Non-paper

Kazakhstan's Steps Forward on the Path to Democracy

The year 2008 marked an important shift in Kazakhstan's focus on further political reform. The impetus for this shift was a major constitutional reform announced in May 2007 that granted more governing powers to the elected national legislature as the country gradually moved from a strong presidential form of rule towards a presidential-parliamentary system.

With this shift, Kazakhstan introduced the basics of the parliamentary majority system, under which parliamentary elections would adopt a political parties-based system versus a single constituencies-based system.

Recognizing that shifting to a full-fledged parliamentary majority system would take time, Kazakh authorities were not surprised that the first parliamentary election in August 2007 produced mixed success.

However, the election did become the focus of international observers, namely the Organization for Security and Cooperation in Europe, as Kazakhstan announced its bid for the OSCE Chairmanship. Although OSCE observer mission saw the election as a "welcome progress," many shortcomings remain. The major drawback for the authorities and others was that the public elected a one-party parliament even though seven parties were represented in the race.

The prevailing mood among OSCE membership was that the job required robust democratic performance by the candidate. While endorsing Kazakhstan's Chairmanship for 2010 in Madrid in December 2007, the OSCE member states expected meaningful democratic progress to evolve in Kazakhstan beginning in 2008. Further perfection of the election legislation and process, genuine support for political parties' growth, meaningful improvements in the media sector and local governance are among those areas identified as the most important for further reform.

The OSCE Ministerial meeting in Helsinki on December 4-5, 2008 was regarded by many as an appropriate opportunity to review Kazakhstan's progress in its ascent to the Chairmanship. Although it was broadly recognized in Helsinki that Kazakhstan "was moving in the right direction," the country faced some criticism, particularly from international human rights NGOs and some Kazakh opposition groups claiming that Kazakhstan did not live up to its promise.

By tradition, their widely publicized reports have been picked up by international observers and media. So, for purposes of balance and a genuine, informed debate, Kazakhstan offers its own account of events.

"Madrid" and Improvements in Kazakhstan's Legislation

In February 2009, Kazakhstan signed into law new legislation regarding the media, elections, political parties, and local government. Through close cooperation and intensive discussions with NGOs, political parties and OSCE institutions, Kazakhstan incorporated many of their proposals into the final draft of the new legislation. The ODIHR and the Office of the Representative on the Freedom of the Media were very active and most helpful in bringing Kazakhstan's laws in line with OSCE standards. As Chargé d'Affaires of the U.S. Mission to the OSCE Kyle Scott stated at the OSCE Permanent Council in Vienna: "This legislation marks a step forward on Kazakhstan's path to democracy."

The law on elections. Twenty-nine amendments signed into the law on elections have further perfected the electoral process in Kazakhstan. Five of them were recommended by the

ODIHR/OSCE. Eight of them were recommended by Kazakhstan's human rights community, in close cooperation with U.S. human rights NGOs, including Freedom House. The law now:

- Guarantees representation of at least two parties in the Parliament even if one of them does not win enough votes (i.e., over a 7 percent threshold). It excludes the possibility to elect a one-party Parliament;
- Makes it mandatory for the media to equally cover the candidates and parties, including the period of nomination and registration;
- Cancels any requirements for thousands of foreign observers, who usually come to Kazakhstan during elections, to have any relevant experience to monitor electoral process;
- Decentralizes authority of the Central election commission in favor of local election commissions. Now local election commissions have greater authority in organizing the electoral process, such as determining their schedules to make them more convenient for the voters;
- Increases salaries for non-public servant members of election commissions at the election periods;
- Authorizes the Central Election Commission to strictly regulate the process of issuing absentee ballots.

The law on political parties. Seven amendments signed into the law on political parties partly reflect recommendations made by the OSCE and Kazakhstan's human rights community, in close cooperation with U.S. human rights NGOs, including Freedom House. The original goal of the amendments is to further liberalize and expand the space for political debate. The law:

- Significantly reduces the number of requirements for registering a political party (in the new text of the law even a party that submits erroneous lists of its members cannot be denied registration on these grounds).
- Decreases required membership size for a party to be registered (now a party needs to have only 600 members in each of the country's regions and 40,000 members nationwide to be registered as a national political party);
- Simplifies the registration process and the funding of political parties to strengthen their role in public life;
- Regulates the legal and technical process of establishing (merger, incorporation, split-up or split-off) a political party (the ODIHR recommendation);
- Provides public financing of political parties.

The law on mass media addressed the concerns that have been recently voiced by the media community. It has been amended to increase the rights of journalists and media to ensure greater self-regulation. The amendments reflect the recommendations of the ODIHR. The law:

- Removes administrative barriers and re-registration requirements for mass media.
- Extends the rights of journalists. For example media representatives are not required to ask for permission to use recording equipment when conducting interviews.
- Provides the right of a citizen to demand retraction of the published defamation or slander if a person who published this information cannot support the allegations with facts.
- Denies this right to citizens, thus upholding the adversarial principle in the court's deliberations.

The law on local self-government codifies local self-governance in the regions (oblast), districts, cities, districts within the cities, towns and villages; significantly increases the political

role of Maslikhates (local elected legislatures) and improves effectiveness of a “checks and balances system” between maslikhates and akimates (local executives). The law reflects the experience of both France and Britain in providing local self-governance. It includes attributes of the European Charter on local self-government, is generally in line with the final document of the 1990 Copenhagen Meeting and reflects the vision of the United States on independence of local governance.

Members of Maslikhates are elected by people of a region. They approve regional development programs, claim the regional budget, and are accountable to voters. Voters have the right to request a report on the work of members of Maslikhates, as well as to recall them in case of duties’ breach.

Heads of Akimats (akims) appointed by the President of Kazakhstan take the office only after approval by Maslikhate. They are accountable to Maslikhates on budget issues. The law also lowers the needed majority (to 51 percent) for Maslikhates to vote Akims out of office.

Amendments to the Law on Religious Freedom

On February 11, 2009, Kazakhstan’s Constitutional Council—a powerful watchdog overseeing the compliance of government policies with the Constitution—ruled that the long-discussed amendments to the law on religious freedom are inconsistent with some articles of the country’s Constitution.

In spring 2008, members of the public and the country’s parliament initiated the amendments. After intense discussions with Kazakhstan’s civil society, domestic and international human rights groups, as well as the OSCE Office for Democratic Institutions and Human Rights, they were endorsed by the Parliament and submitted to the President to be signed into law. President Nazarbayev, however, chose to verify that the new legislation was consistent with Kazakhstan’s Constitution and passed the draft for Constitutional Council’s review.
On February 11, 2009, after a careful review and month-long debates over the document, Chairman of the Constitutional Council, Mr. Igor Rogov, announced that “the amendments to the law on religious freedom are inconsistent with the Constitution of the Republic of Kazakhstan.”

He explained that the proposed legislation violated a number of Constitutional norms, including Paragraph 3 of the Article 39 of the Constitution, which stipulates that human rights and freedoms “shall not be restricted in any way” as well as Article 14, which prohibits discrimination on religious basis. Besides, Chairman Rogov found the draft to be inconsistent with Article 19, which states that everyone has “the right to determine and indicate or not to indicate his/her ethnic, party and religious affiliation.”

The final ruling of the Council was produced during two-day open hearings, whereby the participants of the debate were clearly divided over the issue. Some thought that the amendments would strengthen Kazakhstan’s national security in a volatile environment and protect peace and domestic stability in the country. Others advocated stronger protection of religious diversity and tolerance historically intrinsic in Kazakhstan.

The Council’s final ruling identified that the draft amendments were inconsistent with Kazakhstan’s Constitution and they have not come into effect.