A UNDP project to strengthen Kazakhstan's parliamentary democracy

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IMPLEMENTATION OF THE MOU REGARDING LEGISLATIVE DRAFTING CENTER PARLIAMENT OF THE REPUBLIC OF KAZAKHSTAN

This document details the plan for the implementation of the Memorandum of Understanding (MOU) signed on June 23, 1999, between the Chairs of the Senate and Majilis of the Parliament of the Republic of Kazakhstan, the American Bar Association/Central and East European Law Initiative (ABA/CEELI) and United Nations Development Programme (UNDP). This document will be used to assist Parliament and donors to organize the Center, develop policies and procedures, obtain equipment and reference materials, and to train staff.

I. Purpose of Drafting Center

The purpose and objective of the Legislative Drafting Center is to strengthen the Parliament's capacity for initiating and drafting legislation. The Legislative Drafting Center will focus on increasing the quality and uniformity of draft legislation. Through the Legislative Drafting Center, a Manager-Executive Director and a professional staff of well-trained, non-partisan, legal experts will draft legislation for the Chambers in accordance with the plan of prioritized law drafts approved by the Chairs of both Chambers.

II. Organization of the Legislative Drafting Center

The Legislative Drafting Center is established, on the basis of the MOU signed on June 23, 1999, by the Chairs of the Senate and Majilis, ABA/CEELI and UNDP. The Center is established as a body in the structure of the Parliament, accountable directly to the Chiefs of the Senate and the Majilis Offices. The Center will be located within the structure of the Information and Analytical Center. Both Chambers of the Parliament will contribute equally to the management and financial, staffing, and technical needs of the Center.

The Legislative Drafting Center will employ a non-partisan staff consisting of a Manager-Executive Director and Senior Specialists (assistant drafters). The staff shall have the status of civil servants. The Center will be strictly dedicated to drafting.

III. Staff Structure

Initially, the Legislative Drafting Center will consist of a staff composed of a Manager-Executive Director, a Chief Drafter and at least four assistant drafters. The staff of the Center will serve both Chambers equally. The Senate and the Majilis will provide the staff for the Center from its existing staff complement. The staff of the Center will be considered civil servants of the offices of the Parliament. As staff is trained in drafting legislation, additional staff will then be added as needed.
Manager-Executive Director

The Manager-Executive Director (Director) will be appointed and agreed to by the Chiefs of the Senate and Majilis Offices based on the individual’s administrative abilities, integrity, and managerial skills. The Director will be responsible for the administrative needs of the Center. The Director will act as liaison to the Parliament generally and the international community. The Director will ensure that the staff of the Center remains nonpartisan and free from inappropriate political influences or abrupt shifts in direction resulting from changes in personnel or Parliament.

The Director will be responsible for all personnel matters, assessing the equipment needs of the Center, developing office procedures on personnel matters, and assisting international assistance providers. The Director will not be responsible for or the oversight of the drafting of legislation and amendments.

Chief Drafter

The Chief Drafter will be appointed and agreed to by the Chiefs of the Senate and Majilis Offices and the Director based on the individual’s legal competence, administrative abilities, and integrity. The Chief Drafter will be a lawyer with significant legislative drafting experience and research skills.

The Chief Drafter will ensure equal access to the drafting services of the Center to members of both Chambers. The Chief Drafter will be responsible for the development of a drafting manual.

The Chief Drafter will be responsible for the technical skill development of the assistant drafters. The Chief Drafter will make assignments to the assistant drafters based on their experience and drafting abilities. The Chief Drafter will have direct oversight of the assistant drafters’ work and will be required to approve the drafts for style, drafting uniformity, and legality.

Assistant Drafters

Assistant Drafters will be appointed and approved by the Chiefs of the Senate and Majilis Offices, the Director and Chief Drafter. Assistant Drafters will be lawyers and nominated based on their legal competence, drafting abilities and research skills. Assistant Drafters will have at least one year of drafting experience. Assistant Drafters will be responsible for researching issues, the laws of Kazakhstan and other jurisdictions, drafting legislation and amendments, consulting with deputies on drafts, and consulting with the Director and Chief Drafter.

IV. Staff Responsibilities

The Legislative Drafting Center will perform the following services:

1. Draft bills and amendments according to the legislative work plan approved by both Chairs of the Chambers.
2. Research the current law to determine whether conflicts exist between the draft law or amendments and the existing law.

3. Consult with the deputy on how the proposed law or amendment should be drafted.

4. Proofread the draft laws and amendments.

5. Develop a legislative drafting manual and procedures for the Center.

6. Develop a codification system for laws.

The staff of the Center will not provide legal opinions or offer positions on bills or amendments. However, the staff may advise a deputy on drafting techniques and how to improve the bill's or amendment's chances of enactment.

V. Procedures and Standards

The following procedures will be employed:

1. Deputies submit a request in writing to the Center for a draft law or amendment to be drafted. Draft laws or amendments consistent with the legislative work plan, as approved by the Chairs of both Chambers, will be considered high priority over new drafts.

2. The Center assigns an identification number to the request which allows the Center to track its status.

3. The Chief Drafter assigns the request to an assistant drafter.

4. The assigned drafter schedules a meeting with the deputy submitting the request to discuss the topic of the bill or the amendment, the existing law, how best to accomplish the deputy’s objective, how the bill or amendment will be drafted, and the priority for drafting the bill or the amendment.

5. The assigned drafter researches and drafts the bill or amendment.

6. Once the bill or amendment is drafted, the assigned drafter again schedules a meeting with the deputy requesting the draft to discuss the completed bill. The assigned drafter reviews the completed draft with the deputy to ensure that the draft satisfies the request.

Throughout the entire drafting process, any written information or verbal communication received on the bills and amendments prepared will be considered to be confidential.
VI. Training

The initial training of the Center staff will be conducted in Kazakhstan. This training will be accomplished by locating a long-term legislative legal expert within the Center to conduct intensive one-on-one training and continuous short drafting exercises using current legislation of Kazakhstan and other jurisdictions. An draft outline of the program is as follows:

I. General Overview
   A. Powers of Actors
      1. Executive
      2. Legislative/Parliament
      3. Judiciary
      4. Agencies/Ministries
   B. Importance of “Good Drafting”
   C. Importance of Public Involvement

II. Before Drafting
   A. Identification Stage
      1. Trigger event for the legislation
      2. Problem to be solved - Policy development
      3. Is legislation the proper vehicle?
      4. Which authorities should put the legislation into effect?
      5. Goals & Objectives to be met
         a. What is the basic approach to be adopted in the legislation?
         b. What legal and administrative mechanisms are necessary to put that approach into effect and make it workable?
      6. Timeline for action
      7. Actors and roles and lines of authority
         a. Government entities - including interaction with key Ministries and the Ministry of Justice early in the process.
         b. Private interests - business/corps; trade associations
         c. Public interests - public interest groups, NGOs
         d. General public
   B. Research & Development
      1. Discuss issue with the problem identifier or solver
      2. Research
         a. Technical/Substantive Issues
         b. Political Issues
         c. Budget Issues
         d. General areas of concern
            i. Affect on public
            ii. Economic impact
            iii. Security issues
      3. Identify key areas that need to be addressed
      4. Look to other sources that have addressed the problem
      5. Constitutional concerns
      6. Conflict with existing laws
      7. Codification?
      8. International treaties
III. Drafting

A. Draft Document
   1. Principle of Legal Drafting
      a. Interpretations
      b. Clear, nontechnical language
         i. Readability
         ii. Writing for the audience
      c. Consistency
      d. Broad or detailed legislation
      e. Accuracy
      f. Regulatory authority
         i. Timeframe for regulations
         ii. How broad the authority to draft regulations
   B. Keep track of legal authority for what is written
   C. Keep track of rewritten material
   D. Bill form
      1. Type of bill
      2. Table of contents; preamble
      3. Enactment information
      4. Short title
      5. Purpose
      6. Definitions
      7. Show language added and removed
      8. Applicability
      9. Severability
     10. References to duties of agencies/ministries
     11. Criminal, civil, administrative sanctions
     12. Administrative procedures
     13. Judicial/Appellate procedures/remedies
     14. Repeals
     15. Effective date

IV. Process and Procedures

A. Sponsorship
B. Introduction into Parliament
C. Formal consideration/process
D. Public hearings
   1. Allow opportunity for public comments
   2. Allow opportunity for comments from private and public interests
   3. Incorporate comments from reviewers and other sources
E. Negotiate amendments to original bill
F. Keep track of debate or information regarding passage
   1. Legislative history
   2. Aid to interpretation/meaning for implementation by agencies/ministries
   3. Possible guide for judicial interpretations
G. Final enactment
H. Availability of law to public
The above intensive training exercises will be enhanced with computerized legal research training, introduction to codification and video training. In addition, short-term legal experts will be brought to Kazakhstan to provide workshops on (1) substantive areas of the law for drafting purposes such as environmental, health and gender issues (2) intensive skills training such as drafting constitutional amendments, amendments, regulatory authority, budget/appropriation provisions (3) managing a drafting office (4) system for tracking drafts and (5) codification.

During the process of training, a drafting manual will be created to standardize drafting. The drafting manual will contain information not only on drafting but also office procedures.

Training will also include coordination with other assistance providers for in-country legislative drafting conferences, European parliament experts, and study trips abroad for short-term, training in parliamentary settings or educational programs such as the International Legislation Drafting Institute in New Orleans, LA.

VII. Inputs from Parliament

The Parliament’s contributions to the Center will include the following: staff; staff salaries, office space, telephone and fax lines; equipment such as existing staff computers, telephones, and furniture, staff time for training programs; and arrangements for visas for foreign consultants.

VIII. Evaluation

The Legislative Drafting Center will be evaluated after six months of operation. The international assistance providers will assist the Center with the preparation of an evaluation to report to the Chairs of both Chambers and the Chiefs of the Senate and Majilis Offices regarding the effectiveness of the Center, the status of training, and a timeline for termination of the international community’s resources.