

CSIS-IND TASK FORCE

Supporting Kazakhstan's OSCE Chairmanship Agenda



ABOUT THE PROJECT

The Center for Strategic and International Studies (CSIS) and the Institute for New Democracies (IND) launched in 2009 the initiative U.S.-Kazakhstan OSCE Task Force to assist Kazakhstan in shaping its OSCE chairmanship agenda and to help strengthen U.S.-Kazakh relations. The initiative is supported through a grant from the government of Kazakhstan. The CSIS-IND Task Force aims to bring together policymakers, regional specialists, representatives of non-governmental organizations, representatives of former OSCE chairing countries, and business leaders to offer implementable recommendations for shaping a compelling and focused agenda for Kazakhstan's OSCE chairmanship. The CSIS-IND Task Force consists of two working groups based in Washington, D.C. and Astana. The final Policy Paper produced by the Task Force will be released in Washington on December 3, 2009.

This Policy Brief is issued by the project's Washington Task Force. The paper does not represent the views of the government of Kazakhstan or any single member of the Task Force.

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Kazakhstan and the OSCE Human Dimension

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Executive Summary

This policy brief focuses on the challenges to the OSCE Human Dimension and the challenges to Kazakhstan as Chairman-in-Office of the organization in 2010.

Kazakhstan has chosen a very ambitious role in seeking and then preparing to chair the OSCE. This prestigious international position may well represent the culmination of one stage of Kazakhstan's recent history and the beginning of another. By taking on the OSCE chairmanship Kazakhstan's leaders are signaling that the period of consolidating the country's independence is effectively complete and that the country is now prepared to more fully participate as a major player in both the Euro-Atlantic and Euro-Asian spheres of security and cooperation.

The two major challenges Kazakhstan faces as Chairman-in-Office are first, preserving the autonomy and strengthening the mandate of the Human Dimension body—the Office of Democratic Institutions and Human Rights (ODIHR)—which has been contested by some participating states with the purpose of diminishing its role; and second, advancing its domestic reform agenda in the area of human rights, including civil and political rights. In chairing the OSCE during 2010, the country's leaders recognize that they have placed their own domestic political life under close international scrutiny.

Kazakhstan has made a commitment to defend the mission and mandate of ODIHR as OSCE Chairman-in-Office. There will be challenges to the principles of ODIHR where Kazakhstan will be tested, but it is important to stress that the core mandate of ODIHR can only be changed with the consensus of all 56 participating states.

Domestically, Kazakhstan has committed itself to making progress in systemic reforms by democratizing its political system. Civil society is maturing in Kazakhstan and political debate is becoming increasingly evident in political life, albeit in what is still essentially a one party system or a weak multi-party state. Kazakhstan needs to concentrate its efforts on further developing its legal system to support the development of a multiparty polity.

The country has adopted an ambitious human rights program and a long term legal concept that should be implemented in the timeframe envisioned in these documents.

Kazakhstan has much to contribute in discussions about the OSCE's human dimension, especially in the area that the government in Astana calls its concept of tolerance. Kazakhstan is a valuable example of a multi-ethnic society that is committed to inter-ethnic and inter-confessional coexistence and dialogue. It is a country which successfully completed the transition to independence at a time in which other multi-ethnic societies were fragmenting or even confronting civil war.

Introduction

The human dimension basket of OSCE is a unique mechanism for promoting human rights, the rule of law, and democracy in conjunction with security and economic cooperation. The balance between the three dimensions is essential for making each of them equally effective tools for a stable and developing wider Europe and Eurasia.

OSCE participating states have formally committed themselves to ensure full respect for human rights and fundamental freedoms. They are expected to abide by the rule of law, to promote the principles of democracy by strengthening and protecting democratic institutions and processes (including free and fair elections), and to promote tolerance throughout the OSCE area. After the end of the Cold War, the Paris Charter of 1990 reaffirmed the commitment of the OSCE to respect human rights as

universal values and recognized pluralistic democracy as a key shared value of all participating states. The Charter established an Office for Free Elections in Warsaw, which later became the Office for Democratic Institutions and Human Rights (ODIHR). As the OSCE emphasis on the human rights dimension has increased, ODIHR became one of the most important instruments of the organization. To maximize the effectiveness of the ODIHR, it is important that the OSCE chair remains committed to the organization's democratic standards.

The OSCE is among the most effective international organizations working on human dimension issues today. Its eighteen field missions are assisting new democracies in building sustainable political institutions and vibrant civil societies, but they also address critical needs such as border monitoring, crisis prevention, combating human trafficking and corruption. More widely known is OSCE's election monitoring expertise, its historic efforts to promote basic freedoms and human rights, including religious freedom and freedom of the media, association, and assembly, and its groundbreaking work in combating anti-Semitism and other forms of racism.

The Parliamentary Assembly has also played a pivotal role in enhancing the implementation of the OSCE democracy agenda through two major instruments: election-monitoring and supervising the work of national parliamentary bodies. As a result, the Parliamentary Assembly enhanced the responsiveness of national parliaments and executive bodies to fulfill the commitments made to the OSCE and implement the decisions of OSCE bodies at the national level.

OSCE has continued to develop its institutions for addressing critical needs when they arise. The post of the High Commissioner on National Minorities was established at a time when the issue of national minorities was identified as the primary source of conflict in the Balkans. Over the last fifteen years it has been a success story for OSCE conflict mitigation. After the politically generated ethnic tensions in the Western Balkans subsided, the High Commissioner's office began to involve itself with the problems faced with Roma and Sinti populations in Europe. In 2004, the Bulgarian Chairman-in-Office appointed three personal representatives in the OSCE's campaign to promote greater tolerance and combat racism, xenophobia and discrimination in its participating states. The role of OSCE in promoting gender equality and in countering human trafficking has become more visible in recent years.



Challenges to ODIHR

The Office of Democratic Institutions and Human Rights is facing numerous challenges related to its activities, field missions, and funding. As election observation is the core mission of ODIHR, it has become a point of controversy and dispute between Western democracies and Russia in particular, which has been joined by several CIS countries.

Election Monitoring: The observation of elections is an integral component of the OSCE democratization agenda. Several capitals view it as a controversial activity, especially since some governments have fallen following elections that ODIHR has deemed to be neither free nor fair. However, as important as observing elections is for the development of democracy, election monitoring alone does not lead to government collapse or systemic change. Such developments only occur when a critical mass of society is prepared to change its government and citizens feel thwarted by the election process rather than empowered by it. Election monitoring efforts also come under criticism for inconsistency when large missions are deployed to observe a highly charged election in one country while elections in another country, oftentimes equally undemocratic, are neglected. ODIHR does not observe all elections in the OSCE region for various reasons—including instances where a country has made insufficient progress towards democratizing its electoral process to warrant an election observation mission.

A growing division has emerged between states which actively advocate the spread of liberal democracy and those which fear that it will destabilize their country or their neighborhood. In particular, there have been tensions between Moscow and many other OSCE countries due to differing evaluations of political developments in the former Soviet Union, which Russia regards as its sphere of privileged zone of operations. The Copenhagen Document on Human Dimension adopted in 1990 established that humanitarian issues ceased to be simply domestic and established a mechanism to monitor them and guarantee human rights. Although Russia generally recognizes that OSCE standards should be implemented, it also claims that their observance should not be tailored to the interests of any individual group of states and that cultural, national and other differences should be taken into account. This, together with subsequent issues raised in relation to election monitoring, have created the impression in many capitals that Russia and some CIS countries would prefer to take the OSCE acquis back to where it stood before the



Copenhagen Document.

As a result of these differing positions on whether the mandate of the OSCE grants it the right to engage in what was traditionally the territory of domestic jurisdiction on human rights issues, ODIHR has suffered from numerous problems, including disagreement between Western democracies and CIS countries over election monitoring and on ODIHR's budget. The most serious clash took place in 2004 over the presidential elections in Ukraine when OSCE reported that the election was rigged while CIS observers maintained that the election was fairly conducted. In early 2008, ODIHR cancelled plans to send observers to the Duma elections citing the imposition by Russia's authorities of "severe restrictions" on the composition and duration of the planned mission, which would have made a standard long-term observation impossible.

This latter decision followed from a series of official statements made by Russian authorities criticizing the OSCE. In December 2007, Russia stated that the OSCE had yet to overcome its systemic crisis and threatened to cut funding for the organization. Russian officials argued that ODIHR needed comprehensive reforms and pressed for changes to address what it perceived as a bias against participating states located "east of Vienna" with regard to election observation. Russia proposed placing limitations on ODIHR's activities and putting the OSCE's election-monitoring body under the control of participating states.

Moscow's proposals called for reducing the size of the OSCE election missions to 50 or fewer people and limiting the number of monitors from any one country



to fewer than 5% of that total. In addition, the observers would be barred from making public assessments of the vote until after government bodies had announced the official results. An OSCE meeting on election-related issues, organized by the Finnish Chairmanship in July 2008, made clear that no consensus had emerged on these proposals. The member states of the European Union upheld the autonomy of ODIHR stressing that election monitoring “draws its credibility from two indissolubly linked elements: the autonomy conferred on ODIHR by the participating States, given that no one should be their own judge, and also the rigor and professionalism of the Office’s methodology.”

Western governments are encouraging the OSCE to redouble its efforts to promote democracy and human rights in the former Soviet Union, where, in their view, these values are threatened. In fact, preserving and strengthening the mandate and autonomy of ODIHR is viewed as a critical task by a number of participating states. The United States has expressed opposition to any effort to diminish OSCE’s credibility, dilute the commitments of signatory states, divert OSCE’s attention from tough Human Dimension issues, or undermine the OSCE’s effectiveness on the ground.

Since Russia’s proposal was initially endorsed by Kazakhstan, along with five other CIS countries, observers have raised concerns that under Kazakhstan’s chairmanship the focus of OSCE may move from the human dimension to other OSCE baskets. The commitment that Kazakhstan made in Madrid to preserve and strengthen ODIHR allayed these fears and made possible its OSCE chairmanship in 2010.

It is important to note that the mandate of ODIHR cannot be changed by the OSCE Chairman-in-Office alone, because all decisions of the organization are consensus-based. Thus only a unanimous vote of all OSCE participating states can modify ODIHR’s mandate regarding any of its established activities. It is clear that such consensus cannot be achieved given the widely diverging positions of Western democracies and Russia. Therefore, Kazakhstan will need to avoid getting bogged down in distracting and ultimately futile debates on changing ODIHR’s mandate.

Budget: The OSCE budget reflects the organization’s priorities for each year and the distribution of funds is heavily influenced by the political preferences of participating states. The budget of ODIHR has been an object of debate amidst various proposals for its reduction and restructuring.

In 2008, a fierce debate broke out about ODIHR funding, with the Russian Federation taking the lead to lower the amount of money allocated to the Human Dimension office. The Russian Central Election Commission warned that Russia would stop paying annual contributions to the ODIHR budget. According to the Russian Central Election Commission, Russia has curtailed the ODIHR funding by nearly two fold in the last five years. Moscow has gradually reduced its contributions to the OSCE budget from 7.5 million U.S. dollars in 2005, 6.8 million in 2006, and 5.9 million in 2007. However, in the last two years Russia has not repeated its threat to reduce funding to ODIHR and budgetary discussions within OSCE are focusing more on practical ways to spend effectively. At the same time, other countries’ budgetary contributions, including that of the United States, have also been declining in recent years. Participating states are facing serious challenges due to the economic crisis and the substantial military and humanitarian spending of the U.S. and other countries in Iraq and Afghanistan.

The ODIHR’s Warsaw operations have been fully funded by the extra-budgetary contributions of participating states and often specific field office activities are also supported by such contributions. The Personal Representatives of the OSCE Chairman-in-Office on combating intolerance and discrimination are funded by extra-budgetary contributions as well. Several CIS countries have made proposals in the past to reduce the amount of extra-budgetary funding to the Human Dimension body, particularly for the activities of OSCE field missions located in Eurasia.

Field Missions: The eighteen OSCE missions currently operating in the OSCE region are valuable sources of information on existing conflicts within the OSCE and allow the organization to react during conflicts and assist in post-conflict recovery. The missions also cooperate with the host country according to their mandates. The field missions provide consultations on draft legislation, assist in preparations for elections, and conduct training on a range of issues from policing and border management to judicial reform and human rights.

The decision on setting up a field mission is adopted by the Permanent Council in agreement with the host state. The mandate period is usually six to twelve months with the possibility of extension. Members of the missions are seconded by OSCE participating states, while the Head of the Mission is appointed by the Chairman-in-Office. Presently, the OSCE field missions are located in the West Balkans and the CIS: 10 in Europe (7 in the Balkans and 3 in Eastern Europe), 3 in the South Caucasus, and 5 in Central Asia.

Some participating states (Russia, Belarus, Kazakhstan, and Kyrgyzstan) have raised concerns in relation to: 1) the geographical asymmetry of the field missions; 2) their excessive concentration on the human dimension; and 3) the intrusiveness of the missions - alleging that they intrude on the internal affairs of participating states. Claims that the missions over-emphasize the human dimension and the OSCE has become a human rights watchdog are not based on facts. The missions have been involved in projects on water management, cross-border cooperation, police training, as well as in traditional OSCE initiatives such as arms control and conflict monitoring and rehabilitation. The most important role of the missions is to serve as instruments for cooperative security in all three OSCE baskets. However, they can only operate in cooperation with the host government, which sometimes limits their mandate and scope of activities. In some cases, OSCE field mission mandates have been suspended or obstructed by the host country.

The main task of the field missions is to support the government in developing its capacity to fulfill its OSCE commitments. Their presence and operations are based on cooperation with the authorities and rarely cause systemic confrontation with the host government. In many cases smaller and targeted missions with concrete tasks can achieve measurable success without any perception of intrusion in domestic politics.

The OSCE mission in Georgia was closed in 2009, because no consensus was reached in the Permanent Council to continue OSCE operations in Tbilisi after the Georgia-Russia war of August 2008. The mission was established in 1992 to promote peace talks between Tbilisi and the separatist republic of South Ossetia. The scope of its activities was later extended to include monitoring human rights developments and inter-ethnic relations in Georgia as a whole, and liaising with United Nations operations in Georgia's other separatist region of Abkhazia. The Greek chairmanship is making efforts to reopen the mission, but differing positions with Russia are preventing an agreement. The Kazakh chairmanship will inherit this problem and will need to seek a solution.

New Commitments: The OSCE's role as standard-setter in the field of human rights has somewhat diminished over the past years, as reaching consensus among participating states over new commitments has become increasingly difficult. Nevertheless, the OSCE has broadened the scope of its human dimension standards by adopting new commitments aimed to combat hate crimes, intolerance and discrimination, to counter terrorism, and to combat trafficking in human beings.

At the meeting of the OSCE Ministerial Council in Helsinki in December 2008, a number of important new commitments related to the human dimension were adopted. Participating states agreed to increase their efforts to integrate Roma and Sinti communities, with a special emphasis on education. ODIHR has also organized and supported tolerance-related programs and projects in the fields of legislative reform, law enforcement training, capacity-building for NGOs, education on the Holocaust and anti-Semitism, and all forms of anti-ethnic, racial or religious prejudice, including Islamophobia.

Participating states have also agreed to strengthen criminal justice responses to trafficking in human beings through a more comprehensive approach, and to step up efforts to strengthen the rule of law in a wide range of areas. The OSCE continues to be the pre-eminent Europe-wide institution for confronting trafficking-in-persons. The OSCE's geographic breadth helps to address the transnational nature of the problem, with much front-line work taking place in OSCE field operations. The Chairman-in-Office's Special Representative and the OSCE Anti-Trafficking Assistance Unit (ATAU), as well as ODIHR, work to combat trafficking through specialized police training, legislative advice, and other assistance.

The OSCE participating states approved the Plan for the Promotion of Gender Equality in 2004, and since then the OSCE has sought to promote the Plan throughout the OSCE region and within the organization itself. The Finnish OSCE Chairmanship in 2008 highlighted the importance of mainstreaming the gender perspective into all three dimensions of the OSCE's work—the politico-military, the economic and environmental, and the human.

Kazakhstan and the Human Dimension

Kazakhstan's slow progress in implementing OSCE democracy standards has been the main challenge to its chairmanship. Kazakhstan's ability to lead by example, given its highly personalized and centralized political system, has been questioned by human rights organizations. In addition, past Russian attempts to diminish the role of ODIHR have spurred speculation that Kazakhstan's chairmanship might be used by Moscow as a vehicle to achieve its goals to modify and weaken ODIHR's mandate.

At the OSCE Madrid Ministerial Meeting in November 2007, which designated Kazakhstan as OSCE chair for 2010, Kazakhstan committed itself to protect the OSCE's core human dimension mandate, including the autonomy and current mandate of ODIHR, and also to advance specific domestic political reforms before the end of 2008. The two issues, domestic democratic reforms and the preservation of ODIHR mandate, are related but distinct.

Regardless of the condition of its domestic democratization, Kazakhstan has the capacity to be a responsible Chair-in-Office on the human dimension question with regard to preserving the functions of ODIHR. A country does not need to be a fully-fledged democracy to have capable diplomats necessary for a successful chairmanship. Kazakhstan needs to deliver on its promise to chair responsibly according to the core OSCE principles. At the same time, other member states have the right and will continue to convince Kazakhstan to deepen its democratic reforms and strengthen the rule of law. Astana is already feeling the pressure to move faster on its democratization agenda. In 2009, the government introduced a major human rights program even though the year was marked by the adoption of a controversial Internet law and questions about the sentencing of a prominent human rights activist on vehicle manslaughter charges.

The Kazakh Mazhilis (parliament) passed amendments to the laws on the media, political parties and elections

in 2008, but they were largely considered insufficient to meet the commitments made in Madrid. Following the adoption of the new legislation, the U.S. government stated that they marked a step forward on Kazakhstan's path to democracy, but urged Kazakhstan to take further measures to create the conditions for advancing political pluralism. Such a program must include legislation ensuring that all political parties are represented on independent electoral commissions and that registration hurdles for political parties are reduced. Kazakhstan was also encouraged to improve its media legislation to include the decriminalization of libel.

Commitment to liberalize the media law

While Kazakhstan's new media law has reduced administrative burdens on media outlets, the OSCE's Representative for Freedom of the Media has stated that the law still fails to meet several international standards. These standards include fully decriminalizing libel; delegating registration of media outlets to an independent body; abolishing laws criminalizing breach of secrecy by citizens, including journalists; and abolishing the use of closure or confiscation of circulation as a penalty, among others.

In 2009, parliament adopted changes to several laws, including the media law, to regulate the content of all Internet sites distributed on the territory of Kazakhstan. Under these changes, Internet sites, which regularly distribute information to the public, are considered mass media and therefore subject to the restrictions of the media law. A court of law can order Internet providers to remove Internet content that violates the country's laws. The grounds for suspending the distribution of mass media products through Internet include: propaganda or agitation encouraging the violent overthrow of the constitutional order; propaganda promoting the country's disintegration and undermining the security of the state; propagation of war, extremism and terrorism; and publication of material and distribution of information aimed at kindling inter-ethnic and inter-religious animosities.

The amendments caused controversy and generated international criticism. The U.S. government has stated that in order to meet OSCE commitments to wider and freer dissemination of information and freedom of expression, a key aspect of which is access to the Internet, Kazakh law should secure such access for all citizens of Kazakhstan.

Commitment to reform the election law

The amended legislation on elections preserved the relatively high threshold of seven percent for political parties to enter parliament, but included provisions for a second party to send members to the Mazhilis. If only one political party receives seven percent of the votes, the party with the next highest percentage of votes will receive seats in the parliament. The legislative changes have fallen short of providing for representation of opposition political party or civil society representatives on election commissions at all levels and granting the right to nongovernmental opposition groups to observe elections. Currently Kazakhstan has a one-party parliament controlled by the presidential party Nur Otan. The parliament was elected in 2007, after changes introduced in May 2007 slightly enhanced parliament's powers.

Commitment to liberalize political party registration requirements

The law on political parties was amended to reduce the required membership for registration (from 50,000 to 40,000 members), but created new cumbersome procedures for registering the initiative committees of new political parties. The amendments created a two-staged registration process in which parties must register an organizational committee prior to registering a party, precluding parties from gathering signatures and holding a party congress until the organizational committee is registered. While Kazakhstan has a great deal of work to do in the area of political party development and pluralism, government officials have stated that this is only the beginning of the reform effort and the democratization process will not stop with these changes.

As Kazakhstan's government initiated a "follow up mechanism," providing for consultations with ODIHR experts on the implementation of political reforms recommended by the OSCE, the international community has an open window through which to assist and encourage the authorities in Astana. Participating states will likely continue prodding Kazakhstan to move faster on domestic political reforms during the next year when the country chairs OSCE. The position of a chair has already made Kazakhstan more exposed to international scrutiny of its own democratic progress.

Core OSCE commitment to support freedom of religion
The government of Kazakhstan has taken some welcome steps to improve the situation of smaller religious

communities in recent months, such as registering the Atyrau branch of Jehovah's Witnesses and revoking court decisions that suspended the activities of three Jehovah's Witnesses' communities. In a positive development, the proposed restrictive law on religion adopted by the Mazhilis in 2009 was ruled unconstitutional by the Constitutional Council in February 2009.

OSCE commitment to promote representation of national minorities

As the OSCE Chair, Kazakhstan will be in a pole position to focus on human security, specifically strengthening tolerance and non-discrimination. The Kazakh authorities are proud of their efforts to ensure inter-ethnic and inter-confessional accord and they view this as a significant achievement in the human dimension that can be shared more broadly within the OSCE community. There are 130 ethnic minority groups in Kazakhstan and their assembly (the Assembly of Nations) is represented by nine deputies in the lower house of parliament (Mazhilis). The parliamentary seats are reserved for representatives of the national minorities in a mechanism similar to practices of some parliaments in European countries intended to broaden ethnic representation. However, since the MPs from the minority groups are elected indirectly by the Assembly of Nations, and not by popular vote, this mechanism has been criticized by international organizations. The OSCE High Commissioner on National Minorities has stated that minorities should be allowed to elect their own representatives in a direct vote, with more than one candidate contesting each of the nine seats; and that mainstream political parties should be encouraged to field minority candidates in individual constituencies and to give them prominence on party lists.

The National Human Rights Action Plan 2009-2012 and the Concept for Legal Development of Kazakhstan

The new program for reform—the National Human Rights Action Plan 2009-2012, signed by Kazakhstan's President Nursultan Nazarbayev in May 2009, envisions substantial progress in the human dimension during the next three years. The Plan was prepared in cooperation between the Kazakh government, the United Nations Development Program, non-governmental organizations, and other UN agencies and partner organizations, including the OSCE Center in Astana. It was preceded by a baseline study and report on human rights in Kazakhstan that analyzed the national legislation, law enforcement practices, and compliance with international law provisions in human rights protection. The Human Rights Commission and the

group working on the Plan closely studied the breath of international experiences.

Kazakhstan has also supported the establishment and work of the UN Council on Human Rights and has initiated the Universal Periodic Review process, thus sending positive signals about its commitment to the human rights agenda. The proposed program presents a comprehensive strategy for reform in key areas—from political liberalization and media freedom to freedom of association and religious beliefs, and recommends further liberalization to the recently amended laws on elections, political parties, and the media.

The Action Plan corresponds with the provisions of the Concept of Legal Policy of Kazakhstan from 2010-2020, which has been recently approved in order to further define the main directions of legal policy. Representatives of civil society took an active part in the development of the Concept. The Concept is intended as a foundation for the development of programs in the sphere of legal policy and is projected to bring Kazakhstan's legal system closer to international standards in such areas as the constitution, administration, taxation, customs, as well as civil, financial, and criminal law. It envisages reforms in law enforcement, the judiciary, and the protection of human rights.

Recommendations for Kazakhstan's OSCE Chairmanship on the Human Dimension

- Strengthen the ODIHR mechanism by proposing ways in which the Office can more effectively monitor and promote a broad range of governance issues, including government accountability, transparency, implementation of the rule of law, and official corruption;
- Enhance the efforts of ODIHR to promote tolerance throughout the OSCE regions;
- Work on resuming ODIHR's assistance to Georgia and its war affected regions;
- Continue OSCE election monitoring in countries outside the OSCE region such as Afghanistan and make this mechanism available to other OSCE Partners for Cooperation;
- Continue and enhance efforts to democratize Kazakh society, ensure respect for human rights and support political pluralism by implementing the National Human Rights Action Plan 2009-2012 and the Concept of Legal Policy of Kazakhstan.

ABOUT CSIS AND IND

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