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## WHAT'S IN KYRGYZSTAN'S CONSTITUTIONAL REFERENDUM?

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Eurasianet,

The people of Kyrgyzstan go to the polls on December 11 to vote on amendments to the country's constitution. They are familiar with constitutional referendums; this is the seventh in 25 years of Kyrgyz independence. Another, in 1994, was on the presidency.

As has been true in each of the previous referendums, it's a yes-or-no option. Voters cannot cherry-pick individual amendments from among the more-than-two-dozen proposed changes, some slight, some large.

The changes receiving the most attention deal with shifting power from the president and the parliament to the prime minister and the government. But there are other very important changes included in this package.

First, some background.

Kyrgyzstan's current constitution was approved in the country's last referendum, in June 2010, right after President Kurmanbek Bakiev was ousted from power. That basic law changed Kyrgyzstan's form of government from presidential to parliamentary. It was the first time any country in Central Asia had adopted a parliamentary system. That constitution also included a clause that no changes would be made until 2020.

Now, even some of the architects of that constitution admit the need for some changes. But critics of this referendum argue that the timing is bad, since a presidential election is tentatively scheduled for October 2017, so they say amendments would be more wisely made after that date. In any case, this package of amendments was rushed through; a case in point is the approval of the date of this referendum before parliament had even formally approved the holding of such a referendum.

The changes at the top are what most people are looking at, but actually they are not the most dramatic changes being proposed.

Article 36, Paragraph 5, currently reads, "Persons reaching the age of consent shall have the right to marry and create a family." That would be changed to "a man and a woman reaching the age of consent shall have the right to marry and create a family."

The implications for Kyrgyzstan's beleaguered lesbian, gay, bisexual, and transgender (LGBT) community are clear. They can have no recognized, formal bond and some of the more conservative elements in Kyrgyzstan will likely see this clarification as legitimizing their campaigns against what they consider "nontraditional" relationships.

Article 41, Paragraph 2, says, "Everyone shall have the right to apply in accordance with international treaties to international human rights bodies seeking protection of violated rights and freedoms." The amendment would remove the next sentence, which currently reads, "In the event that these bodies confirm the violation of human rights and freedoms, the Kyrgyz Republic shall take measures to their restoration and/or compensation of damage"

Those familiar with the case of Azimjon Askarov, an ethnic Uzbek rights activist convicted of participating in the June 2010 violence in southern Kyrgyzstan, will see the reason for the change. In April, the UN Human Rights Committee called on Kyrgyzstan to immediately release Askarov and annul his conviction.

Article 26 of the constitution deals with a defendant's rights -- presumption of innocence, right to a trial, and so on. An addition to Article 26 would tighten laws on statutes of limitation but make clear there is no statute of limitation for the "crimes of genocide and ecocide." The Kyrgyz public is environmentally conscious, which has presented problems for mining companies, particularly foreign mining companies working in Kyrgyzstan, who have been accused of damaging local ecosystems.

Under the proposed changes, the constitution's preamble would include language likely to appeal to Kyrgyz nationalists. Added to the "unwavering conviction and firm will to develop and enhance the Kyrgyz statehood, protect state sovereignty and unity of the people," are the words "[and] to develop its language" -- note the singular -- "and culture."

Article 50, Paragraph 2, guarantees that no one can deprive Kyrgyzstan's citizens of their citizenship. But the amended constitution would allow authorities to revoke citizenship in certain cases, the most likely being if a citizen has left to join Islamic militant groups in the Middle East or Afghanistan or Pakistan.

And now for the proposed changes in the government.

The prime minister currently may "appoint and dismiss the heads of local public administrations upon proposals of local "keneshes" in accordance with the procedures of the law (Article 89, Paragraph 7)." The amended version is shortened, and the prime minister may simply "appoint and dismiss the heads of local public administrations."

Changes to Article 87 would allow the prime minister, with parliament's approval, to appoint and dismiss ministers.

Under the amendments, the prime minister must be a parliamentary deputy, something not required under the current constitution. Further, the prime minister and first deputy prime minister would keep their deputy mandates and be able to vote in plenary sessions. In the event that either of these two officials resigns, is dismissed, or for whatever reason ceases to carry out the duties of their posts, "their deputy powers are restored in full (Article 73, addendum)."

Under the amendments, Kyrgyzstan's president would no longer chair the Council of Defense, essentially head of the military and law enforcement organizations, but would become chair of Security Council (Article 64, Section 9, Paragraph 1). The responsibilities of the Security Council are not clear.

There are many changes to the vetting or dismissal processes for judges at various levels all the way to the Supreme Court. The president would have the right to change judges in regional and city courts. People with a tarnished reputation would be excluded from holding state posts.

There are also new rules for parliamentary factions to withdraw from a ruling coalition, and an extension from 15 to 25 days for a coalition to nominate a candidate for prime minister.

An interesting addition to Article 68, Paragraph 2, which currently reads, "Officials exercising the powers of the president shall not have the right to call early elections of the Jogorku Kenesh or dismiss the government," would include "or be a candidate for the post of president in early

elections for president."

The history of Kyrgyzstan's suggests this referendum should pass by an overwhelming majority. Whether most voters are familiar with all the changes they are approving is another question, of course.

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Kaynak/Source: