



Understanding the Proposed Kyrgyz Parliament

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On April 26, 2010, the Interim Government of Kyrgyzstan unveiled a new draft constitution, the merits of which are currently under debate both in Kyrgyzstan and in international forums. The electoral system is only one part of the draft, with other new or modified provisions on fundamental issues such as the separation of powers, the judicial system, human rights, and local self-government. However, given Kyrgyzstan's experience so far with repeated trends toward authoritarianism and manipulation of the parliament through referenda and electoral fraud, the proposed model for electing the legislature is a key topic of this debate. While currently roundtables, public forums, debates, and comments provided by Kyrgyz and international experts on the subject are ongoing, the majority of Kyrgyz and internationals believe the electoral and political system provisions of the draft constitution will change little before the May 20 deadline set by the Interim Government. As this may define the structure of the legislature-to-be, it is useful in the week remaining before the deadline to examine the pros and cons of the proposed legislative model in the context of Kyrgyz society and experience.

Previous experiments

To evaluate the parliamentary model Kyrgyzstan looks poised to vote on, it is helpful to briefly look at the various parliamentary systems used to date. To say that Kyrgyzstan, in its short history, has had an evolving or, ever-changing system for electing the legislature is an understatement. Kyrgyzstan has had four different systems for electing the national legislature in only twenty years; the adoption of the newly proposed constitution would create the fifth. Only once was a parliament elected in the same way as the one that preceded it (1995 and 2000). In each case, changes were made to consolidate political power, and referenda have been used with each initiative to change the system. The public were given little information by the authorities on the changes proposed, and were often presented a 'slanted' statement or propaganda ensuring a vote in favor of the reform. For example, the 2003 referendum posters on Election Day read – *Are you supporting the president's reforms to promote development and prosperity of Kyrgyzstan and democratization of the country? Tick off the word "YES", and thereby make a contribution to the well-being of our Motherland.*

The following is a brief overview of prior parliamentary electoral systems in Kyrgyzstan:

1990-1995 Unicameral parliament; TRS

Newly independent Kyrgyzstan inherited from the Soviet Union a unicameral parliament consisting of 350 deputies. These deputies were last elected in 1990 using a Two Round System (TRS) for 350 single-member districts. Under the TRS, if a candidate failed to win more than 50% of the popular vote in a given district, a run-off took place between the top two vote-earning candidates. Candidates elected to the 1990 legislature did not represent political parties, as the formation and registration of parties only began in 1991.

1995-2005 Bicameral parliament; TRS and Parallel system

Following a 1994 referendum, the unicameral assembly was replaced by a more complicated “mixed” system that resulted in a bicameral legislature of 105 deputies. Sixty deputies were elected to the first chamber and 45 deputies to the second. Two-thirds (45 deputies) of the first chamber and the entire second chamber (45 deputies) were elected in 45 new, larger, single-member districts using the TRS. The remaining 15 members of the first chamber were elected through proportional representation (PR) using closed lists and a single national constituency. Parties had to earn a minimum of 5% of the total vote nationwide to be represented in the legislature.

Reducing the number of electoral districts from 350 to 45 meant that the size of the districts increased. This made it more difficult for smaller political parties to win seats, and arguably, more easier to ‘manage’ outcomes. While PR offered a better chance to small parties, the few PR seats offered little hope for real representation in the legislature. To be guaranteed just one of the 15 seats, a party needed to gain approximately 126,000 votes or 6.7% of the national vote. In practice, even when a minor party got into the parliament, it never received more than a handful of seats.

2005-2007 Unicameral parliament; TRS

Through another referendum in 2003, the parliament was reduced again, this time to 75 members in a unicameral body. Reverting back to the previous system, deputies were elected in single-member districts using the TRS. New requirements, introduced through the referendum, to reside continuously in the country proved controversial and disqualified several prominent candidates (e.g., current Interim Government leader Rosa Otunbayeva).

2007-2010 Unicameral parliament; PR

An October 2007 referendum again changed the system entirely. The 75 deputies are now elected through a closed-list PR system. Political parties must clear a threshold of 5% of *registered* voters (i.e., based on all eligible voters as opposed to votes cast) nationwide to enter the parliament. Given the issues with voter lists in Kyrgyzstan, with many deceased and emigrated voters populating the list, and many internal migrants unable to vote due to complicated and burdensome procedures for both changing registration (*propiska*) and securing an absentee ballot, the actual threshold is in effect much higher. Parties must also clear a second threshold of 0.5% of all registered voters in each of the country's seven regions, plus the cities Bishkek and Osh. By introducing the strictly PR system with two thresholds, combined with some questionable rulings on whether parties reached those thresholds, parties in opposition to the pro-presidential political forces were effectively shut out of the parliament at the last election.

The proposed electoral system

Under the proposed text of the draft constitution, the new legislature will be composed of either 120 or 105 deputies (final size to be determined) based on PR. The size of the parliament has been justified by the model's designers as corresponding to the population of Kyrgyzstan. However, there are plenty of examples of larger or smaller parliaments in countries with a similar population to Kyrgyzstan. The reason for two scenarios on the size of parliament is that there is not unified agreement within the interim government.

If the current electoral code is used, these deputies will be elected on 'closed' lists, meaning that the voter may only choose the party and not specific candidates. The constitution itself is silent on this matter. Given that electoral legislation is relatively easy to amend, there is the possibility to move to open lists in the future. Political parties will need to clear a 5% threshold of total votes to enter the parliament. An important and unique feature of this system is that no party can gain over 65 or 60 seats (depending on the size) regardless of their level of support. There are no provisions in the constitution for minority or gender representation in parliament or on the lists of candidates; however, some provisions are stipulated within Kyrgyzstan's election code.

These characteristics of the proposed electoral system can be examined in more detail through a set of evaluative criteria:

Accuracy of votes cast to seats won

PR is praised for its high level of correlation between votes cast and seats won in the legislature. This is unlike plurality/majority systems, where the winner-take-all system results in many wasted votes. The 5% threshold proposed is an improvement over previous thresholds in the Kyrgyz electoral system which looked at 5% from all eligible voters as opposed to 5% of the cast votes. The removal of the geographic threshold, requiring that a 0.5% threshold be met in each of Kyrgyzstan's 7 regions, also should result in fewer votes wasted should a party not have geographically broad support. This provision was used, albeit controversially, to prevent the popular *Ata-Meken* party from taking seats in the parliament after the 2007 elections.

One unique feature of the electoral system may be the cause of some concern: limiting a party's seats in the parliament to around 55% regardless of the level of support they receive. This provision, while designed to prevent one party from dominating the legislature, also has potential to waste many votes and distort the proportionality of votes cast to seats won. This concept is novel and according to local experts is the innovation of the constitution's main drafter. How seats are applied to other parties in the case one party receives votes over this threshold, would also need to be clearly stipulated in the election code.

Mitigating extremist parties and movements

A consequence of plurality/majority systems is that fringe or extremist parties have a hard time entering the legislature. First, parties typically form around a broad set of issues, thereby appealing to the largest subset of the population, often adopting some but not the most controversial issues of the fringe groups. Second, it is unlikely – but not impossible – that such extremist parties themselves will ever appeal to a broad segment of the population. However, under PR systems, unless the threshold is set quite high, fringe or extremist parties can find their way into the parliament. In some cases, a minority party can even play role of kingmaker, where their support is crucial in forming the governing faction despite their low number of deputies. This is actually an example of how the PR system can appear proportional in terms of number of seats, but disproportional in terms of weight and importance in the legislature. As a consequence, such groups and their causes may not only get a platform and a political lifeline by taking seats in the legislature, but they may seriously influence policy and decision-making if their support is crucial to form the government.

Due to repeatedly flawed elections, it is impossible to determine exactly which if any of the more extreme parties could enter the parliament given the 5% threshold. There are political parties that are based on a nationalistic (*Erkindik*) or religious foundation (*Erkin Kyrgyzstan*); however, as is true in most all cases given Kyrgyzstan's tendency for person-oriented politics, these parties tend to be more based on their leaders than on ideology. Notably, the draft constitution in its current form bans the formation of political parties based on religion or the political aims of religious organizations.

Links to constituencies

Under the proposed system, and a feature of many PR systems, there will be the lack of constituency representation. Whether this is good or bad for Kyrgyzstan is open to debate. While constituency service is a feature of representational government, the need to create national parties and national ideologies is probably stronger than guaranteeing constituency links in the legislature. Under previous single-mandate systems employed in Kyrgyzstan, there were no requirements to actually hail from or reside in the districts, making the argument for this electoral system somewhat weaker should the same rules apply. An additional consideration is the necessary drawing of electoral districts under such a system. Unless traditional or existing governmental borders are used, Kyrgyzstan would have to undertake considerable efforts to redraw and apportion the districts. Given the challenges faced by election commissions and local authorities when dealing with other electoral administration tasks, such as maintaining the voter lists, it seems this exercise would place a considerable burden on the country's electoral institutions. And if existing territorial boundaries for single-member districts are used, then the mandates that deputies receive would vary greatly and consequently the proportionality of the legislature decreases.

One option might be to use PR in multi-member districts under the existing oblast boundaries. This would create a link to geographic regions, yet retain many of the positive features of PR. However, the legislature might need to increase the number of deputies to accommodate such an electoral system. Given that the parliament appears small compared to other European countries of similar population, this may be a welcome development. If the legislature remains at the size currently being proposed, there would be only a limited number of seats to contest in these districts. Moreover, in less populated oblasts, such as *Batken*, *Talas* or *Naryn*, there would be very few seats. The natural threshold to get into the parliament would be much higher than the legal 5%. Consequently there would be more wasted votes, and smaller parties would find it harder to enter parliament.

Development of political groupings vs. traditional power structures

PR systems in a national constituency rely on parties to contest the seats and reward those that garner the most support. PR systems are therefore likely to form political and ideological groupings (parties). In plurality/majority systems this is not always the case, and local leaders can contest and win seats, even as “independents” in countries with strong political party systems (i.e., the US).

Unlike single-mandate constituencies, the proposed system would prevent non-party affiliated local leaders from taking seats in the legislature unless they have significant (over 5% of the national vote) support at the polls. Given Kyrgyzstan’s traditional north-south and family/clan political landscape, however, there still will be elected individuals under the PR system that ‘unofficially’ represent a geographic region. Under PR however, there will be no legal or formal link to these constituencies. Given the desire to create a stronger unitary state in the context of the currently unstable political climate, it appears desirable to employ a party-based PR system.

To encourage greater development of political parties, the threshold could be lowered even further, and introduced gradually. This would enable parties to get a foothold with, say, 2 or 3% of the vote, and then develop over the next few terms of the parliament. In a sort of political “natural selection”, the strongest of these parties would emerge and be able to successfully contest higher thresholds. Given that modern Kyrgyzstan has little experience with competing political ideologies and is founded upon a family/clan-based society, such an argument has merit. After all, there is still very little experience with parties and the PR model – the country’s only other PR elections being a mixed system with just 15 PR seats in 1995 and 2000, and the 2007 elections which were not very proportional at all, as only one party, *Ak-Jol*, qualified for seats. *Ak-Jol* itself was not a true political party or movement, being founded within only a few months prior to the new PR parliamentary elections. On the other hand, lowering the threshold may actually enable charismatic individuals to get into parliament purely on the votes of their personal followers, thereby stunting real party development. The lowering of the threshold could also lead to many small parties in the parliament, and make getting a ruling majority faction more difficult. In doing so it may weaken the ability of the next parliament to function, something it can ill afford given the fragile state of the country.

Cost and Implementation

Overall the proposed electoral system does well in terms of its costs and ease of implementation. As a single national constituency, the PR system does not require any districting, or apportioning of seats on a regular basis; the system is relatively easy and economical to administer vis-à-vis other systems. Expanding or decreasing the size of the parliament, while requiring a constitutional amendment or referendum, is also simple to implement under PR. It also requires the production of only one ballot, as opposed to plurality/majority systems or multiple PR districts which would require many or at least several different ballot papers to be designed and printed. The decision to employ closed lists also arguably reduces the burden of educating voters on the candidates within the parties (as opposed to a single party platform), and makes for a less complex or smaller ballot.

Electoral administration is largely the same regardless of the election system type. Structures (commissions at various levels), the number of ballots, and many procedures remain identical regardless of the system. What does change is the instruction given to the voter to cast his preference, and the counting of results. PR systems utilizing closed lists (as proposed in the draft constitution and current election code) are quite simple – the voter must cast one preference and the polling station commission must simply tally the results among the offered parties. Other systems (PR with open lists, Mixed) can prove to be considerable challenges to the commissions as they have multiple or more complicated ballots and counting requirements.

An important benefit of PR is the need for only one election. As Kyrgyzstan previously used the two-round system to elect its legislature (or the non-PR part of it) prior to 2007, this required the Central Election Commission to repeat the election in certain districts where vote earning or turnout requirements were not met within a few weeks time. This ‘repeat’ scenario is avoided in PR.

Gender and Minority considerations

It is widely recognized that women and minorities fare better under PR systems. In a plurality/majority system, parties often put the most ‘electable’ candidate forward. For psychological or cultural reasons, in the majority of cases this will be an older male of the predominant ethnicity. Within PR systems, parties stand a list of candidates and can therefore more ‘safely’ include women and minority candidates. Moreover, in order to attract as many

votes as possible from a diverse range of supporters, parties will often place such candidates in higher positions on the ballot, thereby helping the candidates' chance of entering parliament.

In addition, PR systems often have quotas or 'zippering' requirements – where candidates from minority gender and ethnic groups must be placed at certain intervals in the party list. Should Kyrgyzstan keep provisions from the existing election code, every fourth candidate will need to be of minority (female) gender. There is an additional provision that 15% of party candidates must be from minority nationalities and 15% below the age of 35. However, there is no 'zippering' requirement to put these candidates in winnable positions, and as such their representation is not guaranteed. When arguing whether Kyrgyzstan should employ open versus closed lists, it is also important to note here that the benefits to gender and minority groups are often diluted when the lists are opened, as the voter again has the ability to indicate or rank a candidate preference.

Ease of Understanding

A closed-list PR system is not as straightforward as basic plurality/majority systems, where the winner-take-all contests are quite easy to comprehend, both in terms of who you are voting for and how the winner is determined. The voter needs to identify with the political parties instead of a single or few candidates, and in the context of Kyrgyzstan very few people currently do this. While claiming an ideology, parties up until now have really just been vehicles of leading Kyrgyz figures and their associates.

The population also should have a basic mastery of how votes are translated into seats, how party lists work or are compiled (including gender provisions), what thresholds are and how the votes of parties that do not reach thresholds are distributed amongst the parties that do. The draft constitution's stipulation that no party receive more than just over half the seats, regardless of their support, would also be a challenge to educate the voter on, both in terms of what happens to the excess votes and the rationale behind this limit.

On the other hand, a closed-list PR system is much easier to comprehend than an open one. This is true both in terms of how to mark the ballot, and how seats are allocated. The ballot paper itself will generally be simpler. There are several other systems that may be technically superior in terms of voter choice, constituency links and other considerations, but are rather

complex to understand, such as systems that enable voters to transfer their vote preference and use multiple systems to elect different “pools” of seats.

Kyrgyzstan’s recent exposure to PR, while far from extensive, means that the model is not completely unfamiliar to citizens.

Conclusion

There is no ideal electoral system for a legislature – each of the tried systems in the world has strengths and weaknesses. The ‘best’ model for any given country will depend on its available resources, political traditions, societal make-up, educational levels and many other factors. The PR model put forward in the draft constitution is likely a better choice than one from the other major families of electoral systems. PR wastes few votes, is relatively simple to implement and for voters’ to comprehend, avoids costly second rounds, and can help build basic ideology-based politics. The closed-list system, while denying voters a choice for individual candidates, can also help to ensure the inclusion of minority gender and ethnicities.

Probably the biggest drawback of the proposed system involves the constituency deficit. This could be slightly ameliorated by using PR in multi-member districts; however the total number of deputies ought to be increased to more effectively accommodate this model. This increase might have another benefit – as an expanded parliament would likely draw in more politically ambitious figures. In a time of great instability in Kyrgyzstan, the value of getting people “inside” the new lawmaking body should not be underestimated. It is also questionable how much ideology-based politics can grow just from deploying an electoral system, especially given the track record of the development of political parties and groupings to date in Kyrgyzstan. Having some accountability to local constituents can sometimes do more for the creation of ideology as it concentrates politicians on the issues dear to a subset of voters, e.g., land issues, workers rights, etc. The thresholds for getting into parliament are reasonable; advantages and disadvantages may arise from lowering them further. Finally, the consequences of placing a cap on the number of deputies per party needs to be thoroughly reviewed. This provision has the potential to waste many votes and could greatly distort the legislature’s proportionality, the very thing a PR system is designed to produce.