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Kazakhstan Constitutional Reforms: A Way Forward

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Abstract: Kazakhstan is Central Asia's largest country, roughly the size of Western Europe. It is the second-most populous country after Uzbekistan, with a population of 19 million. Kazakhstan is also the largest economy among the five Central Asian Republics mainly due to its natural resources - oil, natural gas, uranium, and various metals. Kazakhstan provides approximately 45 percent of the global uranium output. Since its independence, the country has maintained economic and political stability. There was a smooth transition of power from the first President of Kazakhstan, Nursultan Nazarbayev, to the current President Kassym-Jomart Tokayev in March 2019. Subsequently, Tokayev was elected as Kazakhstan's President with nearly 71 percent of the vote in June 2019. However, due to economic and political reasons, the country witnessed mass protests in early January 2022. The government took immediate economic measures to give relief to the people. After the situation with the help of a "peacekeeping mission" by CSTO (Collective Security Treaty Organization) forces and their subsequent return, the comprehensive constitution reform was proposed by President Tokayev in an Address to the Nation in a joint session of parliament on the 16th March 2022.

Keywords: Kazakhstan, The Constitutional Council, The Majilis, Central Election Commission

President Tokayev while addressing the 31st session of the Assembly of the People of Kazakhstan stated, "To build the new Kazakhstan, we need to completely reform the individual and public values system".² The Proposed amendments are changing a super-presidential form of government to a presidential one; robustly revamping the constitutional court; abolition of the death penalty; and strengthening mechanisms for defending citizens' rights. Referring to the referendum in the country, which is required for constitutional

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amendments, President Tokayev said: "I trust that amending the constitution through a referendum will be strong evidence of the will of the people."³

The referendum took place on 5th June 2022. It purposes 56 changes, including 33 fundamental law provisions, constituting one-third of the country's Constitution. According to Kazakhstan's Central Election Commission, nearly 77.18% supported the constitutional amendments, while 19% voted against amendments. The total turnout was 68.06%. In his post-referendum Address, the President said, "A significant historical event took place in our country. Our country has entered a new stage of development... The result of the referendum has become a clear symbol of political renewal. Our citizens showed high responsibility and patriotism. We have demonstrated that we are united in building a New, Fair Kazakhstan".⁴

Limiting the powers of the President

The proposed amendments limit the President's powers and restrict him from being a political party member. This restriction also extends to chairpersons and judges of the Constitutional Court, the Supreme Court and other courts, chairpersons and members of the Central Electoral Commission, and the Supreme Audit Chamber of the Republic. The amendment bans the President's close relatives from holding senior positions as political civil servants and in the quasi-public sector. President's power regarding local authorities has also been reduced and transferred to the akims (governors) at the regional level, substantially strengthening the role of the maslikhats (local representative body).⁵

Purposed amendments excluded the clause mentioned in Article 46 about the status and powers of the First President of Kazakhstan, which is determined by the Constitution of the Republic and constitutional law. This law on the first president pledges complete immunity to first President Nazarbaev and members of his immediate family. The amended constitution removes immunity granted to the immediate family members of the first president."

Decentralization of Power

Several proposed measures give more power to the parliament and make it more representative by substituting the 'proportionate system' of elections with a diverse 'majoritarian-proportional'. It also contains an essential decentralization of power with competencies given to regional and local authorities. The Majilis

(lower house) would consist of 98 deputies instead of 107 through a mixed electoral system. vii Thirty percent of deputies would be elected by territorial districts directly instead of party lists. Rest seventy percent of Majilis deputies would be elected by proportional elections. Now, voters will also have the right to recall them. The presidential share to nominate deputies in the Senate (Upper house) has also been decreased to 10 from 15. Share of the Assembly of the People of Kazakhstan, which used to send nine deputies to the Majilis, has now been reduced to five deputies only. viii It is considered that a mixed electoral structure would better address the rights of all citizens and reflect voters' interests. At the same time, the combination of proportional and majoritarian systems would also increase the activity of deputies, and they would be more responsive to the citizens.

According to proposed amendments, now, akims of regions, cities of 'republican significance', and capitals would be appointed by the President on the recommendation of two candidates forwarded by the deputies of the maslikhats of the region or city. The introduction of a fully majoritarian system for electing deputies to district and city maslikhats would make the deputies more accountable to the people. In addition, in the new amendments, the President would have no power to nullify or suspend the Acts of akims of regions, cities of republican significance, and the capital. The President will now have no power to remove akims of districts, cities, or rural districts.⁶

Reforms in Elections and Political Party

Through amendments, the changes to the legislation will be made to increase prospects for expanding the party system in the country, including streamlining registration measures for political parties. The amendments reduce the registration qualification required for parties from 20,000 to 5,000 people. Furthermore, only 700 individuals instead of 1,000 would be needed for citizens' initiative groups to create a party. Electoral reforms included the need to form a unified electronic voter database that would thwart the possibility of double voting. It would also set restrictions on donations made to election funds and safeguard the financial transparency of all electoral campaign participants, including candidates, observers, and the media. These reforms would help strengthen democratic traditions and establish a new political culture based on mutual accountability and trust between deputies and voters. 10

Administrative-Territorial Reforms:

The President first proposed the administrative-territorial changes during his annual Address to the Nation on 16th March 2022. The President proposed the formation of two new regions - Abai and Ulytau regions, with their regional centers in the cities of Semey and Zhezkazgan, respectively. The Almaty region was also reorganized into two different regions - Almaty Region and Zhetysu Region. Now, the administrative center of the Almaty region is Kapshagai, and, for Zhetysu Region, it is Taldykorgan, which earlier was the administrative center for Almaty."

The President also proposed naming Kapchagai after Dinmukhamed Kunayev, a Soviet-era politician who headed the Kazakh SSR from 1964 to 1986. President Tokayev said, "The creation of a separate region has not only economical but also spiritual and cultural significance." ¹² He also said that these changes were introduced to "optimize public administration, simplify commuting to and from the regional center, and better regulate internal migration."

Protecting the Rights of Citizens

The Constitutional Court that existed in the early 90s had the right to cancel laws, decisions of the Supreme Council, decrees of the President, and decisions of the Cabinet of Ministers. Citizens had the right to apply directly to it to protect their constitutional rights.

However, Constitution Court was changed into Constitutional Council by the first President of Kazakhstan with reduced power. ¹⁴

The Constitutional Council has now been recreated through new amendments as the Constitutional Court. The Constitutional Court consists of 11 judges, six appointed by the parliament (three of each of the chambers) and four by the President. Furthermore, the President will appoint the chairman with the approval of the Senate, which aims to ensure balance in this supreme judicial body. The chairman's term should not be exceeded more than six years, and he may not be appointed as a judge of the Constitutional Court more than two times in a row. Citizens will now have the power to appeal directly to the court. ¹⁵

The Constitutional Court would have the power to review the norms of laws and by-laws for compliance with the Constitution. If any unconstitutionality of normative acts or their parts is revealed, the Constitutional Court has the right to

cancel such acts or their norms. The constitutional law would determine the competence, organization, and procedure for the activities of the prosecutor's office. xvi It should strengthen systemic human rights activities and supreme supervision over the observance of the rule of law in Kazakhstan. The amendments also abolish the death penalty."

Moreover, proposed amendments consolidate the Commissioner for Human Rights status at the constitutional level. The ombudsman will deal with the reinstatement of violated human and civil rights and freedoms. Furthermore, the ombudsman is granted immunity through his independence and is now not accountable to state bodies and officials. Moreover, the commissioner for human rights during his tenure cannot be arrested without the consent of the Senate.

President Tokayev stressed that a significant part of amendments is protecting human rights. He said, "The creation of the Constitutional Court, the consolidation of the status of the Commissioner for Human Rights at the constitutional level, the absolute ban on the death penalty - all these steps are aimed at comprehensive observance of the rights and freedoms of citizens."19

Conclusion

The constitutional reform would form a balance of relations between the branches of power. The reforms would also increase political competition, equal conditions for developing all political parties, and independence and neutrality in decision-making for the citizens. Amendments to the Constitution also aim to modernize and improve the electoral process. The result of the constitutional reform should be the expansion of local/state administration and self-government powers, carried out by local representatives and executive bodies responsible for the state of affairs in the relevant territory.

The proposed amendments would be a way forward to Kazakhstan's transformation to a qualitatively new model for the formation and interaction of government institutions. The reforms are initiated for a new political culture, enhancing the media's competitiveness, and consolidating the civil society institutions' role. Revamping the administrative-territorial structure of Kazakhstan, decentralizing and delegating more power to local governments would, to an extent, meet the demand of citizens' aspirations.

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