

An hourglass-shaped graphic with a globe inside. The top bulb is dark blue, and the bottom bulb is light blue. The globe is centered in the narrow neck of the hourglass. The top bulb is filled with a dark blue color, and the bottom bulb is filled with a light blue color. The globe is centered in the narrow neck of the hourglass.

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*Kyrgyzstan's Constitutional Crisis: Context and Implications
for U.S. Interests*

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CRS Report for Congress

Kyrgyzstan's Constitutional Crisis: Context and Implications for U.S. Interests

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Summary

This report examines civil disorder in Kyrgyzstan surrounding the enactment of a new constitution providing for greater balance between presidential and legislative powers. This report may be updated. Related products include CRS Report RL33458, *Central Asia: Regional Developments and Implications for U.S. Interests*, by Jim Nichol.

Background

President Bush has hailed Kyrgyzstan's March 2005 "tulip revolution" — that included the election of a new president — as another example of countries such as Georgia, Ukraine, Iraq, and Lebanon where "freedom [is] on the march."¹ The Administration states that the United States "must help" Kyrgyzstan to combat corruption, to reform its constitution, and otherwise to become a model to other countries of a "reforming market democracy" that is at peace with its neighbors and is integrated into the world economy. U.S. aid also seeks to enhance Kyrgyzstan's sovereignty and territorial integrity, to prevent weapons proliferation, and to combat transnational terrorism and criminal activities including trafficking in persons and narcotics (State Department, *Congressional Budget Justification for Foreign Operations for FY2007*).

Constitutional reform to reduce overweening presidential power was a major rallying cry during Kyrgyzstan's "tulip revolution." Spurring these calls were memories of frequent constitutional changes orchestrated over the years by former President Askar Akayev to increase his power at the expense of the legislature. A post-independence constitution had been drawn up in 1993 with input from international jurors that created a strong presidency but that also provided for some countervailing legislative powers and for extensive human rights protections. Akayev complained in 1994, however, that this

¹ Weekly Compilation of Presidential Documents. *Commencement Address at the United States Naval Academy in Annapolis, Maryland*, May 27, 2005, pp. 891-896.

constitution was too “idealistic” since the Kyrgyz “people are not prepared for democracy” and said that a “transitional period” was needed. He decreed referendums in 1994, 1996, 1998, and 2003 that whittled away legislative power. Despite these successive restrictions, the legislature at times asserted itself in law-making and oversight.

Many people both inside and outside Kyrgyzstan were hopeful that a legislative election scheduled for February 2005 might mark progress in democratization. Observers from the Organization for Security and Cooperation in Europe (OSCE) who monitored the race concluded, however, that serious irregularities had taken place. After the vote, protests began in southern Kyrgyzstan and spread throughout the country in March in the wake of what many citizens regarded as a fraudulent second round of voting (in districts where the earlier vote was inconclusive), and President Akayev fled the country. Kurmanbek Bakiyev, a party leader active in the protests, was named acting president and won a presidential election in July 2005 that the OSCE praised as “generally respecting ... fundamental civil and political rights.” Virtually all of the legislators elected in February-March retained their seats, purportedly because Bakiyev feared that new elections might exacerbate political instability.

Deliberations over a new constitution proved highly contentious, with Bakiyev seeking to protect numerous presidential powers that many legislators and others wanted to curtail. Facing rising criticism against this stance, Bakiyev in March 2006 appointed one of the critical legislators, Azimbek Beknazarov, to head up a working group to draft three alternative constitutions: one with strong presidential powers; one with strong legislative powers; and one with a mixed system. In September 2006, these drafts were released for public discussion. Frustrated by what they viewed as dilatory tactics by Bakiyev, many parties and non-governmental organizations (NGOs) formed a “For Reforms” bloc in January 2006 to press for constitutional and other reforms. It sponsored large rallies in April and May to demand that Bakiyev agree by September 2006 on a new constitution limiting his powers. After this deadline passed, “For Reforms” announced that new protests would be held.

Recent Developments

Thousands of supporters of “For Reforms” and others launched daily rallies outside the Kyrgyz legislature and presidential buildings on November 2, 2006. Demands included that President Bakiyev and Prime Minister Feliks Kulov resign if they did not quickly accede to constitutional reforms to create a more balanced separation of powers. On November 6, Bakiyev submitted a draft constitution to the legislature that retained substantial presidential authority, but the “For Reforms” members of the legislature vowed to enact their own version. Bakiyev and Kulov publically denounced this as a “coup attempt.” Later on November 7, demonstrators outside the legislature supporting Bakiyev violently clashed with critics of Bakiyev, resulting in some injuries. This violence was denounced by both Bakiyev and the “For Reforms” legislators, and they formed a small team to quickly work out a compromise draft. Late on November 8, the legislature approved this draft, and it was signed by Bakiyev the next day.

Among the innovations, the November 2006 constitution established a mixed voting system for a new legislature to be elected in 2010, with one-half of the members elected by party lists and one-half in single-member constituencies. The legislature would be increased from 75 to 90 seats, and the body would have more influence over budget

legislation. The main party winning seats in the legislature would nominate the prime minister and cabinet. The president would appoint the head of the Central Bank, the Central Election Commission, and the prosecutor-general only after parliament's approval. The National Security Service (NSS) would be placed under the purview of the prime minister rather than, as is presently the case, under the personal control of the president.

Some critics warned that the agreement by the two sides that the sitting legislature and government would be retained until 2010 created great uncertainty about how constitutional laws would apply in the interim period. New strife between the two sides was assured, these critics argued.² Appearing to bear out this prediction, a battle developed in December 2006 when Bakiyev and Kulov accused the legislature of being tardy in approving a 2007 budget and passing laws on privatization, political parties, and the election code. According to some reports, Bakiyev and Kulov decided that if the ministerial government resigned, legal uncertainties surrounding how a new government would be formed might convince the legislature to disband and hold elections. Kulov announced the government's resignation on December 19, but most legislators balked at dissolution. Following a veiled threat by Bakiyev on December 30, 2006, that he would dissolve the legislature, it agreed to his ultimatum to enact another constitution that restores his power to appoint the prime minister, ministers, and regional governors, and to directly oversee the NSS during the transition period up to 2010. In return, Bakiyev dropped (or postponed) his demand for new legislative elections. This December 2006 constitution (which Bakiyev states he soon will sign) reportedly retains most of the innovations of the November version, except for the provisions on executive power.

Implications for Kyrgyzstan

According to some observers, the contention over political power-sharing between the legislature and the executive branch may well continue despite the enactment of the December 2006 constitution. They argue that more careful drafting of constitutional provisions and implementing laws might have eased some of this wrangling, including by competing regional and clan interests. Perhaps troubling, the maneuvering that resulted in Kulov stepping down as prime minister could exacerbate regional and clan tensions. If Bakiyev does not re-appoint Kulov or make other concessions to the northern interests that support Kulov, the balance between these interests and southern interests that support Bakiyev may be broken.³

While "For Reforms" and other Bakiyev opponents appeared to gain influence with the enactment of the November 2006 constitution, they appeared to lose influence when they boycotted the December 30 legislative session that restored some of Bakiyev's powers. If the legislature becomes more cooperative, it might support Kyrgyzstan's participation in debt relief offered by the International Monetary Fund and World Bank (the Heavily Indebted Poor Countries Initiative), as advocated by Bakiyev and Kulov. "For Reforms" supporters and others have raised concerns about Bakiyev's commitment to democratization, such as his praise for a Russian-style "vertical of power from the

² Daniel Sershen, Conflict over Constitution Continues, *Eurasia Insight*, Dec. 22, 2006.

³ Constitution Brings Respite from Crises, *Oxford Analytica*, Nov. 22 2006.

president to the heads of rural governments.... There must be an iron order and discipline in the executive branch.”⁴ Other observers suggest that despite the enactment of the December 2006 constitution that ostensibly restores the “Akayev system” of strong presidential power, Bakiyev will find it difficult to reverse pluralist trends that are defended by civil society. Likewise, the legislature’s capitulation on the constitutional change may not avert calls for its dissolution.⁵ These calls may well increase, since the popularity gained by the legislature in 2006 while it challenged presidential power seemed reduced in early 2007 by its capitulation to presidential power.

The process by which the new constitutions were enacted also has raised concerns in Kyrgyzstan. Some observers warn that the successful public protests encourage citizens and parties to “take to the streets” as the main form of political advocacy, rather than to work within political institutions. Indicative of possible future instability, “For Reforms” has announced that it will launch new mass protests against the December 2006 constitution in spring 2007. Other Kyrgyz commentators praise the government and opposition leaders for eventually reaching compromises on progressive constitutional provisions. These include that citizens may be detained only after a court warrant, rather than on the order of the prosecutor’s office as was previously the case. Another provision for a National Council on Justice to provide non-governmental input into selecting judges and evaluating their conduct may contribute to the independence of the judiciary from political influence, according to these analysts.⁶

The International Crisis Group (ICG) NGO has argued that even if there is progress in Kyrgyzstan in restructuring political institutions, other major problems of north-south regional tensions, corruption, and organized crime must be tackled. Otherwise, ICG warns, Kyrgyzstan could still become a “failed state.” A major key to solving these problems could be progress in reforming law enforcement and the judiciary, it suggests, which would improve public confidence in the government. According to analyst Erica Marat, President Bakiyev reputedly associated just after the “tulip revolution” with criminal elements in order to re-establish civil order in some regions of Kyrgyzstan. She asserts, however, that in recent months, the top level of the government has combated organized crime, although corruption remains rampant and many politicians are involved in criminal activities. She argues that these anti-crime efforts are strongly supported by civil society and that the Bakiyev government should encourage and rely on this support.⁷

Implications for U.S. Interests

The U.S. Administration has appeared to take a cautious view toward recent developments in Kyrgyzstan, balancing its support for constitutional reforms with concern

⁴ Open Source Center. *Central Eurasia: Daily Report*, Dec. 24, 2006, Doc. No. CEP-950018.

⁵ Erica Marat, *Eurasia Daily Monitor*, Jan. 4, 2007.

⁶ Valentin Bogatyrev, *The Constitution Was Signed: Now It’s Time to Change It*, Institute for Public Policy, Nov. 14, 2006.

⁷ International Crisis Group. *Kyrgyzstan on the Brink*, Nov. 9, 2006; Erica Marat, *The State-Crime Nexus in Central Asia*, Silk Road Paper, Central Asia-Caucasus Institute, Oct. 2006.

about civil unrest, crime, corruption, and lagging foreign investment.⁸ The U.S. embassy on November 7, 2006, warned U.S. citizens to avoid the rally areas, particularly since opposing sides reportedly were clashing. It also urged the opposing sides to avoid violence. The embassy issued a statement on November 13, welcoming the peaceful, negotiated resolution of the constitutional dispute, including the “respect shown by Kyrgyz authorities for the rights of peaceful assembly.” It stressed that “a balanced system of representation and accountability” is a democratic necessity and urged Kyrgyzstanis to continue peaceful efforts to implement such reforms. Some observers argue that further instability in coming months is not ruled out, including if Bakiyev dissolves the sitting legislature and new elections are held. Eventually, however, the election of a post-Akayev legislature may contribute to greater popular legitimacy of the political system.

The Administration’s 2006 *National Security Strategy of the United States* asserted that the “‘color revolutions’ in Georgia, Ukraine, and Kyrgyzstan have brought new hope for freedom across the Eurasian landmass,” and have bolstered U.S. security by “strengthening international stability, reducing regional conflicts, countering terrorism and terror-supporting extremism, and extending peace and prosperity.”⁹ According to Secretary of State Condoleezza Rice, “we are supporting people throughout the globe who desire freedom and democracy. [FY2005] has been marked by truly unprecedented democratic transformations in places like Ukraine, Afghanistan, Iraq, Kyrgyzstan, Lebanon, and the Palestinian territories.... We are mindful that the path to sustainable, institutionalized democracy remains long [and] hard....”¹⁰

The United States and others in the international community increasingly have raised concerns about crime, corruption, weak government, and pro-Russian moves by the leadership that might jeopardize Kyrgyzstan’s independence, integration with the West, and support for the Global War on Terrorism. During his April 2006 visit to Kyrgyzstan, Assistant Secretary Boucher cautioned that the apparent continued presence of convicted criminals within the legislature raised questions about the rule of law.¹¹ Just after this visit, there was an unsolved assassination attempt against “For Reforms” co-founder Edil Baysalov, who reportedly had warned Boucher that democratization in Kyrgyzstan was faltering. Such events contributed to concerns expressed by the U.S. Ambassador days later that crime and corruption increasingly threatened Kyrgyzstan’s stability. The European Union too in May 2006 urged the Kyrgyz government to combat what seemed to be “circles connected with organized crime [that] are attempting to gain influence over political life and state institutions.”

⁸ Assistant Secretary of State Richard Boucher stated during an April 2006 visit that “I think everyone agrees that Kyrgyzstan needs a new constitution,” and that the United States “would like to see the constitutional reform process completed [to] rebalance the powers of government,” and was “willing to help.” *Interview With Azattyk Radio and State TV*, Apr. 11, 2006.

⁹ Mar. 16, 2006, pp. 2-3.

¹⁰ The State Department. *FY2005 Performance and Accountability Highlights*, November 2005. Secretary Rice also emphasized that “we are supportive of and working hard for a continued democratization in Ukraine, in Kyrgyzstan, in Georgia, in places that have broken free [from the Soviet Union] and are trying to move forward.” *Opening Remarks by Secretary of State Condoleezza Rice Before the House International Relations Committee*, Feb. 16, 2006.

¹¹ *Interview With Azattyk Radio and State TV*, Apr. 11, 2006.

In addition, Bakiyev's seeming pursuit of closer Kyrgyz-Russian security ties and other cooperation have appeared to complicate U.S.-Kyrgyz relations. Such moves included Bakiyev's early July 2005 endorsement of a call by the Shanghai Cooperation Organization (SCO; members include Russia, China, Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan) to consider closing regional bases used by coalition forces for anti-terrorist operations in Afghanistan. In late July 2005, however, he pledged to visiting then-Defense Secretary Donald Rumsfeld (and in October 2005 to visiting Secretary of State Rice) that operations at an airfield at Kyrgyzstan's Manas international airport (U.S. facilities there were named after the late New York City fire chief Peter Ganci) could continue.¹² In April 2006, the status of the Ganci airbase again appeared jeopardized when Bakiyev threatened to close it if rent and other U.S. payments were not substantially increased. In mid-July 2006, the United States agreed to provide \$150 million to Kyrgyzstan "over the next year" — subject to congressional approval — that would include foreign and military assistance as well as payments for use of the airbase. Kyrgyzstan's mid-July 2006 ouster of two U.S. diplomats on charges that they had "inappropriate contacts" with local democracy and human rights NGOs appeared to indicate troubling collusion between Kyrgyz and Russian intelligence agencies, according to some observers. Ties appeared further strained by the shooting death of a civilian by a U.S. serviceman on December 6, 2006, but U.S. Ambassador Marie Yovanovitch urged Kyrgyz citizens to reflect on the positive benefits of U.S.-Kyrgyz security cooperation.¹³ Some Kyrgyz analysts caution that these ties could face more stress if Bakiyev's political power is further challenged in coming months and he appeals for support from Russia.¹⁴

Congressional concerns about democratization in Kyrgyzstan since the "tulip revolution" and about U.S.-Kyrgyz relations have been reflected in hearings, statements, and legislation. At a hearing in April 2005, Senator Sam Brownback suggested that Kyrgyzstan's "tulip revolution" indicated that its citizens were demanding that the government be democratically accountable through free and fair elections. After Bakiyev's election as president, Representative Christopher Smith praised Kyrgyzstan "as the only country in Central Asia where the head of state won his job in a fair contest. Members also have expressed appreciation for Kyrgyzstan's continued hosting of U.S. anti-terrorism operations at Ganci. Issues for Congress include evaluating whether the level of FY2007-FY2008 foreign operations and military assistance requested by the Administration for Kyrgyzstan will facilitate closer U.S.-Kyrgyz relations and will adequately support democratization, human rights, and stability in Kyrgyzstan."¹⁵

¹² In early 2002, the Ganci base became a major trans-shipment hub to support U.S.-led coalition operations in Afghanistan.

¹³ *Central Eurasia: Daily Report*, Dec. 27, 2006, Doc. No CEP-950193.

¹⁴ Russia's *Nezavisimaya gazeta* newspaper alleged that Bakiyev contacted Putin during the November crisis seeking military and financial aid. *Eurasia Insight*, Nov. 9, 2006.

¹⁵ Commission on Security and Cooperation in Europe (Helsinki Commission). *Hearing: Kyrgyzstan's Revolution: Causes and Consequences*, Apr. 7, 2005; House International Relations Committee. Middle East and Central Asia Subcommittee. *Hearing: U.S. Security Policy in Central Asia (Panel 1)*, Testimony of Rep. Christopher Smith, Oct. 27, 2005. See also Rep. Gregory Meeks, *Congressional Record*, Oct. 7, 2005, pp. E2062-3; and Rep. Dana Rahrabacher, *Congressional Record*, Oct. 18, 2005, pp. E2117-8.