

## **Kyrgyz Constitution is Central Asia's Finest**

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New constitution will not turn the country into a parliamentary democracy just yet, but it's still the most progressive in the region.

The finalised version of Kyrgyzstan's new constitution has diluted the original plan to create a strong parliament and strip the president of all but ceremonial powers.

Yet it is still a genuinely positive step in the right direction, as it should create greater pluralism in the political system and prevent power being concentrated in the hands of one person.

And by the standards of other Central Asian states, where authoritarian leaders can expect to retain their grip on power until they drop, it is a truly progressive document.

Published on May 20, the draft constitution has been submitted for consultations, and will be subject to approval in a referendum scheduled for June 27.

The new constitution does remove some powers from the post of president, but instead of transferring them to parliament as per the original plan, they devolve to the prime minister. On close examination, the president retains enough authority to exert significant influence on the political process.

There is some ambiguity in the wording that delineates this power-sharing arrangement, particularly regarding who has ultimate authority over foreign policy, security and defence. This could prove problematic at a time of crisis, or if president and prime minister fall out.

The heads of the defence and security agencies report directly to the prime minister, but the president can appoint and sack them. The president loses sole control over foreign policy, but will still take part in defining it. It is unclear whether the president or the prime minister is expected to sign international agreements.

The president also has a say in the formation of new governments. The winning party in an election gets to nominate a prime minister, who then submits a proposed cabinet list to parliament. But if legislators fail to approve his chosen ministers within 15 days, or in cases where no one party attains the required majority, the president steps in and may ask other parties to form a government.

The president also plays the role of an arbiter when parliament clashes with government, and may choose to ask either of the two institutions to stand down.

All in all, the hierarchy of power remains undisturbed – the president sits at the top, then comes the speaker of parliament, and only then the prime minister.

Even the way the constitution is set out shows that parliament has not taken over as the principal institution of state. In the final draft, the chapter dealing with the head of state sits before the one on parliament, whereas in the earlier version it was the other way around.

The reason the final draft differs from the constitution as originally conceived is that the first draft was produced by a team of legal experts working to ensure the document reflected the interim government's vision of a shift to a parliamentary system.

Later compromises stem from consultations with various political groups with differing agendas, as well as NGOs and international organisations including representatives of the OSCE, the Venice Commission (the Council of Europe's advisory body on constitutional matters), and experts from Russia.

Some of the changes even represent a step backwards from the current constitution. For example, a provision allowing members of parliament to be dismissed if constituency voters are unhappy with them has been taken out.

The Constitutional Court ceases to exist as a separate entity, and is reduced to being a component of the Supreme Court. This is problematic, as the Constitutional Court used to offer an avenue where NGOs, for example, could claim their basic rights were being violated when the authorities imposed restrictions on demonstrations.

Additional wording to the status of judges could be interpreted as meaning they can be dismissed for reasons other than professional incompetence.

Overall though, despite these flaws, the new constitution is the first of its kind in Central Asia, and is

undoubtedly a step forward for Kyrgyzstan. It makes the country the first in the region to address the problem of heads of state who seek to monopolise power and remain in charge forever.

Kyrgyzstan is the only Central Asian state that has replaced a sitting head of state. Kazakhstan, Uzbekistan and Tajikistan are still run by the same leaders who came to power following the collapse of the Soviet Union, and they show no signs of stepping down.

Turkmenistan declared its first president Saparmurat Niazov president for life, but his reign was cut short when he died in 2006 and was replaced by Gurbanguly Berdymuhammedov.

In Kyrgyzstan, the presidency is restricted to one term only – although the final version makes this six instead of five years. An upper age limit of 70 has been set for the post.

One of the elements that has received most praise in the new constitution is that winning parties are restricted to 50 per cent of the seats in parliament plus five. With the number of seats in legislature expanded to 120, this limited absolute majority will be 65.

The system should help strengthen political pluralism, as it will give more influence to opposition parties. One possible drawback is the legislative process may take longer as the ruling party tries to secure the required number of votes. For constitutional matters, a two-thirds majority is needed.

The constitution retains proportional representation for parliamentary elections. The system will be entirely based on party lists, with no individual constituencies. There is a danger this will widen the divide between the electorate and members of parliament, given that the latter are not accountable to a particular local electorate.

One important point in the final draft is that it reinstates the statement that Kyrgyzstan is a secular state. During the process of revision and debate, there were controversial attempts to remove this statement. The document now draws much clearer dividing lines between state and religion, adding a line prohibiting religious organisations and the clergy from interfering in the work of state institutions.

This document is only the start of a process that should eventually take Kyrgyzstan away from the kind of autocratic presidential rule that sparked popular protest in 2005 and in April this year, in both cases leading to the heads of state of the time, Askar Akaev and his successor Kurmanbek Bakiev, being ousted.

As with previous constitutions, the test will be how effective it is when applied to the realities of Kyrgyz politics, where informal practices and traditions dominate, political groups engage in strife, and public levels of engagement are generally low.

In the words of Gulnara Iskakova, one of the members of the working group that drafted the constitution, "It's going to be a long and difficult journey."

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*This article was produced jointly under two IWPR projects: Building Central Asian Human Rights Protection & Education Through the Media, funded by the European Commission; and the Human Rights Reporting, Confidence Building and Conflict Information Programme, funded by the Foreign Ministry of Norway.*

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**Topic:** [Political reform](#)

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