

# A UNDP project to strengthen Kazakhstan's parliamentary democracy

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## **ANNEX 2: STRENGTHENING KAZAKHSTAN'S PARLIAMENTARY DEMOCRACY**

### **POSSIBLE PRIORITY BILLS**

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#### **INTRODUCTION**

Quickly to strengthen Kazakhstan's Parliamentary democracy by empowering its deputies to carry out their Constitutionally-assigned role in the law-making process, this Project proposes a three-branched strategy:

- + to produce draft priority bills and procedures that will --
  - ii. clarify Parliament's role in the law-making process, and thus enable deputies to play their defined role; and
  - iii. produce a few urgently needed bills for which considerable community preparation already exists.
  
- + to enable the Parliament to serve appropriately in the Constitution's design of democratic, representative government by building the elected deputies' and their staff's capacity, independently of government, to
  - ii. assess and debate pending bills, based on reason informed by experience;
  - iii. where necessary or desirable, to initiate and to draft its own bills; and
  - iv. to oversee the implementation of laws, providing a transparent, accountable channel through which their constituents (especially the weak and vulnerable) and non-government organizations can express their concerns.
  
- + develop the relevant Parliamentary information systems, so that deputies and the public can easily learn of the status of pending bills, that they can access a database of enacted and pending laws, and so that staff can access relevant foreign law and experience.

The Project Document anticipates that Parliamentary leaders will select priority regulations and bills for preliminary drafting at the proposed Three Week Workshop to be held in early May in Astana. Drafting these bills and the regulations will serve a dual purpose: It will get underway urgently needed priority regulations and bills while enabling the workshop participants to learn through practice about the use of legislative theory, methodology and techniques to produce effectively implementable legislation.

During the course of the Mission, those interviewed suggested several possible candidates for the workshop participants to draft as priority bills. *This by no means constitutes an exclusive list.* In many of the bills mentioned, however, deputies, ministries, and non-government organizations have already worked, sometimes collaboratively, to identify the social problems, and to initiate steps to formulate legislation to deal with them.

## POTENTIAL REGULATIONS AND BILL FOR DRAFTING AT THE MAY WORKSHOP

### 1. Regulations concerning the operation of the Parliament

- + Procedures by which deputies may initiate bills and have them drafted by the Parliamentary Legislative Drafting Center. *Note: Without dissent, deputies and staff supported drafting this bill as a matter of urgency.*

The Constitution expressly gives to the President, Government and the deputies independent powers to introduce legislation into the Majilis. Democratic opinion everywhere unanimously views the deputies' right to introduce legislation as an essential element of the checks and balances required for a democratic government to remain popular, representative and balanced. If, as seems at present, Government and the Ministry of Justice retain a perceived monopoly of the drafting process, Parliament must play the role of junior partner to the executive. That contradicts the constitutional provision that makes it the "supreme" legislative body. Developing clear procedures by which a deputy can initiate a bill constitutes the first step in empowering deputies to play their full constitutional role.

- + Procedures by which deputies can play their full role in overseeing laws' implementation.

Deputies may use three tools in exercising their constitutional powers to oversee the actions of the several Government ministries and departments. All concerning *questions* of Government officials, either at Committee hearings, by submitted them during an organized Question Time in the Parliament, or by written enquiry. A necessary corollary of that right lies in the official's duty to respond to the question -- publicly, giving relevant facts and reasons. The right to question lies implicit in the Constitutional provisions empowering one-third of the deputies to subpoena a government official to answer questions, and the power of four-fifths of the deputies to require the dismissal of a government official. Until regulations provide regular occasions for asking questions, at Committee hearings, at Question Time, or otherwise, however, the right of oversight has little meaning -- again to the denigration of the Parliament's constitutional role.

- + Procedures making the deputies accessible to constituents and to organizations of civil society (NGOs).  
There appear no organized channels by which constituents or an organization

representing their interests can by right transmit their concerns to a deputy. Deputies of course receive informal inputs of all sorts, but mainly from the people they see from day to day -- usually, other members of the elite. Decisional output responds to inputs. Experience everywhere demonstrates that, if deputies mainly or entirely receive elite inputs, their legislative output in time will respond to those inputs. Unless regulations provide formal channels for inputs to parliamentary decision-making from the poor, women, children, ethnic minorities, and groups representing them, as well as frequently forgotten interests (environment, human rights, for example), the general course of legislation will not respond to their needs. The Parliament needs regulations creating formal channels of access available to all: Public hearings on bills and on the operation of the laws; notice and comment provisions for pending legislation; a stated minimum of public meetings in the deputy's constituency; a statutory right of complaint with a statutory obligation to answer a complaint; etc.

- + Checking draft bills for good governance and their potential for corruption.

Arbitrary decision-making and corruption result, of course from weak officials. They also result from weak *institutions*. Weak institutions begin with enabling laws and regulations that allow excessive discretion -- i.e., that do not provide narrow substantive criteria to control discretionary decisions, that do not provide procedures that ensure that the decisions remain transparent, accountable, participatory, and subject to rule. Regulations requiring Parliamentary staff to 'flag' provisions in pending bills that allow excessive discretion would help in preventing the enactment of bills making good governance less likely, and making corruption that much easier.

- + Requiring a bill presented to the Majilis to come accompanied by a *detailed* research report justifying the bill, including a social impact statement.

The present regulations for the Majilis requires a bill to come to the Majilis accompanied by an explanatory statement. The statements provided by the Ministry of Justice, however, are so slight as to be derisory. By a resolution Majilis could expand its present regulations requiring an 'explanation' to require all bills, wherever they originate, to come accompanied by a substantial research report detailing the facts and logic upon which the bill rests.

## 2. Possible priority bills for inclusion in the workshop program

- ★ An NGO law.

Inputs to governmental decision-making from civil society inevitably come mainly not from individual citizens but from citizens' organizations (NGOs). Civil society's health finds its measure in the number and vitality of its NGOs. Just as a society concerned with developing a modern market economy ensures that its Company Law, rather than throwing obstacles in the way of forming a share company, makes that road smooth and

easy, so should a country concerned with developing a vibrant civil society that has close and frequent contacts with government (i.e., a genuinely democratic society) should enact an NGO law that makes it easy to organize and maintain an NGO. A recent conference considered such a law. The present draft badly needs professional drafting assistance. It too might make an excellent candidate for inclusion in the workshop

★ An Administrative Procedures Act

In Kazakhstan, notwithstanding the Constitution, the balance of power between legislative and executive seemed significantly tipped in favor of the executive. As in all modern states, in Kazakhstan the executive inevitably must make innumerable implementing regulations under the laws. Presently they do that with literally no guides in law or constitution save the general one that a regulation must conform to constitution and the law. If the law, however, grants essentially unlimited discretion to the executive, that control becomes quite meaningless. A legislative 'law' making the Prince's whim 'law' does not deserve the name 'law'. The Parliament might well pass a law setting general limits on the rule-making power of the ministries. Similar laws exist in almost all countries, sometimes called Administrative Procedure Acts. They set up procedures and substantive limits on the executive's rule-making powers.

★ Any of several priority environmental protection bills.

In a number of areas, the Ministry of the Environment has done significant scientific work concerning the extent of environmental degradation, its causes, and potential remedies. They seem blocked by the ability to transform their remedial schemes in to effective legislation. Including one or more of their possible bills in the workshop -- and including some representatives from the Ministry in it -- would give a needed assisting hand to Kazakhstan's effort to resolve its monumental environmental problems.

★ Any of several priority bills concerning gender equality and empowerment

Supported by NGOs, a group of women have met for some time to prepare programs looking towards gender equality and the empowerment of women as part of that overall effort. Like the environment Ministry, they have programs in hand that need only some drafting expertise to realize as bills. These too might make apt candidates for one or more bills at the workshop.

★ Any of several priority bills concerning Small, Medium and Micro Enterprises (SMMEs).

Throughout the world, governments have turned to SMMEs as a device to help in urgent tasks of creating jobs and increasing production without major capital investments. Laws in aid of SMMEs abound, providing credit, regulating the markets for SMME finance, providing business training for SMME entrepreneurs, providing tax concessions for SMMEs, lease-back programs for production and sales space, building covered

markets for small merchants, and providing computer access and training. As in the case of the environment and gender issues, considerable work has been done preparatory to legislation.

★ Further legislation on corruption issues

A recent conference identified the need for legislation concerning corruption. Further legislation, for example, might specifically focus on issues of judicial corruption, improvement in methods of public procurement, or further refinement of campaign finance reform law and lobbying.

★ A law on the grain market.

The Majilis' Agricultural Committee has been working on legislation to improve the grain market. Many Kazakhstani farmers cultivate grain as the main source of their income. Apparently, however, the transition has disrupted the processes of storing, processing, transporting, and marketing grain with resulting fluctuations of sales and prices that undermine farmers' incomes and threaten to lead to reduce production. The Committee members strongly requested help to draft a bill to regularize the grain market.