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Kazakhstan and so-called «Madrid Commitments»

On November 29, 2007 Kazakhstan's then Minister of Foreign Affairs Marat Tazhin in his speech at the OSCE Ministerial Meeting in Madrid laid out plans for Kazakhstan's further democratic progress. He identified perfection of the election legislation, genuine support for political parties' growth, meaningful improvements in the media sector and local governance as Kazakhstan's comprehensive vision for continued reform. He also promised that Kazakhstan's chairmanship would preserve the ODIHR, its existing mandate and refrain from supporting any future efforts to weaken this institution. Later, these plans of Kazakhstan for its own political development and strengthening one of the core OSCE institutions were interpreted as Kazakhstan's «Madrid Commitments».

In 2008, Kazakhstan started integrating numerous public platforms for cooperation between Government and civil society into a single ad-hoc mechanism involving various national and international NGOs, human rights activists and political parties that helped Kazakhstan introduce important amendments to the legislation on elections, political parties, media and local governance. Kazakhstan also established a «follow-up mechanism» with the ODIHR to set up a timetable for cooperation on improving the national election legislation. On November 11, 2008 the package of amendments was finalized and, in early 2009, signed by the President of the Republic of Kazakhstan Nursultan Nazarbayev.

Kazakhstan's 2009 Political Reform:

Implementation of «Madrid Commitments»

«We would like to take this opportunity today to note that over the past week, President Nazarbayev signed into law new legislation on the media, on elections, and on political parties which was aimed at fulfilling Kazakhstan's Madrid commitments. This legislation marks a step forward on Kazakhstan's path to democracy».

As delivered by US Charge d'Affaires Kyle Scott to the OSCE Permanent Council,
Vienna February 12, 2009

«**Commitment 1:** «In the context of future Chairmanship we are going to incorporate various proposals into a consolidated bill to amend the **Media Law**, which will reflect the OSCE recommendations as well.» (Minister Marat Tazhin, 2007 Madrid Statement)

Delivery: Throughout 2008 media advocacy groups in Kazakhstan, various NGOs, the OSCE Representative on Freedom of the Media and the Government jointly elaborated a number of substantial amendments to the Media Law. Two of nineteen OSCE recommendations have been fully incorporated into the law.

The Law broadened journalists' rights, ensured the media self-regulation, and strengthened the role of mass media as an important political institution in the fabric of Kazakhstan's democracy:

The list of cases leading to re-registration of printed outlets and information agencies was reduced. Registration for broadcasting media, including Internet, was abolished; Mandatory provision for a journalist to obtain consent to the use of audio or video recording during an interview was cancelled. The norm was introduced to secure an equal competitiveness of defendant and plaintiff in courts. Media representatives were enabled not to ask for permission to use recording equipment while conducting interviews; Before the amendments were enacted, citizens of Kazakhstan had the right to demand retraction of the published defamation or slander if a person who published this information could not support the allegations with facts. Today, this right is denied and, thus, Kazakhstan upholds the adversarial principle in the court's deliberations; Confiscation of certain newspaper editions was recognized as an alternative to the administrative sanctions, including fines.

On January 28, 2009 the OSCE Representative on Freedom of the Media, Miklos Haraszti, welcomed the adoption of a number of amendments to Kazakhstan's media law. "I welcome the easing of administrative burdens on the media, as well as the fact that civil society was involved in the discussion about the changes," Haraszti wrote in a letter to Kazakhstan's Foreign Minister, Marat Tazhin, and Culture and Information Minister, Mukhtar Kul Mukhammed.

«**Madrid Commitment**» 2: «Kazakhstan will prepare a package of recommendations» (and) with the assistance of ODIHR and the OSCE's other institutions intend(s) to take measures to reform the **Law on Elections** by the end of 2008. (Minister Marat Tazhin, 2007 Madrid Statement)

Delivery: The new Law on Elections further improves the electoral process in Kazakhstan. Eight of thirty seven OSCE recommendations and eight of ten joint recommendations by Kazakh human rights activists and the «Freedom House» have been fully incorporated into the new law. In total, 18 articles of the Law on Elections have been amended.

For the first time in Kazakhstan's political history a multiparty parliament will be ensured by legislation. In case if 7 percent threshold for access to parliamentary mandates is passed by only one political party, the amendments guarantee that the next biggest gainer of votes will have granted seats in the Parliament. In this regard, one should take note of electoral barriers in other countries: 3% - Spain, Italy; 4% - Austria, Bulgaria, Sweden; 5% - Hungary, Germany, Latvia, Lithuania, Poland, Romania, Slovakia, France, Czech

Republic; 7% - Russia, Lithuania (party blocks); 8% - Poland (coalitions), Lichtenstein, Romania (party unions); 10% - Italy (coalitions), Turkey; The new language of the legislation extended the deadline for a political party to register with respective authorities (from two to four months) after its founding convention. The amendments make it mandatory for the media to equally cover the candidates and parties, including the period of nomination and registration; foreign observers, who usually come in thousands to observe elections in Kazakhstan, are not required to have any experience in monitoring elections. Strengthening the right of the Central Election Commission to regulate the process of issuing absentee ballots its authority in organizing the electoral process was decentralized. Today local election commissions have greater authority in structuring their own schedules to make them more convenient for the voters.

«**Madrid Commitment**» 3: «Kazakhstan will take measures to liberalize registration requirements for **political parties** by the end of 2008». (Minister Marat Tazhin, 2007 Madrid Statement)

Delivery: The role of political parties in the political process has been increased as a result of the election legislation reform. Recommendations by the OSCE, Kazakh human rights activists and the «Freedom House» have been partly incorporated into the Law on political parties.

It has significantly reduced the number of requirements for registering a political party. For example, a party needs to have only 600 members (before ?C more than 1,000) in each of the country's regions and 40,000 members (before ?C 50,000) nationwide to be registered as a national political party. The deadline for submitting registration documents after a constituent conference has been extended. It is crucially important that the registration process is not dependent upon a subjective interpretation by a particular official but becomes a strictly fixed provision of law. In the new text of the law even a party which submits erroneous lists of its members cannot be denied registration on these grounds. It opened the avenue for the state to fund and financially support activity of political parties (Freedom House's recommendation). The amendments also incorporate the ODIHR recommendations on regulating the legal and technical process of establishing a political party. Other important issues such as reorganization of a party (merger, incorporation, split-up or split-off) are also more thoroughly covered by the new legislation.

«**Madrid Commitment**» 4: «In the context of Kazakhstan's future Chairmanship in the OSCE state's efforts in refining the system of **local self-government** will continue». (Minister Marat Tazhin, 2007 Madrid Statement)

Delivery: Amendments to the legislation on local self governance should be considered in close relation to both of the above mentioned pieces of legislation. They affect a host of various laws, including the Law on Administrative and Territorial Division of the Republic of Kazakhstan. Twenty seven amendments have been incorporated into the Law:

The amendments codify local self-governance in the regions (oblast), districts, and cities, districts within the cities, towns and villages. It is now fixed in the law that the localities can self-govern directly or through maslikhats (local elected legislatures), which gain more power vis-à-vis local state administrations, including greater power over finances, setting priorities for the development of so called «civil public squares» of the regions. Today maslikhats approve (or do not) candidates nominated by the President for top positions in the local administration at oblast, district and city levels. They do have the mandatory majority (down to 51%) to vote the head of a local executive out of office.

Maslikhats have become the basis of local self governance with the goal to establish a genuine local self governance in place of the centralized one. Today they manage their finances more independently. Their auditing powers have been considerably expanded. Local agencies received rights and capabilities to resolve everyday issues of communities independently not limiting themselves to the framework of directives from national authorities.

The road to democracy:

Kazakhstan goes beyond «Madrid Commitments»

Kazakhstan's commitment to democratization is unwavering, but transition from a history of Soviet imposed authoritarianism to a full-fledged democracy cannot be accomplished overnight or by simple implementation of the so-called «Madrid Commitments». The true measure of Kazakhstan's commitment is its steady progress on the fundamental principles of establishing a functioning democracy and civil society that will serve as a model for other countries in the region.

Therefore, back in 2006 Kazakhstan established a Working Group on Human Rights to prepare a consolidated program and «road map» for improving national legislation. The Working Group consisted of 35 people, including government representatives, judges, and parliamentarians, as well as 18 prominent human rights activists, among others, Ninel Fokina, President of the Almaty Helsinki Committee; Zhemis Turmagambetova, Executive Director of the Charter for Human Rights; and Yevgeny Zhovtis, Director of the Kazakhstan International Bureau for Human Rights and the Rule of Law. The original goal was to accurately reflect the real needs of Kazakhstan's society in the above «road map».

Through discussions and exchange of ideas, the working group created «**The National Human Rights Action Plan of the Republic of Kazakhstan, 2009-2012**» and «**The Legal Concept, 2010-2020**», which President Nazarbayev approved in 2009. The recommendations and measures proposed in the two documents aim to improve the legislation, the functioning of democratic institutions, mechanisms of human rights protection, as well as to cultivate an advanced human rights culture in Kazakhstan. One of the Action Plan's most important priorities is the decriminalization of defamation in media. «Kazakhstan's legislation is in need of reconsideration, decriminalization of «slander» and «insult» and determination of clear and sound criteria for the

differentiation between the expression of one's opinion and dissemination of information contrary to facts and discrediting honor, dignity or business reputation», the Action Plan reads.

Decriminalization has been in discussion since early 2010 within a number of established platforms for dialogue among Government, Parliament, Kazakh and international human rights activists, including the Consultative Council on the OSCE Issues of the Ministry of Foreign Affairs (initiated by the Freedom House) and the Commission on Human Rights under the President of the Republic of Kazakhstan. Working meetings and discussions revealed some deeply rooted contradictions among national human rights defenders. Granted, all of them strongly believe in democracy as a goal for Kazakhstan's political development, however, some question the society's maturity and readiness for unlimited freedom of speech and expression. This opinion has been reiterated by Mr. Vitaly Voronov, Chairman of the «Transparency Kazakhstan» Public Foundation in a number of recent public speeches.

However, concerns over decriminalization were heard and included into the «2010 Report on Human Rights in Kazakhstan» issued by the Commission on Human Rights. In June, 2010 the report will be submitted for the President's consideration.

Based on the provisions of the Human Rights Action Plan and the Legal Concept, Kazakhstan has made following amendments and changes to its national legislation since the beginning of 2010:

Law on State Guarantees of Equal Rights and Equal Opportunities for Men and Women aims to prevent all forms of gender discrimination, creates conditions for gender equality in all spheres of public life. The legislation also regulates the implementation of measures guaranteeing equal rights and opportunities for women and men.

Law on Prevention of Domestic Violence provides a legal framework for prevention and combating domestic violence. The law also addresses the rights of citizens in respect to family law or family related legal issues.

Law on Reform of Judicial System was designed to improve the judicial system by creating a three-tier court system and defining the jurisdiction of special courts for criminal cases.

Law on Further Improvement of the Penal System aims at further improvement of prison conditions in order to ensure consistency with international standards. The changes will increase the effectiveness of the penal system as well as improve the legal and social protections/rights for the employees of the correctional system.

Law on the Use of Expert Witnesses in the Courts of the Republic of Kazakhstan aims at improving/professionalizing the role of expert witnesses, as well as ensuring their independence and objectivity.

Law on the Further Strengthening of the Fight against Corruption intends to further the fight against corruption, strengthen accountability measures for its manifestation, introduce mechanisms aimed at crime prevention.

Law on Protection of People's Rights to Privacy provides for additional measures on protecting constitutional rights of citizens to privacy, personal and family secrets, confidentiality of personal deposits and savings, correspondence, phone conversations, post and telegraph and other messages. By increasing criminal liability for violations of the above privacy rights, the law enhances the efficiency of crime-prevention, promotes rule of law and human rights.

Law on Social Support of Different Categories of People stipulates rendering additional social assistance to different categories of people, including retirees, mothers of many children, disabled children, veterans and distinguished retired workers.

Law on Refugees provides application and registration procedures related to granting refugee status, rights and liabilities of refugees and people seeking the status of refugee.

Democracy in Kazakhstan is a work in progress. Kazakhstan remains committed to building a strong economy, liberal society and viable democracy not because of its current OSCE Chairmanship status but because this was the choice of the nation from the very outset of its independence. Kazakhstan will continue to focus on the implementation of the National Human Rights Action Plan 2009-2012 and the Legal Concept 2010-2020 in close cooperation with the Kazakh civil society groups as well as foreign government and non-government actors.