What price legitimacy if the ruling elite doesn’t always abide by the law? Although Kyrgyzstan modernised its constitution in 2010, its laws continue to be applied unevenly and are often outweighed by power and privilege.

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The country has a much more democratic system of government compared with other Central Asian states, but state institutions are weak, corruption is endemic and organised crime plays a powerful role.

IWPR’s Timur Toktonaliev asked Tamerlan Ibraimov, director of the Centre for Political and Legal Studies in Kyrgyzstan, to talk about what it might take to progress towards a situation where the law truly applies to everyone without distinction.

The constitution says Kyrgyzstan is governed by its laws, but is that actually the case?

That represents a future to which we aspire rather than the reality as it is now. Rule of law means that the law applies to everyone without discrimination and all matters are resolved solely by legal means. In Kyrgyzstan, however, the law works in some cases, while elsewhere it is other things that prevail. Take what’s called “telephone law” – when matters are resolved by a phone call from above. Or corruption, where what counts is who pays the most.

What that means is that the rich and influential don’t get held to account for any unlawful actions, whereas an ordinary man with no money or power won’t escape responsibility.

Is it more common for the law to be enforced, or for disputes to be resolved by alternative means?

If we compare the situation to that in neighbouring states, it’s perhaps somewhat better here, but of course we are still a long way behind advanced European countries.

It is possible to live and resolve issues through the law. But if you are wealthy and well-
connected, you enjoy a totally different kind of life.

Power is a very dangerous thing, and the phrase “power corrupts” has become a platitude. By power, I mean the top decision-makers, an elite class that barely understands the responsibility it holds and isn’t really able to practice self-restraint. These decision-makers need to understand that they are responsible for building a state ruled by law. To get us moving in that direction, they must first of all obey the law themselves. If they fail to do so, we won’t make progress, and we may go backwards.

This isn’t a linear process heading in the same direction at the same pace. Sometimes it can go very fast – it may take as little as six months to come up with progressive initiatives, leaving no time to track them or enjoy the benefits, and then suddenly the process can roll backwards by two, three or even five years.

To take the last five years, I would say that initially we made confident progress, but over the last year, we have made no headway, and maybe we have even taken a step back. This is shown in the way certain senior officials started expressing a desire to amend the constitution. [Ed.: see Constitutional Tinkering in Kyrgyzstan.] In my view, the proposals made by parliamentary party leaders were discriminatory and obstructive to rule of law. It was only at the last moment that the government either came to its senses or lost heart and decided to suspend the process. [Kyrgyz Constitutional Change Delayed, Not Dropped.]

The message is clear – the government wants to amend the constitution to suit its own purposes; it doesn’t listen to the public and hasn’t learnt the lessons of the past.

If the government itself does not comply with the law and just makes everyone else do so, society will respond with disrespect and mistrust because it doesn’t understand why some people have to obey the law and others don’t. It is logical that when laws are not upheld by top-ranking officials, society falls into a state of semi-chaos in which people live by criminal rather than law-based values. These are simple values, the survival of the fittest. And who holds the power? Criminals, “sportsmen” [hired thugs], and officials with underworld connections. They, rather than the state, begin to control everything, and of course they do it for their ends, not for the benefit of state or society.
The mafia, the criminal world is generally the most resource-rich and well-organised structure after the state itself. They have a hierarchy, a system for issuing commands and the power to enforce them. Power thus passes from the state to the underworld because if the state fails to tackle issues, people will seek help from criminal forces. People don’t care who solves their problems, and quite naturally, criminal values prevail where the law fails.

The state remains the strongest form of organisation in the history of mankind. Nothing better has been devised. But the state works only when the law works. This rule is vital. Otherwise, the state begins to resemble one of the many criminal groups.

Isn’t it true that the authority of the law was being eroded even before Kyrgyzstan became independent in 1991?

Yes. You may recalled that corruption began to become widespread in the Soviet Union of the 1980s. The result was that not everyone was equal before the law; those who had a bit more wealth and influence became “more equal” than the rest. That’s how it started. But of course it wasn’t on the same scale as it is now. At that time, the punitive machinery of the state – police, prosecutors and the security service [KGB] wielded more power. You could still obtain justice then, as long as there was no ideological principle involved.

After independence, private property emerged, some people quickly became rich, and the first accumulation of capital took place. The state proved to be very weak, and the laws didn’t work. All the officials in top positions began to enrich themselves at an unbelievable speed, and they totally ignored the law. Corruption blossomed.

Unfortunately, we didn’t have a political elite that was properly prepared and aware of its responsibilities at the time. There were no true statesmen... If we’d had people like that, they might well have been able to steer us through those dangerous waters and begin building a law-governed state.
So now we’re in a position in which the vast majority of our current politicians came out of that era and were shaped by 20 years of rampant corruption.

Is there a link between the growing Islamisation of society and the weakening authority of the state?
There is a connection there, because people don’t just need order, they also need answers to their questions about why injustice exists; why things as are they are. Religion offers many answers to these questions, but it’s another matter what those answers are and how they are to be interpreted.

In the Soviet era, we had a different faith, the communist ideology that supplanted religion. It answered questions about whether something was good or bad. Now that we lack a political ideology, people are looking to religion for answers to both spiritual and political questions. When the state seems weak and chaotic, it is quite natural for people to become more involved in religion.

**Is there any chance of the rule of law becoming a reality in Kyrgyzstan?**

It’s hard to give a definitive answer to that question. There are both positive and negative trends. I can see that the public understands that the country needs to develop according to the law. But as I’ve said, power corrupts. There is a risk that even honest people will become corrupt once they get into power.

So it is kind of a lottery whether our country will develop in a positive way. There are people who are willing to work for the good of the country, but will they have the determination, energy and good luck to make it into power? Will those who are in power have the wisdom to carry through real reforms and recruit well-educated people to work in the civil service?

One of the key markers will be who gets elected to the new parliament this autumn, because it’s these legislators who will determine the course of our national development over the next five years.

*Timur Toktonaliev is IWPR’s Kyrgyzstan editor.*

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