

Post Legislative Scrutiny Case Study: Connecting Parliament with the Public in Kyrgyzstan

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Introduction

This paper is a case study of a project in which Global Partners Governance (GPG), an organisation delivering international parliamentary support, introduced post-legislative scrutiny (PLS) into the parliament of Kyrgyzstan. The work formed part of a four-year DFID programme, *Government in Action*, which aimed to improve the responsiveness of the Kyrgyz political system and in particular, the way in which it considers the needs of businesses, supporting more inclusive economic development. Part of the project, delivered by GPG, involved working with MPs and committees to create more citizen-focused forms of accountability in an institution which had previously been very focused on the passage of legislation. PLS was a key component of GPG's strategy to help shift political incentives away from an incessant stream of new legislation and towards oversight and evidence-based consideration of the real effect of laws on people and businesses. This paper considers the extent to which this strategy was effective and why.

The Jogorku Kenesh

Kyrgyzstan is a small, stunningly beautiful but little visited Central Asian country with a population of around 6 million. It has undergone significant political turbulence since the collapse of the Soviet Union. The Tulip Revolution (or first Kyrgyz revolution) of 2005 ousted the post-Soviet President and in 2010, the second Kyrgyz revolution in response to ongoing corruption and poor living standards led to the creation of a fuller parliamentary system. Interim President Roza Otunbayeva has been widely credited with creating the conditions for peace and the non-violent transition of power in her country. Since 2010 there has been a period of relative stability and more-or-less open and peaceful political elections for both the President (2017) and the parliament (2015). Kyrgyzstan remains the most open of societies in Central Asia in comparison to some of its more authoritarian neighbours. There is a very active, if somewhat chaotic civil society and recent years have seen the beginning of a flourishing fledgling tourist industry, in particular since the visa regime for foreign visitors was dropped. However, it remains a poor country by comparison to many of its immediate neighbours and it continues to struggle against very high levels of corruption and structural economic problems.

Kyrgyzstan is often referred to as the only parliamentary democracy in Central Asia. Although this accolade is debatable for several reasons (for example, it still has a directly elected President with considerable powers, and Ministers are not MPs), it is nevertheless seen as a beacon of democracy in a relatively authoritarian region. The unicameral Parliament of Kyrgyzstan, the Jogorku Kenesh (JK), has 120 members elected for five-year terms from a single constituency according to a party list system, meaning that the parties have significant power over the choice of candidates. There is a women's quota of 30% enforced via the lists, however, women MPs who leave parliament for any reason (e.g. by resigning or becoming Ministers) are often replaced by men, meaning that overall the parliament does not meet this quota and the proportion of women MPs was only 16% at the time of GPG's work.



The Jogurku Kenesh, housed in the Белый Дом (White House). Built in 1985, this neo-Stalinist building was originally used to house the Kyrgyz branch of the Central Committee of the Communist Party of the Soviet Union and was then used as the Presidential Palace after independence in 1991. It has been the home of the parliament since the 2010 revolution.

Parties are represented in parliament by ‘factions’. The post-Revolution proportional representation system was intended to make it almost impossible for any one party to dominate to avoid a ‘winner takes all’ dynamic (a party can win a maximum of 65 out of 120 seats), so coalitions are frequent. These coalitions have been shifting – for example, during GPG’s first visit two-week to Bishkek in November 2016, the ruling coalition collapsed due to internal disagreements, but a new coalition was established within the fortnight.

Kyrgyzstan is surrounded by powerful neighbours. It shares borders with Kazakhstan and China and the influence of Russia is significant, culturally, economically and politically. Since independence the country has maintained close links with Moscow and its capital city, Bishkek, remains predominantly Russian speaking. Historically, corruption and the intermingling of political and business interests has been an ongoing issue. It is said that many candidates ‘buy’ their places on party lists and when they reach parliament, they expect a return on this investment through the ability to pass measures favourable to their personal business interests.¹

The JK has clear written processes and procedures, but as a very new parliament, these have not yet become embedded into cultural and behavioural norms. At the time GPG was working with the JK (2016-2018), it had nine committees, responsible for both legislative scrutiny and oversight. These had been reduced from 16 in 2010 then 14 in 2014 in an attempt to streamline the system and to make it appear more ‘efficient’. The main issue quickly identified by GPG was that political activity in the JK was almost exclusively focused on legislation, which was seen as the principal political ‘achievement’ by both the government and individual MPs.

¹ See further Marat, E. (2012) ‘Kyrgyzstan: a Parliamentary system based on inter-elite Consensus’, *Demokratizatsiya* 20.4.

There is an extremely high volume of legislation in the JK, driven in part by the number of MPs who propose their own laws, all of which has equal right to parliamentary time in committees and plenary as government legislation. While the right to initiate legislation is an important component of parliamentary powers, in most countries the majority of legislation is instigated by the government and parliament's role is scrutiny/amendment. Legislation instigated by individual members is likely to be of a poorer quality overall and this is the case in Kyrgyzstan. However, the Kyrgyz government also produces large quantities of legislation which receive limited scrutiny and are often poorly implemented, or not implemented at all. Comparatively little thought is given to the policy objectives legislation is intended to achieve or to consultation on its delivery, and the central government coordination of the legislative programme has been weak with departments independently presenting their bills and amendments according to their own timetables. We even heard of departments asking backbench MPs to present legislation on their behalf to bypass the Ministry of Finance requirements.

The difficulties caused by this overwhelming focus on legislation can be illustrated by two examples. Firstly, during GPG's initial visit in November 2016, a law came into force requiring all foreigners staying in the country for more than 5 days to register with the police (including the GPG visiting team, who duly complied and joined a long queue of very confused people). The law caught everyone by surprise, including the large amount of businesses who employed foreign workers. It had resulted from an amendment by a backbench member of parliament late during second reading. There had been no publicity surrounding its implementation and it was suggested that many parts of government were unaware of it. Following an outcry from the business sector, the law was promptly repealed two weeks later.

A second example is provided by GPG's visit to observe a committee meeting early in the project. During its three-hour meeting, the Social Affairs committee considered and amended nine bills including a series of votes by show of hands of its members, as well as rapidly noting a number of 'complaints' from members of the public and resolving to write to government about them. While it should be noted that the items of legislation being considered were not full Bills in the Westminster sense, but more akin to amendments or regulations, it was clear that the JK was functioning largely as a processing machine for ever greater quantities of legislation, with limited prospects that many of them would ever be properly scrutinised or indeed implemented.

Why Post-Legislative Scrutiny?

GPG supports parliaments around the world to develop more open and inclusive institutions, which engage more constructively with citizens and which value oversight as much as legislation. In our projects, GPG has found the introduction of post-legislative scrutiny (PLS) as a technique an effective means of furthering this objective, particularly in parliaments which may be highly efficient in passing new legislation, but devote relatively little time to monitoring its impact. To achieve this, PLS should not be understood as primarily a legalistic tool, but as a means of changing the behaviour of MPs and staff towards establishing more open and consultative processes, and consideration of the

legislative cycle as a process rather than an event. GPG has successfully introduced PLS as an effective oversight tool in the parliaments of Honduras, Sudan and Iraq amongst others.

Internationally, the UK has been seen as a pioneer of parliamentary PLS which has been a formal part of parliamentary procedures since 2006. The formalisation of PLS came as a result of growing feelings from many quarters that parliament was focussing on the passage of legislation at the expense of evaluating its impact, either before or after it enters into force. In 2004, the House of Lords Constitution Committee report on the Legislative Process made recommendations to improve both pre-legislative and post-legislative scrutiny and increase public involvement at all stages:

We believe that legislation is most likely to emerge fit for purpose if Parliament has the opportunity to be involved at all stages of the legislative process and has mechanisms to digest informed opinion and comment from concerned citizens and interested organisations. Parliament does not operate in a vacuum. It is important that those affected by, or with knowledge of or having an interest in proposed legislation should have an opportunity to make their voices heard...²

In 2006, the Law Commission report on post-legislative scrutiny stated:

As the body charged with keeping all the law under review, we are concerned both at the volume of legislation that is passed by Parliament and whether it accurately gives effect to the underlying policy aims. We are also concerned if new law has unintended consequences which make the law less certain and more complex. There are many issues that arise when one considers post-legislative scrutiny. The key questions include the purpose of post-legislative scrutiny, which legislation should be subject to such scrutiny, what form the scrutiny should take and by whom should it be undertaken, and perhaps most importantly, who should be responsible for making decisions about all of these issues.³

Since that time, PLS has become a formal process of both the House of Commons and House of Lords, in different ways. Commons departmental select committees are entitled to request a memorandum on the operation of a law three to five years after it came into force,⁴ and may conduct a full committee inquiry or some more limited paper exercise (e.g. correspondence with the department, requests for further information) to evaluate its effects and make recommendations accordingly. In the Lords, dedicated PLS committees are now established in each session to consider laws that are deemed to be of particular public importance.

² Constitution Committee, *Parliament and the Legislative Process*, 29 October 2004, HL 173-I 2003-04, para 5.

³ Law Commission, *Post-Legislative Scrutiny*, October 2006, Law Com 302, Cm 6945
<https://www.lawcom.gov.uk/project/post-legislative-scrutiny/>

⁴ Office of the Leader of the House of Commons, *Post-legislative scrutiny – The Government’s Approach*, March 2008, Cm 7320 <https://www.gov.uk/government/publications/post-legislative-scrutiny-the-governments-approach> and Kelly, R. *Post-Legislative Scrutiny*, House of Commons Library Standard Note (2013) <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN05232#fullreport>

While formal PLS inquiries at Westminster have grown in frequency,⁵ they remain a clear minority of the amount of work conducted by Commons select committees, however, it is arguable that it is the process of oversight more generally that has been affected by a greater focus on the legislative cycle as a whole and the (sometimes unintended) effects of legislation on the citizen. For example, a quick look at the current inquiries being undertaken by well-known Commons committees reveals subjects including financing alternative energy, operation of the post office network, the EU settlement scheme, prosecution of modern slavery and domestic abuse.⁶ Most, if not all of these could be described as post-legislative scrutiny inquiries, even if they are not formally flagged as being such, in that a key component of what is being investigated is the impact of the operation of laws on the citizen.

The recent 40th Anniversary of Select Committees in the House of Commons marked and celebrated the increasing public policy influence of the select committee system. Some speakers argued that this influence is driven less by formal powers and authorities and more by the fact that committees now sit at the centre of a web of government and non-government relationships, which enables them to act as early warning systems to resolve incidences where policy implementation is deficient and negatively affecting citizens.⁷ In Kyrgyzstan, committees have tended to act far less strategically, simply reacting to individual items of legislation offered by individual MPs or the government in an attempt to resolve specific complaints or issues, motivated by service-related or sometimes corrupt reasons.

GPG's approach to shifting the activity of Kyrgyz parliamentary committees away from new legislation and towards strategic oversight based on the views of the public and their representative groups used the concept of PLS as a way for committees to understand the interplay between the legislative, representation and oversight roles of parliament, to make visible the imbalance between them, and begin to redress it. Despite its name, PLS is essentially an oversight rather than a legislative activity, however, linking oversight to specific items of legislation rather than general policy areas was less of a leap for committees in Kyrgyzstan, which, to that point, had really only ever dealt in legislative amendments. In order to succeed in this attempt, however, GPG was clear that there had to be a political incentive for already overloaded members of parliament to see this as a useful and rewarding political activity, rather than yet another technical task that international donors wished to impose upon them.

(How) Did it Work?

Following the initial scoping visit, the project involved six, week-long visits by GPG by a team of three to Bishkek. GPG adopts a mentoring/coaching approach to projects, allowing time

⁵ Caygill, T. (2019) 'Legislation Under Review: An Assessment of Post-Legislative Scrutiny Recommendations in the UK Parliament', *The Journal of Legislative Studies*, 25:2, 295-313, DOI: 10.1080/13572334.2019.1603260

⁶ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-energy-industrial-strategy/> and <https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/>

⁷ Recording available at <https://houseofcommons.shorthandstories.com/select-committees-40/>

between visits for project partners to put into practice the new techniques and plans they have agreed upon with the team.

An ambitious strategic plan had been adopted by the JK following the 2015 elections, which aimed to modernise the parliament and to learn from best parliamentary practice around the world. Implementation of this plan was being overseen by the first deputy speaker, Altynai Omurbekova (who is now Vice Prime Minister of Kyrgyzstan). GPG worked extremely closely with her and her office, as well as with the parliamentary women's caucus in the JK during the initial fact-finding visits to identify a pilot project which could assist the MPs to perform their oversight function more effectively as well as finding ways to help in improving the quality and reduce the quantity of legislation in the Kyrgyz parliament. Communicating the work of parliament more effectively with Kyrgyz citizens was seen as an essential element of the project.

As noted above, parliamentary committees in the JK are hybrid committees and most meetings of the committees include both legislative and parliamentary oversight agenda items. Following the merger of certain committees, the Social Affairs committee has a particularly large burden of legislative work (said to be 40% of all legislation considered by the JK). It covered important social issues with a direct impact on citizens' wellbeing, such as education, health care, family policy, social policy and social security, as well as culture, the arts, information and media. While the Committee was struggling with its wide remit, it was also open to new ideas and ways of working. GPG therefore decided to focus on the Social Committee, mentoring and coaching some of its key MPs as well as working with its senior staff.

A proposal was agreed to develop a pilot project which would introduce the concept of PLS to illustrate the need to pass fewer but better laws. The project aimed to help MPs to understand their oversight role in holding the government to account by ensuring that laws are implemented effectively once they are passed. The initial stages of the pilot project required providing workshops and seminars explaining the concept of the "legislative cycle" and the usefulness of carrying out a post-legislative scrutiny inquiry for key staff and MPs.

Having identified the Social Committee as the priority committee to carry out the pilot project, it was then important to identify "champions" within the social committee - both from among the parliamentarians and from the staff who would help to lead the project and provide Kyrgyz ownership of it. There were discussions about the best organisational structure in order to carry out the project effectively. Various options were discussed, including creating a sub-committee, a working group and indeed to what degree the full committee should be involved in the process.

The project was greatly assisted by recruiting a Kyrgyz legal and parliamentary consultant, Jibek Abdikerim, who was extremely well connected within the JK, very persuasive and highly organised and who was very much attracted to the project as a new method of measuring the effectiveness of the Kyrgyz parliament and its parliamentary committees. It was decided to choose a law which had been passed several years earlier by the JK the **2013 Law on Fundamentals of the National Policy for Supporting Citizens Abroad** which dealt with the rights of Kyrgyz migrants working in other countries.

Nearly one sixth of the Kyrgyz population – i.e. one million Kyrgyz workers – currently live and work abroad. In 2017, remittances being sent back to Kyrgyzstan accounted for 32% of the GDP – a staggeringly high percentage.⁸ Predominantly, these Kyrgyz workers are working in Russia and Kazakhstan, frequently within the construction industry and are often living in primitive conditions with poor access to health care, education and training and other basic rights. The issue of Kyrgyz migrant workers based abroad and their rights as Kyrgyz citizens is one which affects the vast majority of ordinary Kyrgyz families and therefore seemed an ideal choice of legislation for the PLS pilot project.

By UK legislative norms this law would be seen as a largely declaratory legislative framework rather than detailed legislation but many of the public commitments following the passing of the legislation had not been implemented. We learned that a prominent Kyrgyz MP Kanybek Imanaliyev, who was not a member of the Social Committee, was planning to propose amendments to the law (of which he had originally been a sponsor in 2013). It was therefore decided to involve him in the pilot project and to identify two other MPs from the social committee who could make up the working group to deliver the project.

As this was the first PLS project of its kind it was extremely important to choose the right combination of MPs to be on working group. It was important to emphasise that PLS is a means of improving the quality of laws and of assisting the government in doing its work effectively in implementing these laws rather than being seen as a “tool to bash the government”. Ideally, the legislative branch and the executive branch should see it as a mutually beneficial process. The three MPs on the working group were therefore chosen to be carefully balanced politically - one from the government party, one from an opposition party, and one independent MP. They were all relatively young, well known within their communities and all three were former journalists, who instinctively knew how to make this a high-profile exercise – particularly through effective use of social media.

The next stage was to convince the long-serving staff members on the committee that this was not just another burden on their already heavy workload but an innovative project which would allow the Kyrgyz parliament to be a regional leader in this field. It would be fair to say that the proposals were initially met with some resistance from some of the staff but in an effort to move the pilot project from the theoretical to a living project connected to the lives of real people, it was suggested that the working group should undertake a visit to Russia to meet many of these Kyrgyz migrant workers and to see what, if any, impact the Migrant Law had had on their lives.

A visit of the working group, including all three MPs, the two senior members of staff allocated to the working group as well as some journalists and some staff from the Jogurku Kenesh’s press department, went on a fact-finding visit to Rostov na Donu and Krasnodar in southern Russia to meet Kyrgyz migrant workers, hold public meetings and to take evidence on the impact of the Migrant Law. The visit was covered quite extensively on both conventional and social media in Kyrgyzstan.

⁸ Remittance Inflows to GDP for Kyrgyzstan: <https://fred.stlouisfed.org/series/DDOI11KGA156NWDB>

On their return to Bishkek the working group over a number of weeks held both formal and informal hearings with witnesses, NGOs, representatives from the migrant communities as well as with government bodies responsible for the migrant workers. A draft report setting out clear recommendations for reviewing, improving and updating the law was drafted and a timetable was set for its adoption by the working group and then by the social committee. The adopted committee report was then taken to the plenary session of Jogurku Kenesh and adopted at a special event and hearing.⁹



Adopting the findings of the PLS inquiry into the Kyrgyz migrant law in a plenary session of the Jogurku Kenesh.

Conclusions and lessons learned

PLS can be seen as a dry subject, often revisiting highly technical legislation but if it is used correctly in developing parliaments it can be a useful mechanism to encourage parliamentarians to understand the full scope of their roles and functions more effectively.

This is particularly true in developing parliaments where passing new laws is often seen as a key indicator of an MP's effectiveness. The sheer quantity of legislation results in the poor-

⁹ Covered in the Kyrgyz media at: <http://kabar.kg/news/zakon-o-podderzhke-sootechestvennikov-zarubezhom-vse-eshche-aktualen-deputaty-proverili/>

quality legislation that is difficult to implement and is often incompatible with existing legislation. Holding the government to account in the implementation of the legislation should be seen as a crucial role for parliaments and introducing the concept of post-legislative scrutiny as a norm will assist in developing this process.

International expertise when used to guide and coach “MP champions” to do their day-to-day work as parliamentarians is an effective alternative method of embedding best practice and changing the culture of an institution. This is in contrast to large scale workshops can sometimes take parliamentarians and their staff away from their core work and can on occasion “overwhelm” with the perceived scale of the reforms required.

GPG’s PLS pilot project was also extremely effective in providing motivational incentives for long-serving staff especially when they can see the outcomes in terms of the impact of ordinary people’s lives and when the initiative is able to raise the profile of the institution where they work.

Embedding change requires continuity and repetition of a project to be truly effective. In an ideal world it would have been preferable to assist with similar PLS projects in several of the committees of the JK in order to have an increased number of “MP Champions” and experienced staff who understand and could promote the process within the work of their committees. Working throughout a whole 5-year parliament with the aim of changing the culture and adopting PLS as a key function of parliamentary committees within the internal rules of a parliament would be more likely to make a long-lasting and meaningful difference. Unfortunately this approach is difficult to achieve in practice within DFID’s current models of funding and evaluation.

However, the small group of Kyrgyz MPs we were working with have gone on to see their careers develop since the project ended in early 2018: Aida Kasymalieva MP has now been promoted to Deputy Speaker and continues to be a rising star and very active member of the Jogorku Kenesh; Altynai Omurbekova, who played a key role in supporting our project as First Deputy Speaker responsible for the implementation of the reform strategy of the Jogorku Kenesh is now Vice Prime Minister of the Kyrgyz Republic. It can therefore be hoped that this small project has had a lasting impact on the political and parliamentary approach of several key influential individuals who will shape the parliamentary processes in Kyrgyzstan in the years to come.