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A UNDP project to strengthen Kazakhstan's parliamentary democracy

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Boston University

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A UNDP PROJECT TO STRENGTHEN KAZAKHSTAN'S PARLIAMENTARY DEMOCRACY:

An Executive Summary

The UNDP invited a Mission to Kazakhstan to review the situation relating to the Kazakhstan Parliament and make recommendations to strengthen its capacity to play its Constitutionally-assigned role in building Kazakhstan democracy. Based on interviews with deputies, members of the Parliamentary committees, and office staff from both the Senate and the Majilis, the Mission reached several conclusions:

1. The Parliamentary deputies confront several difficulties in carrying out their three-fold responsibilities for strengthening Kazakhstan democracy: assessing and debating draft bills, almost all initiated by Government; initiating their own bills when useful for strengthening democratic institutions; and exercising oversight over the implementation of the laws and their social impact.

First, the procedures governing the deputies' own role in the law-making process remained unclear. Second, although Parliament has adopted some 500 laws since its inception, many if not most remain poorly implemented; in a few cases, implementation apparently has even contradicted the deputies' intent in enacting the laws. Third, many of the bills that Parliament approved grant all but unlimited discretion to the executive, a potential source of officials' arbitrary and corrupt behaviors.

2. The deputies and their staffs identified many explanations for these difficulties, but three basic causes seemed to run through them all: (1) Parliament lacks regulations to govern how deputies may initiate bills and have them drafted, as well as to define other aspects of the law-making processes; (2) neither the individual deputies, the legislative committee members nor their office staff (indeed, nor Ministry officials who drafted most of the laws) seemed to have a very clear idea of how to conceptualize the translation of policy into effectively implemented legislation, or the relevant facts they needed for that task; and (3) the deputies and staff seemed uncertain about whether and how they might use legislation to constrain executive discretion. These combine to make it difficult for deputies to assert differences with government about a bill's content. At the end of the day, Parliament cannot play its full Constitutional role in a democratic

law making system as the 'highest legislative body.'

3. To build the deputies' and their staffs' capacity and self-confidence to assess and initiate effectively implementable bills, and, working more closely with their constituents, to monitor and evaluate the resulting laws' social consequences, The Mission recommended the institutionalization of a Kazakhstani-run Program by stages. Each stage will build on the lessons learned in the preceding one. All will contribute to Parliament's deputies and staff members' capacity to play an increasingly effective role in building democracy in Kazakhstan:

I. **Stage I: Introducing a learning-by-doing process.**¹ In cooperation with Ann Marie Bereschak of ABA-CEELI, the Seidmans will return to conduct a three week workshop (the date to be arranged) with a three-fold focus: (1) To formulate a preliminary draft of regulations required to facilitate deputies' efforts to play a more positive role in a fully democratic law-making process, including the initiation and drafting of bills, and an increased receptivity to inputs from constituents and their organizations; (2) in the process, to equip selected Parliamentary deputies, committee members and office staff with a legislative theory, methodology, and techniques to draft competent bills, accompanied by well-structured research reports and social impact statements that, using facts and logic, demonstrate that the proposed legislation will likely solve specified priority social problems that hinder Kazakhstan's democratic progress, and lay the basis for institutionalizing an on-going learning process for all deputies and staff members; and (3) to enhance participants' capacity to ensure that laws enacted by Parliament constrain executive discretion as much as the circumstances of each law's implementation admit.

a. *Preparation:* In the period leading up to the workshop, the Project Administrators will work with the leadership of both houses to identify four or more priority bills or regulations, in addition to proposed regulations relating to Parliament's role in the law-making process. Each will focus on a real social problem confronting the people of Kazakhstan. The kinds of problems mentioned by the deputies included unlimited executive rule-

¹ As the proposed Project's underlying premise, there exists no better way to learn to assess or draft a bill than by actually engaging in the process. In that process, the workshop participants will simultaneously produce priority bills to help to strengthen Kazakhstan's democratic institutions.

making powers; environmental degradation; difficulties in producing and marketing grain; obstacles that block non-government organizations from providing inputs into making and monitoring laws; the inadequacies of the existing pension law, an administrative procedures act, gender issues, and problems of small enterprises. Whichever problem the Parliament's leaders decide has priority, in drafting the bills the workshop participants will have to think simultaneously about how to use law to improve the procedures by which the deputies contribute to solving these kinds of problems.

Working with the heads of the staff departments and Parliamentary committees, the Project Administration will select about 40 staff members and deputies workshop participants to serve as members of teams to prepare first drafts of the bills, accompanied by research reports that justify the bill's detailed measures. They will also select at least five senior Parliamentary staff members as facilitators, each of whom will help organize the workshop; work closely with a workshop team to draft a bill and report; and after the workshop, work together to institutionalize an on-going learning process for all the deputies, their committees and staff members.

In preparation for the workshop, each facilitator will study the legislative drafting Manual (largely already translated into Russian); gather from relevant Ministries and elsewhere the available documents and reports relating to the social problem which the particular team's proposed bill aims to resolve; and provide those materials in advance to each team member.

b. *The workshop:* Working with the facilitators, the Seidmans will assume overall responsibility for conducting the workshop. With the Seidmans' assistance, each of the facilitators will undertake to conduct one or more plenary sessions of the workshop. In that context, the facilitators will learn how to conduct a learning-by-doing process which, after the workshop's completion, they will incorporate into the proposed learning process for all members of Parliament and their staffs.

Stage II: Institutionalizing the learning process: After the workshop, the facilitators will conduct similar workshops for deputies and staff members. The

facilitators will acquire greater skill in developing the learning process by working together to plan, implement, and evaluate each others' role in developing that on-going learning process.

a. *A Kazakhstani Legislative Drafting Manual*: In the course of using the existing Manual, the workshop facilitators and participants will consider how to revise it to serve more effectively as a Manual for the proposed on-going Kazakhstan learning process.

b. *Further training*: If it seems necessary, the Project might supply further training for the facilitators either through distance education; bringing the Seidmans back to assess their progress in the course an intensive workshop to help them overcome particular problems; or, if available, employing a Russian-speaking foreign consultant, with expertise in legislative theory, methodology and techniques, to work for six months with the staff of the Legislative Drafting Center, and with the facilitators.

Stage III: Learning from comparative law and experience? By one of several means, the Project Administration may help teams of deputies and staff members working on a particular bill to acquire further information about foreign law and experience in solving a similar problem:

a. Bring domestic or foreign consultants with knowledge of other countries' relevant laws and experience to conduct a short workshop in Kazakhstan;

b. Arrange for team members, after completing a learning-process workshop, to go on a tour to study other countries' relevant laws and experiences;

c. Provide the technology Parliament's staff requires to train and assist team members to obtain information from Internet about other countries' similar laws and experience.

d. Implement plans to introduce a course in Legislative Drafting in a Kazakhstan university law school, including possible training for the required lecturer(s). This would help to produce future generations of drafters for Parliament and Government ministries, as well as providing a

² This stage probably would overlap with Stage II.

center for fostering the improvement of legislative theory, methodology,
and techniques to meet Kazakhstan needs.