entities and are granted the right to nominate candidates.

- The law requires that electoral committees conduct preparations for the elections openly and publicly and that voters are to be fully informed about the membership of electoral committees and their hours of operation, locations of the polling stations, the political parties and candidate competing in the election, and the results of the poll.

- Observers representing nominating parties and representative bodies, mass media, other states and international organizations are entitled to be present at the meetings of electoral committees, at the polling stations on election day, and during the count.

- The law attempts to provide a framework for equal campaign opportunities for nominating organizations and candidates by guaranteeing them the right to free access to public mass media. Candidates are also guaranteed free transportation and exemption from their normal employment at median salary for participation in certain campaign activities.

- In its provisions related to violations of the election law, it is specifically made clear that members of election committees and other responsible officials are accountable for their actions in the conduct of the elections, are held liable under the law for violations.

These fundamental elements serve as a viable foundation on which the election system can evolve.

Throughout the democratic world it is widely understood that election laws continue to evolve over time. There is no such thing as the perfect election system. In Uzbekistan, too, the election law must be reviewed as a work in progress. Where the process is likely to be most vulnerable will be those areas where it appears to work against its fundamental principle of multi-party democracy, and where it lacks sufficient procedural detail to ensure uniform and equal application and consistent interpretation. These may be the single most important issues which will continue to deserve attention as lawmakers and officials contemplate future amendments and clarifications.

2

Transparency Mechanisms

Even a cursory review of the law makes it clear that lawmakers recognized the importance of designing an election process which is open to public scrutiny and transparent to election participants. A number of articles include provisions that speak directly to issues related to ensuring that voters receive the information they need to exercise their right to vote. Other provisions attempt to grant nominating organizations and candidates access to the workings of election committee in advance of the polls and at the polling stations on election day.

Voter Information

Article 6 lays the foundation for the publicity which is to surround the elections, and the openness with which election committees are to carry out their duties. It dictates that the mass media of the Republic is to cover the preparations and conduct of the election. It also describes the kinds of voter information which is to be prepared and disseminated by election committees. In particular, the law requires committees to inform voters about:

- membership of the election committees;
- locations and work hours of the election committees;
- the boundaries of electoral wards (precincts;)
- the political parties participating in the election;
- the candidates appearing on the ballot; and,
- the election results.

Other articles of the law go on to augment the public's access to election information. They also assign responsibility for specific voter information efforts among the levels of election committees. For example, Article 7 requires that the list of constituencies,

their boundaries, and the number of voters in each must be published by the Central Election Committee (CEC) within least 15 days after the date of the election has been fixed. Voters are also to be notified by Ward (precinct) Election Committees (WEC) about the locations of the polling stations where they will be voting. Article 15 requires the WECs to inform the voters in their ward about the date and time of the polling. The District Election Commissions (DEC) are responsible to publish the information about the candidates in their constituencies who have been registered by the CEC.

Under Article 31 the electoral registers must be made available for public scrutiny at least 15 days before the election so that voters can appeal to the ward committees about errors or omissions and corrections that need to be made. Similar provisions are made regarding the availability of the electoral registers specially devised for voting at hospitals, holiday homes, sanatoriums, at polling sites established abroad and at other remote or inaccessible voting sites. At these locations the lists must be publicized 7 days before the election. Ward committees are responsible for letting the voters know when the lists will be available for their review.

Election Observers

One of the key features of the law which promotes transparency is the opportunity for observers to monitor the process. Under Article 6 observers representing the interests of the political parties and the representative bodies who have nominated candidates are entitled to be present during the meetings of election committees. They are also allowed to observe at the polls on election day and during the counting of the ballots. The nominating organizations are required to inform the relevant election committees about their observers at least 15 days before the election. Other observers are also allowed to be present during these activities including representatives of the mass media, other states and international organizations.

Article 26 allows each candidate to appoint up to 5 proxies who will represent his or her interests throughout the election process and the canvassing. The candidates are required to advise the District Election Committees about their proxies, so that the DEC can issue each of them a certificate. Throughout the campaign period the proxies represent the candidates in their relationships with government authorities, election committees, public associations and the voters in their constituencies.

Although these aspects of the law are positive reflections of lawmakers' interest in ensuring that the elections are conducted in an atmosphere of openness, there are some deficiencies and omissions in the law which deserve review.

For Consideration

- It would be helpful if the law were more comprehensive in outlining the rights of observers representing nominating groups to ensure that the rules are not vulnerable to subjective interpretation from one election committee to another.

With regard to their presence at meetings of election committees, it would be helpful, for example, if the law dictated the manner in which these observers are to be notified of scheduled meetings of the committees. The law should also define their rights at the polling stations and during the count. Most typically authorized observers are entitled to:

be present to view the pre-poll activities and the display and sealing of the empty ballot boxes before the polling begins;

observe all steps in the voting process, except the elector marking his ballot paper in the secrecy area;

move freely but quietly and unobtrusively about the polling station to observe the procedures being followed by committee members;

leave the voting premises and return;

ask questions and express concerns to the chairman of the committee;

take notes about their observations;

request and obtain certified copies of relevant election documents and election returns;

report their observations and publish their findings; and,

appeal decisions or actions taken by an election committee to a superior committee if they have reason to believe that errors are occurring at the polling station which are not being addressed by the Chairman.

- Rules can also be formalized as to what observers are not allowed to do. Most commonly laws dictate that observers may not:

disrupt or interfere with the voting process or exert influence on voters in any way;

distribute any campaign materials or literature on election day;

countermand decisions of the election committee;

handle ballot papers or remove or deposit ballot papers into the ballot box;

observe or speak to a voter about how he voted, or serve as an aide to any voter who needs assistance in marking his ballot;

incite disruption of the election or tamper with any election materials or

ballot box.

- The law should specify any credentials which observers may be required to present to gain access to the meeting of election committees or to be present at the polling station on election day. The required information which must appear on such credentials should be defined in law as should the process by which each type of observer shall be able to obtain the necessary authorization.

- Articles 6 and 41 are remiss in ensuring that observers can be present for the summarization of the voting results at the DEC and CEC level.

- The law fails to require that election returns be published with ward by ward detail, at least at the constituency level. Without such detail observers have no way of determining that the summarized results reported for the constituency as a whole accurately reflect the individual ward returns as they observed being recorded at the end of the vote counting.

- Although Article 6 requires that nominating organizations notify the district committees about their observers at least 15 days before the election, it is silent as to what information needs to be provided. For example, it is not clear as to whether nominating groups must identify the specific ward at which each observer will be present. Ideally, there should be no such requirement. Observers should have the flexibility to move from one polling site to another throughout the day rather than being restricted to remain at one specific site. This would provide nominating organizations the broadest opportunity to make sure that a vast number of polling stations could be covered even if they have difficulty organizing and registering a sufficient number of observer for the whole constituency. Even if the law restricts each party and representative body to have only one observer present at any given time, it would be helpful if another observer were allowed to replace another 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. Presentation of an appropriate credential accompanied by identification should be sufficient to obtain access to a polling station.

There are a number of other issues related to transparency which also need to revisited relative to specific components of the election process. They are discussed in more detail in the relevant chapters that follow in this report.

3

Administrative Structure

Under the law elections are administered by a hierarchy of appointed election committees supported by an administrative staff at the Central Election Committee and by local executive bodies at the district level. At the top of the hierarchy is the Central Election Committee (CEC) which is formed by the Oliy Majlis. The CEC consists of a Chairman and at least 14 members including representatives of the Republic of Karakalpakstan, each province of the Republic and the city of Tashkent. According to Article 10 the Deputy Chairman and the Secretary of the committee are elected from among the members at the CEC's first meeting. Although it is not clearly stated in the law it is presumed that the Chairman of the CEC is also selected by the Oliy Majlis.

Subordinate to the CEC are the District Election Committees (DEC) and Ward Election Committees (WEC.) A District Election Committee is formed to supervise the conduct of the election in each of the Republic's 250 constituencies. A single deputy is elected from each constituency. In accordance with Article 7 constituencies are formed by the CEC based on the recommendations submitted by the Chairman of Zhokarghy Kenes of the Republic of Karakalpakstan, the khokims (mayors) of the provinces of the Republic of Uzbekistan and the City of Tashkent. Delimitation generally conforms to the administrative and territorial divisions with an eye to meeting reasonable equal representation standards defined by the Oliy Majlis.

A ward is a local area served by a single polling station. Wards are formed based on local district and neighborhood boundaries with a view of providing the greatest convenience possible to the voters. Article 8 dictates that the boundaries of a ward may not cross a constituency boundary. Wards are established to serve not fewer than 20 voters nor more than 3,000. Wards may also be established by District Election Committees in military units and installations, at locations abroad by the CEC based on information provided by the Ministry of Foreign Affairs.

District Election Commissions are formed by the Central Election Committee and consist of a Chairman, Deputy Chairman, Secretary and at least 6 members. The DECs , in turn, form the Ward Committees which can have from 5 to 19 members. Ward committees with fewer that 7 members are only officiated by a Chairman and a

Secretary.

Working Organization of Election Committees

The law sets succinct rules for the working organization of the committees. The lower level committees serve only for the specific election cycle. The terms of their members end when the powers of the newly elected deputies of the Oliy Majlis come into effect. The officers of the committees are entitled to take leave from their regular employment for the duration of their service. Their average wages will be paid from the budget allocated for the elections. Under Article 17 a meeting of an election committee is considered competent if at least 2/3 of the members are present. A decision taken in an open vote requires a simple majority for passage. Members who disagree with a decision of the committee are entitled to express their dissenting view in writing. Their statement is attached to the minutes. Article 17 also makes decisions of election committees taken within their competence binding on state bodies, public associations, institutions and organizations which are also bound to provide premises and equipment needed for the conduct of the election at no charge. Each committee also has the power and authority to overturn decisions of subordinate committees.

Article 16 dictates that a person may be a member of only one election committee. In addition, law specifies that the Chairman, Deputy Chairman or Secretary of any election committee may not be a member of political party.

Members of the committees have the right to resign. Article 16 also provides that they may be dismissed or divested of their positions for violating the election laws, or for failure to perform their duties on a consistent basis. A member can only be divested of his position by the body that was responsible for the formation of the committee.

The Central Election Committee

Generally speaking, the CEC serves as the central, policy-making arm of the election administrative structure. Among its major responsibilities are:

- control over the uniform application of the law and issuance of instructions and clarifications of issues related to the organization of the election;
- guiding the work of electoral committees, including making decisions about alterations in their composition, and overturning their decisions if they are found to be inconsistent with the law;
- forming wards outside the Republic;

- facilitating the receipt and evaluate of documents related to the nomination of candidates, and make determinations whether they should be accepted or rejected;

- registering the candidates and ensuring that they are afforded equal conditions during the campaigns and the conduct of the election;

- distributing the funds among the subordinate committees and overseeing the allocations of premises, transportation, means of communication, and material and commodity support;

- designing the formats for ballots and other election documents, ballot boxes, seals of the election committees and other election commodities;

- compilation of the Republic-wide results and publication of final election returns;

- adjudication of appeals and complaints regarding decisions or actions of subordinate committees;

- referring materials to the Procurator's office when violations occur which involve criminal liability; and,

- preparing election related ballots and documents for archiving and retention.

It is noted that the law fails to define a deadline by which the Central Election Committee must be formed, or the length of the term for which its members will serve. Article 17 simply states that the powers of the CEC will "be terminated" based on a decision of the Oliy Majlis.

Another crucial omission in the law is that fails to establish the independence of the Central Election Commission. This can be particularly relevant in terms of their supervision of the election of deputies to the Oliy Majlis. The law should make it clear that the CEC acts as an independent body and specifically that it is not accountable to the Oliy Majlis whose members have a vested interest in the outcome of the election they are to supervise.

Lower Level Committees

It is the responsibility of the District Election Committees to organize and supervise the elections within the constituencies. The DECs form the electoral wards and coordinate the work of the WECs. At the constituency level, they also distribute funds, and coordinate transportation, premises, communications and commodities for the wards in their jurisdictions.

One of their major functions is to ensure the equal conditions for the candidates and to assist in the organization of candidates' meetings with the voters. They also register the proxies of the candidates who will represent their interests throughout the campaign process. Another key responsibility of the DECs is to supervise the compiling of the electoral registers. It is also the DEC which is responsible for preparing and distributing the ballots based on the design approved by the Central Election Committees. Based on the results of the vote counting accomplished by the ward committees after the close of the polls on election day, the DECs summarize constituency-wide results, and when necessary organize second round elections, if it is determined there is no winner after the first round. The District Election Committees also adjudicate complaints and forms resolutions related to the decisions and actions of the ward committees under their supervision.

The Ward Election Committees serve at the front line and have the closest contact with the voters assigned to their polling stations. Their responsibilities are prescribed in Article 15. It is the WECs who compile the electoral register that will be used at the polling station on election day. They have a number of responsibilities related to informing voters about the election. For example, they are assigned to inform the voters about the date and time of the poll, and the date by which the electoral registers will be made available for public scrutiny. The must be on hand in advance of the election to accept applications regarding omissions and errors in the registers and have the authority to make appropriate corrections. In the period right before election day the ward committees also facilitate advance voting for voters who know they will be unable to appear at the polls on election day. It is their responsibility to secure the envelopes containing the voting lists voted in advance until they can be deposited into the ballot boxes on election day. It is also they who prepare the polling stations, process the voters and count the ballots on election day. When complaints are brought to their attention during the course of the voting they have the authority to consider them and determine how they might be resolved.

For Consideration

- The law should be amended by adding a new provision which emphasizes that the Central Election Committee is totally independent in the performance of its functions.

- Article 10 should be amended to define the deadline by which the Central Election Committee should be formed.

- The terms of members of the Central Election Commission should be defined in law. In setting the terms of the CEC it is recommended that terms be staggered or rotated so that no more than ½ of the members terms expire at any one time. Staggered terms would serve two purposes. First, the election process would be enhanced by the continuity and institutional memory that would be preserved due to the fact that there would always be some

experienced members remaining on the commission at the point new members were appointed. Secondly, the independence of the CEC would be strengthened. Under a staggered term system, only a certain number of members would be appointed by any sitting Oliy Majlis. The remaining members would be carried over until after the next elections when their terms would expire and they would be replaced by the newly elected deputies.

- The law should delegate specific regulatory authority to the Central Election Commission to adopt formal regulations regarding various components of the election process requiring procedural detail that is not defined in the law itself. Such delegation of specific authority could serve to overcome deficiencies in law without putting the CEC in jeopardy of a legal challenge on the basis that they have acted or taken decisions beyond their competence. In each case, the CEC should be directed to define not only the requirements that will be imposed on voters and election participants, but also the specific procedures which will be followed by the committee members in performing their responsibilities relative to the activity being regulated. The law should also establish deadlines by which the regulations must be adopted. The deadlines should be at least 30 days prior to the time the regulations will be needed. At the very least the law should dictate that the CEC is required to adopt regulations to cover:

  Formalized Procedures for the Counting of Ballots and Summarization of Results;

  The Signature Gathering Process and Procedures for the Evaluation of Petitions by the Central Election Committee;

  Use of State Funds for the Conduct of Candidate Campaigns, Granting Candidates Equal Access to the Media;

  Committee Procedures for the Adjudication of Grievances and Complaints;

  Procedures for the Facilitation of Advance Voting and Service to Voters Who Will Vote Outside the Polling Station.

- The law provides very little guidance as to how members of election committees will be selected. It is recommended that certain ground rules be established to ensure that members on each committee represent a cross section of interests. Ideally, political parties should be provided an opportunity to propose members. In view of the fact that as a standard practice members are frequently selected from the local executive authorities it becomes particularly important that the make-up of committees is balanced by the participation of representatives proposed by the political parties. As subordinates to the khokims, committee members selected from the executive

bodies have a close relationship with the representative bodies also headed by the khokims. Since the representative bodies are entitled to nominate candidates, it is important to make sure political parties are represented on the election committees to avoid any perception of potential bias in the make up of the committees.

4

Time Table for the Elections

The Law on Elections to the Oliy Majlis provides a comprehensive schedule for the preparation and conduct of the election. It is quite thorough in defining deadlines for each activity and component in the process. The deadlines also appear to be in a logical and orderly sequence. However, the way the schedule of events is described in the law, it is not always clear how much time is allowed for a particular activity or between events.

Usually an election calendar is calculated around the specific date of the election. The schedule of activities and deadlines are established working backwards from election day. Under the Constitution and as reiterated in the law, the Oliy Majlis is responsible for setting the date of the election. A unique feature of the Uzbekistan election law is that the date on which the legislative body adopts its decision as to when the election will be held, is equally important in establishing key deadlines for various aspects of the election process.

The Oliy Majlis has great flexibility in determining when it will formalize its scheduling decision. Under Article 19, the election date must be scheduled at least 3 months prior to the end of the current terms of the members of the Oliy Majlis. There is no limit on how much earlier than that they can adopt the decision. This open ended aspect of the law is particularly significant in that the date of the Oliy Majlis' decision has a specific bearing on the eligibility of parties and candidates to participate in the election. In particular, Article 23 dictates that in order to be eligible to run for office a candidate must have been a permanent resident of the Republic in the last 5 years prior to the scheduling of the election. Furthermore, Article 21 mandates that in order for a political party to be eligible to nominate candidates in the election it must have been registered with the Ministry of Justice at least 6 months prior to the date on which the election was scheduled.

The law gives no guidance as to how much or how little time must elapse between the scheduling of the election and election day. Nor does it identify a specific number of days which will be allowed for certain activities. The construct of the law regarding the nomination period serves to illustrate this point. Article 22 provides that the nomination of candidates begins 25 days "after the election date was set," and that the nomination period ends 45 days "before the election." Nothing in the law suggests

how many actual days will separate the beginning and ending of the nomination period.

It appears that the overall calendar can be expanded or contracted significantly. Fundamentally, the law formulates a calendar with one series of events to be calculated by counting a number of days forward from the scheduling of the election, and another series of events counting backward from election day. The longest period allowed in the series stemming from the scheduling of the election is 50 days. Article 14 dictates that the ward election committees must be formed not later than 50 days after the election is scheduled. Working backward from election day, the longest period is 45 days. Articles 22 provides that the nomination period will end 45 days before election day. Article 29 establishes the same deadline by which a nominating organization may cancel its decision to nominate a particular candidate and retain its right to select a replacement. It is not clear if or when these series overlap. It is difficult, therefore, to ascertain with any precision the shortest time period in which and election can take place after it has been scheduled.

One significant omission from the election law is any indication of when or how by-elections should be scheduled to replace deputies who have resigned or have died while in office. An article or articles should be added to the law to specify how such elections are to be called and administered.

The changes to the law to accomodate by-elections need not be extensive. Indeed, all provisions of the law relating to the mechanics of election administration should remain the same, so that election commissions, candidates and voters do not have to operate under different rules when a by-election is held. However, given that the present law is silent on the issue of by-elections, certain provisions should be added, particularly those related to scheduling of elections -- e.g. when by-elections must be called (and when it is permissible to wait until the next general election), who shall call by-elections, and an explicit statement that any by-election should be administered in accordance with the rules for general elections set forth in the law.

For Consideration

- Article 19 should be amended to define a specific time period which must elapse between the scheduling of the election and election day. Affected deadlines should be redefined to clearly state the number of days which will be allowed for key components of the election process, and in particular, the nomination period.

- Consideration should also be given to amending the deadlines affecting the eligibility of political parties and candidates to participate in the election by relating them to election day, rather than the day on which the Oliy Majlis schedules the election.

- The law should also be reviewed to determine where omissions exist. There are several provisions of law which dictate requirements or offer entitlement for which no deadlines are indicated. There are a number of examples, some of which have significant ramifications.

  The law sets no deadline by which the Central Election Commission must be formed. Nor are there any set terms defined for the CEC members.

  No deadline is established for the withdrawal of candidates. Article 29 allows candidates to withdraw at any time before the election. In addition, Article 29 allows a party or representative body to cancel its nomination of a particular candidate waiving it right to nominate a replacement at any time before the election. These omissions could have a significant impact on the printing of accurate ballots.

  Article 8 fails to establish a deadline by which the DECs must notify voters about the boundaries of the electoral wards, the ward committees and the polling stations.

  Article 39 provides that voters who will be unable to come to the polling station on election day are entitled to vote in advance. The law fails to define when advance voting may begin. Ballots are not delivered to ward committees until 3 days before the election. However, the law allows advance voting to be done on "voting lists" in lieu of regular ballots.

  Article 22 does not dictate the time period within which the CEC must notify leaders of political parties or representative bodies that documents related to the nomination of their candidates are in disparity with the law, and are therefore rejected.

- Under certain circumstances articulated in Article 44 all new elections must be scheduled including a totally new slate of candidates. Article 44 dictates that the new election must be held not later than one month after the original election. However, it also dictates that the formation of electoral committees, registration of candidates and "other undertakings" are to proceed in the order prescribed by the law. Holding the election only one month following the original election does not allow sufficient time a new nomination period to be carried out as "prescribed in the current law. Nor does it allow a sufficient time for canvassing by the new candidates so that the voters can make an informed choice at the polls. An alternative schedule needs to be devised for repeat elections to overcome these difficulties.

- A new article or articles should be added to the law which sets forth when by-elections should called and how they are to be administered. Typically, they are called by the Central Election Commission within a short time of the deputy's departure from office, unless new general elections are anticipated

within the coming year. Generally, to avoid confusion, it is wise to administer the by-elections under the same laws and rules which apply to general elections.

On the pages that follow is table outlining the deadlines established in the Law on Election to the Oliy Majlis.

Schedule of Legal Deadlines Established in the Law on the Election to the Oliy Majlis Republic of Uzbekistan

As of 28 December 1993

Legal Deadline	Required Activity	Article of Law
Last 5 Years Prior to the Day on Which the Election Date is Scheduled	Candidates must have permanently resided in the Republic of Uzbekistan, in order to be eligible to run for office	23
6 Months Prior to the Day on Which the Election Date is Scheduled	Political parties must have been registered by the Ministry of Justice to be eligible to nominate candidates	21
At Least 3 Months Prior to Expiration of Terms of Members of Oliy Majlis	**Elections to the Oliy Majlis Must Be Scheduled** (Date for elections must be set)	19
Within 3 Days After the Election Date is Set	Election date must be made public through the mass media	19
"At Least" 15 Days After the Election Date is Set	Lists of constituencies, descriptions of their boundaries and number of voters must be published	7
Not Later than 20 Days After the Election Date is Set	Political parties seeking the right to nominate candidates must submit their applications to the Central Election Committee	21
	District Election Committees must be formed	12
25 Days After the Election Date is Set	Nomination of candidates begins	22
Not Later than 30 Days after Election Date is Set	Electoral Wards must be established	8
Not Later Than 50 Days After the Election Date is Set	Ward Election Committees must be formed	14

45 Days Prior to Election Day	Nomination period ends	22
	Last day by which political party or representative body may cancel its decision to nominate a particular candidate and maintain the right to nominate a replacement candidate.	29
42 Days Prior to Election Day	Last day Central Election Commission will accept registration documents	
35 Days Prior to Election Day	Registration of candidates stops	24
	Final day by which candidate may begin canvassing (although can begin earlier depending on actual date of candidate's registration)	25
	Final day by which candidate may gain right to travel free of charge on public transport (although can be entitled earlier depending on actual date of candidate's registration)	28
15 Days Prior to Election Day	Electoral registers shall be made public for familiarization	31
	Political parties and representative bodies nominating candidates must inform District Election Committees of their representatives	6
7 Days Prior to Election Day	Electoral registers of voters serving abroad, and in sanatoriums, hospitals, holiday homes, and other inaccessible remote sites etc. must be made public	31
Not Later than 5 Days Prior to Election Day	Emergency electoral wards may be established in military and representative offices of the Republic abroad, and other remote and inaccessible areas	8
3 Days Prior to Election Day	Ward Election Committees receive their ballots	34
ELECTION DAY	Polling Hours: 7 a.m. to 8 p.m.	36
	Date by which citizens must reach the age of 18 to vote in the election.	2
	Date by which citizens must reach the age of 25 to be eligible to be elected.	2
	Ballots are counted by Ward Election Committees at the completion of the poll	40
	Canvassing is prohibited	25
Within 2 Weeks	Another round of polling must take place in a constituency in which more than 2 candidates competed and none were elected	43

Not Later than 1 Month After the Election	Another round of election must be held in constituencies where the election failed or was declared invalid, where no candidate was elected after a second round of the poll, if not more than 2 candidates competed and neither were elected, or if registration of an elected deputy must be denied.	44

Deadlines Contingent On Other Events
Law on the Election to the Oliy Majlis
Republic of Uzbekistan
As of 28 December 1993

Time Period	Required Activity	Article of Law
Nomination and Registration of Candidates		
Within 5 Days of Submission	Applications for the right of a political party to nominate candidates must be decided upon by the Central Election Committee.	21
Within 7 Days of Submission	The Central Election Committee must examine documents related to the nomination of candidates and issue a decision as to their compliance with law.	22
On Day of Registration of Candidate	Candidate may begin canvassing	25
Within 5 Days of Registration of Candidates	Respective District Election Committees must publish a report about the candidate's registration and information about the candidates.	24
Adjudication of Complaints		
Within 10 Days	Decisions of election committees may be appealed to higher election committees by political parties and representative bodies who have nominated candidates, candidate and their proxies, observers and voters.	18
	Decisions of the Central Election Committee may be appealed to the Supreme Court.	18
Within 3 Days of Lodging of Complaint	Complaints must be considered by relevant higher election committee or Supreme Court	18
Electoral Registers		
Within 24 Hours of Report of Error	Ward Election Committees are obliged to verify the validity of the report or statement regarding error on electoral registers.	32
Election Committees		
Upon Recognition of the Powers of the Elected Deputies	District and Ward Election Committees terminate their activities	17

Required Activities or Entitlements for Which No Deadlines are Established Law on the Election to the Oliy Majlis Republic of Uzbekistan

As of 28 December 1993

Required Activity or Entitlement	Article of Law
Central Election Committee must be formed by the Oliy Majlis	10
Candidate may withdraw by submitting application to the Central Election Commission at any time prior to the election.	29
Political party or representative body may cancel its decision on nominating a particular candidate at any time prior to the election.	29
A candidate may choose up to five proxies and inform the District Election Committee about them.	26
A candidate may divest a proxy of authority or replace a proxy by notifying the District Election Committee.	26
A proxy may resign at any time.	26
District Election Committees must notify voters about boundaries of electoral wards and locations of Ward Election Committees and polling stations	8
Central Election Committee must notify leaders of political parties or representative bodies that documents related to nominated candidates are in disparity with the law.	22
Advance voting begins for voters who will be unable to come to their polling stations on election day.	39

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Nomination and Registration of Candidates

According to Article 77 of the Constitution, the Oliy Majlis, the highest state representative body, is made up of 250 deputies who are to be elected on a multi-party basis in single mandate territorial constituencies. Deputies to Oliy Majlis are elected to five year terms. The Constitution is relatively silent on the process by which they are to be elected, deferring rather to "requirements" that "shall be determined by law."

The rules are articulated in Chapter IV of the Law on Election to the Oliy Majlis. The provisions of this Chapter cover various aspects concerning the manner in which candidates gain access to the ballot including:

- identification of groups who are entitled to nominate candidates;
- requirements to be met by political parties in order to participate;
- candidate qualifications and circumstances which would preclude a person's eligibility to run;
- the procedures for selecting candidates and submitting nomination applications and documents;
- the responsibility of the election committee to verify that requirements have been fulfilled; and,
- registration of candidates.

As outlined in the law, the process of nomination and registration of candidates for the Oliy Majlis appears to be relatively streamlined and straightforward. However, first impressions may understate the complexity that actually exists. In fact, there are two fundamental weaknesses in the law that will continue to challenge the administrative capacity of election officials as they attempt to apply its provisions,

and leave the system vulnerable to controversies and misunderstandings which are likely to arise during each election cycle.

First, this component is reflective of the global problem that exists throughout the law. There is simply insufficient procedural detail to ensure consistent interpretation and uniform application. Its broadly construed mandates leave critical questions unanswered. The omission of detail places the burden on election administrators to "issue instructions" which may actually involve creating rules that should more properly be set in law. A reasonable argument could be raised that the level of procedural detail which should be formalized by administrative regulation, would actually extend the Central Election Committee beyond the boundaries of its competence as it is currently defined in the law.

Second, the system of ballot access, although it leans towards democratic principles, remains vulnerable to continuing criticism that lawmakers and the political culture have yet to truly committed themselves to fully open elections. Notwithstanding the constitutional and legislative mandate that elections are to be held on a multi-party basis, the system is only marginally successful in creating an legal environment which fully works in support of this objective. Concern lingers that, as constructed, the laws impose fundamental impediments to the development and growth of strong, diverse political parties, and their equal and full participation in the nomination process.

These fundamental weaknesses will be explored in the discussions of specific aspects of the nomination and registration process that follows.

Multi-Partyism: First Steps on a Long Journey

The nomination process under the current Law on the Election to the Oliy Majlis represents a significant departure from former law which granted the rights of nomination to work collectives and public associations and sustained a one-party system. Redirection of the focus to multi-partyism as the cornerstone of the election system is a critically important step in the evolution of a democratic process in Uzbekistan. However, as one reviews the construct of the relevant laws and their potential impact on the elections, it becomes evident that these advances remain cautious and guarded. Political parties remain under the shadow of close government control, and their access to the ballot is burdened by strenuous eligibility requirements that are not imposed on representative bodies who are also granted to right to nominate candidates.

Given the difficult recent history of the political environment in Uzbekistan from the period of Gorbachev's policy of glasnost, the Republic's independence from the Soviet Union in 1991 and leading up to the Oliy Majlis elections in December 1994, it is not surprising that this circumstance continues to exist.

In the early phase a number of political movements and parties emerged, including the

New Movement for Democratic Reform in Uzbekistan, the Social Progress Party of Uzbekistan, the Homeland Progress Party and others. The Communist Party of Uzbekistan, following its break with the CPSU in 1991, renamed itself the People's Democratic Party (PDP) and has maintained its predominant role. During the election of the President, only the Erk (Freedom) Party succeeded in achieving official registration and fielded a candidate to oppose the PDP's candidate, Mr. Karimov. In their bid for the presidency, they were able to garner 12.3% of the vote. Erk's forerunner, the Berlik (Unity) Movement, was ultimately precluded from registering as a party and from participating in that election. In 1993, its registration as a social movement was also suspended.

New rules were subsequently imposed requiring all previously registered parties to re-register. In March of 1993, Erk refused to comply and so lost its registration. Various other groups have attempted to register, but only the Homeland Progress Party was able to register and compete against the PDP and other government candidates in the 1994 elections. Since then, two other political parties and one movement have been registered and entered Parliament through by-elections. All of these parties and movements expressly support the government and the President.

In spite of these problems, Uzbekistan has also taken steps toward liberalizing the political environment, not only in the enactment of progressive legislation, but also through new government policies. These have included, for example, the President's Edict on Amnesty which resulted in reduced or rescinded sentences imposed against those who had been imprisoned for the first time, and pardons for some of the Erk and Birlik activists who had been tried for treason. There has also emerged greater tolerance and responsiveness to the presence and participation of domestic and international organizations in programs focusing on human rights and political reform.[1]

Social Stability and Political Reform

These conditions appear to indicate that there is disagreement in Uzbekistan concerning the proper pace of democratic reform. If there is a consistent theme that has characterized the justification for the exercise of control on the part of the government, it has been the elevation of "social stability" as the primary objective during the Republic's transition to a multi-party state.

In light of this prevailing trend, it is commendable that the legal foundation for the conduct of elections gives recognition to political parties as active players in the nomination of candidates at the national and local levels. The importance of this

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[1] For a broader overview of the political environment leading up to and surrounding the 1994 elections, see the "*Project Activity Report, Republic of Uzbekistan Elections of Deputies to the Oliy Majlis and Regional and Local Councils of Peoples Deputies, December 25, 1994,*" IFES, March 1995.

cannot be understated, and although the status of political parties in the actual process has not yet been fully elevated to level which would be expected by generally accepted international standards, it does provide a crucial springboard from which continued progress toward political reform can continue to evolve. In the discussion that follows a number of relevant legal and procedural issues related to the nomination process will be explored in the interest of providing food for thought as election officials and lawmakers continue to plot the course of positive political reform in Uzbekistan.

Who May be a Candidate for Election to the Oliy Majlis

Article 2 of the election law provides that all citizens who will have reached the age of 25 by election day are eligible to be candidates for election to the Oliy Majlis expect those who have been legally certified insane or who are in prison.

Article 23 outlines additional restrictions. Its provisions further eliminate:

- individuals who have had a conviction unless that conviction has been canceled or expunged in "the manner prescribed by law;"
- citizens who have not resided permanently in the Republic of Uzbekistan during the last 5 years before the election was scheduled;
- servicemen of the Armed Forces of the Republic;
- officials of the National Security Service, the Ministry of Internal Affairs, and other militarized divisions; and,
- professional clergymen.

Generally speaking, these kinds of limitations are not particularly unusual, especially those related to the durational residency requirement and restrictions on persons with criminal convictions. Nor are they specifically at odds with generally accepted international standards. Over a long term they would not necessarily be considered overly restrictive or burdensome. However, there are some technical ambiguities that should be re-evaluated as potential amendments to the law are considered. For example, the 5 year "permanent" residency requirement, and the restrictions against candidacy for individuals who have convictions that have not been "canceled or expunged" may preclude many opposition leaders and activists who have been arrested or left the country from participating in future elections.

On a technical level, it is noted that Articles 2 and 23 differ in their wording regarding restrictions on persons whose records involve troubles with the law. Article 2

prohibits citizens who are "in prison" from being candidates or from voting in the election. Article 23, on the other hand, focuses the restriction on candidate eligibility on the basis of "convictions," and whether or not they have been "canceled or expunged." Amendments to the law should be considered on several points. First, in Article 2, there is no distinction made between persons being held who may be awaiting trial and those who are imprisoned as the result of a guilty verdict rendered by a court decision. Nor does either of these Articles suggest any distinction between misdemeanor and felony counts. In addition, it is not clear whether "cancellation" or "expunging" of a conviction comes automatically as a result of fulfillment of a person's sentence, or whether it involves a specific act or decision of a relevant court or an official pardon. If the latter is true, it would mean that without such a pardon or overturning of a conviction, a citizen would be permanently precluded from participating as a candidate or holding an elected office, regardless of the nature of his crime or how many years had past since the terms of his sentence was fully satisfied.

As written, there is no leeway given for persons with past convictions for crimes based on laws that may have been overturned or found unconstitutional. This could be particularly relevant as attitudes and laws related to political activity are modified over time. These technical points should have a considerable bearing when deciding whether or not and under what circumstances a person's constitutional rights should be taken away.

Article 23 also excludes citizens in the armed services, National Security Service, and Ministry of Internal Affairs from becoming candidates. It goes on to identify other career posts which would subject a potential candidate to certain conditions if they seek nomination and registration. Members of the government, judges, the Procurator General and officials of the Procurator's Office, heads of Ministries, Departments and their deputies, and officials of the executive bodies are required to submit applications which will serve as their resignations from these posts if they are ultimately elected. A specific exception is made for khokims of the provinces, districts, cities and towns, who are apparently not required to provide such applications, and would presumably be entitled to retain their posts even if they were to succeed in winning a seat in the Oliy Majlis.

Article 27 provides that registered candidates may be excused from their principal employment with their average wages paid from the funds allocated for the election specifically "for attending meetings with voters and appearing on radio and television." One issue that should be revisited is whether or not at least some of these posts should be reclassified to require candidates to resign or take mandatory leave, not just in the event of their election, but for the duration of the campaign period immediately upon their registration. The concern is that some of these posts involve responsibilities that figure prominently in the conduct and administration of election process itself. There is reason to question whether any candidate should be allowed to continue to discharge duties which have a direct impact on the conduct of an election in which he or she is one of the competitors. Such circumstances can pose serious conflicts of interest and alter the playing field on which all candidates are to be treated

equally. Several examples illustrate the point.

- The Procurator's Office and Judges in the court system are involved in the investigation and adjudication of violations and complaints which are filed in the course of the election campaign.

- The Ministry of Justice is directly involved in the registration (and deregistration) of political parties.

- The executive bodies of provinces, districts, cities and towns provide the main administrative and logistic support to the election committees throughout the election preparations.

- Under Article 30 of the election law, the Khokimiyats of districts, towns and cities register the voters and provide the data to the ward election committees so that the voter lists for the polling places can be compiled.

- The heads of departments and managing departments of the district khokimiyats are often appointed to election committees. This was certainly the case in 1994, according to the report of Kh. M. Abduraimov, First Deputy Khokim of the City of Tashkent in his address to Working Conference of the District Electoral Committees in November of that year. [2]

- Most significantly, a Khokim, who is exempted from having to resign his or her post upon election to the Oliy Majlis, is not only the head of the executive authority which provides the administrative support to the election committees, but is also the head of the representative body of the respective territory (Constitution, Article 102). The representative bodies are entitled to nominate candidates. Certainly such circumstances suggest a conflict of interest when the Khokim becomes a candidate.

In many established democracies election laws require citizens holding government posts to resign when they choose to become candidates. Likewise, in other countries of the former Soviet Union, it is common for such language to be included in the election laws, even if the resignation is recognized as temporary for the course of the campaign.

For Consideration

- Article 23 should be amended to clarify the conditions under which imprisonment or a conviction should impair one's eligibility to vote or to run for office. A decision should also be made as to expanding the terms under which a person's election rights can be restored. It is not uncommon for

[2] *Supra.* Note 4, pgs 50-51.

similar laws in long standing democracies to more narrowly define the kinds of crimes or convictions that will result in losing one's election rights. For example, such laws sometimes impose restrictions against persons convicted of felonies or "felonies involving moral turpitude." Rarely do they include misdemeanors. In addition, laws are often constructed to clarify that the person's rights are rescinded until they have "fulfilled their sentence and are no longer under the auspices of the court," particularly in terms of restoring a person's right to vote.

- Consideration should be given to requiring candidates who hold certain posts to take mandatory leave at the point they are registered, in particular candidates who occupy a position in which they could be required to fulfill functions directly involved in the carrying out the preparations, administration of the election or adjudication of complaints and appeals. Borrowing from the experience of the Russian Federation, for example, the list of positions to which such requirements would apply could be directors and supervisory officials of state mass media in view of their role in providing access to the press and the airwaves to candidates and parties throughout the campaign process. An amendment to Article 23 could be formulated to provide safeguards guaranteeing that the person who takes mandatory leave to run for office will be eligible to return to his employment should he not be successful in his campaign, and that he would not be transferred or reassigned without his consent. An amendment could also provide that during the period of the candidate's leave, he would be paid is standard wage out of funds allotted for the election.

The Right to Nominate Candidates

The law enacted in December of 1993 provides two avenues by which a person can become a candidate for Deputy to the Oliy Majlis. Under Article 20 of the election law, the right to nominate candidates is granted exclusively to:

- political parties; and,

- to the Zhokarghy Kenes of the Republic of Karakalpakstan, the provincial Councils of People's Deputies, and that of the city of Tashkent.

One of the serious omissions of the law is that no avenue is created for access to the ballot by independent candidates nominated by groups of citizen's groups or through self-nomination. This may also be contrary to the standards agreed to by participating OSCE states. Section 7 of *The Final Document of the Conference on Security and Cooperation in Europe Meeting on the Human Dimension in Copenhagen in 1990* ensures "...the rights of citizens to seek political office, individually or as representatives of political parties or organizations, without discrimination." Under Uzbek law, however, a citizen cannot gain access to the ballot as an individual.

Typically, in long standing democracies the petition process is used specifically as the vehicle by which an individual becomes eligible to stand for election as independent candidate.

The Process of Nomination

Article 22 dictates a number of rules regarding the entitlements of nomination groups and the process of nomination. Under the law the nomination period begins on the 25th day after the Oliy Majlis sets the date for the election and closes 45 days before the election date. The length of the nominating period can fluctuate based on how early or late the Oliy Majlis formalizes its decision.

A qualified political party which meets all registration and application requirements is entitled to nominate one candidate in each of the Republic's 250 constituencies. In selecting individuals they want to nominate they may only choose from members of their party, or individuals who are not affiliated with any party.

The Zhokargy Kenes of the Republic of Karalkalpakstan, provincial Councils of People's Deputies and the City of Tashkent may nominate one candidate in each of the constituencies defined in the boundaries of their jurisdictions. Article 22 provides that the representative bodies may nominate any person they choose regardless of their party affiliation including members of the same political parties with whom they will be competing in the election. No individual may be nominated in more than one constituency.

Under the law, candidates are selected by the supreme bodies of the political parties, as well in sessions of the representative bodies. The applications in which the Central Election Commission is requested to register the candidates are submitted by the leaders of the parties and the heads of the representative bodies. In the case of the latter, it would appear that the application is submitted by the Khokim since under Article 102 of the Constitution this official, who is appointed by the President, serves as the head of the representative body as well as the executive administration.

The application involves submission of several documents:

- a resolution of the supreme body of the nominating party or representative body on the selection of their candidates;
- minutes of the meetings of the supreme bodies during which the candidates were selected;
- information on each of candidates including their names, occupations, places of residence and employment, and party affiliations, and the names and numbers of the constituency in which each will run;

- an "application" from each candidate expressing his or her consent to stand for election; and,

- the "application" of a candidate which will serve as a resignation from his or her post if it is a position identified in Article 23, and if the candidate is ultimately elected to the Oliy Majlis.

Upon submission of the nominating application and related documents, the Central Election Committee is required to issue a certificate to acknowledge the date and time of the submission. The law dictates that the CEC is to examine the documents and determine whether they are to be accepted or rejected within 7 days. If the Committee finds that "there is a disparity between the documents...and the current law," they must notify the leaders of the nominating organization "in the prescribed manner." The wording of this provision is vague in that it does not specify if disparities will cause the entire application to be denied, or if the documents for each proposed candidate are to be evaluated and decided upon separately. Nor is it clear where the manner of notification is "prescribed."

Additional Requirements for Political Parties

Although political parties have gained legal recognition as players in the nomination process, in practical terms they remain step-sisters in a system which continues to favor the other nominating institutions in a way which is far more likely to perpetuate the political status quo.

The fundamental difficulty is that in spite of provisions that appear to place political parties on the same plane as the representative bodies, other provisions pose obstacles that put them at a significant disadvantage.

- As constructed, the law creates a number of pitfalls that can cause a party's efforts to nominate candidates to falter at any stage of the process.

- The path leading to the ultimate registration of candidates is far more rigorous for political parties than it is for the representative bodies.

- Even if a candidate nominated by a political party is successful in winning the race in his constituency, there may still be yet another legal impediment that prevents him from taking office.

Until the current legal barriers are rescinded the process will undoubtedly continue to draw criticism from disenfranchised factions within the Republic and from the international community.

Article 20 provides that in order to be eligible to nominate candidates for election to the Oliy Majlis, a political party must have been registered by the Ministry of Justice

at least 6 months before the election is scheduled. The date of the election is scheduled by the Oliy Majlis. Under Article 19 they can fulfill this function at any time as long as their decision as to the date for the election is made at least three months before the expiration of its members' current terms. Since the law grants such flexibility to when the Oliy Majlis can formalize their decision, it could work against a group seeking registration as a political party for the purposes of nominating candidates. The law as written actually creates an window of opportunity for timing the decision on the date of the election to purposely eliminate aspiring political groups from competition.

Article 19 should be amended in a way that would close this loophole by stipulating a specific time period within which the Oliy Majlis must act rather than just providing a deadline by which the decision must be made. Such an amendment would give any aspiring political groups a more certain target date by which they must be registered by also identifying the earliest possible date on which the Oliy Majlis can select the date of the election. A political group could plan its strategy for acquiring registration, also keeping in mind the time allowed the Ministry of Justice for considering their application, by a deadline which could be calculated with more certainty.

Party Registration

From the outset, the process of registering as a political party has been historically difficult to achieve, and equally burdensome to maintain. The financial affairs, activities and publications of political parties undergo strict, ongoing scrutiny by the authorities. Infractions as well as engagement in any activity perceived by the government to be inconsistent with or beyond those specifically identified in the party's approved charter can result in cancellation of their registration and confiscation of their assets.

If the former law was restrictive and burdensome in its requirements, it does not appear that a new Law on Political Parties put into force on January 7, 1997 promises to make the process any easier. Although the full text of the new law was not available for this writing, it is reported that there now have to be at least 50 initiators who form the organizing committee. Within 7 days of being created, the organizing committee is required to notify the Ministry of Justice as to when it will hold its founding "constitutional" conference. Reportedly, the number of supporting signatures required for registration has been increased from 3,000 to 5,000 members. This also represents an increase over the number proposed in an earlier draft of the legislation considered in August of 1996. The new law requires that the signatures of members must represent residents in at least 8 of the Republic's 14 regional administrative territories. Preliminary reports also indicate that in order to qualify for registration, the group must acquire the signatures, adopt its charter, and submit all required documents to the Ministry of Justice within one month of its founding

"constitutional" conference.[3]

Additional Eligibility Requirements for Political Parties

Even if a political party has been successful in being registered by the Ministry of Justice in time to meet the deadline established by law, they are still not guaranteed the right to nominate candidates for the election. In fact, registered political parties are required to go through an additional application process and pass another threshold in order to secure the right to field candidates. To satisfy the threshold political parties must gather another 50,000 signatures of voters supporting their participation in the election. No more than 10% of these signatures can be acquired in any administrative territorial division. The application, subscription lists, and a "reference" from the Ministry of Justice confirming that they were registered at least 6 months before the selection of the election date has to be submitted to the Central Election Committee within 20 days of the Oliy Majlis' decision. The law gives no indication as to when they can begin their petition efforts in preparation for this submission.

The CEC must issue a certificate acknowledging the date on which the submission was received. The Committee then has 5 days to evaluate the party's documents and to make its final decision whether or not to permit the party to participate in the nominating process. Under Article 20, if it is determined that signatures in the subscription lists have been forged, the political party may be denied the right to participate.

The only ground specifically cited in Article 20 for the rejection of a party's application is "in the event of forging signatures in the subscriptions lists." The law fails to provide any guidance as to how the process of evaluation is to be carried out, or what sources the Committee is to use to determine the eligibility of individual subscribers. In fact, the law fails to dictate any other information which must be provided for each subscriber except for the signatures themselves, making any positive judgement about the person's identity or eligibility questionable. The basis on which the Committee would determine that a signature has been forged is equally unclear.

It is difficult to anticipate how such ambiguous laws might be interpreted in actual practice. Unless it is intended that the evaluation process is to be strictly administerial in nature requiring that petitions are only reviewed to determine that an appropriate quantity of signatures has been gathered, the law is insufficient as a basis for denying a party access to the ballot. Without legal clarifications the system will remain

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[3] *"Law on Political Parties in Uzbekistan,"* OMRI Daily Digest 1, No. 5, January 8, 1997; Abdumannob Polat, *"Uzbekistan: Implementation of Multi-Party System is Delayed,"* Central Asian Human Rights Information Network, January 9, 1997.

vulnerable to the controversies and challenges which are likely to result from potentially inconsistent and subjective application.

In the absence of a clear law, even if formalized evaluation procedures were adopted by the CEC, substantive questions could still remain which should be answered in the law itself. One of the key issues, for example, is whether a determination that a violation has occurred in the petitions from one administrative territory would be sufficient to disqualify the petition as a whole, or whether it is possible to create rules to disqualify questionable signatures without rejecting the entire petition. These questions become particularly significant if in spite of some rejected signatures, 50,000 valid signatures still remain. As it currently stands, the law is inadequate in setting reasonable parameters for making these kinds of determinations. If regulations or instructions are adopted by the CEC to cover these crucial questions, they would also be vulnerable to legal challenge in court if they introduce requirements, restrictions or other grounds for rejection that are not articulated in the law itself. In most democratic contexts courts would overturn adverse decisions of election committees based on administrative rules which are more restrictive than the law requires, or which are adopted outside the limits of their mandated legal authority.

In most long-standing democracies that employ petition processes relative to various features of their election systems, the laws define a list of specific grounds which would cause an entire petition to be denied. Courts are generally reluctant to support the rejection of a petition on the basis of determinations which have relied on subjective interpretations or on grounds that extend beyond the those specifically cited in the law; usually the benefit of any doubt is granted to the petitioner. This is because when a petition is rejected, it is not only the petitioner who is disenfranchised, but all the voters who have signed the petition properly and in good faith. In the case of the rejection of a candidate, all voters are denied an alternative choice on the ballot. Grounds are best stated in terms that preclude subjective interpretation. Distinctions are usually made between technical deficiencies which may be corrected, and actual violations.

The Final Hurdle for Political Parties

Perhaps one of the most significant impediments to the development of active and effectual political parties is Article 46. Under its provisions, even if a party candidate is successful in winning the race in his constituency, there is still no guarantee that he will be allowed to take office. Article 46 provides that unless the political party has polled at least 5% of the votes of all citizens who took part in the election throughout the Republic, a party candidate who has been successful in his or her constituency will not be registered as a deputy to the Oliy Majlis. This seems to be contrary to the fundamental principle of both constitutional and legislative law stressing the elections on a multi-party basis. It is also inconsistent with the principles of a majoritarian, single mandate system of representation instituted in Uzbekistan.

Pursuant to the current law candidates are elected by the voters within a constituency. The threshold not only places another obstacle in the path of fledgling parties. It also denies the will of the voters in a constituency on the basis that voters in other constituencies chose a different course. The opportunities for parties to grow and to become more broadly representative can be greatly dependent on the influence of their elected candidates, even if they represent a minority voice in the legislative body. Denying a duly elected candidate his seat delivers a severe blow to a political party not only in the immediate term; it also interrupts the momentum that even small successes can mean to its future.

As a participating state in the OSCE, it is important for Uzbekistan to reconsider Article 46. The refusal to register a winning candidate to his seat also seems contrary to the election standards established in the document adopted at the 1990 meeting in Copenhagen in which participating countries agreed to "ensure that candidates who obtain the necessary number of votes required by law are duly installed in office...."

As a practical matter, application of Article 46 poses other questions and inequities that also need to be revisited.

- The law does not define the method which is to be utilized in determining if the votes cast for a particular party surpass the 5% threshold. The issue is muddied because representative bodies are entitled to nominate candidates regardless of affiliation. The question that must be answered is whether the calculation of votes cast for a particular party are based on only those cast for their particular nominees, or whether candidates affiliated with their party but nominated by representative bodies are also included. It would be ironic, and obviously unfair, if a nominee affiliated with a political party that fell under the 5% threshold but nominated by a representative body were registered, while that same party's nominee were denied registration.

- Article 44 requires that if a new election must be held because a winning candidate is denied registration on the basis of his party's failure to garner at least 5% of the votes, none of the candidates registered for the regular election are eligible to be re-nominated for the new election. Although not specifically stated in the law, logic would dictate that the political party would precluded from submitting a new nominee altogether. There would be no way to overcome the threshold deficiency suffered in the regular election, so none of their potential nominees could ever be registered as a deputy.

- It also leaves in question whether or not a representative body would also be precluded from nominating a candidate affiliated with the defeated party in the new election.

- Although Article 44 provides that "the registration of candidates" are to proceed in the same order prescribed by the law, there does not seem to be a window for submission of applications by other parties for the purposes of

becoming eligible to nominate candidates for the new election. A representative body is only entitled to nominate one candidate. If no other party had qualified to participate in the regular election, or if no other party had passed the threshold, it is not clear how the second election would be contested. The question arises as to whether a candidate nominated by a representative body would be allowed to run unopposed and ultimately be "elected" simply because the votes cast for him exceed the votes cast against him.

Nominations by Representative Bodies

There is a fundamental question of principle as to whether provisions that allow representative bodies to nominate candidates for the Oliy Majlis are consistent with the generally accepted international democratic standards. Several concerns have been expressed in the discussions throughout this chapter which have highlighted the inequities between the rights of political parties and those of representative bodies in the nomination process. The fact that they are unencumbered by the rigorous qualifying process imposed on political parties, that they may nominate candidates of any party affiliation including those attempting to compete in the election, and that their successful candidates will not be denied registration as deputies, certainly puts them in an advantageous position.

One of the significant areas of concern is that members of representative bodies, through the exercise of their official powers, have extraordinary opportunities to exert influence on the voters in their jurisdictions. Any potential misuse of the power of their office to sway the public will can completely damage the "level playing field" to which all candidates are entitled in a democratic system. Additionally, in their official capacity, representative bodies would have greater access to internal government information and public resources which could be particularly useful for their candidates during the canvassing. The potential inequities are compounded in the event the representative body's nominee is one of their own members.

The system works against multi-party diversity by serving to dilute the influence of party affiliation in the election process. As it is currently constructed, the system also works to preserve existing authority structures and the direct link between central and local authority. A presidential appointee, the Khokim, heads the representative body and undoubtedly has some influence over their nomination decisions. It does not go unnoticed that Article 2 of the law provides that candidates may be elected to two representative bodies simultaneously. In other words, a deputy of the Oliy Majlis may also serve as a member of an elected representative body at the regional or local level, including the same representative body that nominated him.

The lingering attitude that political parties are second string players in the political arena was reflected in the comments of Kudratilla Akhmedov, Chairman of the Central Election Committee, in his address at the Working Conference of the District

Electoral Committees prior to the 1994 elections. In describing the advances of democratic principles in the new provisions related to the nomination of candidates he said,

> "The election law provides the right of nominating candidates to the deputies not only to the political parties, but also to local authorities (representative) bodies. This gives the electors a unique possibility: to send to the Supreme body the deputies who will express not only the narrow interests of the party but the interests of all the population of this or that region of our Republic."[4]

It is arguable that nominations by the representative bodies are necessarily an accurate reflection of the will of the population within a constituency. The fact that the members of these bodies have been elected by the voters may seem to justify such an assumption. However, the terms of these bodies are also for five years. In 1994, they were elected simultaneously with the deputies of the Oliy Majlis. That means that if the next elections are also held at the same time, the representative bodies will nominate candidates for the Supreme body at the very same time their local election will test whether or not they do indeed still have the will of their constituents behind them.

Such a system will continue to generate questions about the level of commitment that exists in the transition to a multi-party democracy.

For Consideration

- Article 19 should be amended to provide a window of time within which the Oliy Majlis must set the date of the election, rather than just defining the deadline. For example, a window could be described in terms such as " not earlier than 120 days or later than 90 days before the expiration of the current terms..." This would enable aspiring parties to calculate the deadline by which they must achieve registration with the Ministry of Justice with greater certainty.

- Consideration should be given to amending the law to provide an avenue of access to the ballot for independent candidates through self-nomination or groups of private citizens. A petition process is a viable method of qualifying independent candidates to demonstrate they have a modicum of support and are serious in their bid for election.

- Any laws that relate to a petition process should specifically define the grounds on which a petition will be rejected. The law should distinguish between technical omissions or deficiencies which can be corrected and true violations which will cause the petition to be denied. At the very least the law

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[4] *Supra.* Note 4, Pg 33.

should dictate that even if some signatures are found to be invalid, the petition will not be rejected if the minimum number of required "valid" signatures remain. One way to approach this issue and to set clear parameters for election officials is to set a double threshold: 1) that the petition must contain at least a certain number of "valid" signatures; and, 2) that errors or invalid signatures in excess of an established threshold will cause the petition to be declared null and void. The allowance for rejected signatures can be stated as a set number or a percentage.

- Use of a petition process as a mechanism for the registration of political parties is a standard practice in democratic contexts throughout the world. However, some modifications of the process as outlined in the Uzbekistan law are worthy of consideration. In the current environment where the transition to multi-party democracy is in its early stages, it may make sense to retain a two phase process. The first phase in seeking registration with the Ministry of Justice should be simplified and the mandatory number of supporter signatures should remain relatively low. This would give political parties legal status while they organize themselves and attempt to broaden their support. The second phase would be the more rigorous petition process to qualify the party to actually field candidates in the elections. However, once a party has passed this requirement they should not have to re-qualify for each and every election. Their right to participate in the elections should be secured. This would put them on a more equal plane with the representative bodies, if the rights of these bodies to nominate candidates is sustained. It would also ease the burden on election administrators who are required to evaluate petitions in such a restrictive time frame with limited resources.

- Article 46 which precludes a successful candidate nominated by a party from being registered as a deputy in the event the party has not received at least 5% of the poll should be repealed. Article 44 should be amended to remove this circumstance as grounds for conducting a repeat election. If a threshold is to be applied at this stage it should not affect the seating of a candidate who has won support of the voters in his constituency. They have expressed their will and should not be denied their choice, especially in a majoritarian, single mandate system. In western democratic contexts a threshold is sometimes established as a basis on which it can be determined if a political party will maintain its eligibility status. In Uzbekistan, the 5% threshold could be used in a similar way. Rather than denying a winning candidate his seat, a party which failed to receive 5% of the total votes cast could lose its eligibility to nominate candidates at the next election. Although such circumstances should have no impact on a party's registration, failure to meet the threshold could require a party to re-qualify for eligibility to nominate candidates in the next election by having to submit another petition. As long as they garner at least 5% of the votes, their eligibility to field candidates would be secured and no re-qualification would be necessary.

- The right of a representative body to nominate candidates affiliated with political parties which are competing in the election should be reconsidered. Preferably they should have a similar limitations as are imposed on political parties. In particular, they should be prohibited from nominating a candidate affiliated with a party which as earned the right to nominate candidates. The parties should not have to compete with representative bodies in the selection of nominees from their own membership.

- As democracy continues to evolve in Uzbekistan the nomination of candidates by representative bodies should be reconsidered. The emergence of strong, effectual and representative parties will continue to be hindered under the current system. As confidence in multi-partyism democracy increases, the reliance on representative bodies for the nomination of candidates will hopefully have diminishing value. In the future preference should be given to nomination by qualified political parties, through petitions of groups of private citizens and by independent candidates through self-nomination.

6

Candidate Campaigns

A critically important element in any democratic election process is the campaign period during which voters have the opportunity to become familiar with the programs and personalities of the candidates and nominating organizations competing in the election. In the interests of creating "equal rights" for all the candidates the Law on Elections to Oliy Majlis places severe restrictions on the campaign process, not only in campaign financing but also the time period in which a candidate can engage in campaign activity, and the manner in which candidates and parties can present themselves.

Several articles of law working together set parameters that strictly limit the opportunities of candidates to define the strategy for their own campaigns. Instead, virtually all aspects of the campaigns are controlled and defined by the state.

Campaign Financing and Material Support

Article 49 provides that all expenditures connected with the preparation for and the holding of the election are financed from state funds of the Republic. It clarifies that these expenditures include those incurred in the course of the candidates' campaigns by specifically prohibiting financing or rendering of material assistance from any other sources. As the law is constructed, it seems to even preclude campaign assistance to candidates from the political parties which have nominated them. Unfortunately, this preclusion may have been unavoidable in view of the fact that representative bodies are also entitled to nominate candidates. If all nominating entities were able to provide material support to their candidates it would mean that some candidates would be receiving support from public resources via the budgets of the representative bodies. Clearly, such alternatives would be unacceptable. Until the rights of representative bodies to nominate candidates are rescinded, the campaign process will most likely continue to severely restricted by these limitations.

Article 25 provides that canvassing may begin as of the day the candidate is registered by the CEC. Under its provisions all candidates are entitled to equal rights to use the

mass media and to meet with the voters in "any way suitable." If a candidate wishes to organize a campaign event such as a public meeting arrangements must be made by the WEC jointly with the khokimiyats of the relevant districts, towns and cities. The premises and equipment necessary for such events are provided by these bodies. The laws also requires that notice of these events be publicized in advance. Article 25 also places a burden on state bodies, public associations, the heads of enterprises, institutions and organizations as well as the bodies of local self government to accommodate candidates who wish to meet with the voters or obtain relevant reference materials and information.

The law seems to segregate canvassing by political parties from that of their candidates. Under Article 25 political parties are also guaranteed with the right to campaign. However, the law limits them to publicizing "their programs for their future activities." Article 12 of the Law on Guarantees of Citizens' Voting Rights ensures that citizens are entitled to canvass for or against candidates standing for election. However, since they too are precluded from lending financial or material support, the activities in which they may and may not engage are not altogether clear. For example, if a sports association which prints its own newspaper for distribution to its members were to publish an article favorable to the program of a particular party, would that constitute "material" support for that party's candidate? If a group of supporters of a particular candidate distributed a biographical statement or flyer during a door to door campaign, would that constitute an illegal "material" contribution? If so, it would mean that citizens are also limited in their options as to how they can exercise their rights to canvass guaranteed under Article 12 of the Law on Citizens Voting Rights. Under the strictest interpretation of the prohibition against rendering financial or material support, the only options open to citizens would be through verbal communication with other voters, and by attending public meetings, conferences or other demonstrations authorized by law.

Questions also arise as to other kinds of support which can come into play which may not be so obvious. First, it is not clear how the advantages of incumbency are treated under the very restrictive language of the law. For example, it is generally difficult to ensure equal access to the media for all candidates when incumbents enjoy continuing media attention by virtue of their public office above and beyond the specific "equal" time allotted by the CEC. It is equally unrealistic to limit material support in circumstances where candidates are afforded the use of telephones, equipment and commodities during the course of their campaigns through their places of employment.

It is problematic that although the law guarantees equal opportunities for each candidate and that campaign costs will be borne by the state, it provides very few details as to what the state's support will actually entail or how it will be disbursed among the candidates. Except for access to the media and arrangements for premises for public meetings, the law does not even guarantee that all candidates will be afforded an equal share of the expenditures allotted by the state for candidate campaigns. Nor does the law identify the specific kinds of materials support to

which each candidate will be entitled. In fact, most questions that candidates may have about the support they will receive for conduct of their campaigns are left totally unanswered in the law. What follows are examples of the kinds of questions which are likely to arise when candidates must rely totally on the state and are given limited control over their own campaign strategies and spending priorities.

- What amount of the state's budget is to be utilized for candidate campaigns and how will it be divided among the candidates?

- Are funds be allotted directly to the candidates from which they pay their own expenses, or are payments for campaign materials paid to vendors and the media directly by the CEC?

- Are candidates offered any choice as to the kinds of campaign materials that will be produced their behalf? For example, can a candidate waive an opportunity to appear on television to produce printed materials such as posters or flyers instead?

- How is the amount of time each candidate will be allocated in the media determined?

- Does equal access to the media include space in newspapers?

- Does a candidate have to use his or her allotted air time or print space all at once, or can it be divided into small increments so the candidate's material can appear more frequently?

- Are broadcast messages prerecorded or are they aired live? Does the candidate have a choice?

- Are the broadcast or print campaign messages of the candidates subject to censorship? If so, what rules will be applied and who will be responsible for making judgements regarding the acceptability of the candidate's materials?

Enforcing such narrow parameters where campaigns are controlled by the state precludes opportunities for any candidate to determine his own spending priorities and control the focus of his own campaign. Rather, the state intervenes and dictates his choices for him. While providing equal opportunities for all candidates can be a positive component of any election law, the candidates should be allowed some discretion in determining how best to present themselves and their programs to the electorate.

Campaign Content

In addition to the strict limitations regarding campaign financing, the law also attempts to impose controls regarding the content of campaign messages. In spite of constitutional guarantees regarding freedom of speech and expression of opinion, under the election law certain restrictions are imposed. Article 25 provides that the programs of political parties and candidates "should not be aimed against the Republic's sovereignty, integrity and security, encroach on the health or morality of the nation, contain propaganda of war, ethnic enmity, racial and religious hostility, or call for changing the constitutional system by force or taking actions infringing on the constitutional rights and freedoms of citizens." Sections of the Constitution also serve to protect citizens against "encroachments" on their honor and dignity including Articles 13, 27, and 48. A law enacted late in 1990 had protected the President from statements which insulted his dignity. There is a general concern that some of these restrictions are vague and ill-defined. Equally important is the concern that compliance with the strictest interpretation of these laws could result in campaigns lacking in any real substance. Any candidate seeking to delve into substantive issues during his campaign could find himself in violation of these provisions, depending on potentially subjective interpretations of the law.

Obviously, there is room to expect prohibitions against knowingly presenting false information or libeling or slandering an opponent. Appropriate civil laws probably already exist under which appeals could be pursued through the courts outside the arena of the political campaign. However, there is no criterion which formally defines what constitutes "encroachments" on one's honor or dignity. For example, if a candidate challenges the general performance or actions of an opponent or accuses an incumbent of misrepresenting facts on important issues, could that be interpreted as an attempt to discredit his honor or dignity?

Observers during the 1994 elections noted that it was an election "devoid of issues." In fact, one specific incident serves to illustrate the extent to which substantive debate is vulnerable to censure depending on how these laws are applied. One candidate attempted to raise the issue of dual citizenship in his campaign. He was prevented from doing so in his state-funded and approved campaign literature. Ultimately, his name was withdrawn from the ballot just 9 days before the election on the basis of his violation of Article 25.[5]

It will remain important for lawmakers and election officials to take steps to provide equitable opportunities for fair competition between candidates seeking election. However, there is room to question whether restrictions that preclude candidates from taking control of their own campaigns or that foreclose on meaningful debate are still viable in the new, democratic setting. While dedication to a policy which fosters equal opportunities for all candidates is laudable, maintaining such strict controls over all aspects of the campaign period may actually sustain some inequities in spite of best intentions. For example, incumbent candidates or high ranking officials who have

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[5]*Supra.* Note 1, pgs 21-22.

held positions of authority will still have the advantage of name recognition. Some parties will have a stronger base of popular support which will usually help new candidates 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 the principles of fair competition that the legal restrictions and controls are meant to preserve. Ideally, the candidate should be allowed some discretion in determining for himself how best to present himself and his programs to the electorate.

There may also be room to question whether the voters are well served under the current system. Tight control by the state over the form, content, style and placement of a candidate's propaganda can minimize the public's opportunity to become familiar with the programs of the candidates, and just as importantly, the differences between them. Often it is the presentation of rational criticism, sincere disagreement and healthy debate which provide the electorate with the most valuable information on which to make informed decisions at the polls.

For Consideration

- Article 49 should be amended to specifically guarantee that the total allotment from the state budget for the conduct of candidate campaigns will be equally distributed among the candidates.

- Under Article 49 political parties, public associations enterprises, institutions, organizations and citizens may make voluntary contributions to the election fund. The money is to be received by the CEC for its use in the election campaign. It is recommended that the law be amended to clarify the purposes for which these funds can be used. Preferably the law should dictate that such contributions are to be used exclusively for the purposes of candidate campaigns with each candidate benefitting from an equal share.

- The law should mandate that the CEC adopt comprehensive regulations to define the financial and material resources which will be allocated to each candidate. The regulations should specify the kinds of materials that will be produced on behalf of the candidate, the rules by which candidates will be allowed to provide their input, procedures for utilizing their free air time and space in the mass media, and the procedures by which their campaign messages will be monitored for content. The law should also dictate that the regulations be adopted and ready for public dissemination before the nomination period begins.

- The election law should be amended to reduce the involvement and potentially subjective interference by election committees in monitoring the content of campaign propaganda. The potential for intervention by authorities in the open and free expression of opposing view and healthy debate between

competing candidates should be curtailed. More reliance should be put on the electorate to make their own decisions about the integrity, character and competence of the candidates and merits of the programs they represent. Should a candidate believe he has been aggrieved by false statements or insults to his honor or dignity, he should be allowed to appeal to the courts and seek the remedies provided for under the civil code.

- The limitations on campaign opportunities for candidates should be lifted to provide them greater individual discretion in determining their campaign strategies and spending priorities.

- It is recommended that the allotment of state funding for the conduct of candidate campaigns be retained, as should the provision of an equal amount of free space and air time in the state mass media. However, consideration should also be given to allowing candidates to use additional funds from other sources to support other campaign activities and media options of their own choosing. For these purposes, candidates should be allowed to use their own funds or contributions from other sources specified in the law. If such amendments were enacted, the law should to define the limits of campaign contributions, the sources from which they may be solicited, and the maximum amount that can be accepted from any single source. The maximum limit can be expressed as a set figure, or in proportion to the amount of funding set aside for each candidate from the state budget. For example, the law could state that total contributions could not be greater than 3 times the amount allotted by the state. Provisions should also be enacted to establish the reporting of contributions and expenditures on a regular schedule, and the public disclosure of this information in the mass media.

7

Conduct of the Poll

The procedures outlined in the law for conduct of the polling on election day are generally consistent with internationally accepted practices. They incorporate a 13 hour polling day beginning a 7 a.m. and ending at 8 p.m. As required under Article 35, polling stations are equipped with screened booths which allow voters to vote in secret. The steps in the voting process require each voter to present identification so that the official can locate the person's name on the electoral register. The voter is then required to sign the register before being issued a ballot.

Article 39 dictates that the voter must mark the ballot in the secrecy booth and that no other person is permitted to be inside the booth while the voter is casting his vote. An exception is made for a voter who is unable to mark the ballot without assistance. Those in need of help may be accompanied by any person he chooses except a member of the election committee. The law contemplates that some voters may make mistakes or otherwise damage their ballots and allows them to get replacements. The law also provides that each voter is to deposit his marked ballot into the sealed ballot box personally.

It is to Uzbekistan's credit that the law is very liberal in accommodating voters with special needs to ensure that they are given every opportunity to vote. For example, Article 38 provides for "election day registration" by making allowances for voters whose names may have been inadvertently omitted from the voter list. Based on presentation of documents which identify the voter, his citizenship and place of residence, the law allows the person's name to be added to an appendix to electoral register, and the voter is allowed to cast a ballot.

Article 39 also outlines special services for voters who may be unable to come to the polls on election day. Two avenues are provided to allow these voters to vote. A person who will be unable to present himself at the polls on election day can be accommodated through advance voting arranged by the Ward Election Committee serving his precinct area. Under these circumstances a voter is required to present his identification, and to sign next to his name on the electoral register to prevent him from being able to later vote in person on election day. The voter is issued a "voting list" on which he will cast his vote rather than an official ballot paper. The marked

"voting list" is retained by the WEC in a special envelope until it is deposited into the sealed ballot box on election day.

On election day, special arrangements can also be made to serve voters at their places of residence if ill health, age, infirmity or other reason makes it difficult for them to come to the polls.

All in all, the law provides a perfectly valid skeletal frame work for the conduct of the poll on election day. In fact, in its allowance for election day registration for voters omitted from the electoral rolls and accommodation of voters with special needs it actually surpasses the systems of some long standing democracies including the United States. The failing of these provisions, however, is that lawmakers have added no flesh to the bones. Virtually no procedural guidance has been incorporated into the law. As a result, the law falls short in establishing acceptable standards necessary to ensure security and accountability of the process, especially relative to the special voting services where voters cast their ballots outside the polling station. Unfortunately, the omissions in procedural detail leave the system vulnerable to misapplication, and even worse, to manipulations that could ultimately impact the fairness and the reliability of the results.

It is acknowledged that during actual application of the law for past elections some of the deficiencies have probably been overcome in "instructions" issued by the Central Election Committee. However, the election system would be better served if resolution of the more significant issues were formalized in the law itself. This is especially true since CEC "instructions" in the Uzbek context tend to be issued extemporaneously in response to an immediate need, with instructions reissued anew with each election. They do not benefit from the level of formality, continuity and codified legal authority of administrative regulations as they are contemplated in most of the western democracies of the world.

There are several examples which can be discussed to illustrate how the law and the applicable procedures could be augmented to more clearly define the rules and incorporate mechanisms to provide greater security and accountability to the process.

The Ballots

Ballots are designed to list the candidates in alphabetical order. Article 33 requires that additional information is also to be provided on the ballot for each candidate including the name of the organization which forwarded his or her nomination, and the candidate's date of birth, party membership and occupation. The law also provides that the ballots may be printed in languages spoken by a majority of the population residing in the constituency as well as the state language.
Printing and distribution of the ballots are a responsibility of the DECs. According to Article 34 ballot papers are to be delivered to the WECs at least 3 days before election day. Their receipt of the ballots is to be confirmed by the signatures of the Chairmen,

Deputy Chairmen or Secretaries of the Ward accepting them as well as the DEC responsible for their delivery.

Security and Accountability Before Voting Begins

Although the WEC must acknowledge that ballots have been delivered, Article 34 does not go far enough to ensure that the actual quantity of ballots received by the ward is verified and signed for. This should be a mandatory part of the audit trail that should maintained throughout the entire election process. Ideally, the law should require that at least two members of the committee are present at the time of delivery of the ballots and that both members participate in the verification process and affix their signatures to the receipt. The receipt should also be signed by the delivery person who should be required to remain present while the quantity is verified.

The current law also fails to address any other issues related to security of the ballots before election day, or during the polling itself. For example, the law establishes no control as to how many ballots each ward is to receive. It is left totally open ended. Most commonly, election laws in established democracies relate the number of ballots to be issued to a polling site directly to the number of voters on the electoral register for that site. Some laws state that the number of ballots must equal the number of voters on the list, while others make a reasonable allowance for a small percentage of overage beyond that number to accommodate unforseen circumstances. However, since it is rare that there is a 100% turnout, usually there is no need to use the extra ballots that may have been issued. The point is that in the interests of security and accountability at every phase, even before the polling begins, there should always be a reasonable and verifiable relationship between numbers of ballots and numbers of voters to be served.

The law is also silent as to where the ballots should be stored and secured until they are needed on election day. At the very least the law should require that the ballots be stored in a locked and secured location.

Printing Techniques That Promote Ballot Security

Under the current law, there are no guidelines or minimum standards imposed related to the actual printing of the ballots. However, certain printing mandated enhancements could promote security while at the same time make handling and accountability easier to manage. There are several options that could be considered.

One of the first objectives is to reduce the risk of fraudulent duplication of ballot papers. Often ballots are printed on quality paper such as one that includes an exclusive watermark. Obviously, cost is always a factor. As an alternative, a faint special ink screen pattern can applied as a background to the printed text. Some

techniques would allow the security screen pattern and the ballot text to applied with one pass through the printing presses to keep costs down.

It would also be helpful if the ballots were at least padded or bound in uniform quantities to provide greater ease in packaging for distribution purposes. Standard packaging and padding of ballots would provide committee members at all levels with better control over the ballots under their supervision.

One of the preferred measures often standardized in law is a requirement that during printing, ballots be sequentially numbered within each election district. This would allow the DEC to maintain a centralized accountability record which documents not only the quantity of ballots provided to each ward, but also the numeric range assigned to each site. As ward committees verify the number of ballots that have been delivered to them, they would also verify that the range of numbers identified on the receipt form matches the actual ballots under their care. In jurisdictions which employ this mechanism the laws must specifically prohibit any activity or procedure which would link a specific ballot number to a particular voter so that the secrecy of the vote can be protected.

Ideally, ballots should include a stub or counterfoil from which they can be separated at a perforation. The sequence number of the ballot would be printed onto a stub or counterfoil rather than the ballot itself. 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 remain part of the formal documentation of activity at each polling station to support the report of overall results and accountability for the ballots originally issued to the polling site.

For Consideration

- In order to improve accountability and security of the ballots, the law should dictate the rules by which DECs are to determine how many ballots will be issued to each polling site. The maximum number of ballots that can be issued should be directly related to the number of voters on the electoral register.

- Article 34 should be augmented to require ward committees not only to acknowledge that ballots have been delivered, but to also verify the quantity of ballots received at the time they are delivered. It should also mandate that at least two committee members participate in the verification which should be carried out in the presence of the personnel making the delivery. Their signatures should be affixed to two copies of the receipt form, one of which should be retained by the ward election committee to be included in the documents of polling site activity submitted to the DEC at the end of the counting of ballots on election day.

- Article 33 should be amended to establish minimum standards relative to the

printing of ballots. In developing legal standards, options related to the quality of paper, padding or binding of ballot papers in uniform quantities, and sequential numbering should be considered.

- Article 34 should include a provision that dictates that prior to election day ballots are to be maintained in locked and secured storage. The law should also define who is to be responsible for maintaining the security of the ballots and should limit who is to have access to them while they are being stored.

Before Voting Begins

Activities undertaken at the polling station prior to official opening when the first voter is allowed to vote are very important in getting the polling day off on the right foot. It is at this point that the audit trail for election day activity is initiated. It is also at this point that the WECs lay the foundation for generating confidence among voters and observers that the processing at the polls will be accurate and accountable and that the work will be carried out in strict compliance with the rules. The transparency with which pre-poll tasks are accomplished can go a long way toward promoting positive and cooperative relations between committee members and authorized observers as the polling day unfolds. The Law on the Election to the Oliy Majlis could be enhanced by establishing a more formal approach to carrying out preparatory duties before the first voter can be processed.

The law is very sparse in its directives related to procedures which are to be accomplished before voting begins. It isn't even clear that Article 36 intends that the voting is to begin at 7 a.m., and therefore, that the pre-voting preparations must be completed before that time. Article 37 provides that at least 2/3 of the ward committee's membership must be present. Under its provisions only 3 tasks are touched upon. First, the law requires that the total ballot papers are to be certified "on a separate document." Second, the Chairman is to seal the ballot box in the presence of the committee members. Finally, the law indicates that the Chairman distributes the ballot papers and the electoral registers among the committee members.

There are two general concerns that deserve to be revisited as lawmakers and election officials consider improvements in the pre-voting formalities in for the future.

Transparency During Pre-Poll Activities

Perhaps the paramount issue is that the law fails to guarantee an adequate level of transparency to this critically important component of the process. The omission begins with Article 6 which provides that observers of the nominating political parties and representative bodies as well as representatives of the mass media, other states and international organizations have the right to be present at the polling stations on election day and during the count. However, it does not make it clear that these observers are guaranteed the right to be present during the preparations

undertaken before the polls officially open for voting. In fact, leeway to purposely interpret the law to preclude observer presence during these activities is fortified by Article 37 as it is currently worded. One of the activities that is of paramount interest to observers is the presentation and sealing of the empty ballot box. Article 37, however, dictates that the Chairman shall seal the ballot box "in the presence of the ward committee." Preferably, the law should include a clear directive that the "empty ballot boxes" should be displayed then sealed. No mention is made of the observers in this context. Unless the observers have the opportunity to be present to witness this part of the procedure, there will always be room for them to speculate as to whether or not the ballot box contained any pre-marked ballots. One of the major purposes of having observers is to protect election committees and the system itself by closing windows of opportunity for these kinds of questions to taint the public's confidence in the process.

As a side note, Article 37 also makes no mention of other ballot boxes which might be utilized on election day. In particular, based on traditional practices related to serving incapacitated voters at home, it is likely that there are portable ballot boxes which should also be displayed and sealed in the presence of authorized observers.

Initiation of the Audit Trail

It is commendable that in Article 37 lawmakers sought to initiate the ballot accountability process before the polls officially open by requiring the "certification" of the total ballot papers. However, this one task is not sufficient by itself to establish the basis for a complete audit trail which will be necessary if the report of results is to be fully supported by appropriate and trackable documentation. Once again, "certification" of the total ballots should be accomplished in front of the committee members and the observers. This information, however, represents only half of the accountability equation that observers should have access to as they monitor the process on behalf of their parties or representative bodies. In addition, the law should require that the total number of voters on the electoral register be verified and announced.

The law provides that voters who will not be able to get to the polling station on election day are allowed to vote in advance. Under the existing provisions of Article 40, nothing is officially done with the votes cast in advance until after polls close. It would be preferable if Article 37 related to the "Beginning of the Poll" ensured that they were dealt with before the polls open. This will be the only time that the Chairman will be able to account for and demonstrate to the committee and to the observers that the number of envelopes on hand containing votes cast in advance match the number of signatures already appearing on the electoral register. Once regular polling begins and in-person voters sign the list, that comparison is no longer possible. Accounting for the voting lists voted in advance should be completed immediately after the ballot box has been displayed and sealed. Once the number of signatures on the voter list have been counted and compared to the number of secrecy

envelopes, the compared numbers should be announced. It is then that Chairman should be required to deposit the envelopes in the sealed ballot box. Accomplishing this task before the polling begins precludes any doubts about real or perceived manipulation or introduction of fraudulent advance voting lists as the day progresses. Observers will be free to once again be able to see for themselves that the advance votes still match the number announced at the beginning of the day when the ballot box is opened for counting at the end of the poll. Incorporation of this procedure creates another step in establishing a proper audit trail.

The final step in the pre-voting preparations should involve making the preliminary entries in the minutes or protocol that will be used to report the results at the end of the count. The law could be enhanced by requiring that the "starting numbers" be entered into the protocol in ink before the first voter votes. This data, which will already have been established, would include the number of ballots issued to ward, the number of voters on the electoral register, the number of voter lists voted in advance, and the number of signatures already affixed to the register. These entries will provide the base line figures against which all the ballot and voting activity throughout the day will be balanced.

These kinds of formalities and transparency mechanisms are not only important in preserving a meaningful audit trail, they also serve to boost the confidence of observers that the process they are monitoring is accurate and accountable.

For Consideration

- Articles 6 and 37 should be amended to make it clear that authorized observers are entitled to be present to observe the pre-voting activities on election day.

- Article 37 should be augmented to formalize the procedures before the first voter is issued a ballot on election day. Those procedures should include the display and sealing of stationary and mobile ballot boxes, and the verification and announcement of:

  the number of ballots issued to the ward (and the range of sequence numbers if printing requirements include sequential numbering;)

  the number of voters on the electoral register;

  the number of signatures of advance voters already appearing on the register;

  the number of secrecy envelopes on hand containing voting lists voted in

advance.[6]

- The law should also require that the base line data against which all polling activity will be balanced at the end of the day be entered in the minutes or protocol, and that the entries be made in ink. Only after these tasks are completed should the polls be officially opened for voting.

Processing the Voters On Election Day

The manner in which voters are processed as they present themselves to vote is fairly routine and consistent with similar practices employed in most democratic contexts. Each voter is required to present identification, and to sign the voter list before being issued a ballot. The voter marks the ballot in a secrecy booth and then deposits the marked ballot in the sealed box before leaving the polling station. Although the law provides for an orderly routine, there are few areas that could be reviewed in the interests of making some technical improvements.

Security of the Ballot Boxes

One issue relates to the security of the ballot box. Observers present for the 1994 elections noted in their reports that frequently the ballot boxes appeared to be out of view of the officials and observers during the course of the voting.[7] At sites where this lapse in security was noted, it was more than likely a result of strict compliance with the wording in the law regarding the layout of the polling station, than negligence on the part of committee members. Article 35 provides that the ballot boxes are to be placed "so as on approaching them, voters shall have to pass through booths or rooms for secret ballot." Many sites, therefore, stretched the voting booths across a room with curtained openings on front and back sides. When a voter had finished marking the ballot, the voter exited on the back side of the booth out of view of officials and observers to deposit his ballot into the ballot box on the opposite side. Article 35 should be amended to ensure that the ballot box remains in full view of the officials and observers at all times. It should also be enhanced to require that all mobile ballot boxes which will be used for assisting voters at home also remain in full view at all times they are not in use for the intended purpose.

Voting On Behalf of Other Persons

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[6] Additional information might also be added to the protocol during the pre-voting formalities if an application process is introduced relative to incapacitated voters who are allowed to vote at home. See discussion on pg.

[7] *Supra.* Note , pg. 29.

Another concern raised by international delegations of observers during the 1994 elections was the frequency with which voters were allowed to present the passports of other persons, and to sign the electoral register, receive ballots and cast votes on their behalf.[8] According to reports, it also appeared that the practice did not just involve "family voting;" multiple voting was frequently extended to voting for friends and acquaintances. Although the official policy prohibited such activity, and pre-election publicity stressed this aspect of the new law, neither officials or voters seemed to take the prohibition seriously. This is most likely due to the fact that, historically, family voting has been a long standing tradition. The fact that the new legal standard was ignored is probably reflective of a civic culture that had not yet come to appreciate the significance of the one voter/one vote principle and the far-reaching implications in the democratic context.

In spite of widespread criticism of the practice, there is room to question whether technically it is against the law as it has been written. The specific provision on which officials rely in trying to curtail the practice is Article 3 which dictates that "every citizen shall have only one vote." This does necessarily preclude "proxy voting," in which the "one vote" to which a person is entitled is physically cast by another person. If lawmakers intend to retain strict prohibition against "family voting," Article 3 or Article 39 should be amended to state specifically that "each voter must vote personally" and that "no person may vote on behalf of another person who is not present." Then, the emphasis should be on ensuring compliance.

If multiple voting violations are allowed to continue out of control, the system will remain vulnerable to abuse. First, it provides fertile ground for the buying, selling and bartering of votes. Additionally, there is no way to monitor what intimidation factors may be at play. Multiple voting by persons presenting the passports of numerous other people also distorts the credibility of any conclusion that the minimum threshold of a 50% turnout has been satisfied. Most importantly, a legitimate question will continue to be raised by critics as to whether or not violations represent an intentional attempt to manipulate the results of the election. Until the rules are strictly applied, the reliability of the election as an actual reflection of the people's will remain in question.

If, on the other hand, lawmakers choose to honor historic traditions, the law should be amended by adding new provisions outlining formal rules under which proxy voting will be allowed. Although proxy voting generates its own set of concerns, with proper safeguards it can be likened to allowing a blind voter to have an assistant of his own choosing mark his ballot on his behalf. Trust in the proxy is based on the judgement of the voter. Examples of rules which could be imposed to guide proxy voting while ensuring a level of security could include:

- requiring advance applications to be signed by the voters who give permission for a specifically named persons to receive and vote their ballot for them;

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[8] *Supra.* Note pgs 29-30.

- making it illegal for a person to serve as a proxy for more than one or two other persons;

- requiring that the advance application be signed by a member of the ward committee at the time it is submitted;

- dictating that the applications be retained by the election committee to become part of the permanent record;

- mandating that the proxy must be identified on the electoral register next to the voter's name and affix his signature to acknowledge that he has received a ballot on the voter's behalf;

- requiring the committee member who issues the ballot to sign the register as an attestation that he or she reviewed the application and the identification of the proxy and verified that the ballot was delivered to the specific person assigned by the voter.

Ultimately, it is of critical importance that if proxy voting is to be allowed, it remains above the table, and that sufficient safeguards are clearly articulated in the law to secure the integrity, accountability and transparency of the process.

Serving Voters at Home

Article 39 provides that if a voter cannot come to the polling place on election day due to bad health or other reason, committee members are to make arrangements for them to vote at the place where they are staying. This is another example of the extraordinary efforts lawmakers have gone to in ensuring that every voter will have the opportunity to cast their vote. However, any time ballots and voting are allowed to take place outside the polling station and out of view of most of the committee members and observers, there is tremendous opportunity for abuse. Even if there is only a perception that manipulations and fraudulent use of ballots is possible, public confidence in the integrity of the process can be seriously undermined.

Unfortunately, the current law leaves the door open to such real and perceived abuses because it is absolutely silent as to how at-home voting is facilitated. Nothing in the law dictates what procedures that are to be followed. In particular, it is not clear how officials are to determine which voters need to be served at home, or how ballots voted outside the polling station will be documented, secured and accounted for. For example, no reference is made in the law regarding the existence of a form or "supplemental" list that would be signed by an "at home" voter to document his or her receipt of a ballot. There should be some kind of list or document utilized for this purpose, not only to offer a track record to support the use of ballots outside the polling station, but also so that measures can be put in place to ensure the person does not attempt to vote in person at the polling site as well.

Nor are there any safeguards to ensure that "at home voting" is only used for its intended purpose. Without proper controls, for example, there is nothing to preclude use of "at home" voting services to solicit participation from any person on the voter list who has not appeared in person to vote. The pressure on officials to achieve the required threshold of participation could encourage them to misapply this process to artificially boost the turnout figures.

Voters who are called upon unexpectedly could easily be made to feel that they are being subjected to undue pressure to cast a vote when officials appear at their door unannounced. And, of course, any ballots taken from a polling station are subject to potentially fraudulent use specifically for the purposes of manipulating the outcome of the election. For these reasons it is very important that the "at home" voting process be facilitated in compliance with well structured laws and procedures.

A new article of law should be added to clearly define the rules for "at-home" voting. Some rules could be similar to those recommended above for proxy voting if it were ultimately legalized, while others would address issues related specifically to accounting for the ballots that are removed from the polling station on election day. What follows are the kinds of rules that should be considered as lawmakers consider amendments to the law.

- The law should provide clear limitations as to the circumstances which would make a voter eligible for "at home" voting services. The current law allows the service to voters on the basis of health, "or other good reason." This vagueness invites misuse. The purpose of setting some restrictions is limit or control the number of votes which may be cast outside the control of the committee as a whole, and outside the general view of the observers.

- Consideration should also be given to instituting an application process and a deadline by which applications for "at home" voting must be made, even if the deadline is at a specific hour on election day. In the interests of convenience for the incapacitated voters and their families, the application forms could be made available at the WEC's in the two weeks preceding the election so that they could be filled out, signed and returned before election day. The law could also provide that voters would be able to fill out an application on behalf of a family member, when they themselves come to the polls to vote in person on election day. Even if the law were to allow applications to be taken over the telephone, an official application form should be used. The application form should include information about the voter to be served, the date and time the application was made, and the signatures of the person submitting it on another person's behalf and the committee member accepting it. Committee members could take the initiated application with them when deliver the ballots to the voter so that the voter could sign it to acknowledge that the application is valid.

- The law should require that a notation be made on the electoral register to

indicate that the voter is voting "at home." Establishing an application process with a strict deadline would allow committee members to make the appropriate notations in advance of their departure from the polling station with the ballots for these voters. It would also allow the actual number of voters to be served and the number of ballots needed for this purpose to be known and documented in the official minutes before the committee members remove ballots from the polling station on election day.

- The law should require that an announcement be made to the committee members and observers present relating the number of applications that have been received. Committee members assigned to facilitate "at home" voting should be required to count out the number of ballots which will be used and sign a receipt for that number in the presence of the observers. The law could make allowances for a few extra ballots to be taken to accommodate any "at home" voter who may inadvertently spoil or mis-marked his or her ballot.

- The law should dictate that a supplemental list be used on which information similar to that on the electoral register is entered for each applicant to be served outside the polling station. Upon delivery of the ballot to the voter, the law should require that the voter sign the supplemental list to acknowledge that he has received the ballot.

- Upon return of the committee members to the polling site, the law should require that they certify the number of ballots that were actually used and the number of ballots which have been returned unused. They should also compare the number of ballots used with the number of signatures on the supplemental list. Entries of this information should be made directly into the minutes so that they are already accounted for so that later the entries can serve as a basis of comparison as each mobile ballot box is opened during the counting process.

- The law should dictate that committee members work in pairs to accommodate this facilitate this service. It would also be beneficial if the law allowed authorized observers to accompany them.

- The procedures should be duplicated by each team of committee members if more than one mobile ballot box is employed. A separate accounting and documentation should be maintained for each box. If more than one mobile ballot box is used at a particular ward, it would be helpful for accountability purposes if each mobile box was numbered, and if the supplemental list associated with that box was identified by the same number.

- The law should dictate the manner in which problems would be resolved in the event that there is a significant disparity between the number of ballots used and signatures on the supplemental lists. It should also address the disposition of these ballots if when the mobile ballot boxes are opened, the

number of ballots inside exceed the number of signatures on the supplemental list associated with that box.

- The law should mandate that voters voting at home must be afforded the same right to mark their ballots in secret and to deposit them in the mobile ballot box personally, as is afforded voters voting in person at the polling station.

Spoiled Ballots

Article 39 contemplates that voters will occasionally spoil a ballot and need a replacement. Under its provisions the voter is apparently required to return the damaged ballot to the committee in order to obtain a replacement. Under the law the spoiled ballots are to be stamped and segregated so that they can be counted separately at the end of the day. As an additional measure, a note should be made on the electoral register that the particular voter has received a second ballot as an offsetting record for the audit trail.

Method of Marking the Ballot

With regard to the manner in which a ballot is to be marked, the current law retains an old tradition from years past. Article 39 provides that the voter makes his choice by crossing out the names of the candidates he votes against, leaving his preferred choice exposed. This marking procedure is reflective of times when there was usually only one candidate on the ballot. The only choice the voter had was to cross out the candidate's name to express a negative vote. The introduction of multi-partyism and growing political competition has resulted in an increase in the number of candidates appearing on the ballot. It would seem timely for lawmakers to consider abandoning the traditional method of marking the ballot in which the voter marks out the candidates he rejects in favor of a method whereby the voter makes a single affirmative vote in a box next to the name of the candidate he prefers. This change would simplify the ballot counting process by making it easier for committee members to read each ballot.

For Consideration

- Article 35 should be amended to ensure that the ballot boxes are placed in a position where they remain in full view of the committee members and the observers. The law should also require that mobile ballot boxes also remain in full view except when they are being used to accommodate voters at home.

- Article 3 or 39 should be amended to make it clear that "each voter is to vote personally" and that " voting on behalf of another person who is not present is prohibited."

  If proxy voting is to be instituted, the law should clearly articulate the rules under which it will be accommodated. At the very least, proxy voting should require an application process whereby the voter identifies the individual authorized to cast a ballot on his or her behalf. The law should prohibit a person from serving as a proxy for more than one or two other persons. A notation should be made on the register next to the voter's name identifying the proxy accepting a ballot on his or her behalf. A committee member should sign the register to acknowledge that the identification of the proxy has been verified to ensure that he is the person authorized by the voter.

- A new article should be added to the law to clearly define the procedures that are to be followed when ballots are removed from the polling station to accommodate voters who wish to vote at home.

  The law should require that an application be submitted and that a deadline be established so that the number of voters to be accommodated is known before committee members depart from the polling station with the ballots and the mobile ballot box.

  The number of applications and the number of ballots needed should be counted and announced in the presence of the committee members and observers. Members responsible for serving voters at their homes should be required to sign a receipt for the number of ballots they are taking from the polling station.

  Upon receipt of an application, a notation should be made in the electoral register that the voter will be voting at home. A supplemental list should be prepared identifying the "at home" voters so that each voter can sign his or her name to acknowledge that a ballot has been delivered.

  Upon return of the committee members, a report of the number of ballots used and signatures on the supplemental list should be made.

Members should also account for any ballots being returned unused.

Information related to "at home" voting activity should be documented separately for each mobile ballot box employed for this purpose. Entries should be made in the minutes to provide a point of comparison when the boxes are opened during the counting process.

The law should dictate the disposition of ballots in a mobile ballot box when it is determined that the number of ballots enclosed exceeds the number of applications processed.

- Article 39 should be enhanced to require that when a voter receives a replacement ballot after the original ballot has been spoiled, a notation should be made next to the voter's name in the electoral register.

- Article 39 should be amended to change the way the voter is to mark the ballot. Instead of crossing out all the names of candidates the voter rejects, the law should voter should make a single mark in a box next to the name of the candidate he prefers.

8

Counting the Votes and Summarizing Results

Generally speaking, the Law on Elections to the Oliy Majlis provides an appropriate mechanism for the immediate counting of votes at the polling station at the end of the voting day. Article 40 dictates that ballot boxes are to be opened only after the Chairman has declared the polls closed and emphasizes that opening them before the end of the poll is prohibited. The results of the count at each ward are submitted to the District Election Committees where they are summarized into constituency-wide results. The CEC is ultimately responsible for reporting the final returns and publishing the list of successful candidates for all the districts throughout the Republic.

Article 40 describes the order in which a generally defined list of tasks is to be accomplished.

- Before the ballots boxes the ward committee is to:

  deposit the sealed envelopes containing the voting lists voted in advance into the ballot boxes; and,

  count and stamp the unused ballots.

- The total number of voters in the ward is to be established.

- The ward committee is to determine the number of voters who received ballot papers.

- The votes are to be counted separately for each candidate.

- Based on the ballots and voting lists contained in the ballot boxes, the law requires the ward committee is to calculate the following information:

  the total number of voters who "took part in the election;"

the number of votes cast for and against each candidate; and,

the number of invalid ballots and voting lists.

- The results are discussed by the ward committee and then entered into the minutes which are signed by the members before being submitted to the District Election Committee.

The Process of Counting the Ballots

Although the law provides general guidance as to how the counting procedure is to be carried out, its directives are only spelled out in cursory terms. Many procedural questions are left unanswered. What follows are examples of the kinds of significant issues that are not addressed adequately in the law.

- The law is devoid of specific guidance as to the order in which the mobile and stationary ballot boxes are to be opened, or how the ballot papers are to be physically handled by the committee members.

- The law does not clearly mandate that the counting is to continue without a break until the process is completed.

- Nothing in the law suggests how duties should be distributed among committee members; nor is there any provision which specifically restricts observers or other persons not on the committee from handling ballots or assisting in the count.

- The law fails to affirm the rights of observers to have a clear, unhampered view of the process.

- There are no legal provisions that speak to internal controls or steps to be taken to verify the accuracy of the count before the results are reported as the official returns.

- The law is silent as to how the various materials are to be sorted or segregated for packaging, transport and archiving.

In the absence of definitive guidelines there is little likelihood that from one polling site to another, observers would find that consistent procedures were being employed. In fact, international observer delegations present for the 1994 elections noted the apparent lack of formalized standards or step by step procedures. At some sites the process appeared to be chaotic and observers noted that mistakes were made as

officials struggled to devise their own methods of carrying out the count.[9]

Additionally, the lack of procedural detail threatens to obliterate a meaningful audit trial. It is fundamental to any election system that the reported results are supported by trackable documentation that substantiates the relationship between the numbers of ballots found in the ballot boxes, and the numbers of voters who have demonstrated through their signatures on the voters lists that they have legitimately participated in the election.

Throughout the law allowances are made for such voting opportunities as advance voting and the casting of ballots outside the polling place on election day, in addition to regular in person voting at the polling station. One would have to infer from the current law that there is no obligation to handle or account for the ballots from each of the various sources separately. Instead, it would appear that everything is simply commingled and treated as one lump sum.

Unfortunately, once the ballots from all the various ballot boxes are merged together, an audit of any specific component is no longer possible. If there is ultimately a challenge or allegation of impropriety related to a specific pool of ballots, such as ballots contained in a particular mobile ballot box, for example, it is no longer possible to isolate the problem to that pool. Instead, the results of the count for the entire polling station are tainted. It precludes any opportunity for the election committee to make rational determinations about the validity of such complaints while minimizing the impact on the ward as a whole.

It would be helpful if the law was more definitive in its regulation of the steps to be accomplished in the counting process to preserve the audit trail, improve accountability for the use of the ballots in their charge and increase the level of transparency during the counting and reporting process. Some amendments would only require clarifying the existing provisions, while others would involve adding new requirements.

For Consideration

- Under the current wording of Article 40, the "ward committee shall establish the total number of voters in the ward." Article 40 should be made clearer by specifying that the election committee is required to count the number of voters on the original electoral register first, and then count the number of voters who were added to the annex to the register throughout the day. Further the law should require that the original number and the additions should be made as a separate entries into the minutes. The pre-poll figure from the original electoral register and the additions should be added together to account for the total number of voters in the ward. (As discussed earlier in

[9] *Supra.* Note 4, pg. 31.

this report, it is recommended that the number of voters on the electoral register should be counted and entered into the minutes as part of the pre-voting procedure. If this procedure were ultimately adopted, Article 40 which specifically guides counting procedures, would only need to address the counting of the voters added to the annex to the electoral register.)

- Article 40 also says that the ward committee "shall establish the number of voters who received ballot papers." As worded, it is not articulated in a way that ensures that an accurate figure is arrived at, against which the actual ballots contained in the ballot boxes can be compared. Without clearer guidance it would be possible for committee members to artificially arrive at the number of voter who received ballot papers by a simple mathematical equation. They could simply subtract the unused ballots which have already been counted and stamped, from the number of ballots originally issued to the polling station. Although the mathematics might be accurate, it does nothing to substantiate a valid correlation between documented voters and voted ballots. It is exactly this correlation that sits at the heart of meaningful ballot accountability. Therefore, the law should be restated to require the committee to determine the number of voters who received ballots by:

  counting the number of signatures on electoral register;

  counting the number of signatures in the annex to register reflecting the voters who have been added to the rolls on election day and were issued ballots;

  counting the number of signatures in each supplemental list acknowledging that voters received ballots at their places of stay.

  There should be a separate supplemental list for each mobile ballot box put into service. It would be helpful if each mobile ballot box were numbered and its related supplemental list were identified by the same number. The electoral register and its annex should relate to the voters who used the stationary ballot box at the polling site.

  The entries in the minutes should reflect the numbers of signatures in each category as well as their total sum.

- Article 40 should clearly define the order in which the ballot boxes are to be opened. As each ballot box is opened, the number of ballots contained in the box should be counted without regard to the manner in which they are marked. The number of total ballot papers in each box should be recorded in the minutes. In each case, a comparison should be made between the number of ballots and the number of signatures on the register or supplemental list related to each box. The comparison of the two figures will demonstrate to everyone present that there is a reasonable correlation between actual voters and voted

ballots. Obviously, an occasional human error could cause the numbers of signatures and ballots not to match exactly, but they should meet a satisfactory "reasonableness" standard. The comparison will also immediately demonstrate any significant disparity which might necessitate of a full review by the committee and a formal decision as to how the incident will be resolved. If the ultimate decision of the committee is that the disparity is so great that the results of the votes from that box would be unreliable and should, therefore be excluded from the count, the rest of the votes cast at the ward remain untainted. The law could dictate the grounds on which such a decision may be made, and provide guidelines as to how such incidents are to be documented in the minutes.

- The law should specify whether the ballots from the mobile ballot boxes are to remain segregated for counting and recording of the votes cast, or whether they can be commingled with the ballots from the stationery ballot box. Ideally, they should be retained in their separate pool so that if the results are ultimately challenged, problems can be isolated to the smallest possible groupings. If there are too few "at home" voters to ensure that the secrecy of their votes is protected, it could justify merging all the ballots from mobile ballot boxes together, so long as the original accounting process demonstrates that they are in good order. Under this scenario the minutes would reflect the number of the votes cast for each candidate based on the ballots from the mobile ballot boxes. Later, when the votes are counted and recorded from the ballots in the stationary box, the results for each candidate would be added together. However, lawmakers determine that all ballots are to be commingled before the actual votes are counted, the law should make it clear that the mixing of all the ballots together can only take place after the accounting steps have been accomplished and recorded.

- In order to ensure that all polling stations apply uniform standards and practices in carrying out the vote counting process, the law should be augmented to define formal procedures that are to be followed. Without formal rules, it means that there will be little uniformity from ward to ward or from one election to election. This informality of process and the inconsistencies that go with it does seem to conform with the requirements of Article 11 (1) which requires the CEC to ensure "uniform application throughout the Republic's territory." Generally, there are two alternative methods that are most commonly employed in manual ballot counting. The first, and according to observer accounts the method utilized in Uzbekistan, is the "sort, stack and count" method. In this scenario the ballots are dumped out of the boxes onto a table to be read and sorted based on the candidate for whom the vote was cast. Stacks are organized for each candidate with a special stack set aside for ballots which committee members believe are invalid. Once they are sorted, the ballots in each stack are counted to determine how many votes the respective candidate received. The second method involves use of a pre-prepared tally sheet on which a mark is made

next to the appropriate candidate's name as ballots are read. The distinctive advantage of the tallying method is that the recording of individual votes on a tally sheet provides physical documentation to validate and support the totals reported on the protocol. This method also provides greater transparency as observers can actually hear and observe the distribution of votes among candidates. Regardless of which alternative is selected, the law should specify the method with sufficient detail to ensure uniform and consistent handling. The procedures should also incorporate standardized mechanisms to promote accuracy and transparency. Examples illustrating how rules might be defined for the "sort, stack and count" method, and the "tallying" method are provided in Appendix B.

- Article 40 provides that the "results of the poll are discussed by the ward committee and entered into the minutes." It is not clear from this general wording what specific information is considered "results of the poll." It could be interpreted to mean the outcome related specifically to the number of votes cast for the various candidates. In order for the audit trail to be complete and available for scrutiny in the event of a challenge, it is important that all enumerated data related to voters, ballots, and voting lists become part of the permanent record.

- To the greatest extent possible entries should be included for each category and subcategory separately on a pre-designed form especially created for that purpose. The reporting form should be designed in a way which not only identifies the categories of information to be provided. It should also provide the spaces in sequence with appropriate mathematical symbols to aide committee members in making any calculations which may be necessary. In practice, understanding the various categories and how they relate to one another will aide committee members in finalizing their documentation. Precise detail will also make it possible for higher election committees, observers, procurator's and courts to reconstruct the factual record should subsequent legal review ultimately become necessary.

- The law should mandate that the minutes and the signatures of committee members be written in ink.

- The law should also make provisions for dissenting opinions from committee members and observers to be attached to the minutes as part of the permanent record. Similar provisions should be made regarding formal complaints filed with the committee throughout the course of the polling day. The minutes should include notations as to how each formal complaint was resolved.

- The law provides no guidance with regard to the disposition of ballots, documents and materials after the counting has been completed. Except for a directive that the minutes are to be forwarded to the DEC, the law is silent with regard to how the materials should be packaged, if and where they are to

be stored, and how long they are to be retained. The law should be amended to overcome this deficiency. To the extent possible, directives should instruct committee members to package materials in the same categories or groupings as they were accounted for in the minutes. Each package should be secured with some kind of seal and the ward number and contents should be identified on the outside of the package.

- As worded in the current law, it appears that only one original copy of the minutes is made. These omissions should be rectified as amendments are considered. It is recommended that 3 copies of the minutes be prepared. One copy should be submitted to DEC. One copy should be retained by the Chairman of the Ward Election Committee. One copy should be posted for public display at the polling station.

Transparency Issues During Counting and Summarization of Votes

Observers, including those representing the nominating parties and representative bodies, the mass media, and international states and organizations are granted the right to be present "during the count of votes" by Article 6. However, a serious omission exists in Article 40, in that it dictates that the ballot boxes are to be opened "in the presence of members of the ward election committee." No mention is made in this specific context that the observers are also entitled to be present as the ballot boxes are opened. Clearly, any interpretation that committee members may open the ballot boxes out of the view of the observers could provide room for doubt as to whether such opportunities resulted in improper manipulations such as replacement of legitimate ballots for fraudulently marked ballots.

Another serious omission is that Article 6 and Articles 41 and 42 covering the summarization of results at the DEC and CEC levels fail to make any provision for the presence of observers at this stage of the process. In addition, the law does not define the level of detail which must be published when the CEC provides the press with its "report on the election returns." Article 47 simply requires the CEC to publish a "report of the election returns" in the press, and a list of the deputies who have been elected arranged in alphabetical order with the names and numbers of the constituencies from which each was elected. The only details enumerated in the law which must be included in the published reports are the elected candidates' surnames, patronymic names, dates of birth, party affiliation, occupation, and places of work. The law does not make it clear, however, that the publication of results must at least involve the reporting of the votes cast for both successful and unsuccessful candidates in each constituency. Nor is there is any legal requirement that the DECs publish reports of constituency results whatsoever. Even if it is not feasible to publish ward by ward results at the national level, the law should at least impose such a requirement on district committees within their constituencies.

Unless there is ward by ward disclosure of votes cast for each candidate, participating political parties and representative bodies, journalists and citizens have no way of satisfying themselves that the total results are fully supported by verifiable data. In spite of the fact that observers may have watched the counting at the polling stations, their ability to verify that the summarized results are, in fact, an accurate reflection of the accumulated individual ward totals is short circuited. Even an aggressive effort on the part of coordinators supervising observer delegations to ensure their representatives submit reports from each of their assigned precincts would prove ineffectual unless official precinct data was made available for comparison.

Nothing in the Law on the Elections to the Oliy Majlis speaks to the rights of authorized observers to actually receive certified copies of ward or districtwide returns. Without such an entitlement being guaranteed under the law, representative bodies which have nominated candidates may be at an advantage over political parties since their access to such documents through internal channels is probably not subject to question. An objection to such a provision might be raised on the basis that it would be impractical for ward committees to be able to reproduce a sufficient number of copies of their minutes to accommodate the number of observers who could potentially be present. However, the law could define the rights of observers to view the minutes and write down the results on their own forms. The Chairman, Deputy Chairman or Secretary of the committee could be authorized under the law to affix the official stamp and their signature to an observer' copy acknowledging that the information was written down accurately. As a security measure, the minutes could include a notation and signature of each observer who received a stamped copy. If such additions were incorporated into the election law, it would be incumbent on the CEC to ensure that lower level committees were well trained to understand their obligations in this regard, and to understand the critical importance of these copies as they could pertain to any challenges or appeal s regarding the results of the election. However, the importance of this level of transparency cannot be understated in building the confidence of observers and the nominating bodies they represent.

For Consideration

- The wording of Article 40 should be amended to ensure that the ballot boxes are opened "in the presence of members of the ward committee and authorized observers."

- Articles 6, 41 and 42 should be amended to extend the eligibility of authorized observers to be present during the summarization process at the DEC level.

- The law should specifically prohibit the SEC from altering any entries or vote totals in the minutes submitted by ward committees except under strictly defined rules. Such rules should require that if the DEC determines that errors have been made in the calculations or entries submitted by a ward committee, corrections can only be made with the concurrence of, and in the presence of

the Chairman, Deputy Chairman and Secretary of the WEC. If a correction results in a change in the vote totals awarded to any candidate, the observers representing the political parties and representative bodies whose candidates appear on the should also have the right to be present. When corrections are made, they should not obliterate the original figures reported by the ward. Rather an amended return should be prepared with an explanation of the reason why the correction was necessary, and the signatures of those responsible for resolving the error. Provisions should be added to the law to outline the circumstances or conditions under which an recount of the ballots may take place. Whenever a recount is necessary, observers should be allowed to be present.

- Article 41 should require the DEC to prepare, post and publish in the press a summary table of election results that includes the details of poll activity for each ward in the constituency. For each ward, the summary table should include the total number the number of voters, the actual turnout and the total votes cast for each candidate. The table should also summarize the grand totals in each of these categories for the constituency as a whole.

- Article 41 should also require that the DEC post a copy of its summary table of districtwide results for public view for at least 10 days following its meeting during which the results were "established." This 10 day period would coincide with the Article 18 which provides that a decision of an election committee can be appealed to a higher committee within 10 days of the decision.

- The law should define rights of observers to receive certified copies of ward and districtwide results and define the process by which those documents will be made available.

9

Determining the Winners

Uzbekistan has established minimum voter turnout threshold which dictates whether an election is considered to have been successful. Under Article 42, at least 50% of the voters included in the electoral register have to have participated. Additionally, to be declared the winner of the election within a constituency, a candidate must have garnered more than half of the votes cast. If less than 50% turnout has been achieved, the election is considered to have failed and no candidate is elected.

If a successful election has been held and more than two candidates stood for election but none of them earned enough votes to be declared the winner, a second round of polling is required. The two candidates who garnered the most votes go on to compete in the second round. The threshold turnout requirement is maintained during the second round as well. If more than half of the voters participate, the candidate who receives the most votes wins the election so long as the number of votes cast for him exceed the number of votes cast against him.

The District Election Committee makes the decision as to whether a second round is necessary and notifies the CEC of its decision. The second round must be held within two weeks.

The Call for New Elections

Article 42 also provides that the election as a whole, or within a constituency can be declared invalid if violations in the procedures have influenced the results. A decision to declare an election invalid, even at the constituency or ward level, requires consideration and a formal decision by the Central Election Commission. An exception is made in the event the elections within a ward are declared invalid. The CEC can decide to exclude the results from an affected ward if the election in general can still be considered valid without them. The CEC's decision to declare any portion of the election invalid may be appealed to the Supreme Court within 10 days after the election returns are made public.

Article 44 dictates that new elections must be called under several circumstances:

- if the election in a constituency failed to achieve the 50% turnout;
- if the election in a constituency was declared invalid due to violations;
- if a second round election resulted in no candidate being elected;
- if not more than two candidates competed in the first round and none were elected; or,
- if the CEC denied registration to a successful candidate because the nominating party failed to receive at least 5% of the votes cast throughout the Republic. (See discussion in Chapter 5, Nomination and Registration of Candidates.)

According to Article 44, the new election must be held within one month of the original election. The district committee conducts the new election at the direction of the CEC. It is up to the Central Election Committee to determine whether the new election should be conducted using the same district and ward committees or whether they should be replaced. The same polling stations are used as are the same electoral registers from the original election.

Article 44 also dictates that any person who was nominated and registered as a candidate in the original election is precluded from being nominated in the same or any other constituency for the new election.

For Consideration

- Consideration should be given to eliminating or lowering the threshold turnout requirement for the second round. Depending on the mood of the electorate, and the level of cynicism or apathy that may exist, it may be difficult to achieve the 50% threshold, especially if the reason for the new election was insufficient turnout in the first place. Even under the best of circumstances there tends to be a drop off in participation when elections are held close together and voters feel that their votes have failed to result in a successful election.
- Article 44 requires that the election must be held within one month of the first election. It is difficult to see how there will be time to nominate new candidates and allow sufficient time for campaigning in that narrow time frame. If the new election is required because no candidate won in the second round, it means that there are only two weeks permitted to prepare for the new election. Article 44 should be amended to allow for sufficient time for a meaningful canvassing period so the electorate can be fully informed about their new choices.

APPENDICES

APPENDIX A: Summary of Recommendations

Chapter 2: Transparency Mechanisms

- It would be helpful if the law were more comprehensive in outlining the rights of observers representing nominating groups to ensure that the rules are not vulnerable to subjective interpretation from one election committee to another. With regard to their presence at meetings of election committees, it would be helpful, for example, if the law dictated the manner in which these observers are to be notified of scheduled meetings of the committees. The law should also define their rights at the polling stations and during the count. Most typically authorized observers are entitled to:

  be present to view the pre-poll activities and the display and sealing of the empty ballot boxes before the polling begins;

  observe all steps in the voting process, except the elector marking his ballot paper in the secrecy area;

  move freely but quietly and unobtrusively about the polling station to observe the procedures being followed by committee members;

  leave the voting premises and return;

  ask questions and express concerns to the chairman of the committee;

  take notes about their observations;

  request and obtain certified copies of relevant election documents and election returns;

  report their observations and publish their findings; and,

  appeal decisions or actions taken by an election committee to a superior committee if they have reason to believe that errors are occurring at the polling station which are not being addressed by the Chairman.

- Rules can also be formalized as to what observers are not allowed to do. Most commonly laws dictate that observers may not:

  disrupt or interfere with the voting process or exert influence on voters in

any way;

distribute any campaign materials or literature on election day;

countermand decisions of the election committee;

handle ballot papers or remove or deposit ballot papers into the ballot box;

observe or speak to a voter about how he voted, or serve as an aide to any voter who needs assistance in marking his ballot;

incite disruption of the election or tamper with any election materials or ballot box.

- The law should specify any credentials which observers may be required to present to gain access to the meeting of election committees or to be present at the polling station on election day. The required information which must appear on such credentials should be defined in law as should the process by which each type of observer shall be able to obtain the necessary authorization.

- Articles 6 and 41 are remiss in ensuring that observers can be present for the summarization of the voting results at the DEC and CEC level.

- The law fails to require that election returns be published with ward by ward detail, at least at the constituency level. Without such detail observers have no way of determining that the summarized results reported for the constituency as a whole accurately reflect the individual ward returns as they observed being recorded at the end of the vote counting.

- Although Article 6 requires that nominating organizations notify the district committees about their observers at least 15 days before the election, it is silent as to what information needs to be provided. For example, it is not clear as to whether nominating groups must identify the specific ward at which each observer will be present. Ideally, there should be no such requirement. Observers should have the flexibility to move from one polling site to another throughout the day rather than being restricted to remain at one specific site. This would provide nominating organizations the broadest opportunity to make sure that a vast number of polling stations could be covered even if they have difficulty organizing and registering a sufficient number of observer for the whole constituency. Even if the law restricts each party and representative body to have only one observer present at any given time, it would be helpful if another observer were allowed to replace another 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. Presentation of an appropriate credential accompanied by identification should be sufficient to obtain access to a polling station.

Chapter 3: Time Frame for the Election

- Article 19 should be amended to define a specific time period which must elapse between the scheduling of the election and election day. Affected deadlines should be redefined to clearly state the number of days which will be allowed for key components of the election process, and in particular, the nomination period.

- Consideration should also be given to amending the deadlines affecting the eligibility of political parties and candidates to participate in the election by relating them to election day, rather than the day on which the Oliy Majlis schedules the election.

- The law should also be reviewed to determine where omissions exist. There are several provisions of law which dictate requirements or offer entitlement for which no deadlines are indicated. There are a number of examples, some of which have significant ramifications.

  The law sets no deadline by which the Central Election Commission must be formed. Nor are there any set terms defined for the CEC members.

  No deadline is established for the withdrawal of candidates. Article 29 allows candidates to withdraw at any time before the election. In addition, Article 29 allows a party or representative body to cancel its nomination of a particular candidate waiving it right to nominate a replacement at any time before the election. These omissions could have a significant impact on the printing of accurate ballots.

  Article 8 fails to establish a deadline by which the DECs must notify voters about the boundaries of the electoral wards, the ward committees and the polling stations.

  Article 39 provides that voters who will be unable to come to the polling station on election day are entitled to vote in advance. The law fails to define when advance voting may begin. Ballots are not delivered to ward committees until 3 days before the election. However, the law allows advance voting to be done on "voting lists" in lieu of regular ballots.

  Article 22 does not dictate the time period within which the CEC must notify leaders of political parties or representative bodies that documents related to the nomination of their candidates are in disparity with the law, and are therefore rejected.

- A new article or articles should be added to the law which sets forth when by-elections should called and how they are to be administered. Typically, they are called by the Central Election Commission within a short time of the deputy's departure from office, unless new general elections are anticipated within the coming year. Generally, to avoid confusion, it is wise to administer the by-elections under the same laws and rules which apply to general elections.

Chapter 4: Administrative Structure

The law should be amended by adding a new provision which emphasizes that the Central Election Committee is totally independent in the performance of its functions.

- Article 10 should be amended to define the deadline by which the Central Election Committee should be formed.

- The terms of members of the Central Election Commission should be defined in law. In setting the terms of the CEC it is recommended that terms be staggered or rotated so that no more than ½ of the members terms expire at any one time. Staggered terms would serve two purposes. First, the election process would be enhanced by the continuity and institutional memory that would be preserved due to the fact that there would always be some experienced members remaining on the commission at the point new members were appointed. Secondly, the independence of the CEC would be strengthened. Under a staggered term system, only a certain number of members would be appointed by any sitting Oliy Majlis. The remaining members would be carried over until after the next elections when their terms would expire and they would be replaced by the newly elected deputies.

- The law should delegate specific regulatory authority to the Central Election Commission to adopt formal regulations regarding various components of the election process requiring procedural detail that is not defined in the law itself. Such delegation of specific authority could serve to overcome deficiencies in law without putting the CEC in jeopardy of a legal challenge on the basis that they have acted or taken decisions beyond their competence. In each case, the CEC should be directed to define not only the requirements that will be imposed on voters and election participants, but also the specific procedures which will be followed by the committee members in performing their responsibilities relative to the activity being regulated. The law should also establish deadlines by which the regulations must be adopted. The deadlines should be at least 30 days prior to the time the regulations will be needed. At the very least the law should dictate that the CEC is required to adopt regulations to cover:

Formalized Procedures for the Counting of Ballots and Summarization of Results;

The Signature Gathering Process and Procedures for the Evaluation of Petitions by the Central Election Committee;

Use of State Funds for the Conduct of Candidate Campaigns, Granting Candidates Equal Access to the Media;

Committee Procedures for the Adjudication of Grievances and Complaints;

Procedures for the Facilitation of Advance Voting and Service to Voters Who Will Vote Outside the Polling Station.

- The law provides very little guidance as to how members of election committees will be selected. It is recommended that certain ground rules be established to ensure that members on each committee represent a cross section of interests. Ideally, political parties should be provided an opportunity to propose members. In view of the fact that as a standard practice members are frequently selected from the local executive authorities it becomes particularly important that the make up of committees is balanced by the participation of representative proposed by the political parties. As subordinates to the khokims committee members selected from the executive bodies have a close relationship with the representative bodies also headed by the khokims. Since the representative bodies are entitled to nominate candidates, it is important to make sure political parties are represented on the election committees to avoid any perception of potential bias in the make up of the committees.

Chapter 5: Nomination of Candidates

Who May Be a Candidate

- Article 23 should be amended to clarify the conditions under which imprisonment or a conviction should impair one's eligibility to vote or to run for office. A decision should also be made as to expanding the terms under which a person's election rights can be restored. It is not uncommon for similar laws in long standing democracies to more narrowly define the kinds of crimes or convictions that will result in losing one's election rights. For example, such laws sometimes impose restrictions against persons convicted of felonies or "felonies involving moral turpitude." Rarely, do they include misdemeanors. In addition, laws are often constructed to clarify that the person's rights are rescinded until they have "fulfilled their sentence and are no longer under the auspices of the court," particularly in terms of restoring a

person's right to vote.

- Consideration should be given to requiring candidates who hold certain posts to take mandatory leave at the point they are registered. In particular should be those positions in which the person could be required to fulfill functions directly involved in the carrying out the preparations, administration of the election or adjudication of complaints and appeals. Borrowing from the experience of the Russian Federation, for example, the list of positions to which such requirements would apply could be directors and supervisory officials of state mass media in view of their role in providing access to the press and the airwaves to candidates and parties throughout the campaign process. An amendment to Article 23 could be formulated to provide safeguards guaranteeing that the person who takes mandatory leave to run for office will be eligible to return to his employment should he not be successful in his campaign, and that he would not be transferred or reassigned without his consent. An amendment could also provide that during the period of the candidate's leave, he would be paid is standard wage out of funds allotted for the election.

The Right to Nominate Candidates

- Article 19 should be amended to provide a window of time within which the Oliy Majlis must set the date of the election, rather than just defining the deadline. For example, a window could be described in terms such as " not earlier than 120 days or later than 90 days before the expiration of the current terms..." This would enable aspiring parties to calculate the deadline by which they must achieve registration with the Ministry of Justice with greater certainty.

- Consideration should be given to amending the law to provide an avenue of access to the ballot for independent candidates through self-nomination or groups of private citizens. A petition process is a viable method of qualifying independent candidates to demonstrate they have a modicum of support and are serious in their bid for election.

- Any laws that relate to a petition process should specifically define the grounds on which a petition will be rejected. The law should distinguish between technical omissions or deficiencies which can be corrected and true violations which will cause the petition to be denied. At the very least the law should dictate that even if some signatures are found to be invalid, the petition will not be rejected if the minimum number of required "valid" signatures remain. One way to approach this issue and to set clear parameters for election officials is to set a double threshold: 1) that the petition must contain at least a certain number of "valid" signatures; and, 2) that errors or invalid signatures in excess of an established threshold will cause the petition to be

declared null and void. The allowance for rejected signatures can be stated as a set number or a percentage.

- Use of a petition process as a mechanism for the registration of political parties is a standard practice in democratic contexts throughout the world. However, some modifications of the process as outlined in the Uzbekistan law are worthy of consideration. In the current environment where the transition to multi-party democracy is in its early stages, it may make sense to retain a two phase process. The first phase in seeking registration with the Ministry of Justice should be simplified and the mandatory number of supporter signatures should remain relatively low. This would give political parties legal status while they organize themselves and attempt to broaden their support. The second phase would be the more rigorous petition process to qualify the party to actually field candidates in the elections. However, once a party has passed this requirement they should not have to re-qualify for each and every election. Their right to participate in the elections should be secured. This would put them on a more equal plane with the representative bodies, if the rights of these bodies to nominate candidates is sustained. It would also ease the burden on election administrators who are required to evaluate petitions in such a restrictive time frame with limited resources.

- Article 46 which precludes a successful candidate nominated by a party from being registered as a deputy in the event the party has not received at least 5% of the poll should be repealed. Article 44 should be amended to remove this circumstance as grounds for conducting a repeat election. If a threshold is to be applied at this stage it should not affect the seating of a candidate who has won support of the voters in his constituency. They have expressed their will and should not be denied their choice, especially in a majoritarian, single mandate system. In western democratic contexts a threshold is sometimes established as a basis on which it can be determined if a political party will maintain its eligibility status. In Uzbekistan, the 5% threshold could be used in a similar way. Rather than denying a winning candidate his seat, a party which failed to receive 5% of the total votes cast could lose its eligibility to nominate candidates at the next election. Although such circumstances should have no impact on a party's registration, failure to meet the threshold could require a party to re-qualify for eligibility to nominate candidates in the next election by having to submit another petition. As long as they garner at least 5% of the votes, their eligibility to field candidates would be secured and no re-qualification would be necessary.

- The right of a representative body to nominate candidates affiliated with political parties which are competing in the election should be reconsidered. Preferably they should have a similar limitations as are imposed on political parties. In particular, they should be prohibited from nominating a candidate affiliated with a party which as earned the right to nominate candidates. The parties should not have to compete with representative bodies in the selection

of nominees from their own membership.

- As democracy continues to evolve in Uzbekistan the nomination of candidates by representative bodies should be reconsidered. The emergence of strong, effectual and representative parties will continue to be hindered under the current system. As confidence in multi-partyism democracy increases, the reliance on representative bodies for the nomination of candidates will hopefully have diminishing value. In the future preference should be given to nomination by qualified political parties, through petitions of groups of private citizens and by independent candidates through self-nomination.

Chapter 6: Candidate Campaigns

- Article 49 should be amended to specifically guarantee that the total allotment from the state budget for the conduct of candidate campaigns will be equally distributed among the candidates.

- Under Article 49 political parties, public associations enterprises, institutions, organizations and citizens may make voluntary contributions to the election fund. The money is to be received by the CEC for its use in the election campaign. It is recommended that the law be amended to clarify the purposes for which these funds can be used. Preferably the law should dictate that such contributions are to be used exclusively for the purposes of candidate campaigns with each candidate benefitting from an equal share.

- The law should mandate that the CEC adopt comprehensive regulations to define the financial and material resources which will be allocated to each candidate. The regulations should specify the kinds of materials that will be produced on behalf of the candidate, the rules by which candidates will be allowed to provide their input, procedures for utilizing their free air time and space in the mass media, and the procedures by which their campaign messages will be monitored for content. The law should also dictate that the regulations be adopted and ready for public dissemination before the nomination period begins.

- The election law should be amended to reduce the involvement and potentially subjective interference by election committees in monitoring the content of campaign propaganda. The potential for intervention by authorities in the open and free expression of opposing view and healthy debate between competing candidates should be curtailed. More reliance should be put on the electorate to make their own decisions about the integrity, character and competence of the candidates and merits of the programs they represent. Should a candidate believe he has been aggrieved by false statements or insults to his honor or dignity, he should be allowed to appeal to the courts and seek the remedies provided for under the civil code.

- The limitations on campaign opportunities for candidates should be lifted to provide them greater individual discretion in determining their campaign strategies and spending priorities.

- It is recommended that the allotment of state funding for the conduct of candidate campaigns be retained, as should the provision of an equal amount of free space and air time in the state mass media. However, consideration should also be given to allowing candidates to use additional funds from other sources to support other campaign activities and media options of their own choosing. For these purposes, candidates should be allowed to use their own funds or contributions from other sources specified in the law. If such amendments were enacted, the law should to define the limits of campaign contributions, the sources from which they may be solicited, and the maximum amount that can be accepted from any single source. The maximum limit can be expressed as a set figure, or in proportion to the amount of funding set aside for each candidate from the state budget. For example, the law could state that total contributions could not be greater than 3 times the amount allotted by the state. Provisions should also be enacted to establish the reporting of contributions and expenditures on a regular schedule, and the public disclosure of this information in the mass media.

Chapter 7: Conduct of the Poll

The Ballots

In order to improve accountability and security of the ballots, the law should dictate the rules by which DECs are to determine how many ballots will be issued to each polling site. The maximum number of ballots that can be issued should be directly related to the number of voters on the electoral register.

- Article 34 should be augmented to require ward committees not only to acknowledge that ballots have been delivered, but to also verify the quantity of ballots received at the time they are delivered. It should also mandate that at least two committee members participate in the verification which should be carried out in the presence of the personnel making the delivery. Their signatures should be affixed to two copies of the receipt form, one of which should be retained by the ward election committee to be included in the documents of polling site activity submitted to the DEC at the end of the counting of ballots on election day.

- Article 33 should be amended to establish minimum standards relative to the printing of ballots. In developing legal standards, options related to the quality of paper, padding or binding of ballot papers in uniform quantities, and

sequential numbering should be considered.

- Article 34 should include a provision that dictates that prior to election day ballots are to be maintained in locked and secured storage. The law should also define who is to be responsible for maintaining the security of the ballots and should limit who is to have access to them while they are being stored.

Before Voting Begins

Articles 6 and 37 should be amended to make it clear that authorized observers are entitled to be present to observe the pre-voting activities on election day.

- Article 37 should be augmented to formalize the procedures before the first voter is issued a ballot on election day. Those procedures should include the display and sealing of stationary and mobile ballot boxes, and the verification and announcement of:

  the number of ballots issued to the ward (and the range of sequence numbers if printing requirements include sequential numbering;)

  the number of voters on the electoral register;

  the number of signatures of advance voters already appearing on the register;

  the number of secrecy envelopes on hand containing voting lists voted in advance.[10]

- The law should also require that the base line data against which all polling activity will be balanced at the end of the day be entered in the minutes or protocol, and that the entries be made in ink. Only after these tasks are completed should the polls be officially opened for voting.

Processing the Voters

- Article 35 should be amended to ensure that the ballot boxes are placed in a position where they remain in full view of the committee members and the observers. The law should also require that mobile ballot boxes also remain in full view except when they are being used to accommodate voters at home.

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[10] Additional information might also be added to the protocol during the pre-voting formalities if an application process is introduced relative to incapacitated voters who are allowed to vote at home. See discussion on pg.

- Article 3 or 39 should be amended to make it clear that "each voter is to vote personally" and that " voting on behalf of another person who is not present is prohibited."

  If proxy voting is to be instituted, the law should clearly articulate the rules under which it will be accommodated. At the very least, proxy voting should require an application process whereby the voter identifies the individual authorized to cast a ballot on his or her behalf. The law should prohibit a person from serving as a proxy for more than one or two other persons. A notation should be made on the register next to the voter's name identifying the proxy accepting a ballot on his or her behalf. A committee member should sign the register to acknowledge that the identification of the proxy has been verified to ensure that he is the person authorized by the voter.

- A new article should be added to the law to clearly define the procedures that are to be followed when ballots are removed from the polling station to accommodate voters who wish to vote at home.

  The law should require that an application be submitted and that a deadline be established so that the number of voters to be accommodated is known before committee members depart from the polling station with the ballots and the mobile ballot box.

  The number of applications and the number of ballots needed should be counted and announced in the presence of the committee members and observers. Members responsible for serving voters at their homes should be required to sign a receipt for the number of ballots they are taking from the polling station.

  Upon receipt of an application, a notation should be made in the electoral register that the voter will be voting at home. A supplemental list should be prepared identifying the "at home" voters so that each voter can sign his or her name to acknowledge that a ballot has been delivered.

  Upon return of the committee members, a report of the number of ballots used and signatures on the supplemental list should be made. Members should also account for any ballots being returned unused.

  Information related to "at home" voting activity should be documented separately for each mobile ballot box employed for this purpose. Entries should be made in the minutes to provide a point of comparison when the boxes are opened during the counting process.

  The law should dictate the disposition of ballots in a mobile ballot box when it is determined that the number of ballots enclosed exceeds the number of applications processed.

- Article 39 should be enhanced to require that when a voter receives a replacement ballot after the original ballot has been spoiled, a notation should be made next to the voter's name in the electoral register.

- Article 39 should be amended to change the way the voter is to mark the ballot. Instead of crossing out all the names of candidates the voter rejects, the law should voter should make a single mark in a box next to the name of the candidate he prefers.

Chapter 8: Counting the Votes and Reporting Results

Under the current wording of Article 40, the "ward committee shall establish the total number of voters in the ward." As discussed earlier in this report, it is recommended that the number of voters on the electoral register should be counted and entered into the minutes as part of the pre-voting procedure. Article 40 could be made clearer if, at the close of the poll, it required the election committee to count the number of voters added to the annex to the list throughout the day. The additions should be made as a separate entry into the minutes. The pre-poll figure from the original electoral register and the additions should be added together to account for the total number of voters in the ward.

- Article 40 also says that the ward committee "shall establish the number of voters who received ballot papers." As worded, it is not articulated in a way that ensures that an accurate figure is arrived at, against which the actual ballots contained in the ballot boxes can be compared. Without clearer guidance it would be possible for committee members to artificially arrive at the number of voter who received ballot papers by a simple mathematical equation. They could simply subtract the unused ballots which have already been counted and stamped, from the number of ballots originally issued to the polling station. Although the mathematics might be accurate, it does nothing to prove a valid correlation between documented voters and voted ballots. It is exactly this correlation that sits at the heart of meaningful accountability. Therefore, the law should be restated to require the committee to determine the number of voters who received ballots by:

  counting the number of signatures on electoral register;

  counting the number of signatures in the annex to register reflecting the voters who have been added to the rolls on election day and were issued ballots;

  counting the number of signatures in each supplemental lists acknowledging that voters received ballots at their places of stay.

There should be a separate supplemental list for each mobile ballot box put into service. It would be helpful if each mobile ballot box were numbered and its related supplemental list were identified by the same number. The electoral register and its annex should relate to the voters who used the stationary ballot box at the polling site.

The entries in the minutes should reflect the numbers of signatures in each category as well as their total sum.

- Article 40 should clearly define the order in which the ballot boxes are to be opened. As each ballot box is opened, the number of ballots contained in the box should be counted without regard to the manner in which they are marked. The number of total ballot papers in each box should be recorded in the minutes. In each case, a comparison should be made between the number of ballots and the number of signatures on the lists related to each box. The comparison of the two figures will demonstrate to everyone present that there is a reasonable correlation between actual voters and voted ballots. Obviously, an occasional human error could cause the numbers of signatures and ballots not to match exactly, but they should meet a satisfactory "reasonableness" standard. The comparison will also immediately demonstrate any significant disparity which might necessitate of a full review by the committee and a formal decision as to how the incident will be resolved.

- The law should specify whether the ballots from the mobile ballot boxes are to remain segregated for counting and recording of the votes cast, or whether they can be commingled with the ballots from the stationery ballot box. Ideally, they should be retained in their separate pool so that if the results are ultimately challenged, problems can be isolated to the smallest possible groupings. Under this scenario the minutes would reflect the number of the votes cast for each candidate based on the ballots from the mobile ballot boxes. Later, when the votes are counted and recorded from the ballots in the stationary box, the results for recorded each candidate would be added together. However, if they are to be commingled before the actual votes are counted, the law should make it clear that the mixing of all the ballots together can only take place after the accounting steps have been accomplished and recorded.

- In order to ensure that all polling stations apply uniform standards and practices in carrying out the vote counting process, the law should be augmented to define formal procedures that are to be followed. Without formal rules, it means that there will be little uniformity from ward to ward or from one election to election. This informality of process and the inconsistencies that go with it does seem to conform with the requirements of Article 11 (1) which requires the CEC to ensure "uniform application throughout the Republic's territory." Generally, there are two alternative

methods that can employed in the manual ballot counting. The first, and according to observer accounts the method utilized in Uzbekistan, is the "sort, stack and count" method. In this scenario the ballots are dumped out of the boxes onto a table to be read and sorted based on the candidate for whom the vote was cast. Stacks are organized for each candidate with a special stack set aside for ballots which committee members believe are invalid. Once they are sorted, the ballots in each stack are counted to determine how many votes the respective candidate received. The second method involves use of a pre-prepared tally sheet on which a mark is made next to the appropriate candidate's name as ballots are read. The distinctive advantage of the tallying method is that the recording of individual votes on a tally sheet provides physical documentation to validate and support the totals reported on the protocol. This method also provides greater transparency as observers can actually hear and observe the distribution of votes among candidates. Regardless of which alternative is selected, the law should specify the method with sufficient detail to ensure uniform and consistent handling. The procedures should also incorporate standardized mechanisms to promote accuracy and transparency. Examples illustrating how rules might be defined for the "sort, stack and count" method, and the "tallying" method are provided in Appendix .

- Article 40 provides that the "results of the poll are discussed by the ward committee and entered into the minutes." It is not clear from this general wording what specific information is considered "results of the poll." It could be interpreted to mean the outcome related specifically to the number of votes cast for the various candidates. In order for the audit trail to be complete and available for scrutiny in the event of a challenge, it is important that all enumerated data related voters, ballots, and voting lists become part of the permanent record. To the greatest extent possible entries should be included for each category and subcategory separately on a pre-designed form especially created for that purpose. The reporting form should be designed in a way which not only identifies the categories of information to be provided. It should also provide the spaces in sequence with appropriate mathematical symbols to aide committee members in making any calculations which may be necessary. In practice, understanding the various categories and how they relate to one another will aide committee members in finalizing their documentation. Precise detail will also make it possible for higher election committees, observers, procurator's and courts to reconstruct the factual record should subsequent legal review ultimately become necessary.

- The law should mandate that the minutes be prepared in ink.

- The law should also make provisions for dissenting opinions from committee members and observers to be attached to the minutes as part of the permanent record. Similar provisions should be made regarding formal complaints filed with the committee throughout the course of the day. The minutes should

include notations as to how each formal complaint was resolved.

- The law provides no guidance with regard to the disposition of ballots, documents and materials after the counting has been completed. Except for a directive that the minutes are to be forwarded to the DEC, the law is silent with regard to how the materials should be packaged, if and where they are to be stored, and how long they are to be retained. The law should be amended to overcome this deficiency. To the extent possible, directives should instruct committee members to package materials in the same categories or groupings as they were accounted for in the minutes. Each package should be secured with some kind of seal and the ward number and contents should be identified on the outside of the package.

- As worded in the current law, it appears that only one original copy of the minutes is made. These omissions should be rectified as amendments are considered. It is recommended that 3 copies of the minutes be prepared. One copy should be submitted to DEC. One copy should be retained by the Chairman of the Ward Election Committee. One copy should be posted for public display at the polling station.

Transparency Issues During the Count

- The wording of Article 40 should be amended to ensure that the ballot boxes are opened "in the presence of members of the ward committee and authorized observers."

- Articles 6, 41 and 42 should be amended to extend the eligibility of authorized observers to be present during the summarization process at the DEC level.

- The law should specifically prohibit the SEC from altering any entries or vote totals in the minutes submitted by ward committees except under strictly defined rules. Such rules should require that if the DEC determines that errors have been made in the calculations or entries submitted by a ward committee, corrections can only be made with the concurrence of, and in the presence of the Chairman, Deputy Chairman and Secretary of the WEC. If a correction results in a change in the vote totals awarded to any candidate, the observers representing the political parties and representative bodies whose candidates appear on the should also have the right to be present. When corrections are made, they should not obliterate the original figures reported by the ward. Rather an amended return should be prepared with an explanation of the reason why the correction was necessary, and the signatures of those responsible for resolving the error. Provisions should be added to the law to outline the circumstances or conditions under which an recount of the ballots may take place. Whenever a recount is necessary, observers should be allowed to be present.

- Article 41 should require the DEC to prepare, post and publish in the press a summary table of election results that includes the details of poll activity for each ward in the constituency. For each ward, the summary table should include the total number the number of voters, the actual turnout and the total votes cast for each candidate. The table should also summarize the grand totals in each of these categories for the constituency as a whole.

- Article 41 should also require that the DEC post a copy of its summary table of district wide results for public view for at least 10 days following its meeting during which the results were "established." This 10 day period would coincide with the Article 18 which provides that a decision of an election committee can be appealed to a higher committee within 10 days of the decision.

- The law should define rights of observers to receive certified copies of ward and district wide results and define the process by which those documents will be made available.

Chapter 9: Determining the Winner

- Consideration should be given to eliminating or lowering the threshold turnout requirement for the second round. Depending on the mood of the electorate, and the level of cynicism or apathy that may exist, it may be difficult to achieve the 50% threshold, especially if the reason for the new election was insufficient turnout in the first place. Even under the best of circumstances there tends to be a drop off in participation when elections are held close together and voters feel that their votes have failed to result in a successful election.

- Article 44 requires that the election must be held within one month of the first election. It is difficult to see how there will be time to nominate new candidates and allow sufficient time for campaigning in that narrow time frame. If the new election is required because no candidate one in the second round, it means that there are only two weeks permitted to prepare for the new election. Article 44 should be amended to allow for sufficient time for a meaningful canvassing period so the electorate can be fully informed about their new choices.

APPENDIX B: Samples of Defined Procedures for the Handling and Counting of Ballots

Samples of Defined Procedures for the Handling and Counting of Ballots

What follows are examples of how laws or regulations might be written based on a Sort, Stack and Count approach, and a Tally Sheet approach to the counting process. The step by step details described in the samples provided here attempt to establish a uniformity of procedure required by Article 11 (1) of the Law on the Election to the Oliy Majlis.

While there are many options that could be employed for either of these counting methods, the examples provided here demonstrate how mechanisms can be incorporated that promote accuracy, accountability and transparency. As authorized observers become better acquainted with their roles and more knowledgeable about the system there will be less tolerance for perceived confusion or ineptness on the part of ward committees. The necessity for adherence to uniform practices on the part of all Ward Election Committees will only become more important in closing the opportunities for complaints or challenges related to the counting process.

Sample Instructions No. 1: The Tallying Method

The tallying method can be implemented in a variety of configurations. If use of a tally sheet were formalized in law, there are number of procedural enhancements of the method might be beneficial.

One such alternative that might be considered involves the ward election committee being divided into smaller counting teams made up of four members. Each team working at a separate table in the same room would be given a portion of the ballots to count. Two team members would sit on each side of the table. The assignments of duties among the counting team members would include:

1. a pair of "readers" on one side of the table - one member 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 member makes marks on an original tally sheet, while the partner makes the same marks on a duplicate tally sheet.

To improve the speed and efficiency of the process, certain preparatory steps would be helpful. Other team members could be assigned to count out stacks of 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. The readers set aside invalid ballots so that they can be segregated, reviewed further and enumerated later. As counting of each stack of 25 ballots is completed,

the members making the marks on the two sets of tally sheets announce their result to ensure they have the same totals for each candidate. If there is a discrepancy the error will be found in the last groups of 25 ballots and the error can be corrected immediately. An additional tool that can be helpful in streamlining the process is using two different colored pens with a switch in color of pen made between each group of 25 ballots.

When the counting is completed the total votes for each candidate are entered onto the protocol. The original tally sheet could be attached as supporting documentation with the protocol submitted to the District Election Committee. The duplicate could be retained by the Ward Election Committee.

Sample Instructions No. 2: The Sort, Stack and Count Method

If it is ultimately decided that the stack and count method is to be retained as the standard counting procedure, there are still some suggestions which would serve to improve transparency and provide internal mechanisms for verifying the accuracy of the count before the results are reported to the District Election Committees.

1. Officials could be instructed to prepare and place signs for each candidate appearing on the ballot. The signs could be spaced along a table in the same order as the candidates appear on the ballot. Additional signs could be made for the invalid ballots. During the sorting process stacks of ballots for each candidate could be created and piled in the space marked with the candidate's name.

2. A team of at least two committee members could be assigned to be responsible for the maintenance and counting of the stacks of ballots for individual candidates, and for the invalid ballots.

3. The Chairman, Deputy Chairman and Secretary and remaining members could be assigned to actually accomplish the sorting by inspecting the ballots, and determining for whom the vote was cast, or if the ballot is invalid. These members would pass the ballots to the appropriate teams who would verify that the ballot is, indeed, marked for the candidate for whom they are responsible. If they note a mistake, they would pass the ballot to the team responsible for the correct candidate.

4. Once the ballots have been sorted, each team would count the ballots in their stacks, marking the total and their initials on a piece of paper. (Cross hatching the ballots into groups of 50 could be utilized to assist in maintaining the count.)

5. As a safeguard to ensure correctness of the counting, teams could trade places

so that the ballots are recounted by a second team. The results of the second team's count would be compared to that of the team originally assigned. If there is a discrepancy, the ballots could be recounted by the team responsible for them.

6. When the team is satisfied that their count is correct, they would report their results to the Chairperson so that they could be entered onto the protocol. Ultimately, when the ballots for each candidate are packaged, the team responsible for the counting of the ballots could sign their names to the package at the time it is sealed.

APPENDIX C: Law on Election to Oliy Majlis Republic of Uzbekistan