

Overall Score:

73 - Moderate

Legal Framework Score:

96 - Very Strong

Actual Implementation Score:

52 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁷⁴Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

According to this article

3. Formation and functioning of public associations pursuing the goals or actions directed toward a violent change of the constitutional system, violation of the integrity of the Republic, undermining the security of the state, inciting social, racial, national, religious, class and tribal enmity, as well as formation of unauthorized paramilitary units shall be prohibited.

4. Activities of political parties and trade unions of other states, religious parties as well as financing political parties and trade unions by foreign legal entities and citizens, foreign states and international organizations shall not be permitted in the Republic.

References:

Constitution of the Republic of Kazakhstan, Article 5 , parts 3 and 4.

It recognizes ideological and political diversity of civic organizations and their equality under the law. The state can not interfere into the activities of these organizations.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

There was an attempt to introduce amendments to the law on non commercial organizations with much more restriction on the activities of the NGOs, but later the Constitutional Council recognized these amendments as contradictory to the constitution. http://www.humanrights.kz/appeal_67.php

References:

Constitution, article 5.
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

Law on non-commercial organizations
<http://www.legislationline.org/ru/legislation.php?tid=2&lid=6522&less=false>

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

According to the article 12 of the law on non-commercial organizations, foundations should publish reports on the use of their funds and property.

References:

Article 12 of the law on non-commercial organizations <http://www.legislationline.org/ru/legislation.php?tid=2&lid=6522&less=false>

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

75

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

Starting from 2005, there has been some pressure on NGOs and state officials who initiated a project of a new law with much harder conditions, which was later vetoed by the president. There is some movement from the state to place some state-funded civil orders and tasks among the NGOs. In 2005, the Kazakhstan government joined to EITI initiative, also with the participation of NGOs.

References:

Interview by Zhetpisov Dzhalal;

Interview with Valentina Sivrukova;

Look to the back from Moscow

Feb. 26, 2007

http://www.ia-centr.ru/public_details.php?id=395

in Russian;

Editorial in Expert Kazakhstan

18(44) / Sept. 19, 2005

ARS AMANDI

<http://www.expert.ru/printissues/kazakhstan/2005/18/18ka-ktema/>

in Russian

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | **50** | 25 | 0

Comments:

The state has considered NGOs as agents of other states for some time and some tension among the NGOs and the state was going on in 2005. It has subsided in 2006.

However, the NGOs are still not involved in decision-making, but the state took some steps to improve the situation. It was suggested to create a Public Chamber with NGO participation to review legal initiatives.

In general, NGOs consider themselves distant from the decision-making process.

References:

Professional study Aitenova Sholpan et alia, 2007

2005-2007 Two Years of Realization of EITI in Kazakhstan. Conclusions and Recommendations

<http://www.transparencykazakhstan.org/UserFiles/file/Coalition%20Report%20on%20EITI%20in%20Kazakhstan.pdf>

Article Bekenov Alim, May 10, 2005

Authorities of Kazakhstan Change the Order of NGO Work

<http://www.zakon.kz/our/news/news.asp?id=39132>

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

Comments:

The government is trying to take an initiative in the work with NGOs. A special law is adopted to place the government order among the NGOs with applicable government financial support. The goal is to attract NGOs to fulfill some social projects.

References:

Report by the Center for Journalism in Extreme Situations
Orninsky Nikolai 2006 Media and NGO in Kazakhstan
http://www.cjes.ru/bulletin/files/rep/2006/rep_06_33.doc;

News report
Interfax
III Civil forum Is Prepared for Convocation
July 31, 2007
<http://www.nomad.su/?a=3-200707310223>
in Russian

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

Interview with Vlad;

Interview with Eugene

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

Interview with Dina Sharipova, senior lecturer KIMEP
Aug. 15, 2007, Almaty

Interview with Vlad Yritsyn, journalist www.zonakz.net Internet newspaper
Aug. 14, 2007, Almaty

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

Interview with Dina Sharipova, senior lecturer KIMEP
Aug. 15, 2007, Almaty

Interview with Vlad Yritsyn, journalist www.zonakz.net Internet newspaper
Aug. 14, 2007, Almaty

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

References:

Constitution, Article 23, section1

http://www.akorda.kz/www/www_akorda_kz.nsf/sections?

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

There is some general feeling that businesses have a much more powerful lobby in comparison with trade unions.

References:

Article in a journal.

Philip Prokudin
Trade Union As A School of A Citizen.
Expert-Kazakhstan (in Russian), April 16, 2007
<http://www.expert.ru/printissues/kazakhstan/2007/15/profsoyuzy/>;

Program. ILO. 2007.
National Program of Adequate Labor in Kazakhstan for 2007-2009 (in Russian)

<http://www.fprk.kz/?m=bulut2>

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Constitution of the Republic of Kazakhstan, article 20
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

References:

Constitution of the Republic of Kazakhstan, article 20
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

69

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

Comments:

The media question is one of the most painful in Kazakhstan. Almost every media outlet at the republican level is associated with some powerful oligarchic group.

References:

Monitoring report, team of authors of Adli Soz NGO, March 2007
Monitoring Of Violations Of Freedom Of Speech in Kazakhstan in March 2007
<http://www.adilsoz.kz/site.php?lan=english&id=81>;

News report, Adil Soz NGO team
Statistics of Violations of Media Rights and Rights of Journalists of Kazakhstan in The First Half of 2007
July 19, 2007
<http://www.adilsoz.kz/site.php?lan=russian&id=207&newsid=904>

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Law on media of the Republic of Kazakhstan, article 4-3
<http://www.adilsoz.kz/site.php?lan=russian&id=444&pub=749> (in Russian)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

According to the minister of Culture, Sport and Information, there are 6,000 registered newspapers in Kazakhstan, of which only one third are active. The other ones are registered and not in print for one reason or another. He considers it as an information weapon in stock".

Registration and licensing of media is an issue, and journalists consider it as an encroachment to the freedom of speech.

References:

Statement by Tamara Kaleeva, head of Adil Soz NGO (International Foundation for the Protection of Freedom of Speech) About Non-Justified Strengthening of Legal Framework and Repression towards Media

Article Information by Khabar agency
Mechanism of Registration of Kazakhstan Media Will Be Put in Order"
March 30, 2006
<http://www.medialaw.kz/index.php?r=1&c=1822>

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

Comments:

The official cost is very low, (less than US\$100 for newspaper) but in practice the process itself is difficult and time-consuming. Hiring additional legal advisor can move costs even higher. Registration conditions are considered amongst the harshest in the CIS (Commonwealth of Independent States) area.

References:

Government document. Committee of Information and Archives of the Ministry of Culture and Information. Explanation of the Ministry of culture and information on the changes to media law Aug. 4, 2006

http://izdatel.kz/2006/08/04/razjasnenie_ministerstva_kultury_i_informacii_rk_po_izmenenijam_vnesennym_v_zakon_o_sredstvakh_massovoj_info

Statement of NGO leader

Statement by Adil Soz NGO (International Foundation for The Protection of Freedom of Speech) Tamara Kaleeva About Non-Justified Strengthening of Legal Framework and Repression towards Media April 19, 2006

<http://www.adilsoz.kz/site.php?lan=russian&id=207&newsid=542>:

http://izdatel.kz/2007/03/20/g_pb_jobeu_b_chn_s_u_jaecjanjoja_cbncshhsu_e_ubu_bpnn_s_ulb_cbchsebnjoja.html

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

63

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

Comments:

Media outlets, especially TV stations, are clearly divided among powerful business groups. They were actually concentrated in the hands of the elder daughter of the president of the country and her husband. Starting from 2006, the Ministry started to change this oligarchic structure. However the majority of journalists consider the work of the Ministry and personally the minister as harshening the conditions for media.

To start a TV or radio station it is necessary to get a frequency from the Ministry. Last tender for frequencies was in 2004.

References:

Government document. Committee of Information and Archives of the Ministry of Culture and Information. Explanation of the Ministry of culture and information on the changes to media law Aug. 4, 2006

http://izdatel.kz/2006/08/04/razjasnenie_ministerstva_kultury_i_informacii_rk_po_izmenenijam_vnesennym_v_zakon_o_sredstvakh_massovoj_info

Interview with Evgeni Zavadski (director of 31 kanal -Karaganda), How To Make A Private Ghannel. June 29, 2006

<http://www.medialaw.kz/index.php?r=74&c=2053>

in Russian

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

References:

Law on media, article 4-3

<http://www.adilsoz.kz/site.php?lan=russian&id=444&pub=749> (in Russian)

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

If the channel is a republican one then it will have special attention. The main problem was the concentration of all powerful media resources in several oligarchic groups.

References:

Government document. Committee of Information and Archives of the Ministry of Culture and Information.

Explanation of the Ministry of culture and information on the changes to media law

Aug. 4, 2006

http://izdatel.kz/2006/08/04/razjasnenie_ministerstva_kultury_i_informacii_rk_po_izmenenijam_vnesennym_v_zakon_o_sredstvakh_massovoj_info

Interview with Evgeni Zavadski (director of 31 kanal -Karaganda),

How To Make A Private Ghannel.

June 29, 2006

<http://www.medialaw.kz/index.php?r=74&c=2053>

in Russian

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The license itself is not expensive but the process and attention of the supervising government bodies are problematic.

References:

Government document. Committee of Information and Archives of the Ministry of Culture and Information.

Explanation of the Ministry of culture and information on the changes to media law

Aug. 4, 2006

http://izdatel.kz/2006/08/04/razjasnenie_ministerstva_kultury_i_informacii_rk_po_izmenenijam_vnesennym_v_zakon_o_sredstvakh_massovoj_info

Interview with Evgeni Zavadski (director of 31 kanal -Karaganda),

How To Make A Private Ghannel.

June 29, 2006

<http://www.medialaw.kz/index.php?r=74&c=2053>

in Russian

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

63

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

There are complaints that certain Web sites are difficult to access. In some situations the Web sites are not possible access from certain organizations (they put firewalls by themselves).

KNB (former KGB) has a special program Bolat to slow down the download process the sites of terrorist organizations. There are a lot of opinions that it is used from time to time to block the opposition sites too.

The high cost of an internet connection still remains the biggest obstacle.

References:

Monitoring report. Adil Soz NGO, February 2007,

Unjustified Limitation To Access Web sites

<http://www.zakon.kz/our/news/news.asp?id=30093909> in Russian;

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

There is no censorship, but Web sites are slowed down. The biggest obstacle is the high cost of internet use. Only 4 percent of the population are regular internet users

Forum discussion is usually very free. There are voices who argue that these forum discussions are instigated by special agents too.

References:

OSCE report Governing the Internet.
Freedom and Regulation in OSCE Area. Rachid Nougmanov.
July 2007 Internet Governance in Kazakhstan
http://www.osce.org/publications/rfm/2007/07/25667_918_en.pdf

Statement by Journalist

NGOs of Kazakhstan – About the Continuous Effort of the Ministry of Information To Limit the Freedom of Speech.

Dec. 6, 2006

<http://www.adilsoz.kz/site.php?lan=russian&id=207&newsid=736>

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

Comments:

There are provisions in the same law on state secrets and right for refutation by persons and legal entities. Also there is so called defamation laws or laws on interference into private life where the journalist or newspaper can be brought to the court for damaging the reputation of a person. Several precedents back in 2001 and 2002 took place. Some threats to use these laws were articulated as well. However if newspapers are involved in some inter oligarch wars the information is published without limitations.

References:

Law on media, articles 14 and 20

<http://www.adiisoz.kz/site.php?lan=russian&id=444&pub=749>

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

References:

Report on media coverage of the elections
OSCE Presidency Opposed after Heavily Biased Election Coverage
RSF staff Kazakhstan
Aug. 22, 2007
Reporters sans frontières Secrétariat International
<http://www.kub.kz/article.php?sid=18988>

Opennet Country Profile Report.
Opennet staff 2007 Kazakhstan
<http://opennet.net/research/profiles/kazakhstan>

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

Censorship is prohibited, but quite often officials ask to see the written material, such as an interview, before the publication. Usually, if there is an attempt for censorship it is reported by the NGOs that monitor the freedom of speech.

References:

Monitoring. ADLI SOZ NGO. April 2007

Monitoring Of Violations Of Freedom Of Speech in Kazakhstan in March 2007 <http://www.adilsoz.kz/site.php?lan=english&id=8>;

News report. BBC

OSCE Accuses Kazakhstan And Georgia in Internet Censorship

July 28, 2007

http://news.bbc.co.uk/1/hi/russian/international/newsid_6920000/6920710.stm

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

55

10a. In law, print media companies are required to disclose their ownership.

YES | NO

Comments:

When the registration process is going on, an owner should provide identification documents.

References:

Law on media, article 11

<http://www.adilsoz.kz/site.php?lan=russian&id=444&pub=749>

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Law on media, article 11

<http://www.adilsoz.kz/site.php?lan=russian&id=444&pub=749> (in Russian)

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

PR materials are quite common. Media entities belong to financial groups in Kazakhstan. Journalists are only instruments of the owners. There are some lists of companies which cannot be criticized because of the newspaper business affiliation with the owner. Maybe Web sites are some exception to this rule.

References:

Vlad Yritsyn, journalist. www.zonakz.net (web newspaper),
Aug. 7, 2007, Almaty

Debate between editor Meltser and ex-ambassador of Kazakhstan Aliyev.
Editor-in-chief of Vremya Newspaper Confirms The Authenticity of Rahat Aliyev Interview
Interfax (news agency) June 20, 2007
<http://zonakz.net/articles/18191>

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

In the parliamentary elections of 2007, TV ads by the opposition party were not accepted by TV channels, under the pretext that they instigate to inter social intolerance. They were placed on Web sites.

References:

Letter to the Chair of the Central Election Commission,
Uraz Zhandosov

July 28, 2007
<http://www.osdp.kz/index.php?itemid=403>;

Article in Tas zhagan newspaper 29 (57) , Darhan Kerey.
What Is in My Clip?
July 26, 2007
<http://zonakz.net/articles/18654>

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

References:

Letter to the Chair of the Central Election Commission,
Uraz Zhandosov
July 28, 2007
<http://www.osdp.kz/index.php?itemid=403>;

Article in Tas zhagan newspaper 29 (57) , Darhan Kerey.
What Is in My Clip?
July 26, 2007
<http://zonakz.net/articles/18654>

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

Several times journalists were under investigation and prosecution for slander. The most famous case was when a journalist was sentenced to two years on parole for insulting the president in two articles published on the internet.

References:

Monitoring of the violations of the freedom of speech in Kazakhstan on monthly basis conducted by Kazakhstan NGO Adill Soz <http://www.adilsoz.kz/site.php?lan=russian&id=633> (in Russian);

Kazakh Blogger Sentenced To Two Years Imprisonment

Jan. 22, 2007, Mon 5:21 PM Moscow

<http://eng.cnews.ru/news/line/indexEn.shtml?2007/01/22/232325>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | NO

Comments:

On Jan. 7, 2007, a camera was destroyed while journalists were shooting after a fire broke in the market. Guards of the market destroyed the camera and the TV channel brought this case to court.

Some NGO organizations have not indicated these violations. Some violence against journalists is attributed to criminal cases not connected with their professional activity.

References:

Monitoring. Team of Adil Soz NGO (www.adilsoz.kz), from January to July 2007,

Monitoring of Violations of Freedom of Expression of Speech in Kazakhstan from January to July 2007

<http://www.adilsoz.kz/site.php?lan=english&id=80>;

Data set. Team of Center for Journalists in Extreme Situations 2007

Violations of the rights of the journalists in Kazakhstan in 2007

http://www.cjes.ru/monitoring/?country_id=11&year=2007

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | NO

Comments:

One journalist has disappeared and probably she was kidnapped. Journalist Oralgaysha Omarshanova (Zhabagaytaykyzy) disappeared on March 30, 2007. She is a journalist of the newspaper Zakon I pravosudie and investigates crimes with elements of corruption. There are opinions that her disappearance is connected with her professional activity. Muhit Iskakov (representative

of the newspaper in Almaty) said that Oralgaysha was received some threatening phone calls before the publication of this article. As a result, she has bought and registered fire-arms because she was afraid for her life. Oralgaysha and her colleagues came to Almaty from Astana on March 29, 2007. Her friend saw Oralgaysha in an unknown car (it was jeep) on March 30, 2007. Anybody has seen her. She works as journalist of the newspaper Zakon i pravosudie within a year. Colleagues record of her fearlessness and the highest professionalism. The criminal case was instituted under article 125 Kidnapping of Criminal Code of the Republic of Kazakhstan.

References:

Monitoring. Team of Adil Soz NGO (www.adilsoz.kz), from January to July 2007,
Monitoring of Violations of Freedom of Expression of Speech in Kazakhstan from January to July 2007
<http://www.adilsoz.kz/site.php?lan=english&id=80>;

Article Rahat Kosbarmak
Journalist is lost! (in Kazakh)
April 23, 2007
<http://www.sayasat.kz/modules.php?name=News&file=print&sid=2002>

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

58
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

100

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

References:

Constitution, article 18, part 3
[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

Comments:

If access is denied then the case can be brought to court.

References:

Constitution, article 18, part 3

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The presidential decree should have been substituted by the law, but it is still under discussion.

References:

The general mechanism is to go directly or to write directly an address or appeal to the given government body or to the superior agency. If there is no superior agency, it is possible to write an appeal to the court. Also, every government body or official has a specified time to meet with the people and address their complaints.

Constitution, article 18, part 3 and article 33, part 1

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9;)

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9;](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9;)

Law on media, article 2 Freedom of Speech, Receipt and Information Dissemination, part 3 and article 25 Grounds for Responsibility for Violating the Legislation on Mass Media

http://www.msc-law.kz/index.php?option=com_content&task=blogcategory&id=14&Itemid=43;

Criminal Code, article 155 Hindering of the legal professional activity of the journalist

<http://www.medialaw.kz/index.php?r=82&c=381> (in Russian);

Presidential decree from June 19, 1995 «On the order of the addresses of the citizens

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

55

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The government started so called e-government initiative in 2004. People are still are not well aware about it, but this awarness is growing. NGOs made several cases in the courts against the state bodies, when they did not provide the information.

References:

Description of e-government initiative, 2004,
Electronic Government of Kazakhstan
<http://www.e.gov.kz/about?lang=en>

Web article. The Institute for Information Freedom Development
Kazakhstan's Authorities Will Meet The People Electronically
March 23, 2007
<http://svobodainfo.org/info/page/rus?tid=633200005&page=10&nd=458204427>

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Description of e-government initiative, 2004,
Electronic Government of Kazakhstan
<http://www.e.gov.kz/about?lang=en>

Web article. The Institute for Information Freedom Development
Kazakhstan's Authorities Will Meet The People Electronically
March 23, 2007
<http://svobodainfo.org/info/page/rus?tid=633200005&page=10&nd=458204427>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Web article. The Institute for Information Freedom Development
Kazakhstan's Authorities Will Meet The People Electronically
March 23, 2007
<http://svobodainfo.org/info/page/rus?tid=633200005&page=10&nd=458204427>

Comparative survey
Legal Regulation in the ERRA Countries March 2004. Fourth Annual Meeting of The Regional Association
www.erranet.org

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Appeals are made via courts. There are precedents when newspapers and environmental NGOs made appeals when governmental bodies have not responded on time.
The government fee for the court case is 4,115 tenge (US\$34).

References:

ALLEGATION On Violation of the Right to Receipt of Information by Greensalvation NGO,
April 21, 2002
http://greensalvation.org/English/Facts/H_rights/decision_0.htm;

Report. Transparency International,
2003 Assessment of Mass Media Participation in The Fight against Corruption (in Russian)
<http://www.transparencykazakhstan.org/UserFiles/file/88.pdf>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

There is a law on state secrets and it can be used as an official tool to avoid the provision of information

References:

ALLEGATION On Violation of the Right to Receipt of Information by Greensalvation NGO,
April 21, 2002
http://greensalvation.org/English/Facts/H_rights/decision_0.htm;

Report. Transparency International,
2003 Assessment of Mass Media Participation in The Fight against Corruption (in Russian)
<http://www.transparencykazakhstan.org/UserFiles/file/88.pdf>

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁷⁵Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

References:

Constitution of the Republic of Kazakhstan, article 3
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

References:

Constitution of the Republic of Kazakhstan, Article 51 <http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

75

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

People are very apathic in the electoral period and are politically passive. There are different explanations for that and one of them is the constant fraud in previous elections as well. Some political parties were calling for boycotting the last parliamentary elections in 2007.

References:

Statment. O Zhumabekov
Address to Central Elections Committee of the Republic of Kazakshtan
Nov. 26, 2005
http://www.iicas.org/libr_rus/kz/00_085_kz.htm;

Editorial
To the Elections As to The Celebration.
Aug. 8, 2007
<http://www.liter.kz/site.php?lan=russian&id=151&pub=7846> (in Russian)

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are secret, but before the 2007 elections almost every time fraud was reported, including fake or spoiled ballots.

References:

Monitoring report.
Headquarters of the electoral team of Zharmahan Tuyakbai.
Dec. 4, 2005. Monitoring of violations
http://www.iicas.org/libr_rus/kz/00_051_kz.htm (in Russian);

Statement. International Observers' Mission
Republic of Kazakhstan Parliamentary Elections, Sept. 19, 2004
Sept. 19, 2004
<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019028.pdf>

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Elections were held several times before the official deadlines, and every time the legal aspect was resolved or justified by the Constitutional Council. This Council is not directly controlled by the citizens.

References:

Report. Office for Democratic Institutions and Human Rights. April 2001
REPUBLIC OF KAZAKHSTAN REVIEW OF THE ELECTION LEGISLATION FOR ELECTION DISPUTES, APPEALS AND PENALTIES
http://www.osce.org/documents/odhr/2001/04/1289_en.pdf;

News report. Ria Novosti
Nazarbayev Dissolved the Parliament
June 20, 2007
<http://www.electiondog.net/doc.php?lang=rus&docid=2919>

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

60

16a. In law, all citizens have a right to form political parties.

YES | NO

References:

Constitution, Article 23

[http://www.akorda.kz/www/www_akorda_kz_nsf/sections?](http://www.akorda.kz/www/www_akorda_kz_nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz_nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Constitution of the Republic of Kazakhstan, article 33,

http://www.parlam.kz/Information.aspx?doc=2&lan=en-US#_Toc150237530

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

There is a threshold of 50,000 members for the party to be registered, and also it is necessary to have regional representative offices. Some parties could not re-register after the new law on political parties came into force in 2002. Political party Alga has not been able to get a registration till this moment.

References:

Dossier of the country. Team of Eurasian Home.

Party and Political System. <http://www.eurasianhome.org/xml/t/databases.xml?lang=ru&nic=databases&country=98&pid=98;>

Article. Majilis press office.

How Many Parties in Kazakhstan?

April 10, 2003

<http://zonakz.net/articles/?artid=3125>

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The probability of success for a person from outside the system is almost zero.

References:

Election Observation Report. Office for Democratic Institutions and Human Rights. 2005
REPUBLIC OF KAZAKHSTAN. PRESIDENTIAL ELECTION
Dec. 4, 2005, OSCE/ODIHR Election Observation Mission
<http://www.cs.uiowa.edu/~jones/voting/KazakhOSCE.pdf>;

Report. Team of IICAS. 2005.
Elections of the President of the Republic of Kazakhstan
2005
http://www.iicas.org/libr_rus/kz/00_076_kz.htm

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

One member of the opposition party could get a seat in the Parliament. All others were cut off due to the irregularities in the electoral processes. Results for the 2007 elections were even more impressive when none of opposition candidates could win a seat

References:

Report Tracy, Jen; Loza, Tihomir; Krauthamer, Ky; Gardner, Andrew; Druker, Jeremy;
Kazakhstan: How to Win on All Counts
Sept. 28, 2005
<http://www.cceol.com/aspx/issuedetails.aspx?issueid=8bf01ad0-92fc-494b-9700-75138c0814f2&articleid=ee93243d-7ed1-42b2-922f-e0be0bbe9c>

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

References:

Election Law of the Republic of Kazakhstan, Article 10
http://election.kz/portal/page?_pageid=153,93253&_dad=portal&_schema=PORTAL

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

75

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

Comments:

According to this article, local governing entities (maslikhats) form the commissions:

Territorial, district and divisional election commissions are elected by the corresponding maslikhats based on proposals of political parties.

Each political party has the right to propose one candidature to the corresponding election commission. The political party has the right to propose to the election commissions the candidatures who are not members of the given political party.

If the political parties do not submit any proposals within the term specified by the maslikhat – not less than one month prior to the term of formation of election commissions – the maslikhats shall elect the election commission based on the proposals of other public associations and superior election commissions.”

References:

Election Law of the Republic of Kazakhstan, Article 10

http://election.kz/portal/page?_pageid=153_93253&_dad=portal&_schema=PORTAL

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The chair of the Central Election Commission is appointed by the president, which makes his/her independence questionable. Other members are appointed by the lower chamber of the Parliament.

References:

Article Erken Turanov, August 2005

Not Friday, But 13th

<http://www.continent.kz/2005/08/2.htm>

Report. Office for Democratic Institutions and Human Rights.

REPUBLIC OF KAZAKHSTAN'S PARLIAMENTARY ELECTIONS, Sept. 19

2004OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

April 2004

<http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019027.pdf>

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The staff is professional, but there is a high dependency on the political will of the executive.

References:

REPORT. Office for Democratic Institutions and Human Rights
REPUBLIC OF KAZAKHSTAN'S PARLIAMENTARY ELECTIONS
Sept. 19 and Oct. 3, 2004
OSCE/ODIHR Election Observation Mission Report, Dec. 15, 2004
http://www.osce.org/documents/odihr/2004/12/3990_en.pdf

Article. Fokina Ninel
Evaluation of the Central Election Committee of the Republic of Kazakhstan. (in Russian)
Oct. 5, 2004
<http://www.kub.kz/print.php?sid=7023>

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

References:

Materials of the press center of the Central Election Commission. 2007
http://election.kz/portal/page?_pageid=73,43433&_dad=portal&_schema=PORTAL

Report. CEC staff. 2007
Responses to The Most Frequent Questions on the Elections to Majilis and Maslikhats of RK
http://election.kz/portal/page?_pageid=73,599314&_dad=portal&_schema=PORTAL

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The Central Election Committee is enforcing the rules, but as the power is concentrated in the institution of the presidency, the treatment of the presidential party is not so impartial. As a consequence many opposition leaders call for boycotting the elections.

References:

Report. Office for Democratic Institutions and Human Rights.
REPUBLIC OF KAZAKHSTAN'S PRESIDENTIAL ELECTION
OSCE/ODIHR Election Observation Mission
Dec. 4, 2005
<http://www.cs.uiowa.edu/~jones/voting/KazakhOSCE.pdf>

Article. Shayhmet Baurzhan
Kazakhstan's Authorities in Discrimination of Opposition Push through Again. (in Russian)
Aug. 4, 2005
<http://www.azattyq.org/programs/parovoz/ru/2007/08/F40DD67F-82E4-4EFB-814A-286347D8AEEF.asp#>

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

71

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | 50 | 25 | 0

Comments:

There were numerous complaints in 2004 and 2005 about the mess in the voter-registration process. It looks like in 2007 the situation has improved.

References:

Monitoring. Press service of Zharmahan Tuakbai electoral team.
Monitoring of Violations
Dec. 4, 2005
http://www.iicas.org/libr_rus/kz/00_051_kz.htm;

Report. Office for Democratic Institutions and Human Rights.
REPUBLIC OF KAZAKHSTAN'S PRESIDENTIAL ELECTION
OSCE/ODIHR Election Observation Mission
Dec. 4, 2005
<http://www.cs.uiowa.edu/~jones/voting/KazakhOSCE.pdf>

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost” voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

Comments:

By constitution, any citizen can go court and start a case if they feel their rights have been violated. There were cases when people were not satisfied with the election results.

References:

Constitution of the Republic of Kazakhstan, Article 76

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Observers and politicians made several appeals, but the results of the elections were not changed.

References:

NGO Society of young professionals and political movement “Za spravedlivyi Kazakhstan” made an appeal to the court about abuses on the elections in 2005 (in Russian)
Internet newspaper zonakz.net
www.zonakz.net/articles10431 Dec. 15, 2005
www.zonakz.net/articles10110 Nov. 10, 2005

“Formally you can go to the court to challenge the results but judicial protection is not effective” Interview with Timur Kadyrbayev, lawyer of NGO Society of Young Professionals, July 26, 2007, Almaty

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | 50 | 25 | 0

Comments:

The Office of the Prosecutor made a claim that the video materials of the opposition party are violating some norms in the law. The opposition thinks the prosecutor is not impartial. Generally, military and security forces do not interfere in elections. There were reports that officers of some security forces were buying out the opposition newspapers.

References:

Statement of General Prosecutor Office in Kazakhstan
July 24, 2007

[http://www.procuror.kz/?iid=5&type=news\)=ru&nid=1656;](http://www.procuror.kz/?iid=5&type=news)=ru&nid=1656;)

News report. Team of Adil Soz NGO
Suits for Freedom of Speech" Are Growing

<http://www.adilsoz.kz/?lan=russian&id=207&newsid=911> (in Russian)

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

References:

Election Law:

Article 20-1. Observers of Political Parties, Other Public Associations, Non-profit Organizations of the Republic of Kazakhstan;
Article 20-2. Observers of Foreign States and International Organizations, Representatives of Foreign Mass Media

http://election.kz/portal/page?_pageid=153_93253&_dad=portal&_schema=PORTAL

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | 50 | 25 | 0

References:

Press release of the Republican Network of Independent Observers (RNIO), Kazakhstan, on their intention to monitor the parliamentary elections in 2007. They were monitoring elections before and now they would send more than 2,000 observers. They also produced a report on the local elections in 2006.

[http://www.rsnn.kz/index.php?s=news&n=14;](http://www.rsnn.kz/index.php?s=news&n=14)

OSCE observers produced a report on the presidential elections of 2005. They were invited by the government to monitor the elections.

http://www.osce.org/documents/odhr/2006/02/18133_en.pdf

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

82
II-3. Political Financing

20. Are there regulations governing political financing?

100

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 33 State financing of the elections

http://election.kz/portal/page?_pageid=73,48392&_dad=portal&_schema=PORTAL

(in Russian)

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 34 Non-State financing of the elections
http://election.kz/portal/page?_pageid=73,48392&_dad=portal&_schema=PORTAL
(in Russian)

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 34 Non-State financing of the elections
http://election.kz/portal/page?_pageid=73,48392&_dad=portal&_schema=PORTAL
(in Russian)

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 34 Non-State financing of the elections
http://election.kz/portal/page?_pageid=73,48392&_dad=portal&_schema=PORTAL
(in Russian)

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 34 Non-State financing of the elections

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

Comments:

Controlling and auditing are made by the Central Election Committee.

References:

Election Law. Chapter 6 Financing of the elections. Article 36 Control of the expenditure of the financial means given to the election campaign

http://election.kz/portal/page?_pageid=73.48392&_dad=portal&_schema=PORTAL
(in Russian)

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

References:

Election Law. Chapter 6 Financing of the elections. Article 36 Control of the expenditure of the financial means given to the election campaign

http://election.kz/portal/page?_pageid=73.48392&_dad=portal&_schema=PORTAL
(in Russian)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

42

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

Comments:

By law it is regulated that parties should be accountable for these types of financial support; in practice there were a lot of opinions expressed on the financial support from powerful oligarchs to certain political parties.

References:

Report , NGO Risk Assessment group
Why The Bankers of Kazakhstan Promised Not To Intervene to Politics
Feb. 5, 2007
http://risk.kz/pages.php?id=1&id_m=105 (in Russian);

Report Irina Galkina and Sabit Zhusupov
It Can Not Be Excluded That the Tax Check-Up in Kazkommertsbank Is A Suggestion to Refrain from Financing the Ak zhol Political Party
July 19, 2004
<http://www.ferghana.ru/article.php?id=3020>

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

References:

Report. Transparency Kazakhstan 2004.
Providing Transparency And Accountability of Political Parties Activities in Kazakhstan (in Russian)
<http://www.transparencykazakhstan.org/UserFiles/file/66a.pdf>;

Interview with the chair of the Central Electoral Commission, Turgankulov
July 1, 2007
<http://www.nomad.su/?a=3-200707030031>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | **50** | 25 | 0

References:

Article
Duvanov Sergei
Trump Ace of the President Nazarbayev
Aug. 10, 2007
<http://www.kub.kz/respublika.php?sid=18773>

Report. Transparency Kazakhstan 2004.
Providing Transparency And Accountability of Political Parties Activities in Kazakhstan (in Russian)
<http://www.transparencykazakhstan.org/UserFiles/file/66a.pdf>;

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | **25** | 0

References:

Interview with the chair of the Central Electoral Commission, Turgankulov
July 1, 2007
[http://www.nomad.su/?a=3-200707030031](http://www.nomad.su/?a=3-200707030031;);

Article
Duvanov Sergei
Trump Ace of the President Nazarbayev
Aug. 10, 2007
<http://www.kub.kz/respublika.php?sid=18773>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

It is effective, but penalties are usually imposed on opposition parties.

References:

Interview with the chair of the Central Electoral Commission, Turgankulov

July 1, 2007

<http://www.nomad.su/?a=3-200707030031>

Article

Duvanov Sergei

Trump Ace of the President Nazarbayev

Aug. 10, 2007

<http://www.kub.kz/respublika.php?sid=18773>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

News report. International Institute of Political Expertise.

Elections to Majilis (Parliament): events from Sept. 1-19 (in Russian)

Sept. 23, 2004

<http://www.stratagema.org/politechnology.php?nws=10959178480170848508>

Interview with Meldeshev Bahyt made by Olga Kazantseva

Work of CEC Is A Constant Figure

Kazakhstanskay Pravda

April 28, 2004

<http://www.nomad.su/?a=3-200704300039>

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or

candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

50

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | **50** | 25 | 0

Comments:

Latest development in Kazakhstan is special state financing (partial) of all political parties. The implementation of the proposal (a constitutional amendment) is under consideration. All the parties would receive equal amount of money and financing of the parties would be based upon the performance on the elections. Idea is to prohibit also private donations to the parties and make more transparent for the public the financing itself.

References:

Report by CEC. CEC staff. 2007.

CEC Jointly with Banks And Fiscal Bodies Would Control The Expenditure (in Russian) http://election.kz/portal/page?_pageid=73,596292&_dad=portal&_schema=PORTAL;

Report. Nauryzbaeyva Zhanna. 2006.

Some Issues of Political Parties Construction in The Contemporary Period (in Russian)

<http://imp.kz/bullets/bullet10/003.htm>

Article Nurbol Sabyraly Zoloto partii Newspaper Liter 150 (16298) 16.08.2007 (In Russian)

http://www.express-k.kz/show_article.php?art_id=11127

Analytical report Aldashov B. 10.11. 2007 Peculiarities of contemporary political process in Kazakhstan (in Russian)

<http://www.analitika.org/article.php?story=20071028002809770>

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

According to the law, the records should be published in mass media and presented to tax authorities.

CEC publishes only the lump sum of the electoral fund of each party.

References:

Report by CEC. CEC staff. 2007.

CEC Jointly with Banks And Fiscal Bodies Would Control The Expenditure (in Russian) http://election.kz/portal/page?_pageid=73,596292&_dad=portal&_schema=PORTAL;

Report. Nauryzbaeyva Zhanna. 2006.

Some Issues of Political Parties Construction in The Contemporary Period (in Russian) <http://imp.kz/bullets/bullet10/003.htm>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In major parties' charters there is a clause regarding the reports, which are presented to tax authorities and to the Central Electoral Commission. I could find only the CEC information on the lump sum of each party.

References:

Report by CEC. CEC staff. 2007.

CEC Jointly with Banks And Fiscal Bodies Would Control The Expenditure (in Russian) http://election.kz/portal/page?_pageid=73,596292&_dad=portal&_schema=PORTAL;

Report. Nauryzbaeyva Zhanna. 2006.

Some Issues of Political Parties Construction in The Contemporary Period (in Russian) <http://imp.kz/bullets/bullet10/003.htm>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

People can go to court and start a case if their rights and interests are violated. It means they can sue the government too.

References:

Constitution of the Republic of Kazakhstan, Article 76
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

56

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The president gives annual addresses. The Cabinet of Ministers and the ministers report to the Parliament. The president gives interviews and internet interviews as well.

References:

Report. Freedom House staff. 2006. Country Report – Kazakhstan <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=119>

Staff of the Administration of the President
President Nursultan Nazarbayev Is Going to Hold an Internet-Conference on June 7, 2007, and to Answer Questions of Users of the Global Network.
May 30, 2007
[http://www.akorda.kz/www/www_akorda_kz.nsf/news-open?OpenForm\)=en&idn=6&idno=F27EE52A3EA6AF61462572EB0049540C](http://www.akorda.kz/www/www_akorda_kz.nsf/news-open?OpenForm)=en&idn=6&idno=F27EE52A3EA6AF61462572EB0049540C)

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized

process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

Comments:

The Constitutional Council supervises the constitutionality of the actions of the executive. The constitution emphasizes the citizens' right to judicial protection.

References:

Constitution of the Republic of Kazakhstan, Articles 71 and 76
<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | **25** | 0

Comments:

There is a Constitutional Council with a function to check the constitutionality of executive decisions but it is appointed by the president. The independence of judges on the local level has been strengthened recently, but it is believed they are still dependent upon the executive branch.

References:

Report. Freedom House staff. 2006. Country Report – Kazakhstan <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=119>

Review Karoly Bard
Review of The Constitutional Law of the Republic of Kazakhstan on the Judicial System And the Status of Judges
April 12, 2006
<http://www.legislationline.org/legislation.php?tid=112&lid=6055&less=false>

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to relay upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on

instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

The president has the power to rule by decree, but now he doesn't use it as often as before.

References:

Report. Freedom House staff. 2006. Country Report – Kazakhstan <http://www.freedomhouse.org/template.cfm?page=140&edition=7&ccrpage=31&ccrcountry=119>;

Analytical report

Nurbolat Masanov 2002. Presidential Republic of Total Corruption (in Russian) http://www.iicas.org/articles/anv_22_01_02.htm

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

100

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

Comments:

However, article 46 states that the president's honor and dignity shall be inviolable.

References:

The constitution declares equality of everyone before the law and court

Article 14

<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

There were precedents when some newspapers were suing the minister of Culture, Information and Public Accord.

References:

Criminal Code of the Republic of Kazakhstan

Article 14, section 2

It is declared that everyone who committed a crime is equal before the law despite their position

<http://www.pavlodar.com/zakon/?dok=00087&uro=08014> (in Russian)

Constitution of the Republic of Kazakhstan, Article 76 grants the right for judicial protection of the rights and interests

<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

59

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

Law On Anticorruption Efforts, Article 9. Financial Control Arrangements

Tax Code of the Republic of Kazakhstan, article 171, section 1

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf>

Tax Code is available for download from

<http://www.kazakhstanembassy.org.uk/cgi-bin/index/209>

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

References:

Law On Anti-corruption Efforts, Article 9. Financial Control Arrangements

Tax Code of the Republic of Kazakhstan article 171, section 1

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf>

Tax Code is available for download from

<http://www.kazakhstanembassy.org.uk/cgi-bin/index/209>

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Government officials can not take a gift if it is more than 10 times the Monthly Calculation Items (MRP mesyachnyi raschetnyi pokazatel).

References:

Civil Code of the Republic of Kazakhstan, article 509 Prohibition of the gifts

Civil Code (Special Part) in Russian

<http://www.cis-legal-reform.org/document.asp?id=3642>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

Comments:

The auditing procedure is formulated very vaguely. There is a criminal liability for false income declaration.

References:

Law On Anticorruption Efforts, Article 9. Financial Control Arrangements

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | **NO**

Comments:

It is very vaguely formulated. De facto it is almost not regulated, only the use or abuse of the confidential information previously held in state service can be punished.

References:

Law on civil service, Article 9 -Main responsibilities of the state official

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | **25** | 0

Comments:

There are some clauses about confidential information or state secrets obtained while being in the government service. They are prohibited for dissemination after leaving the service. This issue is discussed from time to time because some ministers and top officials have interests in various businesses.

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness (in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analytics&submod=self&article=383>

Article in Kazakhstanskay Pravda. Gairat Spargalieyv and Petr Krepak
What Kind of Political Elite Is Necessary (in Russian)
April 20, 2002
http://www.kazpravda.kz/index.php?uin=1151645457&act=archive_date&day=20&month=4&year=2002

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

There were a lot of efforts to fight corruption, but it continues on two levels. At the low level officials take bribes because they are underpaid, while at the highest level it is a classical abuse of power. Gifts in both cases are different as well.

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness (in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analitics&submod=self&article=383>;

Survey. Team of Enterprises survey
Featured snapshot report
Kazakhstan 2005
<http://www.enterprisesurveys.org/ExploreEconomies/Default.aspx?economyid=100&year=2005>

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness (in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analitics&submod=self&article=383>

Article in Kazakhstanskay Pravda. Gairat Spargalieyv and Petr Krepak
What Kind of Political Elite Is Necessary (in Russian)
April 20, 2002
http://www.kazpravda.kz/index.php?uin=1151645457&act=archive_date&day=20&month=4&year=2002

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

8

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | **NO**

Comments:

It is available to tax officers, otherwise it is considered as private and confidential information. Tax officers hold the content of the declaration in secret. It can be released to the public if the case is going on to the court on corruption charges. In theory it is possible, but in practice it is hard to imagine. Several times the information on some property or property of close relatives of the head of the state was published in the opposition press.

References:

Law on fighting corruption
Chapter 2 Prevention of corruption, corruption crimes and responsibility for them
Article 9 Measures of financial control
http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

By law, only tax officers or court authorities have this access. Opposition leaders in 2005 suggested to make the declarations available to the public.

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness (in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analytics&submod=self&article=383>

Article in Kazakhstanskay Pravda. Gairat Spargalieyv and Petr Krepak
What Kind of Political Elite Is Necessary (in Russian)
April 20, 2002
http://www.kazpravda.kz/index.php?uin=1151645457&act=archive_date&day=20&month=4&year=2002

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In case of criminal proceedings the records can become public.

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness (in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analytics&submod=self&article=383>

Article in Kazakhstanskay Pravda. Gairat Spargalieyv and Petr Krepak
What Kind of Political Elite Is Necessary (in Russian)
April 20, 2002
http://www.kazpravda.kz/index.php?uin=1151645457&act=archive_date&day=20&month=4&year=2002

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

0

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

Ruling party Nur Otan and state apparatus work closely with each other. Their relationship goes back to the early stage of party development in the country.

References:

Report. Daniyar Ashimbayev
To the Elections. Configuration of the Future Kazakhstan Majilis of Four Convocations (in Russian)
July 4, 2007
http://www.ia-centr.ru/public_details.php?id=692

News report. Kazakhstan Today
Nur Otan™ Consider The Accusations of Using Administrative Resources And Violations of Terms of Electoral Campaign As Ungrounded Ones (in Russian)

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

83

29a. In law, the judiciary can review laws passed by the legislature.

YES | NO

References:

Constitution, Part 6 – Constitutional Council, Article 7
<http://www.legislationline.org/ru/legislations.php?jid=28<id=14>

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | **50** | 25 | 0

References:

Article. A. Kotov
Interpretation of the Constitution and Forming Precedent Constitutional Law (in Russian)
March 21, 2003
http://www.concourt.am/armenian/con_right/3.21-2003/A.%20Kotov.htm

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

Comments:

In general, Parliament should give a consent for criminal prosecution of its members. However if the member is caught at the place of crime, or in case of charges of hard crimes this consent is not necessary. Civil cases do not require the consent of the Parliament either.

References:

Decree of the president on Parliament on the statute of its members,
Oct. 16, 1995, Part 5, article 32 (in Russian)
[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=986397EACC60B17F462572340019E7F9\)=ru](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=986397EACC60B17F462572340019E7F9)=ru)

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

50

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

Comments:

The contesters for the seats in the Parliament are required to file these declarations to the Central Electoral Committee.

References:

Law on Elections. Part 2, in particular Chapter 12. Elections of the deputies of Majilis of Parliament of Kazakhstan
Article 89 Registration of the candidates to the Majilis deputies.
<http://www.pavlodar.com/zakon/index.html?dok=00008&oraz=08&noraz=89>

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

Comments:

This is not fully regulated.

References:

Law on the Parliament of the Republic of Kazakhstan and statute of its deputies
Chapter 5 Statute of the deputies of the Parliament of the Republic
Article 24 Deputy of Parliament of the Republic;

Dariga Nazarbayeva after Termination of Her Term Entered Business Activities in Nur Bank
<http://www.pavlodar.com/zakon/?dok=00155&uro=08024;>

News report
Dariga Nazarbayeva Has Entered The Board of Directors of Nurnbank.
Centralasia.ru, July 31, 2007
<http://www.centrasia.ru/newsA.php4?st=1185860460>

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | NO

Comments:

This law covers all government officials, including deputies. A deputy of the Parliament loses immunity if he/she is under criminal accusations by a court. Considering their immunity, the members of Parliament can be prosecuted only if he/she is apprehended while committing the crime or if the Parliament gives approval. In case of a corruption investigation against a member of Parliament, the investigator has to inform the territorial voting commission and the Parliament within five days.

References:

Law on fighting corruption
Chapter 2 Prevention of corruption, corruption crimes and responsibility for them .
Article 13 Corruption crimes, connected with illegal access to preferences (in Russian)
<http://www.pavlodar.com/zakon/?dok=00044&uro=08013>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | NO

Comments:

Before the elections, the declarations are submitted to tax authorities and they are made available to the Central Election Committee. Tax authorities are responsible for the auditing.

References:

Law on Elections. Part 2, in particular Chapter 12. Elections of the deputies of Majilis of Parliament of Kazakhstan Article 89 Registration of the candidates to the Majilis deputies.

<http://www.pavlodar.com/zakon/index.html?dok=00008&oraz=08&noraz=89>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

This is not regulated.

Dariga Nazarbayeva, after her term in office, entered the business activities in Nur Bank.

References:

Memo from Nurbank shareholders meeting

Protocol of the annual meeting of the shareholders of TOO Nurbank

May 25, 2007

http://www.kase.kz/emitters/scan/nrbn/nrbn_resch_250507.pdf;

Article. Newspaper. Liter Igor Nevolin

Where Will Party Send?

June 30, 2006

<http://www.akzhol.kz/modules.php?name=News&file=article&sid=637>;

News report

Dariga Nazarbayeva Has Entered The Board of Directors of Nurbank.

Centralasia.ru, July 31, 2007

<http://www.centralasia.ru/newsA.php4?st=1185860460>

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

Legislators are considered government officials and they are subject to the same clauses as government officials in case of corruption.

References:

Article. Expert Kazakhstan magazine
Aleksandr Konstantinov
Third Is Not Given (in Russian)
June 25, 2007
http://www.expert.ru/printissues/kazakhstan/2007/24/borba_s_korruptsiev/

Survey J. Jandosova, N. Baitegulova, F Jandosova, S. Kunitsa 2003
Perception of Corruption in Kazakhstan
<http://unpan1.un.org/intradoc/groups/public/documents/UNDP/UNPAN011504.pdf>

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

It is questionable, because the asset disclosure forms are required before entering Parliament and they are available to the Central Electoral Commission and to tax authorities. There were no precedents of some inconsistencies or public debates about them. The declarations of income are not required. Some politicians declared their intention to file them. However, they are not required and there are no precedents.

References:

Interview with Alikhan Baimenov
To Civilization through The Declaration
Nov. 6, 2006
http://www.expert.ru/printissues/kazakhstan/2006/41/qa_baymenov/

Report. e-gov.kz 2007.
Guidelines. How Registration of The Candidates Is Going On And What Documents Are Required for Registration
http://www.e.gov.kz/state/elections/elec_sys/elec_majdeputies/article/1561?lang=ru

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

17

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

Comments:

They are accessible to tax authorities and the Central Electoral Committee. There are some pressures to make them public.

References:

Law on Elections. Part 2, in particular Chapter 12.

Elections of the deputies of Majilis of Parliament of Kazakhstan Article 89 Registration of the candidates to the Majilis deputies.

<http://www.pavlodar.com/zakon/index.html?dok=00008&oraz=08&noraz=89>

Law on the Fight against Corruption., Article 9 – Measures of financial control (in Russian)

http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | **25** | 0

Comments:

They can be made publicly available in case of some public scandal.

References:

Interview with Alikhan Baimenov

To Civilization through The Declaration

Nov. 6, 2006

http://www.expert.ru/printissues/kazakhstan/2006/41/ga_baymenov/

Report. e-gov.kz 2007.

Guidelines. How Registration of The Candidates Is Going On And What Documents Are Required for Registration

http://www.e.gov.kz/state/elections/elec_sys/elec_majdeputies/article/1561?lang=ru

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | **25** | 0

Comments:

It is not very likely that ordinary citizens can obtain these reports. However, there are pressures to make income declarations of the highest officials available to the public.

References:

Interview with Alikhan Baimenov
To Civilization through The Declaration
Nov. 6, 2006
http://www.expert.ru/printissues/kazakhstan/2006/41/qa_baymenov/

Political program. 2005. Nagyz Akzhol Party political program
<http://www.akzhol-party.kz/action.php?go=content&set=showpage&pid=515>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

100

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

Law On the Parliament of the Republic of Kazakhstan and the Status of Its Deputies
Chapter 2

Chapter II The Competence of Parliament of the Republic and Organizational Forms of Its Realization
Article 8. Publicity of sessions of Parliament of the Republic
<http://www.parlam.kz/Information.aspx?doc=4&lan=en-US>

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

They are available on the Web site of the Parliament. However, information on who voted what is difficult to obtain.

References:

Information about Mazhilis activity. Majilis staff or secretariat. 2006-2007
TOTALS OF THE MAZHILIS ACTIVITY OF THE THIRD CONVOCATION OF THE PARLIAMENT OF THE REPUBLIC OF KAZAKHSTAN
Review of the Mazhilis legislative activity of the Parliament of the Republic of Kazakhstan for the second session
<http://www.parlam.kz/ltogi.aspx?&page=2&lan=en-US>

News report. Kazakhstan today agency.
Parliament Accepted Amendments to Constitution
May 18, 2007
<http://www.zonakz.net/articles/17772>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Information about Mazhilis activity. Majilis staff or secretariat. 2006-2007
TOTALS OF THE MAZHILIS ACTIVITY OF THE THIRD CONVOCATION OF THE PARLIAMENT OF THE REPUBLIC OF KAZAKHSTAN
Review of the Mazhilis legislative activity of the Parliament of the Republic of Kazakhstan for the second session
<http://www.parlam.kz/ltogi.aspx?&page=2&lan=en-US>

News report. Kazakhstan today agency.
Parliament Accepted Amendments to Constitution
May 18, 2007
<http://www.zonakz.net/articles/17772>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

63
III-3. Judicial Accountability

33. Are judges appointed fairly?

75

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

References:

Law on court system and statute of the judges in Kazakhstan
Part 3. Statute of the judges
Chapter 1. Legal position of the judges
Article 30. Selection of a candidate for the position of a judge
<http://www.pavlodar.com/zakon/?dok=00450&uro=08031>

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

There are a lot of debates about buying the position of a judge. There are some qualified judges, however there is a strong influence of the executive power on the judges.

References:

Statement . Sergei Utkin
Statement on The Discussion of the Judiciary System.
OSCE number HDIM.NGO/242/06
Oct. 10, 2006
http://www.osce.org/documents/odhr/2006/10/21238_ru.pdf

Report. Meirambek Duisenbek.
About Qualification of Some Judges
Aug. 6, 2007
<http://zonakz.net/articles/18752>

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

Judges are appointed by the president at the recommendation of the Judges' Qualification Commission.

References:

Constitution Section VII COURT AND JUSTICE

Article 82

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en&L1=L1&L2=L1-9)

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

83

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Criminal Code

Chapter 44 sentencing

article 379

Descriptive and declarative part of the accusative sentence

(in Russian)

[http://base.zakon.kz/doc/lawyer/nph-lawyer.exe?uid=&uid=5629BF74-A91E-46AE-B0F9-](http://base.zakon.kz/doc/lawyer/nph-lawyer.exe?uid=&uid=5629BF74-A91E-46AE-B0F9-AB652043296E&language=rus&doc_id=1008442&page=22)

[AB652043296E&language=rus&doc_id=1008442&page=22](http://base.zakon.kz/doc/lawyer/nph-lawyer.exe?uid=&uid=5629BF74-A91E-46AE-B0F9-AB652043296E&language=rus&doc_id=1008442&page=22)

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

Comments:

Judges write the references to the relevant laws and provisions of the codes in the declaration part of the sentences.

References:

Monitoring report. American Bar Association 2004 Index of Court Reform in Kazakhstan
<http://www.abanet.org/rol/publications/kazakhstan-jri-2004-ru.pdf>

Report. Meirambek Duisenbek.
About Qualification of Some Judges
Aug. 6, 2007
<http://zonakz.net/articles/18752>

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Law on court system and statute of the judges
Part 3. Statute of the judges
Chapter 2 Disciplinary responsibility of the judges
(in Russian)
<http://www.pavlodar.com/zakon/?dok=00450&all=04005>

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Constitution
Section VII COURT AND JUSTICE
Article 77

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The process of disciplinary actions is not transparent and statistics are only available in the disciplinary cases.

References:

Monitoring report. American Bar Association 2004 Index of Court Reform in Kazakhstan

<http://www.abanet.org/rol/publications/kazakhstan-jri-2004-ru.pdf>

Article Serikkeldy Abdrahmanov

About The Work of Republican and Oblast Disciplinary and Qualification Commission of the Judges of the Republic of Kazakhstan in 2003.

Turabi magazine 2004 #1

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

Monitoring report. American Bar Association 2004 Index of Court Reform in Kazakhstan

<http://www.abanet.org/rol/publications/kazakhstan-jri-2004-ru.pdf>

Article Serikkeldy Abdrahmanov

About The Work of Republican and Oblast Disciplinary and Qualification Commission of the Judges of the Republic of Kazakhstan in 2003.

Turabi magazine 2004 #1

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

61

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Tax Code
Part 2. Particular part
Division 6. Individual income tax
Chapter 26. Declaration on individual income tax
Article 171
<http://www.pavlodar.com/zakon/?dok=00967&uro=08187>

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | NO

References:

Law on anti-corruption efforts
Article 3. Corruption-related offenders
Article 9. Financial control arrangements
<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf>

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | NO

Comments:

It is made by tax authorities.

References:

Law on anti-corruption efforts

Article 3. Corruption-related offenders

Article 9. Financial control arrangements

<http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019167.pdf>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | NO

Comments:

It is not regulated. It is only mentioned if a judge changes jobs.

References:

Law on Court system and statue of the judges

Part 3. Statue of the judges

Chapter 1

Article 33 Interruption of the authorities of a judge

(in Russian)

<http://www.pavlodar.com/zakon/?dok=00450&uro=08034>

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | 75 | 50 | 25 | 0

Comments:

It is not regulated and the closest data available is on disciplinary actions for the abuse of power by judges.

References:

Interview with Arkaeyva Gulnar, lecturer in KIMEP

Aug. 16, 2007 Almaty

Review OSCE/ACN staff 2005.

Review of Legal and Institutional Framework for Fighting Corruption

REPUBLIC OF KAZAKHSTAN Summary of Assessment and Recommendations

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

References:

Review OSCE/ACN staff 2005.
Review of Legal and Institutional Framework for Fighting Corruption
REPUBLIC OF KAZAKHSTAN Summary of Assessment and Recommendations
Endorsed at the Fourth Review Meeting
OECD, Paris, Oct. 20- 21 , 2005
<http://www.oecd.org/dataoecd/58/20/35716503.pdf>

Article Brenda Swartz, Frank Wadsworth, Jerry Wheat, 2007
Perceptions Of Corruption In Central Asian Countries
<http://www.cluteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

It is done internally by the tax authorities.

References:

Review OSCE/ACN staff 2005.
 Review of Legal and Institutional Framework for Fighting Corruption
 REPUBLIC OF KAZAKHSTAN Summary of Assessment and Recommendations
 Endorsed at the Fourth Review Meeting
 OECD, Paris, Oct. 20- 21, 2005
<http://www.oecd.org/dataoecd/58/20/35716503.pdf>

Article Brenda Swartz, Frank Wadsworth, Jerry Wheat, 2007
 Perceptions Of Corruption In Central Asian Countries
<http://www.cluteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

50

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | NO

Comments:

It is accessible only to tax authorities and the content is considered a secret; there is a statement that provides for the size and sources of income to be publicized in the order established by the law.

This article is considered as unclear
 See <http://www.oecd.org/dataoecd/58/20/35716503.pdf>

References:

Law on the Fight against Corruption.
 Article 9 Measures of financial control
 (in Russian)
http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There are no precedents, at least not publicly known.

References:

Review OSCE/ACN staff 2005.
Review of Legal and Institutional Framework for Fighting Corruption
REPUBLIC OF KAZAKHSTAN Summary of Assessment and Recommendations
Endorsed at the Fourth Review Meeting
OECD, Paris, Oct. 20- 21, 2005
<http://www.oecd.org/dataoecd/58/20/35716503.pdf>

Article Brenda Swartz, Frank Wadsworth, Jerry Wheat, 2007
Perceptions Of Corruption In Central Asian Countries
<http://www.cluteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In theory it can be published, but there are no precedents.

References:

Review OSCE/ACN staff 2005.
Review of Legal and Institutional Framework for Fighting Corruption
REPUBLIC OF KAZAKHSTAN Summary of Assessment and Recommendations
Endorsed at the Fourth Review Meeting
OECD, Paris, Oct. 20- 21, 2005
<http://www.oecd.org/dataoecd/58/20/35716503.pdf>

Article Brenda Swartz, Frank Wadsworth, Jerry Wheat, 2007
Perceptions Of Corruption In Central Asian Countries
<http://www.cluteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

37. Can the legislature provide input to the national budget?

83

37a. In law, the legislature can amend the budget.

YES | NO

References:

Budget Code
Part 2. Particular Part
Division 5. Fulfillment and correction of the budget
Chapter 20. Process of correction of the budget
Article 114. Correction of the republican budget
(in Russian)
<http://www.pavlodar.com/zakon/?dok=03038&uro=08120>

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Final approval is given by the president. It is an ordinary legal procedure when any law is signed by the president. Revision of the Republican budget is considered as a law and that is why it should be signed by the president, but before it should be accepted by the two chambers of Parliament.

References:

Report. Information Agency Trend 2007.
Parliament of Kazakhstan Has Adopted Revisions to The Budget of the Country
<http://www.fintraining.kz/modules.php?op=modload&name=News&file=article&sid=125>;

Analytical report Staff of International Institute of Modern Policy
Analysis of the Republican Budget Fulfillment for Year 2006
May 23, 2007
http://www.iimp.kz/default.aspx?article_id=973

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Staff and qualification is not such an issue in comparison with a configuration and distribution of power among different branches

References:

Recruitment report. Agency on Civil Service Affairs 2006 on state tender to vacant positions

[http://www.kyzmet.kz/?id_1=6&id_2=9&v_id=978\)=ru&type=vacancy](http://www.kyzmet.kz/?id_1=6&id_2=9&v_id=978)=ru&type=vacancy)

(in Russian)

Report. Republican network of independent observers

Recommendations on Guarantees of Transparency of the Work of the Deputies of Parliament of RK

May 23, 2005

in Russian

http://www.rsnn.kz/zan_orda/index.php?subaction=showfull&id=1116772382&archive=&start_from=&ucat=&q=list

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

42

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

Critical review of the process of budget formation and budget structure have become common because of growing prices and inability to address this issue through budget subsidies

References:

Article Musiraly Utebayev June 2007

Role of the Parliament of the Republic of Kazakhstan in The Process of Budgeting the Social Programs for The Children And Family

(in Russian)

<http://zhuldyz.kz/?type=magazine&iid=14&aid=315>;

Article Kanat Berenatyev 27.09.2007 Budget 2008: to take or to cancel?! Main financial document is not responsive to the realities of Kazakhstan

<http://gazetakapital.kz/2007/09/27/bjudzhet-2008-vzjat-i-otmenit-glavnyj.html>

Report by Canadian Parliamentary Center.

2004 Preliminary Assessment of The Needs of the Kazakh Parliament

<http://www.parlcent.ca/easterneurope/docs/post%20mission%20report%205.pdf>

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

References:

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament) 2006-2007 Conclusions of the Chamber of the public experts.
[http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU;](http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU)

Interview. Galina Dyrkina
As Society The Parliament Is The Same
Feb. 10, 2006
<http://www.kub.kz/respublika.php?sid=11933>

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

References:

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament) 2006-2007 Conclusions of the Chamber of the public experts.
[http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU;](http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU)

Interview. Galina Dyrkina
As Society The Parliament Is The Same
Feb. 10, 2006
<http://www.kub.kz/respublika.php?sid=11933>

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

Committee on finance and budget. Majilis of Kazakhstan
Law about committees and commissions of the Parliament of Kazakhstan
<http://www.parlam.kz/DPersons.aspx?lan=ru-RU&page=2&proc=1&id=67>

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

38

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

Usually the government and the heads of appropriate ministries submit their budgets for review and approval.

References:

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament)
2006-2007 Conclusions of the Chamber of the public experts.
<http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU>

Report. Muratbek Makulbekov
Majilismen Think Budget Discipline Has Worsened in 2006 (in Russian)
June 14, 2007
<http://www.nomad.su/?a=3-200706140340>

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

In Parliament there was only one person from the opposition in 2007. The results of the new elections are not yet out.

References:

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament)
2006-2007 Conclusions of the Chamber of the public experts.
<http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU>

Report. Muratbek Makulbekov
Majilismen Think Budget Discipline Has Worsened in 2006 (in Russian)
June 14, 2007
<http://www.nomad.su/?a=3-200706140340>

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Parliament in general is heavily influenced by the executive branch.

References:

News report Zhiger Baitelesov 05.06.2006
Majilis Opinion Is That There Were More Budget Reserves
(in Russian)
June 5, 2006
<http://www.zakon.kz/our/news/news.asp?id=30057493>;

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament)
2006-2007 Conclusions of the Chamber of the public experts.
<http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU>

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

References:

Statements. Experts of the Chamber of the public experts at Majilis (Lower Chamber of the Parliament) 2006-2007 Conclusions of the Chamber of the public experts.
<http://www.parlam.kz/News.aspx?idloc=5&page=2&lan=ru-RU>

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

Category IV. Administration and Civil Service

IV-1. ³¹ Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

References:

Law on Civil service. Chapter 1 – General Provisions, Article 3 – Principles of Civil Service

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Law on the fight against corruption Chapter 1 – General provisions; Article 11

<http://www.paviodar.com/zakon/?dok=00044&all=all>

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

It is a right for judiciary protection. They can go directly to the court and make a case against the government agency. There are some other special agencies which can perform internal controls in the relevant ministries. This special agencies can be exemplified by internal security service in Ministry of Internal Defense.

References:

Constitution

Section 7 Court and Justice

Article 76

<http://www.parlam.kz/Information.aspx?doc=2&lan=en-US>

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Criminal Code

Part 1 General Part

Division 3 Punishment

Article 41. Deprivation of the right to take some position or to be involved in some activity

<http://www.pavlodar.com/zakon/?dok=00087&all=02003>

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

50

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

In political matters, civil servants are pressed to vote for a certain party: the ruling party.

References:

News report Andrei Chebotarev

Kazakhstan's Constitutional Changes Benefit The President

June 5, 2007

<http://www.turkishweekly.net/news.php?id=45568>;

Discussion. Club Polyton Participants

Constitutional Reforms. Reasons, Trends, Prospects

(in Russian)

May 25, 2007

<http://club.kz/index.php?lang=ru&mod=discuss&submod=large&article=244>

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

There are a lot of opinions that positions are sold and bought in the civil service.

References:

Article Zaure Mirzahodzhaeva
Loutish Rates. How Much Does It Cost To Be in The Position of the ROVD Head
June 15, 2007
http://www.politica.kz/index.php?option=com_content&task=view&id=560&Itemid=8;

Interview made on the condition of anonymous reference. Senior specialist.
July 12, 2007, Almaty

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Article Andrew E. Kramer
Amid Growing Wealth, Nepotism and Nationalism in Kazakhstan
Dec. 23, 2005
<http://www.kub.kz/article.php?sid=11544>

Report. Caspian Information Center June 2005
Corruption: Can It Be Beaten?
CIC Occasional Paper No. 10
<http://www.caspianinfo.org/story.php?id=628>

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

Comments:

All ministries and state bodies have a so-called staff description work sheet" (shtatnoe raspisanie).

References:

Speech Zautbek Turisbekov

On Parliamentary Hearings on The Issue of Realization of Administrative Reforms and Modernization of Executive Power"
May 21, 2007

[http://www.kyzmet.kz/?type=news&id_1=3&id_2=5\)=ru&nid=162;](http://www.kyzmet.kz/?type=news&id_1=3&id_2=5)=ru&nid=162;)

Article Igor Loskutov

Increasing the Qualifications of The State Officials
(in Russian)

Oct. 29, 2004

http://www.kazpravda.kz/index.php?uin=1152770745&act=archive_date&day=29&month=10&year=2004

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

Comments:

Usually there is one bonus of the pay at the end of the year, which is the size of monthly salary. It is received both by political and state civil servants.

References:

Article Minayev O. S

Improvement of The Legal Framework of Kazakhstan on Civil Service
Nov. 15, 2006

[http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5\)=ru&nid=130;](http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5)=ru&nid=130;)

Report Ashimbayeva A.T.

Corruption in Kazakhstan. Growing Problems in Economy
July 13, 2007

<http://www.analitika.org/article.php?story=20070707042134476>

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

Comments:

The list is published in the Republican newspaper and on the Web site of the Agency on civil service and regional agencies. There is an information system which records the filled positions, but it is available only to certain agencies.

References:

Agency on civil service
2007 Declaration about The Competition on Vacant Positions in Administrative State Positions, Central State Bodies
[http://www.kyzmet.kz/?id_1=6&type=vacancy\)=ru](http://www.kyzmet.kz/?id_1=6&type=vacancy)=ru)

Article Evgeni Kononovich
To Civil Service on The Contract
(in Russian)
Feb. 14, 2006
[http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5\)=ru&nid=70](http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5)=ru&nid=70)

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

Comments:

Many things in the redress mechanism are solved in informal ways.

References:

Analysis Risk assessment group
Hard Way from Bureaucratic Corporatism to Corporate Governance in Kazakhstan
(in Russian)
Feb. 2, 2007
<http://www.risk.kz/pages.php?id=3;>

Article Kenzhegali Akhmetov
Second Stage of The Administrative Reform
Aug. 17, 2007
<http://www.kub.kz/article.php?sid=18923>

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

Comments:

Nowadays, when there is a budget surplus it is paid on time.

References:

Interview with Zautbek Turisbekov to the newspaper Panorama
Chair of The Agency on Civil Service
Aug. 11, 2006
[http://www.kyzmet.kz/?id_1=3&type=news\)=ru&nid=118;](http://www.kyzmet.kz/?id_1=3&type=news)=ru&nid=118;)

News report Elmira Gilmutdinova
Almaty Residents Are Paid More
Sept. 15, 2006
<http://www.kazakhstan-business.com/3042>

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

References:

Interview was made on the condition of anonymous reference. Senior specialist.
July 12, 2007, Almaty

Article Minayev O. S
Improvement of The Legal Framework of Kazakhstan on Civil Service
Nov. 15, 2006
[http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5\)=ru&nid=130](http://www.kyzmet.kz/?type=news&id_1=3&id_2=5&id_2=5)=ru&nid=130)

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

46

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Law on civil service
Chapter 2 Legal position of the civil servants
Article 10 Limitations connected with being in the civil service
<http://www.pavlodar.com/zakon/?dok=00083&uro=08010>

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

Comments:

There is only the prohibition to use service and state secret information. Also, there is a restriction that if a person was in the controlling agency for the stock company, then he/she cannot take a position in the board of directors of this company for one year after leaving the government post.

References:

Law on share holding companies
Chapter 5 Managing the company
Article 33. Bodies of the company

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Law on fighting corruption

Article 13 Corruption crimes related to anti-legal access to goods and preferences

http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

Top government officials are very rich people and get involved in some kind of business after leaving the service.

References:

Article Paul Sampson

Western Kazakh Cocktail in Canadian Performance

Aug. 6, 2004

<http://www.kub.kz/print.php?sid=6498;>

Analysis Nurlan Iskakov and Sergei Kornev

Does Democracy Have A Human Face? Political And Electoral Prospects of the Democratic Political Party Akzhol

July 16, 2004

<http://www.nomad.su/?a=2-200407160022>

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Report Brenda Swartz, Frank Wadsworth, Jerry Wheat 2007

Perceptions Of Corruption In Central Asian Countries

<http://www.cluteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

Article Nurbulat Masanov 2001

Again about Corruption in Kazakhstan

http://www.iicas.org/articles/publ_24_10_01.htm

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | **25** | 0

References:

Report Brenda Swartz, Frank Wadsworth, Jerry Wheat 2007
Perceptions Of Corruption In Central Asian Countries
<http://www.ciuteinstitute.com/Programs/Slovenia-2007/Article%20110.pdf>

Article Nurbulat Masanov 2001
Again about Corruption in Kazakhstan
http://www.icas.org/articles/publ_24_10_01.htm

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

17

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | **NO**

Comments:

Tax authorities and courts have access to the declarations in case of criminal charges. The information in the declarations is held in secret by the tax authorities and can be disclosed only in courts, in case of corruption charges.

References:

Law on fighting corruption
Chapter 2 Prevention of corruption, corruption crimes and responsibility for corruption
Article 9 Measures of financial control
http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness
(in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analitics&submod=self&article=383>

Article Antonina Shepeluk
State Wants To Uncover Secrets of Our Earnings
(in Russian)
Feb. 13, 2007
Komsomolskay pravda
<http://www.kp.kz/?date=13-02-07&number=1>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Survey. Sophia Isenova
Analytical Survey of The Government Officials' Ethics for Their Corruptness
(in Russian)
July 17, 2006
<http://club.kz/index.php?lang=ru&mod=analitics&submod=self&article=383>

Article Antonina Shepeluk
State Wants To Uncover Secrets of Our Earnings
(in Russian)
Feb. 13, 2007
Komsomolskay pravda
<http://www.kp.kz/?date=13-02-07&number=1>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

63

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

Law on fight against corruption

Chapter 1. General provisions

article 7. Guarantees of inviolability of the people who contribute to the fight against corruption

http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

Comments:

In general whistleblowing is not considered in cultural norms as something praised. It is considered as a breakage of corporate loyalty.

References:

Internet conference of President Nursultan Nazarbayev, 2007

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=11AA8E023D73D7EB462572F3003801B4\)=ru](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=11AA8E023D73D7EB462572F3003801B4)=ru)

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

Comments:

The law does not differentiate between private and civil persons reporting on corruption.

References:

Law on fight against corruption

Chapter 1. General provisions

article 7. Guarantees of inviolability of the people who contribute to the fight against corruption

http://ru.government.kz/docs/z980267_20040511.htm

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Serki Kapparov, director of HR department of Agency on the Civil Service

August 2007

<http://www.and.kz/22/korrupcionery>

Article Satkanbai Tauzhanov

Corruption in Kazakhstan. Engine for The Growth or Obstacle for The Development

August 2007

<http://zonakz.net/articles/18749>

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

Comments:

This decree establishes general rules.

References:

Phone hotlines in local government bodies (akimats);

Presidential decree of May 3, 2005

On establishing the Code of honor for the civil servants of the Republic of Kazakhstan

http://svv.kz/ma_page.php?id=38

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

31

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There are a lot of declarations regarding efforts to fight corruption. Every agency has a phone hotline at which citizens can report acts of corruption. KNB and the agency of financial police are oriented to fight against corruption. However, the financial police, for example, is considered to be corrupted itself. It is a systemic case. As some experts said, power is associated with corruption.

References:

Speech at the conference

Sergei Duvanov

Corruption against The Freedom of Speech

(in Russian)

Oct. 9, 2002
http://forumkz.addr.com/article/news_09_10_02_4.htm;

Report
Nurbulat Masanov
Presidential Republic of Total Corruption
Jan. 22, 2001
http://www.icas.org/articles/anv_22_01_02.htm

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Speech on the conference
Sergei Duvanov
Corruption against The Freedom of Speech
(in Russian)
Oct. 9, 2002
http://forumkz.addr.com/article/news_09_10_02_4.htm;

Report.
Nurbulat Masanov
Presidential Republic of Total Corruption
Jan. 22, 2001
http://www.icas.org/articles/anv_22_01_02.htm

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Collection of articles Podoprighora Roman et alia 2006
To Entrepreneur. About the Counter-Action to
Corruption http://www.transparencykazakhstan.org/UserFiles/file/Businessmen%20about%20fight%20agains%20corruption_rus.pdf

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

This information is hardly available. Usually it has a very general character.

References:

Interview with Vitali Voronov
LEGAL BASIS FOR DOING BUSINESS AND INVESTING IN AZAKHSTAN
Published in Eurobak, 2007
http://www.eurobak.kz/files/EUROBAK_World_Monitor_March_issue_2007/Legislation.pdf

Report by the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs,
Organisation for Economic Co-operation and Development (OECD)
2006 Monitoring of National Actions to Implement Recommendations Endorsed During the Reviews of Legal and Institutional Frameworks for the Fight against Corruption
KAZAKHSTAN UPDATE ON ACTIONS TO IMPLEMENT RECOMMENDATIONS
<http://www.oecd.org/dataoecd/50/52/37228001.pdf>

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Law on Public Procurement,
Article 7 Limitations connected with the process of state procurement
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | NO

References:

Resolution of the Government of Kazakhstan # 1262.
Dec. 13, 2003 On some questions of the Agency of state procurement
<http://ru.government.kz/docs/1262.htm>

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | 75 | 50 | 25 | 0

References:

Article in Expert Kazakhstan
Aleksandr Konstantinov
Expectation of The Clear Rules of The Game
(in Russian)
Oct. 2, 2006
http://www.expert.ru/printissues/kazakhstan/2006/36/gos_zakupki/

Request by the Parliament Member Elena Tarasenko
Forming the System of State Procurements
May 25, 2005
<http://www.asar.kz/Lists/List2/DispForm.aspx?ID=1446>

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | NO

Comments:

The Committee of Financial Control and State Procurement under the Ministry of Finance, and the agency of Financial Police are responsible for that.

References:

There is a committee of financial control and state procurement under the Ministry of Finance;

Resolution of the Government of Kazakhstan.

Oct. 29, 2004. N 1134 Some questions of the The Committee of Financial Control and State Procurement under the Ministry of Finance

It is possible to download from

<http://www.goszakup.kz/rus/about/>

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Law on Public Procurement,

Article 16 Consideration, evaluation and comparison of the bidding statements and concluding the bidding process

<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Law on Public Procurement,
Article 21. State procurement from sole source
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Law on Public Procurement,
Article 17 Protocol on the results of the competition
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | NO

References:

Law on Public Procurement,
Article 29 Appeal of the actions and decisions of the competition organizers, customers, and competition commission
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | NO

References:

Law on Public Procurement,
Article 8 Qualification requirements to the potential supplier
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | 0

References:

Article in Expert Kazakhstan
Aleksandr Konstantinov
Expectation of The Clear Rules of The Game
(in Russian)
Oct. 2, 2006
http://www.expert.ru/printissues/kazakhstan/2006/36/gos_zakupki/

Request by the Parliament Member Elena Tarasenko
Forming the System of State Procurements
May 25, 2005
<http://www.asar.kz/Lists/List2/DispForm.aspx?ID=1446>

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

100

49a. In law, citizens can access public procurement regulations.

YES | NO

Comments:

Competition packages and documents are available to everyone who is interested in participating for a certain amount of money or for free. Other regulations are available at <http://www.goszakup.kz/rus/base/>

References:

Law on Public Procurement,

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Law on Public Procurement,
Article 16 Consideration, evaluation and comparison of the bidding statements and concluding the bidding process
<http://www.goszakup.kz/tema/Z020321.html>

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Access to regulations is not limited at all to the participants of open competitions or to the citizens, but the results of the tenders are often the results of agreements based upon corruption between the supplier and the organizer.

References:

Article
Aleksandr Konstantinov
Expectation of the Clear Rules of The Game
(in Russian)
Expert Kazakhstan
Oct. 2, 2006
http://www.expert.ru/printissues/kazakhstan/2006/36/gos_zakupki/

Information from the Committee of Financial Control and State Procurement under the Ministry of Finance on the regulations of the government procurement process 2007
<http://www.goszakup.kz/rus/faq/>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Article
Aleksandr Konstantinov
Expectation of the Clear Rules of The Game
(in Russian)
Expert Kazakhstan
Oct. 2, 2006
http://www.expert.ru/printissues/kazakhstan/2006/36/gos_zakupki/

Information from the Committee of Financial Control and State Procurement under the Ministry of Finance on the regulations of the government procurement process 2007
<http://www.goszakup.kz/rus/faq/>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

It is usually available on the Web sites of professional associations (<http://www.prof.in.kz/>), national companies or ministries and in the republican mass media.
The Committee of Financial Control and State Procurement has a special printed newspaper which is issued five times per week.

References:

Bulletin of the state procurement newspaper
Aug. 17, 2007
http://www.goszakup.kz/files/bulletin/bul_158_17_08_2007.pdf

Information from the Committee of Financial Control and State Procurement under the Ministry of Finance on the regulations of the government procurement process 2007
<http://www.goszakup.kz/rus/faq/>

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

Bulletin of the state procurement newspaper

Aug. 17, 2007

http://www.goszakup.kz/files/bulletin/bul_158_17_08_2007.pdf

Information from the Committee of Financial Control and State Procurement under the Ministry of Finance on the regulations of the government procurement process 2007

<http://www.goszakup.kz/rus/faq/>

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

75

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

References:

Law on privatization

Chapter 1 General provisions

Article 2 Subjects of the privatization

<http://www.pavlodar.com/zakon/?dok=00074&uro=08002>

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

As reported by many experts, many officials became rich in the privatization process.
http://www.polit.ru/analytics/2006/09/20/korrupt_kazah.html

References:

Regulation
The statement of the rules of organizing and conducting the auctions
Department of State Property and Privatization of the Ministry of Finance
Part 1 General provisions
Point 7 The participants of the auctions can not include...
<http://www.cis-legal-reform.org/document.asp?id=2582>

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

Report.
Staff of Agency of Financial Police. 2007
Concepts and Signs of The Corruption Crimes
(in Russian)
[http://finpol.kz/rus/protivo/ponijpr/;](http://finpol.kz/rus/protivo/ponijpr/)

Interview with Alikhan Baimenov, chair of Akzhol party
Sept. 20, 2006 published by polit.ru website;

http://www.polit.ru/analytics/2006/09/20/korrupt_kazah.html

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

75

51a. In law, citizens can access privatization regulations.

YES | NO

Comments:

By law, privatization auctions are open to the public and all regulations are described in the article 14.

References:

Law on privatization
Chapter 1 General provisions
Article 4 Main principles
<http://ru.government.kz/docs/privat.htm>

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

Comments:

The major part of privatization of Soviet property has already been done. Today, state companies go more for IPOs.

References:

Interview with Utepov E.K., chair of the Committee of State Property and Privatization
The State As A No-Owner
Kazakhstanskaya pravda
Aug. 1, 2006

[http://www.minfin.kz/index.php?uin=1119501045&chapter=1159183813\)=rus;](http://www.minfin.kz/index.php?uin=1119501045&chapter=1159183813)=rus;)

Statement

Oraz Jandosov
On The Privatization Tender of The Energy Facilities
June 15, 2005
http://www.akzhol-party.kz/print.php?mod=content&print_id=134

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

Comments:

Since then, many reforms have been undertaken within the ministry and its committees.

References:

Resolution of the Government of Kazakhstan from Feb. 14, 1997

On specialized coupon auctions

Point 3. Order of conduction of coupon auctions

<http://www.cis-legal-reform.org/document.asp?id=1761>

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Quite often privatization went on in closed auctions, to which people had limited access.

References:

Report.

Staff of Agency of Financial Police. 2007

Concepts And Signs of The Corruption Crimes
(in Russian)

<http://finpol.kz/rus/protivo/ponijpr/>

Report

Nurbulat Masanov

Corruption in Kazakhstan. Myths and reality

Aug. 14, 2001

http://www.iicas.org/articles/ks_14_08_01.htm

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

The main rules are defined in the law on privatization and some regulations of the government. All of them are easy to find.

However, usually the results of the privatization tender are known beforehand. It means that if someone is interested, the formal regulations are easy to obtain. If the piece of property is not lucrative then the competition can be a real one; if it is a very interesting piece usually there are some parties involved, which make the preliminary work and sometimes the unofficial negotiations with the state. That is why maybe international experts called the policy of the government in privatization unclear”.

References:

Report
Oleg He
On EBRD Estimations Central Asian Countries Have Not Moved forward in The Reforms
(in Russian)
Nov. 29, 2002
http://panorama.vkkz.com/index.php?option=com_wrapper&Itemid=66

Report
Sarabekova T.S., deputy head of The Chair of Territorial Committee of State Property And Privatization of Almaty City
Legal Foundation of Privatization, 2006
(in Russian)
[http://www.minfin.kz/index.php?uin=1146020107&chapter=1146020175\)=rus](http://www.minfin.kz/index.php?uin=1146020107&chapter=1146020175)=rus)

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category V. Oversight and Regulation

V-1. ⁸³ National Ombudsman

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Decree of the President # 947, Sept. 19, 2002
On the establishment of the position of the authorized agency on human rights” (with amendments from the Decree of the President # 1474 from Nov. 29, 2004)
<http://www.ombudsman.kz/>

Text of the decree is at
http://www.ombudsman.kz/about/files/statute_omb.pdf

or available
at <http://www.nhri.net/Ni/Files/66/KZ%20Decree%20no%20947%20of%20September%202002%20Statute%20on%20Commissioner%20for%20Hur>

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

75

53a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Decree of the President # 947, Sept. 19, 2002

On the establishment of the position of the authorized agency on human rights" (with amendments from the Decree of the President # 1474 from Nov. 29, 2004)

<http://www.ombudsman.kz/>

Text of the decree is at

http://www.ombudsman.kz/about/files/statute_omb.pdf

or available

at <http://www.nhri.net/Ni/Files/66/KZ%20Decree%20no%20947%20of%20September%202002%20Statute%20on%20Commissioner%20for%20Hur>

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Analytical Report at the request of Polyton Club

Sophia Isenova

Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity
(in Russian)

June 21, 2006

<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357>:

Report of the National Human Rights Ombudsman of Kazakhstan on 2006 (in Russian)

http://www.ombudsman.kz/en/publish/docs/doklad_zhyl/detail.php?ID=1419

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | **50** | 25 | 0

Comments:

The general opinion among the experts is that the ombudsman institution is not very strong. So far there have been no precedents of the removal of the ombudsman.

References:

Analytical Report at the request of Polyton Club

Sophia Isenova

Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity
(in Russian)

June 21, 2006

[http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357;](http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357)

Kazis Toguzbayev

Ombudsman in Kazakhstan As An Ancient Profession (in Russian)

Oct. 18, 2006

<http://www.kub.kz/article.php?sid=9362>

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The list of the ombudsman's staff is available at <http://ombudsman.kz/about/list.php>

At the very beginning the staff issue was a problem.

References:

Ombudsman report on human rights in 2006,

Office of Ombudsman of the Republic of Kazakhstan, 2006 (in Russian)

[http://ombudsman.kz/publish/docs/doklad_zhyl/detail.php?ID=1419;](http://ombudsman.kz/publish/docs/doklad_zhyl/detail.php?ID=1419)

Article

Dinara Mukasheva

Analytical Survey of the Ombudsman Institute As An Instrument of Anti-Corruption Policies
(in Russian)

July 17, 2006

<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=self&article=374>

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The office of the ombudsman is not considered as an important career move, so appointments are out of clan rivalry.

References:

Ombudsman report on human rights in 2006,
Office of Ombudsman of the Republic of Kazakhstan, 2006 (in Russian)
http://ombudsman.kz/publish/docs/doklad_zhyl/detail.php?ID=1419;

Article

Dinara Mukasheva

Analytical Survey of the Ombudsman Institute As An Instrument of Anti-Corruption Policies

(in Russian)

July 17, 2006

<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=self&article=374>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funding of the ombudsman office comes directly from the government.

References:

Analytical Report at the request of Polyton Club
Sophia Isenova
Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity
(in Russian)

June 21, 2006

<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357>;

Kazis Toguzbayev

Ombudsman in Kazakhstan As An Ancient Profession (in Russian)

Oct. 18, 2006

<http://www.kub.kz/article.php?sid=9362>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman office publishes reports quarterly and annually. Also there are special reports on the rights of the disabled, the elderly and children.

References:

Analytical Report at the request of Polyton Club

Sophia Isenova

Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity

(in Russian)

June 21, 2006

<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357>;

Reports by the ombudsman office 2006, 2005, 2004, 2003;

Report on the activities in 2003, 2004, 2005, 2006 (in Russian)

http://ombudsman.kz/publish/docs/doklad_zhy/

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Usually the ombudsman writes a complaint to an official agency if certain rights have been violated.

References:

Analytical Report at the request of Polyton Club
Sophia Isenova
Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity
(in Russian)
June 21, 2006
<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357>;

Report of the National Human Rights Ombudsman of Kazakhstan on 2006 (in Russian)
http://www.ombudsman.kz/en/publish/docs/doklad_zhyl/detail.php?ID=1419

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The ombudsman institution still lacks some kind of authority among the officials. However, the number of activities it initiates is growing. Usually the ombudsman office starts the process of official complaints. People are skeptical about the ombudsman's abilities to start some serious debate.

References:

Analytical Report at the request of Polyton Club
Sophia Isenova
Ombudsman (authorized on the human rights) As an Instrument of Anti-Corruption Activity
(in Russian)
June 21, 2006
<http://www.club.kz/index.php?lang=ru&mod=analitics&submod=analyze&article=357>;

Report
Kikbai Kosayev
Ombudsman Points Out to Majilis The Non-Correspondence of The Legal Amendments To The Questions of National Security To International Standards of Freedom of Faith
(in Russian)
July 22, 2005
http://www.humanrights.kz/suggestion_75.php

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

Comments:

The main problem with the ombudsman office is that it is not constitutionally confirmed (it is established only by the decree of the president) and it has limited authority, e.g. it cannot intervene in court decisions.

References:

Article
Sara Shenderovich
Authorized without Authorities
Aug. 3, 2007
<http://www.kub.kz/article.php?sid=18639>;

Report by the members of the EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
June 5, 2007
Official Opinion No. 425 / 2007
EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)
ON The Possible Reform of The Ombudsman Institution in Kazakhstan
Adopted by the Venice Commission at its 71st Plenary Session (Venice, June 1-2, 2007)
on the basis of comments by Mr Peter PACZOLAY (Member, Hungary) and Mr Hjörtur TORFASON (Member, Iceland)
[http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)020-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)020-e.asp)

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Article
Sara Shenderovich
Authorized without Authorities
Aug. 3, 2007
<http://www.kub.kz/article.php?sid=18639>;

Report by the members of the EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
June 5, 2007
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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)
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[http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)020-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)020-e.asp)

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

100

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

References:

Decree of the President # 947, Sept. 19, 2002

On the establishment of the position of the authorized agency on human rights" (with amendments from the Decree of the President # 1474 from Nov. 29, 2004)

Article 3. Competence of the commissioner and the procedure of implementation, point

7<http://www.nhri.net/Ni/Files/66/KZ%20Decree%20no%20947%20of%20September%202002%20Statute%20on%20Commissioner%20for%20Hum>:

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

The main publications of Ombudsman, including annual reports, are available since 2003 at

[http://ombudsman.kz/publish/docs/;](http://ombudsman.kz/publish/docs/)

Report by the members of the EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

June 5, 2007

Official Opinion No. 425 / 2007

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)

ON THE POSSIBLE REFORM OF THE OMBUDSMAN INSTITUTION IN KAZAKHSTAN

Adopted by the Venice Commission at its 71st Plenary Session (Venice, June 1-2, 2007)

on the basis of comments by Mr Peter PACZOLAY (Member, Hungary) and Mr Hjörtur TORFASON (Member, Iceland)

[http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)020-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)020-e.asp)

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

The main publications of Ombudsman, including annual reports, are available since 2003 at <http://ombudsman.kz/publish/docs/>;

Report by the members of the EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
June 5, 2007
Official Opinion No. 425 / 2007
EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION)
ON the Possible Reform of The Ombudsman Institution in Kazakhstan
Adopted by the Venice Commission at its 71st Plenary Session (Venice, June 1-2, 2007)
on the basis of comments by Mr Peter PACZOLAY (Member, Hungary) and Mr Hjörtur TORFASON (Member, Iceland)
[http://www.venice.coe.int/docs/2007/CDL-AD\(2007\)020-e.asp](http://www.venice.coe.int/docs/2007/CDL-AD(2007)020-e.asp)

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

Comments:

There are different legal acts and the constitution defines the authority of the president and Parliament over the Accounts Committee

References:

Accounts Committee for control over the execution of the Republican Budget
It is the supreme body of financial control, performing external control over the execution of the republican budget, directly subordinate and accountable to the president of the Republic of Kazakhstan'

Constitution of the Republic of Kazakhstan, Articles 44, 53, 57
August 1995;

Excerpts from the Budget Code of the Republic of Kazakhstan
April 24, 2004 #548
Provision on the Accounts Committee for the control over the execution of the republican budget

Order of the President of the Republic of Kazakhstan from Aug. 5, 2002 #917 On approval of the Provision on the Accounts
Committee for the control over the execution of the republican budget

Standards of state financial control
On approval of standards

Rules of external control organization
Ethics rules for employees working in the sphere of state-financial control
On approval of ethics rules for employees in the sphere of state financial control
[http://www.esep.kz/eng/content/view/full/1251;](http://www.esep.kz/eng/content/view/full/1251)

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

81

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

Comments:

The chair and two members are appointed by the president, and each chamber of the Parliament appoints three members of the committee. All these people have a mandate for five years.

References:

Constitution
Chapter 3 President, Article 44
Chapter 4 Parliament, Article 57
[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?
OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=ru&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=ru&L1=L1&L2=L1-9)

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | **75** | 50 | 25 | 0

References:

Article
Ksenia Formaluk

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.liter.kz/print.php?lan=russian&id=151&pub=3433>

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

For some specific auditing jobs the staff is limited

References:

Evaluation Report, 2005
Peter Armstrong, Denis Mankin, Lois McDaffy
External Complex Evaluation of the Efficiency of The Republic OF Kazakhstan Accounts Committee
<http://www.esep.kz/rus/content/view/full/1028>

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.liter.kz/print.php?lan=russian&id=151&pub=3433>

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The chair is more dependent on the president, just like Parliament is also dependent on the president.

References:

Article

Ksenia Formaluk
Syndrome of Quixotism
Expert Kazakhstan
Feb. 27, 2006
http://www.expert.ru/printissues/kazakhstan/2006/08/interview_seitkul/

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.liter.kz/print.php?lan=russian&id=151&pub=3433>

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Article
Ksenia Formaluk
Syndrome of Quixotism
Expert Kazakhstan
Feb. 27, 2006
http://www.expert.ru/printissues/kazakhstan/2006/08/interview_seitkul/

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.liter.kz/print.php?lan=russian&id=151&pub=3433>

Provisions on Accounts Committee, 2005
<http://www.esep.kz/rus/content/view/full/294>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

References:

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.iiter.kz/print.php?lan=russian&id=151&pub=3433>

Reports 2001-2006

Staff of Accounts Committee

<http://www.esep.kz/rus/content/view/full/698>

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | **50** | 25 | 0

Comments:

There is a committee of financial control in the Ministry of Finance with more or less similar functions and it some times duplicates the activities of the Accounts Committee.

References:

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.iiter.kz/print.php?lan=russian&id=151&pub=3433>

Evaluation Report, 2005

Peter Armstrong, Denis Mankin, Lois McDaffy

External Complex Assessment of the Performance of the Accounts Committee for Control over Execution of the Republican Budget

<http://www.esep.kz/rus/content/view/full/1028>

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

References:

Interview with Omarhan Oksikbayev, chair of the Accounts Committee, by Dinara Beisembina
Astana, April 8, 2006
<http://www.liter.kz/print.php?lan=russian&id=151&pub=3433>

Evaluation Report, 2005
Peter Armstrong, Denis Mankin, Lois McDaffy
External Complex Assessment of the Performance of the Accounts Committee for Control over Execution of the Republican Budget
<http://www.esep.kz/rus/content/view/full/1028>

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Resolution of the Accounts Committee for the control of the Republican budget
Article 2 Functions of the state committee
<http://www.esep.kz/rus/content/view/full/293>

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Report
Transparency International Staff.
2003 Evaluation of the Transparency of Budget System of the Republic of Kazakhstan
<http://www.transparencykazakhstan.org/UserFiles/file/89d.pdf>

Evaluation Report, 2005
Peter Armstrong, Denis Mankin, Lois McDaffy
External Complex Assessment of the Performance of the Accounts Committee for Control over Execution of the Republican Budget
<http://www.esep.kz/rus/content/view/full/1028>

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

These reports are available on the Web site of the committee
<http://www.esep.kz/>

References:

Report
Transparency International Staff.
2003 Evaluation of the Transparency of Budget System of the Republic of Kazakhstan
<http://www.transparencykazakhstan.org/UserFiles/file/89d.pdf>

Evaluation Report, 2005
Peter Armstrong, Denis Mankin, Lois McDaffy
External Complex Assessment of the Performance of the Accounts Committee for Control over Execution of the Republican Budget
<http://www.esep.kz/rus/content/view/full/1028>

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

94
V-3. Taxes and Customs

58. In law, is there a national tax collection agency?

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Tax Committee of the Ministry of Finance
Resolution of the Government from April 29, 2004, on the Tax Committee of the Ministry of Finance
<http://www.nalog.kz/>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

63

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

Tax officers are famous for being corrupt.

References:

Interview with Nurlan Rahmetov, chair of Tax Committee, by Zhanna Oishibayeva
Tax Sphere Is One of The Most Corrupted
Liter newspaper, May 8, 2007
<http://www.liter.kz/site.php?lan=russian&id=151&pub=6877>

Article
Two Worlds of Taxation System
Expert Kazakhstan
March 13, 2006
http://www.expert.ru/printissues/kazakhstan/2006/10/nalogovaya_sistema_kazahstana/

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

According to the government resolution, the tax agency is funded from the republican budget.

References:

Tax Committee of the Ministry of Finance
Resolution of the Government from April 29, 2004 on the Tax Committee of the Ministry of Finance
<http://www.nalog.kz/>

Interview with Nurlan Rahmetov, chair of Tax Committee, by Zhanna Oishibayeva
Tax Sphere Is One of The Most Corrupted
Liter newspaper, May 8, 2007
<http://www.liter.kz/site.php?lan=russian&id=151&pub=6877>

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

25

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

There are a lot of special tax regimes and contracts with special taxation with large foreign investors which are not made public.

References:

Interview with Nurlan Rahmetov, chair of Tax Committee, by Zhanna Oishibayeva
Tax Sphere Is One of The Most Corrupted
Liter newspaper, May 8, 2007
<http://www.liter.kz/site.php?lan=russian&id=151&pub=6877>

Article
Two Worlds of Taxation System
Expert Kazakhstan
March 13, 2006
http://www.expert.ru/printissues/kazakhstan/2006/10/nalogovaya_sistema_kazahstana/

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

61. In law, is there a national customs and excise agency?

YES | NO

References:

Customs Control Committee of the Ministry of Finance of Kazakhstan

Customs Code. Division 2. Customs bodies of the Republic of Kazakhstan
Chapter 3 Structure and activity of customs bodies of the Republic of Kazakhstan
to download at

<http://www.customs.kz/exec/stat/stat?tip=6>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Article
Baurzhan Altynbekov
Kazakhstan's Customs Is Not A Backyard
(in Russian)
Jan. 31, 2006
www.liter.kz/site.php?lan=russian&id=151&pub=2908;

Customs Committee staff
Report from Regional Conference
Strategic Methods of Improving The Anti-Corruption Work in Customs Bodies
March 14, 2007
http://www.customs.kz/exec/news/news_msg?newsid=511

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Article

Igor Loskutiv

In The Sphere of Customs Business

Nov. 12, 2004

http://www.kazpravda.kz/index.php?uin=1152770745&act=archive_date&day=12&month=11&year=2004

Speech of the chair of Customs Committee, Karbuzov K, to the Government of Kazakhstan 2007

[http://www.minfin.kz/index.php?uin=1146042274\)=rus&chapter=1176804236](http://www.minfin.kz/index.php?uin=1146042274)=rus&chapter=1176804236)

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

25

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Customs are mentioned very often as being corrupted.

References:

Article

Vladimir Kalt

Who Is Allowed To Do It in Kazakhstan in Customs

Aug. 10, 2007

<http://www.nomad.su/?a=13-200708130106>

Report

Ashimbayeva A.

Corruption in Kazakhstan. Growing problems

July 24, 2007

<http://www.analitika.org/article.php?story=20070717032558769>

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

Kazakhstan State Holding on Management of State Assets. http://www.samruk.gov.kz/page.php?page_id=184)=1

Presidential decree of Jan. 28, 2006

<http://www.zakon.kz/our/news/news.asp?id=30043637>

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

75

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

Resolution of the government from Feb. 23, 2006

On the measures of realization of the decree of the president of the Republic of Kazakhstan from Jan. 28, 2006

http://www.zakon.kz/law/news/news_which.asp?datebeg=2006.02.27&dateend=2006.03.05

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Article
Aleksandr Konstantinov
Mythical Bird Samruk
(in Russian)
Expert Kazakhstan
Feb. 6, 2006
[http://www.expert.ru/printissues/kazakhstan/2006/05/kaz_gos_holding/;](http://www.expert.ru/printissues/kazakhstan/2006/05/kaz_gos_holding/)

Interview with Sauat Mynbayev, executive director of Samruk Holding
Feb 2, 2006
<http://www.zakon.kz/our/news/news.asp?id=30043625>

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

References:

Article
Aleksandr Konstantinov
Mythical Bird Samruk
(in Russian)
Expert Kazakhstan
Feb. 6, 2006
[http://www.expert.ru/printissues/kazakhstan/2006/05/kaz_gos_holding/;](http://www.expert.ru/printissues/kazakhstan/2006/05/kaz_gos_holding/)

Interview with Sauat Mynbayev, executive director of Samruk Holding
Feb 2, 2006
<http://www.zakon.kz/our/news/news.asp?id=30043625>

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

Comments:

It can initiate investigations through the Committee on the Competition Protection.

References:

News report
staff of Expert Kazakhstan
On Equal Terms But Not Our Terms
(in Russian)
May 28, 2007
http://www.expert.ru/printissues/kazakhstan/2007/20/news_bash_na_bash/;

Interview with Sauat Mynbayev, executive director of Samruk Holding
Feb 2, 2006
<http://www.zakon.kz/our/news/news.asp?id=30043625>

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

Comments:

The holding was created more or less a year ago; so far they reported to Parliament once and started one case against the under-performing of the investment program by the company in which the state has 50 percent in stakes.

References:

News report
staff of Expert Kazakhstan
On Equal Terms But Not Our Terms
(in Russian)
May 28, 2007
http://www.expert.ru/printissues/kazakhstan/2007/20/news_bash_na_bash/;

Interview with Sauat Mynbayev, executive director of Samruk Holding
Feb 2, 2006
<http://www.zakon.kz/our/news/news.asp?id=30043625>

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

95

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

Comments:

usually it is very difficult to get the reports. They usually have a very general character. The aforementioned statement has little judicial power.

References:

Statement of the Government of Kazakhstan and National Bank from
Jan. 27, 2007

On Main Directions of Economic And Social Policies And Prospects of Economic Indicators for 2007
<http://ru.government.kz/docs/p070049~2.htm>;

Order # 89 of the Ministry of Finance from June 18, 2004

On Confirmation of The Structure of Divisions, Forms and Lists of Indicators for The Plans of National Companies
www.minfin.kz/structure/data/@028;0999.doc

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The financial activities of the companies provoked a public scandal when the information on the unbelievably high salaries of the top managers (more than US\$300,000 per month) was published
<http://www.zakon.kz/our/news/news.asp?id=30070816>

Usually citizens are not interested in this issue, however a coalition of NGOs for several years is working on EITI initiative and some pressure to make these report more available is present. When company needs auditing from big 4 then usually all the reports are published on the websites of the companies.

References:

Final report 2007

Staff of Samruk holding

Report about the activities of Open Stock Company Kazakhstan Holding on Management of State Assets Samruk" 2006
[http://www.samruk.gov.kz/page.php?page_id=40\)=1](http://www.samruk.gov.kz/page.php?page_id=40)=1)

News report.

Staff of Kazpochta company

Meeting of the Board of directors of AO Kazpochta

July 16, 2007

<http://www.kazpost.kz/news/?page=2007-07-16.html>

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

The biggest national companies order audits from Big 4.

References:

Annual report 2006

Kazpochta staff

Kazpochta. Annual report for 2005 (Audit was done by Deloitte)

http://www.kazpost.kz/file/kazpost_report_2005.pdf

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

All reports are available, but companies are criticized for the small dividends paid to the state, internal prices, insider deals and large budgets.

References:

Annual report of National railways company 2005

Consolidated Financial Statement of National Company Kazakhstan

Temir Zholy

http://www.railways.kz/about/finances/reports/KTZ%20Consolidated%20FS_IFRS%202005_Eng.pdf

News report

Anatoli Vaiskopf

Deutsche Welle

Kazakhstan New Financial Scandal

July 13, 2005

http://www.dw-world.de/dw/article/0,2144,1648214_00.html

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Annual report of National railways company 2005
Consolidated Financial Statement of National Company Kazakhstan
Temir Zholy
http://www.railways.kz/about/finances/reports/KTZ%20Consolidated%20FS_IFRS%202005_Eng.pdf

News report.
Anatoli Vaiskopf
Deutsche Welle
Kazakhstan New Financial Scandal
July 13, 2005
<http://www.dw-world.de/dw/article/0,2144,1648214,00.html>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

90
V-5. Business Licensing and Regulation

67. Are business licenses available to all citizens?

88

67a. In law, anyone may apply for a business license.

YES | NO

References:

Law on licensing
Chapter 1 General provisions
Article 3 Main principles of licensing
<http://www.pavlodar.com/zakon/?dok=00106&ogj=all>

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Law on Licensing
Chapter IV. Conditions and order of licensing
Article 20. Appeals on denial in licensing
<http://www.pavlodar.com/zakon/?dok=00106&ogj=all>

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | **75** | 50 | 25 | 0

Comments:

By law it is less than one month and 10 days.

References:

Order of the government
March 24, 2000
Rules of Licensing of Tourist Activities 2000
<http://www.tourkz.com/tourism/law/rules.htm>

Letter to an entrepreneur.
Akimat of Pavlodar 2007 Information from local government regional Web site
http://www.pavlodar.gov.kz/page.php?page_id=807

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

It is not by mail, people are coming to pick up the licenses from the authorized local agencies.

References:

Myrzhibbaeva L. , senior specialist of Tax Committee, Ministry of Finance 2006
Regulation of The Activities in Recycling The Metal Business
(In Russian)
<http://www.mining.kz/index.shtml?f=show&type=1&id=154807264038>

Ur Info company
2006 Simplified Procedure of Licensing for Small Businesses
<http://business.zakon.kz/licenz/>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Order of the Agency on Health Care Matters from Jan. 16, 2001, N 42
On Licensing Medical and Health Care Activities”
<http://www.pavlodar.com/zakon/index.html?dok=00921&oraz=00&noraz=0>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Environmental Code from Jan. 9, 2007
<http://www.pavlodar.com/zakon/?dok=03353&ogj=all>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Different aspects of public safety are regulated by different norms (so called GOST).

References:

Law on standardization
<http://www.pavlodar.com/zakon/?dok=00081&ogj=all>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

33

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Report on the conference
Toksanova A.N.
Decreasing The Barriers for Entrepreneurs And Support of Entrepreneurial Development
June 19, 2007
Main Obstacles for The Entrepreneurial Development And Ways To Overcome Them
(In Russian)
http://www.unece.org/ceci/pdfs/eed/ppt/tox_r.pdf

Report
Department of Monitoring and Control. Committee on Legal Statistics 2007
Conclusions of The Remedial Activity of the Committee on the Protection of The Private Property Right And Freedom of

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Report on the conference

Toksanova A.N.

Decreasing The Barriers for Entrepreneurs And Support of Entrepreneurial Development

June 19, 2007

Main Obstacles for The Entrepreneurial Development And Ways To Overcome Them

(In Russian)

http://www.unece.org/ceci/pdfs/eed/ppt/tox_r.pdf

Report

Department of Monitoring and Control. Committee on Legal Statistics 2007

Conclusions of The Remedial Activity of the Committee on the Protection of The Private Property Right And Freedom of

Entrepreneurial Activity for The First Quarter of 2007

http://www.pravstat.kz/ru/index.php?option=com_content&task=view&id=223&Itemid=225

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Report on the conference

Toksanova A.N.
Decreasing The Barriers for Entrepreneurs And Support of Entrepreneurial Development
June 19, 2007
Main Obstacles for The Entrepreneurial Development And Ways To Overcome Them
(In Russian)
http://www.unece.org/ceci/pdfs/eed/ppt/tox_r.pdf

Report
Department of Monitoring and Control. Committee on Legal Statistics 2007
Conclusions of The Remedial Activity of the Committee on the Protection of The Private Property Right And Freedom of
Entrepreneurial Activity for The First Quarter of 2007
http://www.pravstat.kz/ru/index.php?option=com_content&task=view&id=223&Itemid=225

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

Category VI. Anti-Corruption and Rule of Law

VI-1. ~~74~~ Anti-Corruption Law

70. Is there legislation criminalizing corruption?

100

70a. In law, attempted corruption is illegal.

YES | NO

References:

Law on fighting corruption, July 2, 1998,
Article 3 Subjects of the crimes connected with corruption
http://ru.government.kz/docs/z980267_20040511.htm (in Russian)

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Criminal Code, Particular Part: On crimes against the property
Article 181 Extortion

<http://www.pavlodar.com/zakon/index.html?dok=00087&oraz=08&noraz=181> (in Russian)

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Criminal Code

Part 2 Particular part

Chapter 13. Corruption and other crimes against the interest of civil service and state rule

Article 312 Offering the bribe

<http://www.pavlodar.com/zakon/?dok=00087&ogl=04013&og=1>

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Criminal Code

Part 2 Particular part

Chapter 13 Corruption and other crimes against the interest of civil service and state rule

Article 311 Taking a bribe

<http://www.pavlodar.com/zakon/?dok=00087&ogl=04013&og=1>

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

Criminal Code
Part 2 Particular part
Chapter 13 Corruption and other crimes against the interest of civil service and state rule
Article 312 Offering the bribe
reference 3
<http://www.pavlodar.com/zakon/?dok=00087&uro=08323>

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Criminal Code
Part 2 Particular part
Chapter 13 Corruption and other crimes against the interest of civil service and state rule
Article 307 Abuse of authority
<http://www.pavlodar.com/zakon/?dok=00087&uro=08318>

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

References:

Different legal provisions concerning banks, computers, the right for the protection of private information and other state information and also forgery by state officials

Example: article on forgery
Criminal Code
Part 2 Particular part
Chapter 13 Corruption and other crimes against the interest of civil service and state rule
Article 314 On forgery
<http://www.pavlodar.com/zakon/?dok=00087&uro=08325>

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Criminal Code
Part 2 Particular part
Chapter 7 Crimes in economic activities
Article 193 Legalization of money and other assets obtained illegally
<http://www.pavlodar.com/zakon/?dok=00087&uro=08197>

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Criminal Code
Part 2 Particular part
Chapter 9 Crimes against public security and public order
Article 235 Creating and leading organized criminal groups or criminal community (criminal organization)
Participation in criminal community
<http://www.pavlodar.com/zakon/?dok=00087&uro=08244>

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

Agency for Fighting Economic and Corruption Crimes (Financial Police)

Law on the Financial Police

<http://www.pavlodar.com/zakon/?dok=02088&ogj=all>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

47

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

Comments:

By constitution, officials of law enforcing agencies are not members of any political party. This agency is considered a law enforcement one.

References:

Constitution

Chapter 2 Person and citizen

Article 23

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=ru&L1=L1&L2=L1-9)

[OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=ru&L1=L1&L2=L1-9](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=ru&L1=L1&L2=L1-9)

Also in the Law on the Financial Police

Article 4 Principles of organization and activity of the Financial Police

<http://www.pavlodar.com/zakon/?dok=02088&uro=08004>

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The opposition considers the Financial Police as one of the most corrupted state bodies. Opposition politicians consider this police as a tool of the current ruling political group to harass the opposition.

References:

Article

Saken Salimov

Hunting The Non-Loyal Ones Is Going on In Astana

Nezavisimaya Gazeta

Aug. 21, 2006

http://www.ng.ru/cis/2006-08-21///7_astana.html

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Today the political power is personified, and the head of the Financial Police is personally and directly associated with the current president – he is dependent on him. Legal considerations are secondary in this case. By law, the head of the agency is appointed by the president and protected from other interferences.

The first son-in-law of the president used to be a head of this body. In 2007 the chair is a person who used to be a main official in the privatization processes.

References:

Interview with Sarybai Kalmurzaev, chair of the agency of Financial Police by Dmitri Glumskov
Expert Kazakhstan
Jan. 31, 2006
http://www.expert.ru/printissues/kazakhstan/2006/04/interview_kalmurzaev/

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007
<http://www.centran.ru/asianews/Paradoksy-finpolicii/>

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Some of the officers are involved in corruption scandals.

References:

Interview with Sarybai Kalmurzaev, chair of the agency of Financial Police by Dmitri Glumskov
Expert Kazakhstan
Jan. 31, 2006

http://www.expert.ru/printissues/kazakhstan/2006/04/interview_kalmurzaev/;

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007

<http://www.centran.ru/asianews/Paradoksy-finpolicii/>

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There are frequent reports in mass media on abuses committed by the Financial Police.

References:

Interview with Sarybai Kalmurzaev, chair of the agency of Financial Police by Dmitri Glumskov
Expert Kazakhstan
Jan. 31, 2006

http://www.expert.ru/printissues/kazakhstan/2006/04/interview_kalmurzaev/;

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007

<http://www.centran.ru/asianews/Paradoksy-finpolicii/>

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

By law, the Financial Police is financed from the republican budget.

References:

Official information report
Financial Police staff
Legal Basis of the Financial Police Bodies
Aug. 9, 2007
<http://finpol.kz/rus/about/hpb/?cid=0&rid=833>

Article
Chizenko V.
The Gray Cardinal" Is Gone "Long Live The Gray Cardinal"
July 6, 2007
<http://www.analitika.org/article.php?story=20070628003548362&mode=print>

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

It publishes the reports on the Web site finpol.kz
There are some doubts about the adequacy of the figures presented.

References:

Report
Financial Police staff
On Main Indicators of The Activities of The Financial Police in 2006
Jan. 23, 2007
<http://finpol.kz/rus/about/analiz/?cid=0&rid=497>

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007
<http://www.centran.ru/asianews/Paradoksy-finpolicii/>

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

Comments:

The problem is that even this agency is felt to be corrupted, some people feel that the agency abuse it's power

References:

Interview with Sarybai Kalmurzaev, chair of the agency of Financial Police by Dmitri Glumskov
Expert Kazakhstan
Jan. 31, 2006

http://www.expert.ru/printissues/kazakhstan/2006/04/interview_kalmurzaev/;

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007

<http://www.centran.ru/asianews/Paradoksy-finpolicij/>

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

Sometimes politically motivated accusation in corruption are made

References:

Report
Financial Police staff
On Main Indicators of The Activities of The Financial Police in 2006
Jan. 23, 2007

<http://finpol.kz/rus/about/analiz/?cid=0&rid=497>

Report
Marat Asipov
Paradoxes of The Financial Police

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

38

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | **50** | 25 | 0

References:

Report
Financial Police staff
On Main Indicators of The Activities of The Financial Police in 2006
Jan. 23, 2007
<http://finpol.kz/rus/about/analiz/?cid=0&rid=497>

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007
<http://www.centran.ru/asianews/Paradoksy-finpolicii/>

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

Comments:

People are concerned and afraid about the police and their actions.

References:

Report
Financial Police staff
On Main Indicators of The Activities of The Financial Police in 2006
Jan. 23, 2007
<http://finpol.kz/rus/about/analiz/?cid=0&rid=497>

Report
Marat Asipov
Paradoxes of The Financial Police
(in Russian)
Newspaper Vremya
July 19, 2007
<http://www.centran.ru/asianews/Paradoksy-finpolicij/>

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

62 VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

83

74a. In law, there is a general right of appeal.

YES | NO

References:

Criminal and Procedural Code
Part 2 Particular Part
Division 8 Review of the court sentences and court orders if they are not enacted
Chapter 46 Appeals, protests of court decisions if they are not enacted
Article 396 Right to appeal and protest against the sentence
<http://www.pavlodar.com/zakon/index.html?dok=00147&oraz=08&noraz=396>

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Report
Lyaziza Bersugurova
Judicial Reform from The Point of View of An Expert
May 15, 2002
<http://www.continent.kz/2002/09/11.html>

Report
Heinrich Schnitger and Jens Deppe
Fälle und Anmerkungen – Eine Besprechung von Entscheidungen kasachischer Zivilgerichte
March 14, 2003
<http://www.cis-legal-reform.org/publication/civil-procedures/besprechung-entscheidung-zivilgericht-kasachstan.de.html>

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

If a court decision is thought to be politically motivated, appeals are not successful.

References:

Report
Lyaziza Bersugurova
Judicial Reform from The Point of View of An Expert
May 15, 2002
<http://www.continent.kz/2002/09/11.html>

Report
Heinrich Schnitger and Jens Deppe
Fälle und Anmerkungen – Eine Besprechung von Entscheidungen kasachischer Zivilgerichte
March 14, 2003
<http://www.cis-legal-reform.org/publication/civil-procedures/besprechung-entscheidung-zivilgericht-kasachstan.de.html>

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

50

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

Comments:

The executive power puts pressure on courts.

References:

Report
Bureau of Democracy, Human Rights, and Labor
Kazakhstan. Country Reports on Human Rights Practices – 2006
March 6, 2006
<http://www.state.gov/g/drl/rls/hrrpt/2006/78820.htm>;

Article
Joanna Lillis
Kazakhstan Authorities Put More Pressure on Political Opponents
June 7, 2006
<http://www.eurasianet.org/russian/departments/insight/articles/eav060706ru.shtml>

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

50

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

References:

News report
Tatyana Bredihina and Olga Semenova
Officer of The Court Is on The Top

June 7, 2007

http://www.kazpravda.kz/index.php?uin=1152013916&act=archive_date&day=7&month=6&year=2007

Analysis

Asel Sandybaeva

April 4, 2006

Executor of The Decisions

Expert Kazakhstan

http://www.expert.ru/printissues/kazakhstan/2006/16/sudebnye_resheniya/

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

81

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Constitution

Section VII COURT AND JUSTICE

Article 77

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en)

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | **25** | 0

References:

Report

Bureau of Democracy, Human Rights, and Labor

Kazakhstan. Country Reports on Human Rights Practices – 2006

March 6, 2006

<http://www.state.gov/g/drl/rls/hrrpt/2006/78820.htm>;

Article

Joanna Lillis

Kazakhstan Authorities Put More Pressure on Political Opponents

June 7, 2006

<http://www.eurasianet.org/russian/departments/insight/articles/eav060706ru.shtml>

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

Comments:

More and more cases are distributed automatically.
<http://www.continent.kz/2005/25/5.htm>

References:

Cases are distributed by the chair of the court.
Law on courts and statute of judges
Division 2. Court system
Chapter 1. District courts
<http://www.pavlodar.com/zakon/?dok=00450&all=02002>

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Constitution
Section VII COURT AND JUSTICE
Article 79
[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en)

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

Comments:

There are no statistics on that, no reports in the media, no references by experts. Most probably there were no assaults in 2007.

References:

Interview with Vladimir Borisov
Authority of the Agency
Yuridicheskaya Gazeta, Feb. 6, 2004

Report
American Bar Association
JUDICIAL REFORM INDEX FOR KAZAKHSTAN 2004
<http://www.abanet.org/rol/publications/kazakhstan-jri-2004.pdf>

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

Comments:

No evidences

References:

Interview with Vladimir Borisov
Authority of the Agency
Yuridicheskaya Gazeta, Feb. 6, 2004

Report
American Bar Association
JUDICIAL REFORM INDEX FOR KAZAKHSTAN 2004
<http://www.abanet.org/rol/publications/kazakhstan-jri-2004.pdf>

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

100 | 75 | 50 | 25 | 0

Comments:

Ethnic minorities are represented disproportionately.

References:

Report
American Bar Association
JUDICIAL REFORM INDEX FOR KAZAKHSTAN 2004
<http://www.abanet.org/roi/publications/kazakhstan-jri-2004.pdf>

Lawyer. Asked for anonymity
Aug. 10, 2007, Almaty

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

100 | 75 | 50 | 25 | 0

Comments:

Women have normal access to all necessary judicial services. It was not an issue so far. The government several times have declared gender equality policies and steps to work with family violence and human traffick which is also female traffic. Also non consensual marriages still can take place in some cases

References:

Chapter in the book. Cynthia Werner (2004) Women, Marriage, and the Nation-State: The Rise of Non-Consensual Bride Kidnapping in Post-Soviet Kazakhstan." In Reconceptualizing Central Asia: States and Societies in Formation. Edited by Pauline Jones Luong. Cornell University Press. pp. 59-89.

Interview on line Olcott Martha 2002 Kazakhstan
With Martha Brill Olcott
http://discuss.washingtonpost.com/wp-srv/zforum/02/world_olcott041802.htm

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

References:

Constitution

Section II

THE INDIVIDUAL AND THE CITIZEN

Article 16

[http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A\)=en](http://www.akorda.kz/www/www_akorda_kz.nsf/sections?OpenForm&id_doc=DB26C3FF70789C84462572340019E60A)=en)

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

References:

Interview with Anuar Tugel, president of the 1st Defendants Union

Published in Expert Kazakhstan

June 9, 2006

http://www.expert.ru/printissues/kazakhstan/2006/23/ga_tugel/

Report

USA Bureau of Democracy, Human Rights, and Labor

Country Reports on Human Rights Practices – 2006

March 6, 2003

<http://www.state.gov/g/drl/rls/hrrpt/2006/78820.htm>

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

References:

Interview with Kairat Mami, chair of the Supreme Court
Torgyn Nurseitova
(in Russian)
newspaper Liter
Jan. 24, 2006

<http://www.supcourt.kz/site/SupCourt.NSF/Document/62C15D538CA5F21B4625710600157E6C?OpenDocument>

Article
Farid Yumashev
Referring To The Principle of Legal Protection
April 27, 2007

<http://www.zakon.kz/our/news/news.asp?id=30099980>

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

Comments:

Official payments are not very high but corruption and unofficial pressures on the court are more important factors.

References:

Legal Recommendations.
Yur Info company
2006 Checks and guarantees from non-justified interference
<http://business.zakon.kz/proverki/>

Article
Olga Flink
Business in The Process of Self-Determination
Expert Kazakhstan
Oct. 25, 2004

<http://www.expert.ru/printissues/kazakhstan/2004/20/20ka-ktema2/>

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

References:

Speech of Kairat Mami, chair of the Supreme Court
On the Fourth Convocation of the Judges of Kazakhstan 2005
Conditions for successful completion of the reforms are created
<http://www.supcourt.kz/site/supcourt.nsf/Documents/80ED25611BEA71AB4625706E003F335B?OpenDocument>

Analytical report 2005
Sabit Zhusupov
Road Map for Kazakhstan Part 5
<http://www.apn.kz/publications/article335.htm>

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

50

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

Law enforcing agencies like the police or the Financial Police have a reputation of being corrupt. There are a lot of rumors about the sales of government positions.

References:

Article
Zaure Mirzakhodzhayeva
How Much Does The Position of ROVD Head Cost
June 14, 2006
http://www.politica.kz/index.php?option=com_content&task=view&id=560&Itemid=8

Interview with Erlan Turgumbayev, head of Department of Internal Affairs
I Am Responsible for All
newspaper Karavan, Oct. 20, 2006

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Article

Ainur Balakesheva

Bumps And Chips of The Big Road

Jan. 19, 2007

<http://www.liter.kz/site.php?lan=russian&id=151&pub=579;1>

Interview with Baurzhan Muhamedzhanov, minister of Interior Affairs

Interview is given to Aleksandr Tarakov

Kazakhstanskay Pravda

June 23, 2007

<http://www.dialog.kz/site.php?lan=ru&id=93&pub=125>

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

it is prohibited by law for the policeman to be part of a political party. However, there were several reports of the police acting as a tool of the current regime in its efforts to suppress the opposition.

References:

Interview with Baurzhan Muhamedzhanov, minister of Interior Affairs

Interview is given to Aleksandr Tarakov

Kazakhstanskay Pravda

June 23, 2007

<http://www.dialog.kz/site.php?lan=ru&id=93&pub=125>

Report

Freedom House staff 2007

Freedom in the World – Kazakhstan (2006)

http://www.freedomhouse.org/inc/content/pubs/fiw/inc_country_detail.cfm?year=2006&country=6990&pf

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

71

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

Comments:

Courts are the best for appeals. Complaints or appeals can be given also to KNB, the Financial Police, or the Ombudsman. There is also an internal police security service. The right for judicial protection is declared by the constitution.

References:

Constitution
Section II THE INDIVIDUAL AND CITIZEN
Article 13

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

It is very difficult to appeal police actions because of the corporate support they have.

References:

Report 2007
Zhanabyl Zhaisanbayev, head of internal security unit, department of internal affair
Preventive Measures Again And Again
http://police.sko.kz/news/20070724_2.html;

Article 2002
Pulman M.

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

Comments:

The Internal Security Units deals with abuse of power, the Financial Police with corruption, and the Committee of National Security (KNB) with general crimes. All of these agencies can deal with the same issues related to the abuse of power by the police. There is also the Public Council to review police work. It is also possible to write to the Ombudsman.

References:

Law on the Financial Police
<http://www.finpol.kz/rus/about/npb/?cid=0&rid=833>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

References:

Report
Staff of Financial Police. 2007.
Report of the activities for 2006
<http://www.finpol.kz/rus/about/analiz/?cid=0&rid=497>;

Interview with Osman-Rustambek Bizhigitov, chair of the Department of Internal Security of the Ministry of Internal Affairs
Interview is given to Askar Dzhalidinov and published in the newspaper Liter
April 14, 2007
http://www.mvd.kz/index.php?p=razdel_more&id5=585&id1=2

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

Presidential Decree on Bodies of Internal Affairs
Chapter 5 Legal Position of the employees of the bodies of Internal Affairs
Article 24 Responsibility of the employees of the bodies of Internal Affairs
<http://www.pavlodar.com/zakon/?dok=00153&uro=08028>

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Report
Staff of Financial Police. 2007.
Report of the activities for 2006
<http://www.finpol.kz/rus/about/analiz/?cid=0&rid=497>;

Interview with Osman-Rustambek Bizhigitov, chair of the Department of Internal Security of the Ministry of Internal Affairs
Interview is given to Askar Dzhalidinov and published in the newspaper Liter
April 14, 2007
http://www.mvd.kz/index.php?p=razdel_more&id5=585&id1=2

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.

