

Constitutional Reform in Uzbekistan: A Symposium

Svante E. Cornell, ed.

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A Joint Transatlantic Research and Policy Center
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www.silkroadstudies.org

“Constitutional Reform in Uzbekistan: A Symposium” is a *Silk Road Paper* published by the Central Asia-Caucasus Institute and Silk Road Studies Program, Joint Center. The Silk Road Papers Series is the Occasional Paper series of the Joint Center, which addresses topical and timely subjects. The Joint Center is a transatlantic independent and non-profit research and policy center. It has offices in Washington and Stockholm and is affiliated with the American Foreign Policy Council and the Institute for Security and Development Policy. It is the first institution of its kind in Europe and North America, and is firmly established as a leading research and policy center, serving a large and diverse community of analysts, scholars, policy-watchers, business leaders, and journalists. The Joint Center is at the forefront of research on issues of conflict, security, and development in the region. Through its applied research, publications, research cooperation, public lectures, and seminars, it functions as a focal point for academic, policy, and public discussion regarding the region.

© **Central Asia-Caucasus Institute and Silk Road Studies Program, 2022**
ISBN: 978-91-88551-34-4

Printed in Lithuania

Distributed in North America by:
Central Asia-Caucasus Institute
American Foreign Policy Council
509 C St NE, Washington DC 20002
E-mail: info@silkroadstudies.org

Distributed in Europe by:
The Silk Road Studies Program
Institute for Security and Development Policy
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Introduction

Svante E. Cornell

How does political change happen? This question, which has occupied the minds of scholars and analysts for many decades, has been especially vexing for the broad lands that include the Middle East and Central Asia. Samuel P. Huntington identified a “third wave” of democratization between the mid-1970s and 1990, and the collapse of the Soviet Union appeared to confirm that democracy would now spread unhindered across the world. But in the Middle East and Central Asia, this did not happen. Quite to the contrary, in spite of some liberalizing efforts in the 1990s, what occurred in this region was more akin to what Huntington, who passed away in 2008, would have called a “reverse wave” – with authoritarian governments proving not only resilient but able to consolidate control over societies.

The political stagnation of the broader region led to considerable frustration among foreign well-wishers of these regions – and more importantly, among large strata of people in these regions that experienced heavy-handed government, mismanagement, and systematic corruption. Between 2003 and 2011, popular revolts overthrew a series of governments – first in the post-Soviet space, particularly Georgia and Ukraine, and subsequently in the Middle East and North Africa. These upheavals were met with great enthusiasm in western circles, who were convinced that democracy had finally come to the Middle East and North Africa.

Except it did not work out that way. The “Color Revolutions” in the former Soviet Union and the Arab upheavals largely failed, as no country

that experienced these upheavals has progressed in a sustainable way toward democracy. Most are worse off than before these upheavals. Libya, Syria and Yemen have descended into civil war. Georgia and Ukraine were invaded by Russia, in part because of their political changes, and Kyrgyzstan descended into instability, with two additional upheavals as well as ethnic rioting. Egypt almost saw state capture by the Muslim Brotherhood, which was only undone through a military intervention that proved lasting. For some time, Georgia and Tunisia appeared to go against the grain, and make sustained progress – but in recent years, those two have backtracked significantly. While many of these societies underwent change that increased the level of pluralism in the political system, mostly they did not succeed in addressing underlying causes of public frustration, such as mismanagement and corruption. All in all, it seems clear that revolution did not prove a sustainable model to liberalize societies.

In the past several years, however, an alternative model of political change has been on display in the region – an evolutionary model of political development. Following the political and economic upheavals of the past decade, the leadership in some countries appear to have concluded that “business as usual” is no longer feasible; they must answer to popular demands for change, while seeking to manage the political process to maintain stability and avoid upheavals. As a result, they have implemented reforms from the top down, seeking to improve the efficiency of government and in a controlled and gradual manner expand political rights. This is happening in countries as diverse as Azerbaijan and Jordan, Kazakhstan and Morocco. But Uzbekistan plays a particular role because of the sheer rate of change in the country.

Nowhere is the contrast between the “before” and the “after” as dramatic as in Uzbekistan following the accession to power of President Shavkat Mirziyoyev. While paying respects to his predecessor Islam Karimov,

Mirziyoyev departed dramatically from Karimov's approach to both foreign and domestic policy, unleashing a torrent of reform initiatives that have changed Uzbek society for the better.

Of course, it should be understood that the evolutionary process of reform will not turn Uzbekistan, or any other country engaging in it, into a model democracy in the short term. That is not the purpose of these reforms. That does not mean these reforms are "cosmetic," as they are frequently called: they are highly ambitious in scope, because they aim to fundamentally change the relationship between state and society. It should be recalled that in the Soviet system, the individual was subordinated to the all-powerful state. This in turn bred impunity and corruption, as documented already in 1982 by Soviet exile Konstantin Simis in his book *USSR: the Corrupt Society*. This Soviet legacy is one that in some ways continues to this day – but is one that reformist leaders like President Mirziyoyev are now trying to reckon with. In the place of the old logic, they are seeking to turn the tables, and turn state institutions into bodies that exist to serve the citizens of the country rather than to control them or extract rents from them.

This is the background to the constitutional reform process in Uzbekistan, launched in the summer of 2022. As such, it is not an isolated event, but very much a step in the process of reforms that have been introduced since President Mirziyoyev acceded to the presidency in 2016.

This process is one that the Central Asia-Caucasus Institute & Silk Road Studies Program documented in several entries in the Silk Road Papers series, and in the 2018 book, *Uzbekistan's New Face*. This time, the Joint Center was pleased to have the opportunity to cooperate with the Center for Development Strategy in Tashkent to organize a Symposium on the constitutional reform process. This event, held in July 2022, provided an

opportunity for Western and Uzbek researchers to exchange views on the reforms process. This publication is a collection of their presentations.

We are grateful to the authors of these papers and to the Center for Development Strategy, and particular its Director Eldor Tulyakov, for the opportunity to bring these papers to print.

Uzbekistan's Constitutional Reform in Regional Perspective

Johan Engvall

Since taking charge of Uzbekistan in 2016, President Shavkat Mirziyoyev has set out a vision of creating a “New Uzbekistan”. During the past six years, Uzbekistan has recorded impressive achievements in economic, social and foreign policy. Meanwhile, reforms to the political system have been less substantial, leading international observers, such as Freedom House, to conclude that there are few signs of democratization. After securing a second term in office, President Mirziyoyev in November 2021 argued for the need of accelerating Uzbekistan's political modernization, designating constitutional reform a first order priority.

This analysis outlines some of the main priorities of Uzbekistan's proposed constitutional reform and places these in a regional perspective. It further discusses the limits to formal reforms of political systems in which power to a considerable extent is wielded informally. The final part discusses the current reform initiatives in Central Asia in light of the region's ongoing societal transformations in Central Asia, which generate popular demand for more representative and accountable governments.

What is in Uzbekistan's Constitutional Amendments?

On June 20, 2022, in a speech to the country's Constitutional Commission, President Mirziyoyev presented the basic outlines of these reforms, which will be subject to a national referendum. Four priority areas were identified: elevation of human dignity, codification of Uzbekistan as a social state, specification of the role of the mahalla in the constitution, and

improving governance. All of these areas appears to have one thing in common – the idea of fostering a stronger, more caring and responsive relationship between citizens and the state.

The first priority area, described with the phrase “elevation of human dignity” includes a reaffirmation to citizens’ inalienable right to life. Special emphasis is paid to protecting the rights of people placed under law enforcement detention, an area where public officials notoriously have acted with impunity.

The second priority is to establish in the constitution the idea of Uzbekistan as a social state caring for the wellbeing of its citizens. The constitution should explicitly reflect the state’s obligations to provide the population with housing, strengthen the family as an economic and spiritual unit, protect the interests of children and people with disabilities, and protect human health and the environment.

The third priority relates to the status of the local neighborhood community – the mahalla – and its relationship to state bodies. The constitution should reflect that the mahalla is separate from the state bureaucracy, but is empowered to solve issues of local importance. To this effect, it is entitled to state support.

The fourth priority concerns improving governance. The thrust here is that the state, its constitutive bodies and human resources must better serve the needs of the population. The amended constitution should therefore include principles that secure openness, transparency and accountability in the bureaucracy. The president also proposed that initiative groups can submit legislation as long as they can muster the support of 100,000 people.

Overall, the purpose of Uzbekistan’s political reforms is to transform the state into a more efficient and well-functioning entity; a state with the

ability to be more responsive to the demands of the citizens than has been the case until now. In contrast, the reform package is much less geared toward exposing the political system to real competition.

The Drive for Constitutional Change in Central Asia

Constitutional referendums are nothing new to Central Asia. Both Uzbekistan and Kazakhstan have held constitutional referendums before, in 2002 and 1995 respectively, and both Kyrgyzstan and Tajikistan have held multiple plebiscites. However, in the past year, constitutional reform has gained renewed momentum in the region. Uzbekistan's upcoming constitutional referendum occurs against the backdrop of such events in Kyrgyzstan in April 2021 and Kazakhstan in June 2022, making a closer look at these two cases warranted.

Kazakhstan's recent constitutional reform took place in response to mass protests in early January this year. The protests, which turned violent, threw the country into its deepest political crisis since independence and even led President Tokayev to invite CSTO troops to help him secure his hold on power. In a speech to the nation after the January uprising, President Tokayev announced his intention of building a "New Kazakhstan", thereby mimicking Mirziyoyev's idea of a "New Uzbekistan" several years earlier.

To accelerate reforms, he set a referendum on constitutional amendments to implement gradual change to the political system. On June 5, 77 percent of Kazakh voters endorsed the changes. Amongst the most consequential of these were an effort to better balance the presidential powers with a strengthened legislative branch as well as changes to the electoral system and the electoral process. Other changes included measures to strengthen

the party system, administrative territorial reforms and greater independence and autonomy of local governments.

Kyrgyzstan, in turn, underwent its eleventh – a remarkable number – constitutional overhaul a year earlier. During its first two decades of independence, Kyrgyzstan's amendments to the basic law had largely served to elevate the powers of the presidency relative to the government and the parliament. However, in 2010 Kyrgyzstan set out on a different path, toward a parliamentary form of government.

The constitutional reform of 2010 gave the legislature greater powers and decentralized executive power. The rationale behind this parliamentary-style constitution was to provide an insurance against the kind of corrupt presidential rule that had plagued the country during the presidencies of Askar Akayev and Kurmanbek Bakiyev. In practice, however, the constitutional reform did not prevent a return to presidential authoritarianism. Over the course of its "parliamentary decade", Kyrgyzstan's democratic progress backtracked according to Freedom House and other international democracy observers.

Why did Kyrgyzstan's at the time much touted parliamentary experiment fail to succeed and become a model for other countries in the region? The overarching problem laid in the ambiguity of the constitutional design itself: it raised the status of the prime minister without sufficiently diminishing the powers of the president. While the president was restricted to a single six-year term and no longer had the right to initiate legislation, the president nonetheless retained significant powers, such as controlling foreign policy and national security as well as the right to veto legislation. Combined with informal influence, these formal levers allowed Kyrgyzstan's presidents to re-establish the presidential office as the focal point, towards which all the other political institutions gravitated.

Neither did Kyrgyzstan's parliamentary-style constitution encourage any of the major political actors to carry out reforms. First, the single mandate tenure provided the president little incentive to endorse reforms in a bid to seek re-election. The absence of a scheduled election further meant that there was no way to hold the president accountable. Second, the unstable nature of Kyrgyzstan's coalition governments undermined the position of the prime minister, who faced the threat of removal from the outset. During Kyrgyzstan's decade of parliamentarism, the country's prime ministers, on average, remained in office for less than a year.

Finally, Kyrgyzstan's weak and hyper-fragmented political parties, which the 2010 constitution placed at the center of the political system with the task of forming viable coalition governments, were ill-suited to serve as a channel between the citizens' and policymaking. A political system constructed around an abstract and immature party system with little to offer in terms of concrete policy, the gulf between the political elite and the people widened.

Overall, this form of "parliamentarism" hollowed formal institutions and weakened governance further. Unsurprisingly, following the political upheaval in October 2020, the new leadership made as its top priority to return the country to a presidential form of government. A new presidential constitution was adopted by Kyrgyz voters in April 2021.

Neither Uzbekistan nor Kazakhstan have been attracted to the type of repetitive and often hasty constitutional machinations pursued by Kyrgyz politicians. Both countries' political leaderships fear that uncontrolled liberalization could lead to political instability and ultimately to regime collapse. Neither President Mirziyoyev nor President Tokayev seeks a departure from a presidential system. This is hardly surprising given the problems experienced not only in Kyrgyzstan, but also in Armenia and

Georgia, two other post-Soviet countries that have introduced parliamentary forms of government.

While Armenia, Georgia and Kyrgyzstan have been characterized by greater political competition, they have nonetheless struggled with severe governance problems. Georgia saw a protracted political stalemate after the contested 2020 parliamentary election and Armenia has been hit by recurring mass protests in recent years. These cases clearly illustrate that combining political competition with effective governance and sustainable economic development has proved a difficult task in democratizing states.

These lessons suggest the need to prioritize some goals over others. In particular, the state must first get its core governance functions in place, such as the provision of elementary law and order and basic economic and social security, before a viable form of government characterized by meaningful political competition is likely to take hold.

The Limits of Formal Reforms

Formal reforms are one thing. But the fact is that real power in Central Asian countries continues to a large extent to be informally wielded. Thus, while formal rules, such as constitutions, can be altered quickly, informal norms, cultures and behavioral patterns typically change at a much slower pace. Constitutional changes are thus no silver bullet for bringing about a bureaucracy that is more responsive to the needs of the citizens. The implementation of real changes in Uzbekistan will require a shift in the mentality of the country's political and bureaucratic elite, which will require time.

In most post-Soviet countries, public officials very much remain trapped in a bureaucratic mindset that is detached from the needs of citizens. Incentives, accountabilities and rewards continue to be based on how

many decrees they issue or how well their work corresponds to some internal plans and quotas to be fulfilled. In this system, officials are not evaluated in terms of the actual services they provide for citizens and, as a consequence, they have scant incentives to ask themselves what they can do for the citizens. In this context, behavioral changes will hardly come about just by adopting new policies. No one wants to change unless there are some real incentives for doing so.

Thus, the bulk of the initiatives that we see in countries like Uzbekistan and Kazakhstan focuses on supplying change, i.e. enacting new laws, new policies, etc., while paying less attention to the necessity of generating a demand for change from inside public bodies themselves. As long as there are no concrete consequences attached to failing to introduce changes and improve effectiveness, there will be business as usual for officials. In short, to be successful, incentives must be created that actually motivate officials to approach their work in a new manner.

Why Now?

Uzbekistan and the other Central Asian countries are no longer newly independent states. More than thirty years have passed since the sudden dissolution of the Soviet Union. Since then, these countries have gone through major changes. They have developed distinct national identities, protected their sovereignties and become ever more assertive on the international arena.

Over the past three decades, they have retained top-down political systems with a Soviet-trained elite still at the helm. They have largely relied on what can be labeled super-presidential systems of government underpinned by a vast Soviet legacy bureaucracy, in which government

employment is seen in equal measures as an instrument of control over the populations and as a source of rents to be extracted from it.

Now, however, these post-Soviet systems are lagging behind societies that are shattering their Soviet legacies, growing civic awareness and changing at a rapid pace. A large generation between the ages of 20 to 40 is now coming to the fore. In Central Asia, more than 70 percent of the population is below 40 years old, with an outlook on life that is thoroughly shaped by developments since independence.

These younger generations are more diverse compared to the uniformly trained Soviet generation; different identities and worldviews are competing for the hearts and minds of the youth. And they are creating popular pressure for more responsive and accountable states to emerge. For example, during the January 2022 uprising in Kazakhstan – which forced Kazakh President Kassym-Jomart Tokayev to accelerate political reforms – the main actors were young people of roughly the same age as the independent state itself. Now, they want to have a say over the country's future, and they are willing to risk more than their parents could stomach.

In Uzbekistan, President Mirziyoyev after coming to power sensed the need to take tentative steps towards establishing a new kind of relationship with citizens. One of his first initiatives in launching the “new Uzbekistan” was to establish a hotline to give citizens a direct communication channel to him. He also repeatedly spoke of fostering greater citizen participation at the local level, including elections of local governors, only to seemingly drop this idea from the proposed constitutional amendments.

Parts of the constitutional reform package – the idea of a social state, a stronger role for local neighborhood communities and improved governance – nonetheless appear to reflect a growing understanding that a

rapidly changing society must become a key pillar of the state. The outstanding issue is whether the attempt to build stronger ties between state and society can really be accomplished through the old top-down methods, and through control of the media.

The protests and violence in Nukus, following the proposal to change the constitutional status of Karakalpakstan – from an autonomous region with a constitutionally granted right to hold a referendum on secession to an indivisible part of Uzbekistan – illustrate the danger of engineering reforms without truly engaging in a direct conversation with the public. Eventually, the president admitted as much when he backtracked on the proposed change to Karakalpakstan's status, implying that it was a miscalculation and not what people had expected.

In conclusion, the paramount challenge for Uzbekistan is for the government to manage to fulfill peoples' expectations. When the government promises reforms and consultations with the public, they are making themselves increasingly vulnerable if they fail to deliver on these promises. These are the lessons to learn from Kyrgyzstan's recurrent protests, the events in Kazakhstan in January this year, but also from the unprecedented local protest in response to the initial proposal to remove Karakalpakstan's regional autonomy.

Constitutional Reform in the New Uzbekistan

Mirafzal Mirakulov

Comprehensive reforms have been initiated to build a New Uzbekistan. The Development Strategy of the New Uzbekistan has been adopted. During the last six years, our people and society have been striving for a new way of thinking, working and living. In order to provide more stamina and spirit to these processes of democracy and renovation and to deepen them, many recommendations and opinions regarding amending the existing Constitution were suggested in the past presidential elections.

Therefore, to realize our people's wishes and desires, a Constitutional Commission was established by the Chambers of Oliy Majlis. The Commission has developed a related project based on the recommendations provided by our people and the bill was introduced to the Parliament by deputies of the Legislative Chamber.

Wide-scale discussions of the Law "On Amendments and Additions to the Constitution of the Republic of Uzbekistan" has been taking place since June 25. The bill was formulated based on thousands of recommendations received by the Constitutional Commission and was based on the idea that "The people is the sole source and author of the Constitution".

The foremost aim of the bill is to implement the noble idea of "Human interests are above all" and deepen the "Human – Society – State" approach to the content of our Constitution and turn this idea into the overall value in our lives.

The Preamble of the updated Constitution clearly states what kind of society and state are to be built in Uzbekistan.

The following is reflected in the preamble:

We, the people of Uzbekistan, with the purpose of building and strengthening a humane, democratic, social and secular state that cares about dignity, values, interests, and the well-being of its people, and being aware of our significant responsibilities in front of the current and future generations, striving for open, just, civil society, and proving our loyalty to such ideas as democracy, social justice, freedom and equality, to preserve the environment, and strengthening and developing harmonious, friendly relations of Uzbekistan with the world community and especially with the neighbours based on the ideas of mutual support, partnership, respect, and peace, to provide civic, international and interconfessional peace, adopt and proclaim the given Constitution of the Republic of Uzbekistan.

According to the proposed amendments, as Immanuel Kant states, human beings should not be treated as a means of achieving a goal, instead, they must serve as an end goal and source and the highest value of that aim.

For the New Uzbekistan, this means, "the value of human beings and their interests are above all." Therefore, the elevation of human value should be treated as a duty and predominant task of state government organizations. These principles had to be clearly stated and find a perfectly legal solution in the renewed Constitution.

Sixteen amendments have been introduced to the Constitution of the Republic of Uzbekistan. These amendments mainly concerned the State Government section. The difference in the current amendments is that the Constitutional Commission has received most of the recommendations regarding human rights and freedoms. Therefore, the current bill aims at amending the second part of the Constitution. We can call this part of the Constitution a "Bill of Rights" as introduced to the Constitution of the United States in 1791.

Their content matches the idea that the essence of law is to love a human being, as was stated by William Shakespeare. From this point of view, the bill concentrates on the leading ideas of world constitutionalism. In

particular, it emphasizes that respecting, protecting and adhering to human values, rights and freedoms are the duties of the state. Further, that direct implementation of human rights and freedoms predetermines the implementation of laws, activities of state organs and their officials.

Legal sanctions against persons must be sufficient for a state organ to achieve a legal goal and must, to the extent possible, refrain from inconveniencing the stakeholder. In the interaction of individuals with state organs, any misunderstandings and oppositions in legislation must be interpreted in favor of the individual.

Fundamental human rights and freedoms are inseparable and inviolable and are entitled from birth. Ensuring observance of human and citizens' rights and freedoms is the state's highest goal.

When it comes to human dignity, the first thing that comes to mind is the right to life. Therefore, the bill includes a norm prohibiting the death penalty in the Republic of Uzbekistan. This is how we declare that we will never go back in this principal matter and are always loyal to the ideas of humanism.

In addition, from the perspective of guaranteeing human freedoms, an important component of human dignity, it is proposed to strengthen the institution of *habeas corpus* by including the "Miranda Warning" in the Constitution.

The proposed amendments also outline the state's essential qualities: "constitutional, social, secular".

The content of the amendments reflects the mechanisms of implementing these rules. In particular, the following are given as essential elements of the rule of law:

- Any person has the right to free personal development and has the right to be involved in any activities that are not restricted by law and that do not infringe other people's rights and freedoms;
- Every person has a right to protect his/her rights and freedoms by any means that are not restricted by law;
- Every person has a right to restore their infringed rights and freedoms in lawsuits that are conducted by competent, independent and objective courts within a reasonable time frame on the basis of principles of equality, debates and justice;
- No person shall be charged with the same crime;
- No person shall be charged with deeds that were not determined as a crime at the time of commitment;
- No person shall be charged, convicted, and liable to confiscation of property or infringement of rights according to laws which are not officially announced;
- No person shall be deprived of their property except by a court decision. Compulsory alienation of property for state needs can be made only on the condition of preliminary and equivalent compensation;

The amendments include essential elements of a secular state that are reflected in ensuring freedom of activities of religious confessions under laws in the Republic of Uzbekistan; the state ensures their coexistence.

The theme of the "Social State" is an important element of the amendments, but is treated in another contribution to this volume.

The amendments consider the rights and interests of all primary segments of our society. They comprise the norms concerning youth and children, women, persons with disabilities, people needing social protection, and our citizens and compatriots who live and work abroad. In particular, the bill prohibits rejection from employing pregnant women and women with

children, their dismissal and transfer to a lower-paid job. The state ensures necessary conditions for the spiritual and moral education of children; and guarantees social and economic conditions for the comprehensive development families and ensures that there is a provision of benefits and social guarantees to families with many children; the state policy's leading direction is guaranteeing the interests of children, creating all conditions for their comprehensive, physical, mental and cultural development.

The state guarantees that there is a provision of housing for citizens with low-income and who need housing and its improvement; the state also ensures all conditions for the implementation of the rights and interests of people with disabilities, as well as preserving and developing relationships with citizens and compatriots who live abroad.

The amendments also consist of norms that concern the development of civil society and increasing civic engagement. In particular, for the first time, it is determined in the Constitution that building an open, civil society is our supreme goal. The third chapter of the Constitution is titled "Civil Society and the Individual". For the first time, the Constitution reveals the notions of civil society institutions.

To widen citizens' participation in matters of state, they can introduce their suggestions to the Legislative Chamber of the Oliy Majlis if no less than 100,000 citizens provide them. This way, now, the people have the right to act as initiators and producers of laws.

For the purpose of the clear-cut definition of the status of mahalla and defining the tasks of state organs in the matters of mahalla in the Constitution, it has been determined that the mahallas are not considered an integral part of the system of government organs and their powers on solving local matters independently have been defined separately.

It has also been noted that citizens and civil society institutions have the right to establish a social oversight on forming the state budget of the Republic of Uzbekistan and its implementation.

In formulating the amendments, particular attention was paid to the idea that all segments of society, be it a man or woman, young or old, people with disabilities, of different ethnicities and faiths, would consider the constitution as their own and see their rights and interests in it.

The proposed amendments deserve particular attention as they contain a lot of phrases such as "the state guarantees", "the state ensures", and "the state cares".

Experts, along with strengthening the rule on the direct implementation of the Constitution, also tried to determine exact mechanisms that ensure the real-life performance of the Constitution.

In preparing the proposed amendments, international documents, constitutions of world countries were used, but it is worth mentioning that there is no standard model for developing a constitution worldwide. As Jean-Jacques Rousseau stated, a wise legislator begins not with publishing laws but with studying their suitability for a given society. And from this perspective, all states around the world improve their constitutions, considering their nations' needs, national identity, social-political, social-economic conditions, people's political and legal minds, mentality, political parties, and the level of development of civil society institutions. That is why a constitution of an any given country reflects the will, spirit, mind and culture of the people who live there. As is frequently said, a Constitution is the product of the people's political wisdom and thinking.

Constitutional Amendments and the Rule of Law

Mjuša Sever

The last three years were very challenging not just for Uzbekistan and the Central Asia region, but globally. The first shock was the Covid-19 pandemic, which substantially delayed in-person cooperation and switched the focus of the government and population to the medical emergencies for most of 2020. This was followed by another shock, when the U.S. and the international community implemented the withdrawal from Afghanistan in August 2021. Uzbekistan continues to play a major role in strengthening Central Asia as a region, also being among the few international actors to keep intensive contacts with the Afghanistan temporary government, thus playing a very important role in securing international stability and security. In the beginning of 2022, a third shock rocked the region – the riots in Kazakhstan, followed by the CSTO intervention to restore stability there. These events, which remain to be fully investigated or explained, led to significant changes in the government and top leadership of Kazakhstan, including the marginalization of the country's former President and his entourage.

An issue well noticed in Uzbekistan during this period was the direct threats to Uzbekistan articulated by Belarusian leader Alexander Lukashenko during an unusual live meeting of CSTO presidents, stating that Uzbekistan could be the next to experience such events. It should be noted that Uzbekistan left the CSTO in 2012, precisely for the reason of opposing such international interventions into a sovereign country. Then came February 24, 2022, and the Russian invasion in Ukraine. Uzbekistan decided to continue its declared “multifaceted” foreign policy and to step up its intensive outreach to all parts of the globe. The country's leadership

continued to implement domestic reforms and intensified foreign policy activities also in the Central Asian region. Additionally, it significantly expanded its efforts to provide alternative transit corridors for foreign trade through Afghanistan and Pakistan, researched options for a new route through the Caspian, and even through the Middle East. It intensified its efforts to become a member of the WTO, strengthened its relations with the EU and with the U.S., as well as with Canada and Brazil.

Rule of Law Developments

Many presidential decrees of recent years addressed improving the criminal justice system. The announcement of reform of the criminal justice codes (CC, CPC, CEC) and a new Advocacy Law were among the most important ones. A legal expert from Regional Dialogue was a member of the working group in its initial review and Regional Dialogue, with its U.S. and EU experts, also participated in the initial draft of the concept of the new Advocacy Law, developed by the Chamber of Advocates.

However, the process was interrupted due to COVID-19 restrictions and slowed down. Later, it was picked up by the presidential administration with very little public reporting on where things stand. It was apparent that inter-agency cooperation was insufficient. Such reforms demand more open discussions among the judicial actors. It is not clear whether there is substantial agreement reached to finalize new codes or to amend the existing ones.

The next major initiative initiated by a presidential decree shifted the focus to combatting corruption. An Anticorruption Agency was set up by the presidential decree in June 2020. The main purpose of the agency was to take over the preventive and monitoring function, while the actual

prosecution of corruption was assigned to prosecutors and law enforcement.

These efforts were accompanied by intensive coverage in the Uzbek media. Akmal Burkhanov, a well-known lawyer educated in Japan and a media skilled former leader of a government-oriented NGO was appointed the Director of the Agency. Umida Tukhtasheva, a former Dean of the Criminal Justice at Tashkent State University of Law and well known in the legal community for her outspoken role in reforming criminal justice, was appointed Deputy Director.

The draft legislation on the mandate of the Agency and the draft law on asset declaration and compliance in prevention of conflicts of interest was highly evaluated by international experts. Yet the deadline for the asset declaration that should include all top-down senior officials, including the president, was not met, since the laws were only submitted to parliamentary procedure in June 2022. Deadlines were postponed several times. No legislation has been passed through the parliamentary chambers to date.

The nationwide movement Yuksalish, led by young M.P. Bobur Bekmurodov with very active representatives in all Uzbek regions, implemented the first ever corruption risk assessment research, in cooperation with AC Agency and Regional Dialogue, and with support from the U.S. State Department's INL Bureau. The risk of corruption at admission to the elementary schools was assessed, interviewing almost 5,000 parents, teachers, and school principals in all regions of Uzbekistan in the second half of 2021. The results of the assessment were publicly presented and discussed. Several other similar risk assessments have been conducted. It will take some time before the culture of corruption can be changed, but active cooperation, although initially met with some concerns

and resistance, is the right path towards setting up a more transparent system of managing public assets.

With the deteriorating international security situation, new challenges in criminal justice – as part of the strong digitalization process – became a priority, including crypto-currency, dark web, and cybercrime issues. This caused additional delays in the process of setting up a firm legal framework. While the rule of law reforms sought to simplify and adjust implementation to make it easier for both the population at large and economic actors, the new challenges also needed to be included in the criminal justice codes. Uzbekistan's leaders quickly understood that properly addressing these new issues was becoming an urgent matter of national security, and an important path towards a developed economy and inter-connectivity with the rest of developed world.

In the meantime, numerous changes occurred that raised international support for the reform process in the country. Uzbekistan passed legislation which substantially loosened restrictions on freedom of religion. Calls for prayers can now be heard from Uzbek mosques, more young women are covering their heads, and a big turnout of men gathering for Friday prayers can be observed both in Tashkent and in the regions.

Uzbekistan also addressed another very important issue that had exposed the country to sustained criticism: forced labor in the cotton fields was prohibited. This long overdue reform was efficiently implemented with proper government-led efforts, supported by the International Labor Organization (ILO). This ended the years-long international boycott of Uzbek cotton. Cotton quotas on farmers were abolished and local officials that continued to disobey these top-down instructions were prosecuted.

The legislation on gender equality marks Uzbekistan as a Muslim country leading in the reforming of outdated cultural traditions. This means a

substantial change for more than half of population. There are many influential positions that have been taken over by well-educated and highly motivated female professionals on the republican and regional levels. This is a big change from what Uzbekistan looked like 20 years ago.

Digitalization of Government Services and its impact on the rule of law

The pandemic, in spite of all its negative impact, also led to positive improvements. Institutions experiencing improvements include the Ministry of Justice, followed by the Tax Office and many other state institutions. Simplifying access to state services saved time and efforts for citizens. Instead of standing in line for long hours, being exposed to the whims of low-level officials, citizens are now able to resolve many of their issues digitally. This was an improvement that was well received by the population and all legal entities. It resulted in enormous savings of citizens' time, no more standing in long lines, abolishing tons of useless paperwork and resulting in substantial savings for the national budget. It was also a big step forward for transparency, as it did away with corruption opportunities for local officials. These reforms were quickly adopted by most government institutions and by businesses and citizens.

For instance, the Ministry of Justice took the lead in modernizing its operations. It digitalized communications with non-governmental organizations, which led to considerable improvements although restrictive regulations remain.

Digitalization brought many positive steps, and slowly other institutions are focusing on internal reforms to bring their work to the same level, starting with the presidential administration, parliament, law enforcement agencies, courts, local governments etc. At the same time, the pandemic

encouraged Uzbek institutions to be more open, to reach out also to the international community, to communicate with local and foreign interlocutors, officially and informally also through social media. An explosion of bloggers is a new phenomenon, and Uzbek media almost completely switched to digital operations. This created more normal conditions expected in modern times.

The challenge now remains for those less computer savvy, especially among older or less educated citizens who now must turn to the younger population to assist them in keeping up with the progress. It also led to establishment of different legal clinics, set up either by the state or by civil society that help citizens accessing governmental portals when needed.

The Process of Constitutional Reform

After reelection in October 2021, President Mirziyoyev announced it was time to prepare a new Constitution that would reflect the important reforms passed in the recent years. On June 20, 2022, the first meeting of the Constitutional Reform Commission was led by the President, and it was attended mainly by parliamentary representatives of both chambers and by legal experts. Soon the first draft for the New Constitution was publicly presented for public discussion.

In the early 1990s, most new democracies drafted new constitutions, but none of them presented the draft for public discussion, neither was this the practice in traditional democracies. Usually, they passed it through referendum or parliamentary confirmation. It is unclear why Uzbekistan decided to go fully public with this process, but in a way, this was obviously done in an effort to engage the citizenry. Citizens took this opportunity and the deadline for public discussion was moved several times. The process of public discussion, although first announced to last

for 10 days, raised a lot of suggestions from citizens, and was initially extended until July 15, and later on until August 1. So far, the commission received more than 100,000 recommendations from citizens, including both positive and negative comments. The parliamentary commission then decided to open a hotline to provide a channel for those less experienced in submitting their comments in writing.

It remains unclear how the commission will be able to process this huge number of comments. But the process itself surely does not lack democratic credibility. It is quite a unique example, taking the lead out of the hands of legal experts which usually handle such issues in most countries. But it remains to be seen how and when this process will be finalized.

Initial Review of the First Draft of the Constitutional Reform

Regional Dialogue's initial review of the first draft proved that from the substance point of view this is clearly not just a "facelift." The amendments bring new quality in many areas, including in the criminal justice process, separation of powers, and so on. It is no doubt a step forward in terms of establishing a platform for the constitutional democracy and the Rule of Law.

In the chapter on "new rights of citizens," it is obvious that Uzbek experts gathered, studied and to some extent copied elements from a number of constitutions from Eastern Europe that were adopted in the early 1990s. The amendments in the constitutional draft put Uzbekistan in line with other central European and Balkan countries in terms of the language of the constitution as it relates to improving protection of human rights and framing due process. In this sense, it is a big step forward. To list just a few novelties: implementation of Miranda rights, time limited detention,

obligatory presence of defense attorney from the first moment of arrest, and – perhaps most important – a court order as a prerequisite for most intrusions into basic rights. For instance, the draft states that no intrusion into the privacy of telecommunications can occur without a court order – something that goes further than many EU constitutions.

Deepening the separation of powers is a very important and long-awaited novelty in this constitutional draft: courts got an explicit say in most intrusions into individual's right to liberty, privacy, property, and dignity.

The draft strengthens the role of Parliament. For many presidential appointments, which were used as a main legal drive of reforms in the past year, a parliamentary confirmation and reporting is now required, including for instance for the Anticorruption Agency and the Accounts Chamber. This is in line with the practice in established democracies.

A very good provision is "Incompatibility of office," which prohibits persons holding high positions in local government (such as mayors or local deputies) from also being members of Parliament. This is a major improvement in the separation of powers, in preventing abuse of power, conflicts of interest and one of the main risks for corruption in public administration.

The right to Internet access is a novelty included into the constitution. That is a surprising new step for a country like Uzbekistan, which often resorted to the blocking of websites or social media in the past.

While the current draft is far from perfect, Regional Dialogue experts agree that 80 percent of the draft constitutes a huge step forward in terms of Rule of Law. It brings the Uzbek constitution closer to the level of many other democratic countries in Europe or Asia. Some provisions could be more specified and may lack further steps, such as in the reforms of judiciary and the prosecution.

This constitutional draft does not introduce institutional and procedural remedies for its enforcement. In other words, this constitution, even if a good one, can like the current one become a "hostage" of the executive and legislature. It does not provide the Constitutional Court with powers like the U.S. Supreme Court or Constitutional Courts in Europe – with authority to accept individual appeals, or with powers to strike down laws, properly interpret them, or overturn sentences passed by the courts. What was reviewed was not the final draft, so final evaluations will have to wait until the constitution is finalized and presented to a referendum.

An issue that has generated significant attention is the extension of the presidential term from five to seven years, something that would also allow the President to run for office again. While this has led to criticism, the fact is that any country in a fragile geostrategic region such as Uzbekistan would most likely make a similar decision. In times of insecurity about what the future will bring, people tend to stick to what they are accustomed to. President Mirziyoyev is definitely very popular both inside and outside Uzbekistan. The main challenge for him is to create conditions to ensure that he is not the only one that can safely lead the country towards a prosperous future, but that there are many potential leaders in his wake.

Then there is Karakalpakstan, and its own sovereignty and the right to secede, enshrined in the old Constitution, where the clauses on the territorial integrity of Uzbekistan as a country are actually in collision with this right of secession. Unrest in Karakalpakstan in July testifies to how this issue can be manipulated, and how sometimes seeking rapid reforms is a recipe for tragedy. That is why the wise men and women say that Constitutions need to be changed only with trembling hands.

President Mirziyoyev's decision to fly to Nukus the day after the riots, where he promised Karakalpakstan that nothing will be changed

regarding the republic's position in the final draft of the new constitution, was the right move. Both parliamentary chambers also took correct steps, taking on an observation mission that travelled to Karakalpakstan to investigate what really happened. Led by the Ombudswoman and consisting of parliamentarians from both chambers and civil society representatives, it proved that Uzbekistan learns fast from its past mistakes.

Change happening too fast can be scary, while change that is just window-dressing is not persuasive enough for people to feel safe. It will take a lot of discussions and open dialogue to erase fear and insecurity. Considering opposing and even critical opinions, all in the effort to make the country better for the people of Uzbekistan, is no doubt a new phenomenon in the country. It provides hope for a strong, independent, and sovereign country of Uzbek citizens of many different ethnic backgrounds, and as such a positive model for many regions and societies. Many ethnic groups, now considering Uzbekistan as their homeland, were ousted from their homelands under the cruel autocratic system of the Soviet Union decades ago and dropped in the middle of Central Asia. These people and their descendants testify to the support, tolerance, and mutual respect they received from their neighbors, which made it possible for them to start new lives in safety and dignity. This, too, is a remarkable aspect of Uzbekistan.

Democratization of Uzbekistan is young, since its independence and sovereignty is only 31 years old. A lot remains to be done. Yet many aspects of the three thousand year old culture can be inspiring also for more developed democratic societies in other parts of the World.

Political Reforms in Constitutional Amendments

Anthony Bowyer

The proposed amendments to the Constitution of the Republic of Uzbekistan should be viewed as part of the adoption of the new, five-year National Development Strategy (2022-2026) launched after President Shavkat Mirziyoyev's re-election to a second, five-year term in October 2021.¹ The Strategy was released soon after the president's inauguration on November 9 during which he suggested that constitutional reform was likely to take place in the year ahead. The new, five-year approach was planned (and developed in the months leading up to the election) as a follow-up to the initial, transformative five-year National Development Strategy (2017-2021) released during Mirziyoyev's first election in October 2016 following the passing of longtime first president Islam Karimov in September of that year.² The New Strategy builds on its predecessor by making the citizens the focal point of national development strategy for the next five years. Proposed amendments to the constitution, formally submitted by citizens via an online portal beginning in May 2022 following an invitation from President Mirziyoyev, totaled close to 100,000.

On May 20 the Oliy Majlis announced that a Constitutional Commission to be headed by current Senator and former Foreign Minister Sodiq Safoev would be created to receive and consider recommendations from citizens on changes to the country's constitution. Citizens were invited to submit

¹ <https://invest.gov.uz/mediacenter/news/development-strategy-of-the-new-uzbekistan/>

² National Development Strategy (2017-2021) <https://uzbangla.com/uzbekistans-development-strategy-for-2017-2021-has-been-adopted-following-public-consultation/>

recommendations for constitutional reform via an online portal set up by the Commission. After receiving some 50,000 suggestions via an online portal, President Mirziyoyev confirmed that a national referendum would be held to formally approve proposed changes. On June 25 the 47-member Constitutional Commission presented over 90 concrete amendments to the Oliy Majlis for consideration and for public discussion. Once the final version of the proposed amendments is approved by the parliament following a period of public vetting and parliamentary debate, the package will be put before Uzbekistan's voters in a nationwide constitutional referendum, to take place in early 2023, in which voters will approve or reject the package of amendments in a "yes/no" vote. If approved, the 200-some amendments, which affect approximately 64 articles (over half) of the basic law, will become part of an updated national Constitution, the first changes to the document since 2014,³ and in time for the founding document's 30th anniversary in December 2022.⁴

In presenting the reforms the president cited several priority areas as submitted by citizens which, if approved, will make government even more accountable to the people, following reforms during his first elected term in office (2016-2021) that saw a significant shakeup in local government as well as in the security services. The proposed changes are being hailed as consistent with the new National Development Strategy, which envisions seven main areas of focus, the first of which envisions "Building a people's state by raising human dignity and further

³ Constitution of the Republic of Uzbekistan, at (<https://constitution.uz/en>.)

⁴ Odiljon Tojiyev, "Uzbekistan's constitutional reforms are for the people," BNE Intellinews, June 14, 2022. ([bne IntelliNews - COMMENT: Uzbekistan's constitutional reforms are for the people](#))

developing a free civil society.”⁵ This is envisioned by increasing the role and responsibility of local governments in solving local problems and transferring the functions of the central government to the regions.

One key provision within the de-centralization effort is the redefining of the role of *khokims*, divorcing them from direct links to national government and possibly making this key office directly elected by voters in future elections. Another set of reforms focuses on the *Mahallas*, Uzbekistan’s semi-official local advisory bodies, which will see an expansion of their authority as key interlocutors between citizens and the state and guarantors of community stability and civic harmony. Not spelled out by the President, but no less impactful, will be the “re-setting” of presidential term limits, meaning Mirziyoyev will be deemed eligible to run for two more terms, re-expanded to seven years, when his current term expires in 2026, under the argument that he has not yet served under the (anticipated) new constitution.

While many recommendations on presidential terms of office were made, with some favoring shorter (four-year) terms and others indefinite terms with no term limits, a seven-year term has been put forward, with a two-term limit. As stated by the First Deputy Chairman of the Legislative Chamber, Dr. Akmal Saidov, “the new Constitution is the creation of a new legal space...and I am convinced that the person who started these reforms should have the opportunity to bring them to the end.”⁶ The First Deputy Chairman added that Mirziyoyev is not the kind politician looking to cling

⁵ Investment Promotion Agency, “Development Strategy of the New Uzbekistan,” June 11, 2021, (<https://invest.gov.uz/mediacenter/news/development-strategy-of-the-new-uzbekistan/>)

⁶ “Shavkat Mirziyoyev will be able to run for president if a new Constitution is adopted, says Sodiq Safoev,” *Tashkent Times*, June 17, 2022. (<http://tashkenttimes.uz/national/9078-shavkat-mirziyoyev-will-be-able-to-run-for-president-if-a-new-constitution-is-adopted-says-sodiq-safoev>)

to power at any price. Mr. Safoev, who as MP also serves as the First Deputy Chairman of the Senate, commented that President Mirziyoyev is Uzbekistan's recognized leader whose reforms since coming to office have transformed the country, though the work is far from done. Suggesting that these reforms would be jeopardized by Mirziyoyev not seeing them through, Safoev underscored the importance of "continuity and consistency of [our] reforms and policies...and this is connected with the name of President Mirziyoyev."⁷ It should be recalled that former president Karimov also used national referenda to modify the constitution and extend his term in office to over a quarter century.⁸ Further, there do not seem to be, in the version of the amendments presented for public scrutiny, provisions that would limit the number of years a president can serve in total (Article 90), for which some have suggested there be a hard, 10-year limit.

Changes to the constitution were initially proposed by President Mirziyoyev not long after he won a second, five-year term as president on October 24, 2021. During his inauguration speech on November 9 the president outlined several priority areas of reform to transform the country to one based on the principle of "person, society and state," replacing the previous directive of "state, person and society" and thus elevating the individual citizen and society generally for which the state should focus its attention and from which it draws its strength and legitimacy. The proposed reforms presented by the Commission in June link democracy in Uzbekistan to the rights of people, with a government based on social justice and law. There are many clarifications of the rights and protections of individuals, from expanded protections of and due

⁷ Ibid.

⁸ Catherine Putz, "Karimov, Uzbekistan's Perpetual President," *The Diplomat*, April 11, 2015. (<https://thediplomat.com/2015/04/karimov-uzbekistans-perpetual-president/>)

process for persons accused of committing crimes, access to legal services and defense against double jeopardy.

The proposed amendments increase protections of personal data and an individual's right to privacy as well as freedom of movement and place of residence. There is also a provision that allows any citizen to return to his or her homeland without pretense or precondition, though it does not address the cases of such persons being charged with political crimes. New rights of all citizens to use the internet and have equal access to information are proposed, along with protections for freedom of thought.

A key proposal, which very much builds on the reform process, the previous Development Strategy and the newly adopted successor Development Strategy is the right of persons to play an active role in decisions and direction of the government, through a closer relationship with local representatives and greater say in decision-making. One manifestation of this may be eventual direct elections of *khokims* (governors). One provision likely to be adopted is the separation of the *khokims'* responsibility over *viloyat* or city/town affairs and obligation to report directly to the executive as a result of their presidential appointment, thus eliminating the dual responsibility of implementing executive prerogatives. This would follow the mantra of "person-society-state" by allowing greater control over local officials and input into community affairs by citizens, while at the same time reducing the perception of agenda-setting by the president. Even with the lessened role of the executive, the presidency remains an all-important institution in Uzbekistan, and there are no plans at this time to transform the country to a parliamentary system of government.

Responsibilities of *khokims* and *kengashes* are spelled out in greater detail, charging them with providing social services, and guaranteeing wellbeing of citizens, delivering security and providing for their economic potential.

Local government's role is envisioned as solving citizens' problems and working for the people, rather than being subjugated to national politics. Further, going forward citizens would have the right to propose legislative initiatives to the Legislative Chamber of the Oliy Majlis if they gather 100,000 signatures of supporters, a significant step for citizen-led advocacy initiatives.⁹

Proposed amendments and clarifications further underscore the rights of citizens to gain and maintain employment, in particular stressing the equal rights of women in this regard, and the prohibition of child labor. There are enhanced guarantees on equal education (with secondary education guaranteed, and the right to a higher education). Social protection is a major theme of the proposed clarifications, bestowing pension and unemployment benefits upon citizens. There are also guarantees of support in case of illness or disability, with strong measures proposed to prevent discrimination of persons with disabilities, building on the elevation of disabled persons' equality realized during President Mirziyoyev's first term, which included the June 2021 ratification of the Convention on the Rights of Persons with Disabilities (CRPD) by the Oliy Majlis.¹⁰

Additional guarantees envisioned to citizens under the proposed amendments relate to a higher standard of living, the right to personal property (including land), the ability to "engage in economic activity"

⁹ Shavkat Mirziyoyev, "Президент: Наша главная цель – обеспечить стабильность в обществе и непрерывное развитие страны," [President: Our main goal is to ensure stability in society and continuous development of the country], President.uz, June 20, 2022. (<https://president.uz/ru/lists/view/5272>)

¹⁰ Dilmurad Yusupov, "Uzbekistan ratifies the Convention on the Rights of Persons with Disabilities," dilmurad.me, June 8, 2021. (<https://dilmurad.me/uzbekistan-ratifies-the-convention-on-the-rights-of-persons-with-disabilities/>)

based on free market economics, and protection of national traditions with focus on the family as the basis of society.

Although subject to their own elections, Mahallas are specifically emphasized to lay outside of the structure of state authority, and are free to pursue their activities independently. The role of Mahallas are enhanced as the key vehicle and guarantor of social protections, with these semi-formal, community structures mentioned in the same section as political parties, movements, mass media, trade unions, public foundations and other civic movements including civil society organizations as having particular responsibilities to citizens.

Mahallas are preeminent in the daily lives of citizens, and the value ascribed to Mahallas as instruments of civic engagement and support is clear in the proposed legislation and in statements by government officials. This is particularly important in keeping with the key role of community and preserving familial relations, supporting parents and children – something that is seen as a particular priority of the state. While not stated in the amendments, there is also an implication that the Mahallas serve as a sort of moral compass or consciousness of the community. Article 63 confirms the institution of marriage between a man and a woman, with no specific mention of rights for the LGBTQI+ community.

The proposed changes to the constitution clarifying the status of the Autonomous Republic of Karakalpakstan have drawn perhaps the most attention of any aside from the provisions allowing President Mirziyoyev to seek two new, seven-year terms in office. Most significant of the proposed changes was made to Article 74, which removes the provision allowing Karakalpakstan to seek independence from Uzbekistan through popular referendum in the autonomous region. The move sparked a backlash in Nukus, the regional capital, and in other cities across the territory which saw a rare display of public opposition via mass

demonstrations. The government in Tashkent responded by declaring a State of Emergency and ordering National Guard forces to quell the uprising, along with censorship of local media and arrest of local journalists. The show of force by Tashkent led to violent clashes and loss of life among protestors and numerous injuries among citizens and police. Mirziyoyev flew to Nukus and rescinded the proposed constitutional amendments of Karakalpakstan's status, restoring existing articles 70 through 75 and the region's status within Uzbekistan and its nominal autonomy vis-à-vis the central government.¹¹ The State of Emergency in Karakalpakstan was lifted on July 21, and the international community has called for a full and transparent investigation into the violence and the government's actions in this tragic matter.

Article 117 specifies that the Central Election Commission (CEC) has authority to organize and conduct all elections and referenda in Uzbekistan; local *kengash* elections had previously not been under their direct jurisdiction. This would seem to apply as well to future, direct elections of *khokims*. On June 16, the president signed amendments to the law on referenda, which increase the authority of the CEC and local election commissions and expands the rights of observers during the pre-election campaign.¹²

The previous five-year National Development Strategy 2017-2021 was successful from many points of view, such as addressing corruption at national and local levels, eliminating (or greatly reducing) child labor, promoting economic opportunities and modernization, education, judicial

¹¹ "Uzbekistan President Backtracks on Constitution to Defuse Karakalpakstan Tension," *Eurasianet*, July 2, 2022. (<https://eurasianet.org/uzbekistan-president-backtracks-on-constitution-to-defuse-karakalpakstan-tension>)

¹² "Law on Referendum Amended," *kun.uz*, June 17, 2022. (<https://kun.uz/en/news/2022/06/17/law-on-referendum-amended>)

reform, religious tolerance and advancing the rights of citizens – particularly youth, women and persons with disabilities. The Strategy keyed in on “big picture” structural reforms of the state, pushing for modernization of all sectors while increasing the potential of citizens. One should not underestimate the impact the Strategy, complimented with reforms and transitions to key state sectors and leadership posts, had in terms of vaulting the “new Uzbekistan” onto a path of matching its enormous potential with the ability to pursue individual ambitions and raise the level of public consciousness and activeness in the affairs of their communities and state. Critical to this effort has been the removal of barriers that previously inhibited, or actively discouraged, direct citizen engagement with their local representatives in government, aided by the expanded availability and use of modern technology.

Under the new State Development Strategy citizens and civic groups, i.e. civil society and Mahallas, are a main priority, as Uzbekistan has re-defined itself at a “people’s state.” This suggests greater enabling of individual freedoms and opportunities, which is mirrored in the proposed constitutional amendments and is in line with President Mirziyoyev’s priorities for the country. Development of human capital and a fair social policy is complimented by a strategy to support the spiritual integrity of the nation and its economic and security/foreign policy development. Through this approach the county will continue to develop and mature inwardly, while defining its outward orientation and policies, something that has no doubt taken on even greater significance given Russia’s expanding war and occupation of Ukraine.

It should be stated that while judicial reform, combatting corruption, increasing access to decision-making, improved education and economic development have been landmark achievements of the first National Development Strategy under President Mirziyoyev, there are other aspects

of democratic development that continue to lag that were exposed by the 2021 presidential election. One major consideration is the absence of genuinely competitive elections, which the OSCE/ODIHR observation mission noted in its final observation report published on April 22, 2022 “demonstrated that recent reforms, which have gradually introduced welcome improvements, have not yet resulted in a genuinely pluralistic environment.”¹³ Genuinely opposition candidates and political parties have been unable to gain legal status through official registration to contest the elections.

Further, in spite of some improvements in the media environment including the prevalence of independent bloggers and online media sources, there remains a high degree of self-censorship. As OSCE/ODIHR notes, “despite some opening of the media environment, in particular online, the space for citizens to freely and fully express their opinion remains controlled.”¹⁴ It is hoped that the ability to monitor government performance and future electoral processes will be fully extended to civil society organizations as a part of the anticipated reforms under the new State Development Strategy, and guaranteed under the Constitution in keeping with the expanded rights accorded to citizens and citizens’ groups. As noted by OSCE/ODIHR in its 2021 election observation report and previous reports, there remains a lack of independent election monitoring that would contribute to the overall transparency of the process, as “Independent NGOs and private organizations are not entitled to observe, contrary to OSCE commitments and international standards, thus limiting transparency and public scrutiny of the electoral process.”¹⁵

¹³ OSCE, “Republic of Uzbekistan, Presidential Election, ODIHR Election Observation Mission Final Report,” p.1. (https://www.osce.org/files/f/documents/9/e/516435_0.pdf)

¹⁴ Ibid.

¹⁵ Ibid, pp. 23-24.

While the role of Mahallas will be enhanced, it should be noted that these institutions served a dual role during the election process as well, at once observing voting in precincts (including providing voting precincts themselves) and assisting election administration manage the voting process. Such a mandate raises conflict of interest issues, however, and underscores the existing gap left by the lack of independent monitoring organizations as well as political balance among precinct election commissions.

One particularly noteworthy achievement that continues to be prioritized under the new National Development Strategy and strengthened in the proposed amendments is the promotion of rights for persons with disabilities as equal citizens in society, protected by the social state. Disabled Persons Organizations (DPOs), buoyed by the ratification of the CRPD, have received strong support from the state and found a voice through productive cooperation with the authorities in numerous areas, including electoral access. It is hoped the success in promoting equality and inclusion will extend to other fledgling NGOs promoting similar rights for traditionally-marginalized populations, both in law and in practice.

While the holding of a constitutional referendum should not come as a surprise to those who are familiar with the country and the Central Asian regional generally – a similar referendum was held in neighboring Kazakhstan earlier in 2022 and one in Kyrgyzstan in 2021, both orchestrated to shore up vulnerable presidents. By contrast, Uzbekistan's referendum comes at a time of unquestioned authority and popularity of President Mirziyoyev, fresh off of a resounding (though hardly competitive) electoral victory and a new mandate to continue modernizing the country. By cherry-picking a portion of the many citizen-submitted suggestions, the Constitutional Commission led by erstwhile ally Sodiq

Safoev and a pro-presidential Oliy Majlis can represent the changes as “by the people and for the people” in the marketing campaign leading up to the referendum. If a recent survey is any indication, the measures should overwhelmingly pass public muster (83% of respondents to a survey conducted by “Ijtimoiy Fikr” support the constitutional reforms).¹⁶

The process does present a unique opportunity to re-commit to democratic development, and both the president and parliament could promote debate and discussion, showcasing key differences among the political parties and elevating younger leaders within the conversation. Media could provide various opinions and scrutiny over the process, free from fear of reprisals. Think tanks and both government-organized and independent non-governmental organizations could advance an intellectual debate on the merits of the reforms, in the process educating the voters who will ultimately decide the measure’s fate at the ballot box in an up-or-down vote. These steps would offer important evidence that, in addition to modernizing the country and safeguarding its culture and traditions, Uzbekistan is simultaneously maturing its democracy.

¹⁶ “Survey: 83% of Uzbeks Support Constitutional Reform in the Country,” kun.uz, June 28, 2022. (<https://kun.uz/en/news/2022/06/28/survey-83-of-uzbeks-support-constitutional-reform-in-the-country>)

Enhancing the Constitutional Foundations of Parliamentary Control, Ensuring Freedom of Speech and Access to Information

Ilkhom Abdullayev

The presence of an effective system of parliamentary control and ensuring freedom of speech and information in the country are important factors of a democratic public life. The constitutional reform undertaken in Uzbekistan organically incorporates a number of important provisions aimed at the development of these institutions. In particular, amendments and additions are made to the fundamental norms of the Constitution (Articles 29 and 30) that ensure freedom of information, as well as citizens' access to socially important information held at the disposal of state bodies. The following proposal illustrates this – the wording in the old constitution to the left, with the new proposed version in the right column.

<p>Article 29.</p> <p>(First part) Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information <i>except that which is directed against the existing constitutional system and some other instances specified by law.</i></p>	<p>Article 29.</p> <p>(First part) Everyone shall be guaranteed freedom of thought, speech and convictions. Everyone shall have the right to seek, obtain and disseminate any information.</p> <p>(Second part) Everyone shall have the right to access and freely use the Internet World Wide Web.</p>
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<p>Complemented by</p> <p>(Second part) <i>Freedom of opinions and their expression may be restricted by law if any state or other secret is involved.</i></p>	<p>(Third part) The restriction of the above mentioned rights shall be permitted only by law and only in cases related to the protection of the existing constitutional order, the rights and freedoms of others, public safety and order, and the prevention of the disclosure of information classified as a State or other secret.</p>
<p>Article 30.</p> <p>(First part) All state bodies, public associations and officials in the Republic of Uzbekistan shall allow <i>citizens</i> access to documents, resolutions and other materials relating to their rights and interests.</p> <p>Complemented by</p>	<p>Article 30.</p> <p>(First part) State bodies, citizens' self-governing bodies, public associations, organisations and officials must ensure that everyone has the opportunity to familiarise himself/herself with legislative acts, as well as with documents, decisions and other materials affecting his/her rights and legitimate interests.</p> <p>(Second part) Everyone has the right to become acquainted with the data collected about him/her at state bodies, citizens' self-governing bodies, public associations and organisations, and to demand the correction of inaccurate data, as well as the extermination of data collected illegally or which no longer have a legal basis.</p>

With separate norms citizens are guaranteed access to certain types of essential information, namely:

<p>Complemented by</p>	<p>Article 26¹.</p> <p>The suspect, accused or defendant has the right <u>to be informed of</u> the nature and grounds of the charge, to confront witnesses testifying against him/her and to call witnesses testifying in his/her favour.</p> <p>In administering justice it shall not be allowed to use evidence received by violating the law.</p> <p>The rights of victims in cases of offences and abuses of power are protected by law. The State shall provide victims with access to justice and compensation for the damage caused.</p> <p>Everyone shall have the right for a State compensation for damages caused by unlawful actions or inaction of bodies of state authority and their officials.</p>
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<p>Complemented by</p>	<p>Article 40¹.</p> <p>Everyone shall have the right to favourable environment, reliable information about its state and for a restitution of damage inflicted on his health and property by ecological transgressions.</p>
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The proposed amendments guarantee the information security of certain types of sensitive information.

<p>Article 27.</p> <p>(First part) Everyone shall be <i>entitled to protection against encroachments on his honour, dignity, interference in his private life, inviolability of his home.</i></p> <p>Complemented by</p> <p>Complemented by</p> <p>Complemented by</p> <p>(Second part) No one shall have the right to enter a home, carry out a search or an examination, <i>violate the privacy of correspondence and telephone conversations</i> except for case and procedure prescribed by law.</p>	<p>Article 27.</p> <p>(First part) Everyone shall have the right to the inviolability of private life, personal and family secrets, the protection of honour and good name.</p> <p>(Second part) Everyone has the right to have his or her personal data protected.</p> <p>(Third part) Everyone shall have the right to the freedom and secrecy of correspondence, telephone conversations and conversations via other telecommunication devices, postal and telegraphic correspondence and other messages. Limitations of this right shall be allowed only by court decision.</p>
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Regarding the norms envisaging an increase of the role and importance of parliamentary control, it is necessary to note the content of the norms defining the powers of the chambers of the Oliy Majlis. Namely:

<p>Article 78.</p> <p>(First part) The joint conducting of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan shall include:</p> <p>...</p> <p>4) <u>determination of the guidelines</u> of home and foreign policies of the Republic of Uzbekistan, and adoption of strategic state programmes;</p> <p>...</p>	<p>Article 78.</p> <p>(First part) The joint conducting of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan shall include</p> <p>...</p> <p>4) Consideration of home and foreign policies of the Republic of Uzbekistan, and adoption of strategic state programmes;...</p>
<p>15) consideration and approval, upon the nomination of the President of the Republic of Uzbekistan, of a nominee of the Prime Minister of the Republic of Uzbekistan, <i>as well as</i> hearing and discussing reports of the Prime Minister on urgent issues of social and economic development of the country;</p>	<p>15) consideration and approval, upon the nomination of the President of the Republic of Uzbekistan, of a nominee of the Prime Minister of the Republic of Uzbekistan, hearing and discussing reports of the Prime Minister on urgent issues of social and economic development of the country, as well as the consideration of the annual report of the Cabinet of Ministers of the Republic of Uzbekistan on the most important issues of social and</p>

	economic life in the country;
16) election of an Authorized person of the Oliy Majlis of the Republic of Uzbekistan for human rights and <i>his deputy</i> ;	16) election of an Authorized person of the Oliy Majlis of the Republic of Uzbekistan for human rights (Ombudsman), an Authorized person of the Oliy Majlis of the Republic of Uzbekistan for the Rights of the Child;
17) consideration of report of the Accounting Chamber of the Republic of Uzbekistan;	17) consideration of report of the Accounting Chamber, the annual National Report on Combating Corruption in the Republic of Uzbekistan;
<p>Article 80.</p> <p>(First part) The exclusive powers of the Senate of the Oliy Majlis of the Republic of Uzbekistan shall include:</p> <p>....</p> <p>Complemented by</p> <p>6) ratification of decrees of the President of the Republic of Uzbekistan on appointment and relief of the Procurator-General of the Republic of Uzbekistan and the Chairman of the <i>Accounting Chamber</i> of their posts;</p>	<p>Article 80.</p> <p>(First part) The exclusive powers of the Senate of the Oliy Majlis of the Republic of Uzbekistan shall include:</p> <p>...</p> <p>5) appointment and relief of the Chairman of the Accounting Chamber of his/her post upon the nomination of the President of the Republic of Uzbekistan;</p> <p>6) ratification of decrees of the President of the Republic of Uzbekistan on appointment and relief of the Procurator-General of the Republic of Uzbekistan and the Director of the Anti-</p>

<p>...</p> <p>8) appointment and relief of diplomatic and other representatives of the Republic of Uzbekistan to foreign states of their posts upon the nomination of the President of the Republic of Uzbekistan;</p>	<p>Corruption Agency of the Republic of Uzbekistan of their posts; ...</p> <p>8) appointment and relief of diplomatic representatives of the Republic of Uzbekistan to foreign states and international organizations of their posts upon the nomination of the President of the Republic of Uzbekistan, as well as hearing reports on matters relating to their activities;...</p>
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An analysis of the content of these norms leads to the reasonable conclusion that the constitutional reform being implemented will substantially increase the effectiveness of parliamentary control and ensure the further development of the system of guarantees of citizens' information rights.

Constitutional Amendments in Uzbekistan: Quo Vadis?

Farrukh Irnazarov

Countries around the world regularly amend or draft entirely new constitutions. They do this for several reasons. For instance, amendments may reshape the current *status quo* of distribution of political power or introduce more democratic changes, with a better system of checks and balances and more accommodating to the interests of voters. Constitutional amendments can be also carried out after a war, conflict, revolution or turbulence in order to establish a new constitutional order and provide a better platform for a more inclusive society. Also, constitutional amendments might be driven by ongoing changes in political, economic and social spheres. Alternatively, some exogenous factors such as external military threats, regional power pressures and/or a desire to elevate a country's political/military neutrality could serve as a reason for amendments. In any case, the changes in the main legislative document draw domestic and international attention, as it is an important milestone in any country's political, economic and social life. The proposed amendments in Uzbekistan's constitution are no exception in this regard. This paper aims at exploring and analyzing the current scope of envisaged amendments.

It should be stated at the outset that this paper does not analyze the necessity, expediency, or timing of constitutional amendments in Uzbekistan, nor does it analyze the implications of the new constitution should it be endorsed in a referendum. Rather, it focuses on the juxtaposition of the current and new constitutions based on five key concepts – “right”, “state”, “social”, “just”, “information” – that are being promoted in the new constitution. It also analyzes the concept of a

“person” vis-à-vis the concept of a “citizen”, which is placed as the core idea in the new constitution.

Constitutional System

A constitution implies a social contract that is reflected in a country’s main document. In practice it has four key pillars. A first is **procedural stability**. Basic laws, rules and processes cannot be constantly and unreasonably changed. Citizens must know how the government functions in their country, and, therefore, be aware of the consequences of their actions. In other words, it envisages a more participatory approach. Second is **government accountability**. In constitutional democracies, the authorities are accountable to citizens through procedures: elections, budgetary openness, referendums, etc. The accountability of authorities makes it possible for citizens to be held accountable for the actions of their government. Third is **separation of powers**. The separation of powers into national, regional and local as well as legislative, executive and judicial branches creates a system of checks and balances. Citizens can influence the policies pursued by applying to various institutions. One can distinguish between horizontal and vertical separation of powers, where horizontal separation envisages the allocation of power across governmental agencies and vertical separation implies adequate division between different levels of government (central, regional and local). Finally, the **transparency** of the authorities is indispensable so that citizens have enough information to participate in decision-making - for example, through elections. Without transparency, it is impossible to ensure the accountability of the authorities, and hence the responsibility of citizens.

Constitutional Changes and Anticipated Amendments

The Constitution of Uzbekistan was adopted on December 8, 1992 at the eleventh session of the Supreme Council of the Republic of Uzbekistan. Amendments to the Basic Law were made 11 times. The first amendment

was made on 28 December 1993. In 2002 and 2003, amendments were made to chapters 28 (Oliy Majlis), 19 (President), 20 (Cabinet of Ministers), 23 (Electoral system) of the Basic Law. Further amendments were made in 2007. In 2008, an amendment was made to Article 77 (Oliy Majlis) of the Constitution. Additional amendments were made in 2014. Major revisions were made in 2017. In particular, amendments were made to articles 80, 81, 83, 93, 99, 102, 107, 108, 109, 110 and 111 of the document. The latest amendment was made on October 15, 2018. Basically, the above-mentioned amendments concerned the activities of the Oliy Majlis, the Cabinet of Ministers and the President of Uzbekistan.¹⁷

The government has been proclaiming that the new constitution is more humane, that it significantly shifts its focus onto the person rather than on the state. The government emphasizes that the current principle of “state-society-person” will be replaced by the “person-society-state” principle,¹⁸ implying extended rights and an increasing role for people in the country’s affairs. To understand this further, five keywords that underwent changes were determined and counted, namely:

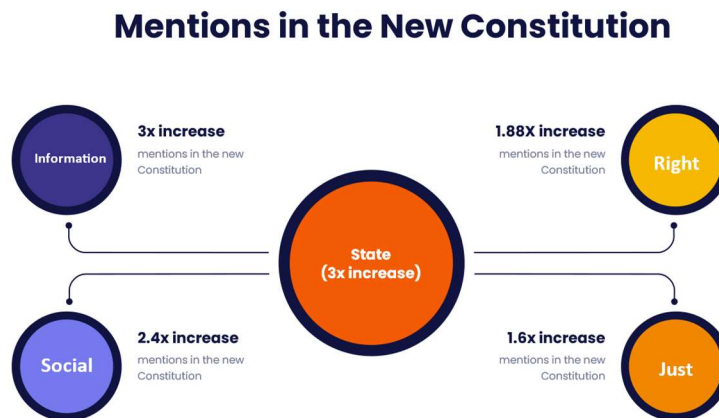
The word “**right**” almost doubled in the new constitution, being mentioned 45 times compared to 24 times in the current constitution. The word “**state**” is mentioned 37 times compared to 12 times in the current constitution. The new constitution mentions “**social**” 29 times, whereas in the current constitution the word “social” is mentioned 12 times. The word “**just**” is mentioned 8 times compared to 5 times in the current

¹⁷ “Kak Menyalas’ Konstitutsiya Uzbekistana za Poslednie 26 Let”, Kun.uz, December 8, 2018. (<https://kun.uz/ru/news/2018/12/08/kak-menalas-konstitucia-uzbekistana-za-poslednie-26-let>)

¹⁸ Catherine Putz, “Constitutional Changes Ahead for Uzbekistan”, *The Diplomat*, June 28, 2022. (<https://thediplomat.com/2022/06/constitutional-changes-ahead-for-uzbekistan/>)

version. Finally, the mention of the word “**information**” increased threefold in the new constitution, 6 times against 2 times in the current document (see Figure 1).

Figure 1. Keywords Mentions in the New Constitution



A quick analysis unveils two challenges as a result of this exercise. First, it becomes apparent that the role of the state has increased even further. A more thoughtful analysis of proposed amendments, however, lends itself to the conclusion that most mentions of the “state” come down to the role of the state as a guarantor, provider, and supplier that serves the need of people. While this interpretation may help balance the overwhelming mentions of the “state” in the new constitution, it requires additional reflection on fostering efficient mechanisms that may substitute or complement the state in exercising its responsibilities, especially when it comes to provision and supply.

Second, and perhaps the more fundamental challenge, is the concept of “person” in the new constitution. The new constitution heavily revolves on the concept of a “person” as a pivotal subject, while the more appropriate notion would be the concept of a “citizen”. The concept of a “citizen”

implies the participation of people in state affairs, and is inextricably linked with ideas of freedom and democracy. Democracy is understood as the power of the people, and participation in public affairs is nothing but a manifestation of that power. As a rule, the people begin to engage in politics on the eve of elections, not having a clear idea of who they choose. Nowadays, it is the people represented by the citizens of the state that govern the country. This governance should be considered indirect, as all state issues cannot be decided directly by voting. That is why there are public authorities, some of which are elected by citizens. In other words, it is essential to distinguish between people and citizens and to fix the latter in the new constitution to ensure better and more inclusive participation in political, economic and social life of the country.

Also, rights have been significantly increased in numbers, but a deeper analysis questions the necessity of particular rights, as they were already covered in the current constitution. For instance, Article 13 of the current constitution reads “Democratic rights and freedoms are protected by the Constitution and laws”.¹⁹ The complemented part of Article 13 reads as “Respect, observance, protection of the honor and dignity of a person, his rights and freedoms are the duty of the state. Human rights and freedoms act directly, determine the meaning, content and application of laws, the activities of state bodies, self-government bodies of citizens and their officials. Measures of legal influence on a person must be sufficient to achieve the legitimate goal pursued by the state body, and the least burdensome for the persons concerned. All irreparable contradictions and ambiguities in the legislation that arise in the relationship of a person with

¹⁹ *Gazeta.uz* (2022), “Popravki v Konstitutsiyu Naglaydno – Sravnitel’naya Tablitsa”, June 30, 2022, available online at <https://www.gazeta.uz/ru/2022/06/30/construction/>

state bodies are interpreted in favor of a person”.²⁰ This addendum brings to light more nuances, but content-wise it does not appear to be needed.

The word “social” is frequently linked to protection and the government is indeed preoccupied with issues of social protection, having introduced the iron notebook, youth notebook and women notebook – to provide support and assistance to people, youth and women in need. The word “information” gains popularity as the government realizes that information is an issue that cannot be neglected, as it might be fraught with negative consequences such as radicalization and it may result in advantages and development when it comes to information technologies.

In Lieu of a Conclusion

The anticipated amendments to the constitution indeed aim at making the main legislative document more holistic and detailed. Judicial protection and enforcement of all rights to a large extent depend on their formulation and articulation. There are quick fixes, as each setting depends on the context, existing legal system and legal traditions in the country. Nevertheless, there are common traits that serve as a backbone for efficient enforcement of the legislative basis. Firstly, it is necessary to determine whom the constitution prioritizes: the citizen or the state. Secondly, if citizen is placed at the core of the constitution, he or she may actively exercise his or her rights before public agencies that enables the emergence of an active responsible citizen. Last but not least, the focus of accountability must be shifted towards a general public rather than superior bodies and individuals, as currently prevails in Uzbekistan. This change paves the way for more transparency in decision-making by public officials and more engagement of citizens in daily decision-making processes.

²⁰ Ibid.

The Idea of a Social State in the Constitution of the Republic of Uzbekistan

Gulnoza Sattarova

Today we are witnessing the practical reflection of the principle “for human value,” recognized as the main principle of the policy implemented in Uzbekistan, by strengthening the prime mission of constitutional reforms – the expansion of human rights, their guarantee and the general social content of the Constitution. In this regard, defining the model of Uzbekistan as a social state in the norms of the Constitution is of great importance. In the preamble of the amended edition of the Constitution of the Republic of Uzbekistan, among other goals, while recognizing the supremacy of generally recognized rules of international law, establishing and strengthening a humane, democratic, legal, social and secular state that cares about the honor and value, well-being and interests of every person regarding the high responsibility to the present and future generations, it is defined in the first article that Uzbekistan is a sovereign republic, a legal, social, secular, democratic state.

Nowadays, notions such as "social policy", "social protection", and "social guarantee" differ from the previous ones, and they are increasingly reflecting the changes happening in our lives. Therefore, social policy is not only an activity directed at solving the material problems of the citizens but also represents the central part of the state's internal policy. Meanwhile, social protection not only provides material or monetary assistance to those in need, but also deals with issues such as ensuring the normal functioning of the state's social infrastructure, implementing effective state and public administration in this sphere, providing

employment opportunities to the unemployed citizens, involving them to business activities and providing them with comfortable living conditions.

Previously, while social protection was only concerned with providing help to the poor, today this concept also includes increasing the rate of citizens' employment, payment of salaries according to the quantity and quality of labor, implementation of the right to education, providing high-quality medical services, and all aspects of providing decent living standards.

In terms of social protection, the issue of human rights is of prime importance. This is because in our country, where the rights, freedoms and interests of citizens are recognized as the highest value, it is natural to take the most necessary material, organizational and legal measures for the sake of their guarantee and implementation.

The norm that defines the state's social status to some degree is present in the Constitutions of all countries; these are the norms in the form of general social measures (such as social services for people) or some measures with a social purpose (social protection of particular layers of population – elderly, children, disables, unemployed and others). That the state has a “social” character can be observed in the Constitution of seven of eleven CIS countries, including Armenia, Kazakhstan, Tajikistan, and Kyrgyzstan, among other.

Like many foreign countries, Uzbekistan is responsible for implementing an active social policy aimed at reaching human development, citizens' well-being, social protection, and security. Since the creation of the doctrine of the social state, it keeps advancing its primary commitment to individual interests and rights. In this sense, creating sufficient conditions for social protection, well-being and development of a person is recognized as the most critical task of the state.

Taking into consideration modern views on the classification of the characteristics of the social state, it is essential to note that they are forming rapidly in Uzbekistan today. This includes in particular:

- the presence of state social support for all members of society;
- the existence of social legislation;
- maintaining employment;
- social security, including the existence of the social support system from budget funds;
- the state taking responsibility for the well-being of its citizens;
- the existence of civil society.

With the aim to strengthen the social protection of the population, the President of the Republic of Uzbekistan adopted many decrees and decisions to provide for clearly directed and targeted social protection. For example, the principle that "Human interests are above all else" in the national strategy of the Republic of Uzbekistan on Human Rights, approved by the Decree of the President of the Republic of Uzbekistan, the main task of the authorities is to continue the large-scale socio-economic reforms carried out to fundamentally improve the life of the people.

First of all, the Ministry of Economic Development and Poverty Reduction has been established, the activity of "Monocenters" has been launched, and "Iron notebook", "Women's notebook", and "Youth notebook" have been established. There has been a shift to paying one hundred percent of working pensioners. It is for this reason that 2022 was named the "Year of Honoring Human Value and Active Neighborhood." Programs aimed at reducing poverty, developing entrepreneurship, creating jobs, and increasing the population's income are being adopted in each region. Most

importantly, a new system has been introduced to care for our citizens and children.

Secondly, considering the great importance of education and medicine in the social state, in this regard, we should underline that the level of coverage of preschool education and higher education has increased, and the number of private medical facilities has increased significantly too.

If we analyze the amendments and additions to the Constitution of Uzbekistan, some of the norms introduced are connected with developing existing ones. For example, in Article 37, the norm that everyone has the right to work has been complemented with the phrase that everyone should have decent work conditions. The phrase “decent work” displays that systematic work is being carried out in terms of implementation of the principles of decent work in Uzbekistan today and the establishment of effective cooperation with the International Labor Organization, and especially the elimination of child labor, the struggle against forced labor, monitoring the observance of labor rights, and the implementation of international standards. Other norms are taken from the current legislation; that is, they are constitutionalized norms. These norms have proven successful in practice; thus, they are progressive norms. They include additional benefits and guarantees provided by Labor legislation and norms prohibiting discrimination.

The third type of norms are newly introduced norms. For instance, the norm pertaining to the issue of ecology, which did not exist before in our Constitution, is now being introduced as a completely new norm in the following form: every person has the right to a healthy and comfortable environment, access to truthful information about its condition, and compensation for damage caused to their health or property due to environmental violations.

As part of reflecting the model of the social state of Uzbekistan in the Constitution, new guarantees and social rights were developed. These include the state's guarantee that talented young people will continue their education regardless of their financial situation, the development of physical education and sports, and the creation of the necessary conditions for the spiritual and moral education of children and young people by the state, property rights, provision of legal benefits for large families and social security, protection of fatherhood in addition to motherhood and childhood by the state. Thus, new constitutional norms establish the mechanism of protecting main values. These suggested amendments and additions pertaining to children and youth prove Uzbekistan's adherence to generally accepted norms. In particular, the 1989 UN Convention on the Rights of the Child ensures that all necessary rights of children aimed at promoting their social, spiritual and moral well-being, as well as their physical and mental development, and the obligation of the state to ensure them are consolidated in the Constitution.

In general, it is worth mentioning that the constitutional strengthening of the foundations of the welfare has been carried out in accordance with the dynamics of socio-economic reforms implemented in Uzbekistan. On the one hand, activities related to social protection of the population are implemented based on national values; on the other hand, they are being implemented based on advanced world experience and achievements of developed countries as well. For example, to ensure the implementation of the provisions of the Universal Declaration of Human Rights, as well as the provisions of the International Covenant on Socio-Economic and Cultural Rights – among the most important socio-economic rights of citizens – the norm that the minimum salary is sufficient for a person and his/her family to live was reflected in the amendments to the Constitution.

The strengthening of the above-mentioned norms in the Constitution imposes very serious social obligations on the state of Uzbekistan; however, such provisions of the Basic Law determine the prospects and directions of further development of the Republic of Uzbekistan because state-legal relations that have not yet been established in the state, but may appear in the future, can be defined in the norms of the Constitution.

Conclusion: Uzbekistan's Constitution Joins the Modern World

S. Frederick Starr

President Shavkat Mirziyoyev of Uzbekistan has capped his movement for change by instituting a sweeping reform of the country's constitution. Carefully conceived and comprehensive in scope, the revisions will affect nearly every area of life, including the rights of citizens and their engagement with public policy, the duties of the state at the national and local levels, the separation of powers, and both the social and economic orders. Together, these changes mark the most far-reaching shift in Uzbek thinking about the rights and duties of citizens and the fundamentals of public policy since the post-Soviet constitution was introduced in 1992

Our review of core elements of these reforms is overwhelmingly positive. Experts from several countries have examined them and concluded that they mark a decisive step forward in the engagement of citizens in the development and execution of public policy and their participation in economic and social life, and in the definition of the responsibilities and constraints of state power.

In both respects they mark the final liberation of Uzbek life from the framework of the Soviet Union's revised constitution of 1977 (the "Brezhnev Constitution"), which in turn resulted in the Uzbek Soviet republic's new constitution of 1978. Following the collapse of the USSR and the establishment of Uzbekistan's sovereignty, this was replaced by the Constitution of 1992. This first post-Soviet document removed the role

of the Communist Party and expanded the concept of citizenship but left both the rights of citizens and duties of the state vague on many important points. Above all, it concentrated state power in the presidential office, which was empowered to exert *de facto* centralized control over the parliamentary body (Oliy Majlis), regional governments, and the judicial system. Moreover, it was all but silent on the role of both the state and citizens in the economy and social life. These arrangements reflect the fact that many Soviet-type institutions and the individuals who staffed them lingered on into the early post-Soviet era.

It must be acknowledged that the statism and centralization of the 1993 constitution enabled Uzbekistan to survive the upheavals of the 1990s relatively intact, and even to prosper in comparison with most of its neighbors. However, it did so at the price of perpetuating many elements of the old Soviet system that were increasingly at odds with the citizen-based and market-based thinking of the rising generation. As a former regional governor and as prime minister beginning in 2003, Shavkat Mirziyoyev was well aware of these currents. With the apparent approval of President Islam Karimov he not only embraced much of this new thinking but began considering how Uzbekistan's constitutional order might be adapted to it. As a result, when he arrived in the presidency in 2016 he was able quickly to set forth a dramatic new program of reform, which he steadily implemented in the years thereafter.

As this process advanced, the tension between the emerging new order and the 1993 Constitution heightened. This tension remained unresolved and sharpened with time, with the result that on many important points the two were in open conflict. It is important to note that "the new order" comprised not just the Mirziyoyev reforms but the rising generation of young Uzbek men and women who supported them. The present

constitutional reforms were put forth in order to resolve this tension and unify the emerging society and state.

On the basis of this report, readers can on their own acquaint themselves with other features of Uzbekistan's constitutional reform, and decide for themselves the prospects of their being fully implemented. There are ample grounds for thinking that this process will be successful. Consultation with voters has been serious and constant and there are no grounds for thinking that such interaction will not continue. Surveys indicate that a rising generation of citizens and civil servants support the reforms.

That said, it must be acknowledged that constitutional projects in many countries have remained largely on paper, or have been neglected in practice. The tendency of post-colonial countries to evade provisions of their own constitutions is depressingly widespread. Worse, many countries have approved admirable constitutions but then proceeded to neutralize important provisions simply by revising or abrogating them. To cite but one example, a recent wave of constitutional revisions in South America has constrained citizens' rights and expanded the reach of government, nullifying previous advances in both areas.

Beyond this, one must ask if Uzbekistan's government will resist what the British journal *The Economist* calls the near-universal temptation to tinker with constitutions. Such tinkering can be directed not only towards aggrandizing the role of the state but equally, towards expanding the rights of citizens. Indeed, the penchant for indefinitely extending human rights on paper can itself become a problem. Paradoxical as it may seem, there is truth in the assertion by Mila Versteeg, director of the Center for

International and Comparative Law at the University of Virginia, that “the more rights you have on paper, the less they are protected in practice.”²¹

The endless revision of constitutions, far from reflecting a desire to keep up with change, is itself a pathology. Such tinkering is often defended with the Marxist argument that constitutional arrangements inevitably reflect the underlying economic relationships within society. Such a claim assumes that all rights are merely time-bound arrangements to be modified or abrogated as the society evolves. Implicit in this assumption is that there exist no rights as such, timeless truths that apply to all humanity, independent of time and place. Besides contradicting the fundamental affirmations of all three “religions of the Book,” i.e. Judaism, Christianity, and Islam, this assertion places both citizens and states completely at the mercy of transitory politics. In this context, one must admire the Japanese, who have not amended their constitution since it was instituted in 1947.

That said, how are we to evaluate the extensive “social rights” – e.g., for housing, work, food, etc. – that are included in Uzbekistan’s revised constitution? A critic might argue that they look more like an activist’s wish list than practical ground rules for governance. Indeed, scholars who have analyzed constitutions around the globe point out that five of the ten constitutions with the most social rights are in South American countries where such rights are scarcely observed in practice.

Further cautions are in order. Other comparative studies suggest that the assertion of such rights can lead to constitutional micromanagement. Faced with this possibility, these authors argue that the task of asserting and defending them is best left to lawmakers and the courts, who would

²¹ “Dictators and utopians are fond of fiddling with constitutions,” *Economist*, August 25, 2022. (<https://www.economist.com/international/2022/08/25/dictators-and-utopians-are-fond-of-fiddling-with-constitutions>)

thereby gain a practical interest in their implementation. Viewed in this light, extensive social rights appear less as a boon to citizens than as a usurpation of the duties of legislators. Still other constitutional experts worry that many specified rights worldwide benefit mainly the rich.

A less theoretical caution is raised by economists who have calculated the financial cost of implementing specific social rights enshrined in constitutions. These costs can be formidable. The extensive social rights included in Turkish president Erdogan's reforms a decade ago led to a significant expansion of the government's role in the economy. Estimates of the cost of implementing the extensive social rights guaranteed by Chile's proposed new constitution range from nine to fourteen percent of the gross national product. Such concerns lead one to ask to what extent the social rights set forth in Uzbekistan's constitution will expand the role of government in the economy as a whole.

Fortunately, this is not the whole story. The various rights, both legal and social, that are affirmed in Uzbekistan's constitutional overhaul indeed pose important challenges that cannot be ignored. At the same time, they add up to a commendable statement of the nation's aspirations. Older members of the population are still accustomed to the umbrella of paternalism that the Soviet system once provided. Meanwhile, millions of Uzbeks living in the countryside and in smaller towns that have yet to benefit from the new market-based economy are understandably concerned over their future and that of their families. Beyond this, Uzbek culture, like traditional cultures everywhere, has always assumed and expected a strong element of paternalism on the part of its leaders.

Viewed in this context, Uzbekistan's proposed social rights offer both a comforting element of continuity in a world of change. They provide the welcome assurance that, as President Mirziyoyev put it, Uzbekistan's new constitutional order will be based not on the old formula of "state, society,

and person” but on its reverse, e.g., “person, society, and state.” It is true that the changes being advanced in Tashkent include a strong aspirational element. But the reversal of the old formula is so fundamental that it is wise for the government to back it up with practical constitutional assurances that the individual, not the state, constitutes society’s fundament. One hopes that future articulations of this noble principle might refer not just to the “person” but to the “citizen.”

To no small degree, the viability and solidity of Uzbekistan’s constitutional reforms can be attributed to the fact that they are solidly grounded in both the immediate and timeless elements of Uzbek society. While they may have distinctively Uzbek elements, they also share much in common with neighboring societies in Central Asia. This is important because Uzbekistan today is a crucial anchor in the Central Asian region as a whole. Its neighbors on both sides of the Caspian, and in Afghanistan as well, are facing many of the same challenges that lawmakers in Tashkent have sought to address, and may take inspiration from Uzbekistan’s experience with reform. Any evaluation of Uzbekistan’s constitutional reforms must therefore take cognizance of this regional context.

Over time we can expect Uzbekistan’s neighbors to undertake their own constitutional reforms. Indeed, Kazakhstan and Kyrgyzstan have already begun this process. The process by which Uzbek leaders have adapted their proposals to the cultural realities of their populace is directly relevant to all their neighbors and will, if followed, assure that the changes they embrace are solidly grounded in the specifics of their cultures.

At the same time, the potential audience for Uzbekistan’s constitutional reforms extends far beyond the Central Asian region. All other former republics of the Soviet Union face similar constitutional challenges. While the Baltic states have long since adopted new constitutions that accord with modern thinking about government, rights, and the economy, others

have taken half-way measures that, like those instituted by Uzbekistan in 1993, will need to be revised in the coming period. The study of Uzbekistan's precedent will prove to be invaluable in this process.

But the potential impact of the Uzbek reforms extends even beyond the countries of the former USSR. A common feature of the otherwise diverse peoples of Uzbekistan is that they share a common Muslim heritage. Because of this, the reforms outlined in this paper are as relevant to other Muslim societies as they are to Uzbekistan itself and to its immediate neighbors. Their solution to the age-old problem of governance in Muslim societies is the more important because it confirms the principle of secular governance in societies that are at the same time loyal to the principles of Islam. It is therefore inevitable that Uzbekistan's revised constitution will be carefully studied throughout the Middle East and in parts of Southeast Asia, and that it will open a dialogue of immense importance to Muslim peoples everywhere.

All those countries that were formerly republics of the USSR and Muslim societies further afield are faced by deep insecurities that arise from both internal and external causes. This insecurity is focused above all on the issue of national leadership. Uzbekistan's constitution limits presidents to two five-year terms. By contrast, the tenure of President Mirziyoyev's predecessor would have extended from 1991 to 2020, had he not died in 2016. On the grounds that the institution of a new constitution starts the clock anew, President Mirziyoyev's term in office can now be extended if he is elected through fair elections to a second five-year term, but no further.

Given his strong and persistent personal leadership of the campaign for constitutional reform and his commitment to its results, there is good reason to assume that President Mirziyoyev will honor this schedule, and that the limit of two five-year terms will remain solidly in place. Indeed,

for him to do otherwise would deeply undermine his credibility and legacy. Thus, the recondite and perhaps tricky process by which the reformers handled this delicate issue assures continuity of the country's top leadership during a period in which Uzbekistan faces formidable external challenges, yet at the same time it staunchly confirms the principle of term limits.

Here, too, Uzbekistan has the potential to provide leadership on one of the most vexing problems of fragile states. President Mirziyoyev's readiness to adhere to the term limits specified in Uzbekistan's revised constitution will confirm the rule of law in his country and serve as an important model elsewhere.

Returning to the constitutional revisions as a group, we must ask about the *process* by which it has been undertaken and pursued. Tens of thousands of Uzbek citizens responded to the government's call for suggested changes to the constitution. These responses were carefully vetted and the ensuing deliberations opened to public discussion. During this process President Mirziyoyev travelled to every part of the country to explain the proposed changes and respond to questions about them, as did members of the parliament and judiciary. To be sure, there were slips, as when a draft provision revoked the right of the province of Karakalpakstan to secede, which had been included in the Soviet era constitution and retained after 1991. However, when serious disturbances broke out over this issue, Mirziyoyev rushed to the regional capital at Nukus, promptly withdrew the proposal, and opened a new round of discussion between Tashkent and the regional citizenry, which continues today.

What are the prospects that Uzbekistan's constitutional reforms will prove successful domestically and come to serve as a model beyond its borders? Those considering this question should be encouraged by the fact that the national discussion of the proposed constitutional changes has been

carried out in accordance with the principle that government serves citizens and not *vice versa*. They should be further heartened by the fact that leaders in professions as diverse as law, industry, finance, public health, and education have already begun studying how their fields can adapt to the proposed changes.

At the same time, it must be recognized that all this is taking place in a period when Uzbekistan faces grave and unprecedented geopolitical and economic challenges. The Greek historian and geographer Herodotus, writing of the Lydian King Croesus, cautioned against judging men and events prematurely, before we know how things actually turn out. Acknowledging that truth, the overviews on Uzbekistan's constitutional reforms offered in this collection give solid grounds for optimism, and justify international efforts to welcome and support the process.

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