



*"Republic Network of the Independent Monitors"*

# Concept of amending Kazakhstan electoral legislation

**"Kazakhstan - OSCE 2010"**



при финансовой поддержке  
Freedom House



## *"Republic Network of the Independent Monitors"*

### **Presentation consists of the following aspects:**

- I. Main problems of Kazakhstan electoral system**
- II. Principles of amending Kazakhstan electoral legislation, developed by RNIM**



# *"Republic Network of the Independent Monitors"*

## **I. Main problems of Kazakhstan electoral system**

- Absence of representation of all political parties in electoral commissions
- Limitation of access to mass media
- Illegitimacy of Majilis (Lower Chamber of Parliament) elections through Assembly of Kazakhstan Nations
- Inefficiency of court defense of voters rights
- Inefficiency of the system of legal responsibility for violations of electoral process
- Legal uncertainty and forecast ability of electoral legislation provisions
- E-voting system "AES Sailau" can not provide transparency of electoral procedure, and does not guarantee from falsifications
- Unjustified advantages of some candidates and political parties during electoral period
- Non transparency of electoral process
- Limitation of constitutional indirect voters' rights
- Right for a freedom of peaceful gatherings
- Voters' lists



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system

### ➤ Absence of representation of all political parties in electoral commissions

*Active provision of Law "On elections in RK" does not let automatically to all political parties registered in Kazakhstan to have their representatives in electoral commissions in a quality of members (article 10). Moreover, Law "On elections in Kazakhstan" does not include provisions on order of forming Central Election Commission. According to Constitution it is formed by President directly, and by politically controlled by him upper and lower Chamber of KZ Parliament (article 56 Constitution of RK).*



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

### ➤ Limitation of access to mass media

*Opposition political parties have no access to TV which enables incumbent authorities to begin campaign of indirect agitation on TV early before elections. During elections all political parties and candidates have equal time on TV and radio, paid from the budget. However to conduct sufficient agitation during campaign one 15 minute long speech on TV is not enough (article 27 KZ Law "On elections in Kazakhstan"). Candidates also have right for paid time on TV, however, such rule, during election campaign majority of channels refuse to run political agitation or set intentionally increased prices.*



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

### ➤ Illegitimacy of Majilis (Lower Chamber of Parliament) elections through Assembly of Kazakhstan Nations

*Kazakhstan Majilis elections do not correspond to international standards, violating principle of votes equality. This is a violation of point 7.2 of Copenhagen Document of OSCE. Members of Assembly of Kazakhstan Nations have two votes during elections of Lower Chamber of Parliament. Majority of which are members of pro-presidential party "Nur Otan" (point 7.2 Copenhagen OSCE Document - ... all mandates, at least in one chamber of national legislative body, should be object of free competition for candidates during all national elections)*





# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

- Inefficiency of the system of legal responsibility for violations of electoral process

***Kazakhstan Criminal Code contains only two articles stipulating responsibility for violation of electoral legislation (article 146 -147 Criminal Code). During all history of independent Kazakhstan nobody was prosecuted on these articles, although facts of falsifications are known to everyone. To defend electoral system from violations it is necessary to increase a number of criminal violations content.***



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

### ➤ Legal uncertainty and unexpectedness of electoral legislation provisions

***Kazakhstan Law "On elections in KZ" has no clear criteria for finding elections invalid. This gives no chance to find elections invalid and illegitimate even in cases of finding falsifications. The law also contains terms that have no official explanations and no establishment in legal terminology circulation. Especially Article 68 Kazakhstan Law "On elections in KZ" stipulates that KZ President can appeal the "fairness" of election conduct in Constitutional Council. What is considered fair and what is not, is not outlined anywhere.***



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

- E-voting system "AES Sailau" can not provide transparency of electoral procedure, and does not guarantee from falsifications

*E-voting system does not provide opportunity to cross check voting results and does not leave "traces". Also, people alien from electoral process point of view are admitted to provide service to the system.*



# **"Republic Network of the Independent Monitors"**

## **I. Main problems of Kazakhstan electoral system.**

### **➤ Unjustified advantages of some candidates during election period**

**Candidates possessing authority responsibilities have unjustified advantages in comparison with other candidates and political parties. Especially in accordance with Law "On elections in KZ" (Articles 68, 84, 100) President, Chair of the Senate, Majilis, 1/5 of deputies can approach Constitutional Council in order to find elections invalid. Even though other candidates and parties have no such rights. This gives unjustified advantage and weakens real competition among candidates. Also, according to law on peaceful gatherings of candidates (Article 10 and for example Decision of XVII session of Almaty city Maslikhat as of July 29 2005 #167 some issues of rational use of city infrastructure objects \*, possessing authority responsibilities have right to conduct gatherings in the center of the city, and the rest only with the permission in a strictly defined spots in a remote city districts.**



# ***“Republic Network of the Independent Monitors”***

## **I. Main problems of Kazakhstan electoral system.**

### **➤ Non transparency of electoral process**

***Kazakhstan Law “On elections in RK” does not provide free access to voters’ lists to check their authenticity. Only voter can check their presence in voter lists (article 26 KZ Law “On elections in Kazakhstan”). Even in this procedure voter can not observe the whole list, but only checks their personal data. Observers continuously face problems while trying to observe process of drawing conclusions of elections in district and territorial election commissions. Members of these commissions by using unclear definition of law and while interpreting its provisions in their own way do not let observers, or significantly limit their rights (pp10) p.2 of Article 20-1 Kazakhstan Law “On elections in KZ”). It is necessary to provide the right to observe Kazakhstan elections from international and foreign non-governmental organization in accordance with Copenhagen Document of Conference on Human Dimension (CSCE (OSCE)).***



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

### ➤ Right for a freedom of gathering

***Constitutional Law of RK "On elections in RK" as of 2/12/2006 excluded provision of Article 44 point 6. According to this provision of the law any forms of expressing public, group or personal interest and protest, which could influence voters and members of election commissions were not permitted from end of pre-election agitation and till official publication of election results.***



# "Republic Network of the Independent Monitors"

## I. Main problems of Kazakhstan electoral system.

### ➤ Voters' lists

***Registered facts of inaccuracies and mistakes in voters' lists gives bases to insist that last elections held in Kazakhstan did not correspond to provisions of Kazakhstan Constitution, as well as to requirements of Constitutional Law "On elections in RK". A definite part of Kazakhstan citizens think that past elections do not reflect fully free will expression of Kazakhstan's.***



## *"Republic Network of the Independent Monitors"*

### **II. Principles of amending Kazakhstan electoral legislation developed by RNIM**

**Shall provide:**

- **Complexity**
- **Equality**
- **Prohibition to use administrative resource**
- **Transparency and access to information**
- **Right for legal defense**
- **Accountability for violation of electoral process**



# *"Republic Network of the Independent Monitors"*

## **II. Principles of amending Kazakhstan electoral legislation developed by RNIM**

### **➤ Complexity**

*To provide for real democratic elections in Kazakhstan it is necessary to introduce complex changes, which should be introduced to:*

- ✓ *Constitutional Law ("On elections in Kazakhstan")*
- ✓ *Kazakhstan Law "On order of organizing and conducting peaceful gathering, rallies, demonstrations and picketing in Kazakhstan"*
- ✓ *Kazakhstan Code "On administrative violations"*
- ✓ *Criminal Code of Kazakhstan*
- ✓ *Constitution of Kazakhstan*
- ✓ *Other legislative acts, connected with regulation of elections*



## *"Republic Network of the Independent Monitors"*

### **II. Principles of amending Kazakhstan electoral legislation developed by RNIM**

#### **➤ Equality**

- ✓ ***Equal representation of all political parties in electoral commissions***
- ✓ ***Equality of votes***
- ✓ ***Equal representation of rights and opportunities to all candidates and political parties***
- ✓ ***Provision of legal rights to all candidates and political parties while contacting Constitutional Council on finding elections invalid and unconstitutional***



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### **II. Principles of amending Kazakhstan electoral legislation developed by RNIM**

#### **➤ Prohibition to use administrative resource**

*Electoral legislation does not contain sufficient mechanisms to prevent usage of administrative resource during elections. It is necessary to clearly prohibit both direct and indirect usage of administrative resource in electoral campaigns.*



## *"Republic Network of the Independent Monitors"*

### **II. Principles of amending Kazakhstan electoral legislation developed by RNIM**

- **Providing for transparency and international observation**
- ✓ ***Lifting limits on international observation***
- ✓ ***Providing for transparency and access to voters' lists***
- ✓ ***Providing for transparency of election results drawing process at all levels of electoral commissions***
- ✓ ***Liquidation of e-voting system in its current state***
- ✓ ***Increasing term for keeping documents after conduct of elections***
- ✓ ***Providing for transparency of electoral campaign financing and usage of means***



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### **II.Principles of amending Kazakhstan electoral legislation developed by RNIM**

#### **➤ Provision of right for court protection**

***A number of legislative norms limits right of candidates for court protection of voters' rights and makes ineffective court order of defense. Especially Law "On elections in RK " provides 10 day term to file a charge on finding illegal acts of electoral commission and calling elections invalid. This term is insufficient to gather necessary documents and properly prepare to court process.***



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#### **➤ Accountability for violation of electoral legislation**

*It is necessary to increase the number of articles in Criminal Code in order to cover as much as possible acts of violation of electoral process. Also it is important to move or to criminalize some parts of articles of Kazakhstan Code "On administrative violations" and Kazakhstan Criminal Code.*