



C2D – Centre for Research on Direct Democracy  
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### **Direct Democracy in the Commonwealth of Independent States:**

The State of the Art

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## ABSTRACT

Direct democracy is typically defined as a system in which citizens are able to participate directly in political decision-making without relying on representatives or intermediaries. However, like representative democracy, direct democracy is only possible if citizens are able to exercise a real influence over the decision-making process. The inclusion of direct democracy mechanisms in a country's constitution and other fundamental laws is not a sufficient condition for the existence of direct democracy as a genuine participatory process. Direct democracy also requires that the law be applied in practice, ideally in a manner that improves democratic governance. The example of the Commonwealth of Independent States (CIS) shows that there are a number of cases in which the legislation allows for direct democracy, but in practice this legislation is applied selectively, if at all. Worse still, direct democracy mechanisms can be used to strengthen authoritarian levers of control, as evidenced by the way in which some presidents in the successor states of the USSR have manipulated referendums to augment their own powers at the expense of those of the legislature. The experience of many CIS countries shows that the development of direct democracy cannot be separated from the overall democratization process; settings that lack fundamental democratic principles such as a political culture supportive of the rule of law are unlikely to provide fertile ground for direct democracy.

## **CONTENTS**

1. Introduction.....	1
2. Country Profiles.....	3
3. Annex.....	42

## 1. Introduction

After this very brief introduction to acquaint readers with a general view of the state of direct democracy in the twelve non-EU successor states of the USSR, this paper will give an overview of the 'state of the art' in terms of mechanisms of direct democracy in each of the twelve republics.

The issue of direct democracy cannot, clearly, be separated from that of democratisation and democratic transition in general. When comparing mechanisms of direct democracy in the twelve republics of the Commonwealth of Independent States (CIS) with similar mechanisms in other parts of the world, the first thing we must bear in mind is that most of the twelve republics are not democracies. Although most possess a formally democratic system in terms of a Constitution that guarantees a multiparty system and universal human rights, this facade of democracy often obscures an underlying informal reality in which the main determinant of political life is raw power unrestrained by the rule of law. If we consider the Freedom House index of political rights and civil liberties, in which countries are rated along a range from 1 (full democracy) to 7 (full authoritarianism) on both measures, we see that the twelve republics range from hard authoritarianism (Belarus, Turkmenistan and Uzbekistan) to flawed democracy (Ukraine) with a number of semi-democratic or semi-authoritarian systems in between. Figure 1 lists all twelve according to Freedom House's 2008 data and categorizes them as 'flawed democracies' (with a combined score for political rights and civil liberties between 5 and 6), 'hybrid regimes' (with a combined score of 7-9), 'soft authoritarian regimes' (combined score of 10-11) and 'hard authoritarian regimes' (combined score of 12-14).

**Figure 1: Freedom House Democracy Indicators, 2008<sup>1</sup>**

<b>Republic</b>	<b>Political Rights</b>	<b>Civil Liberties</b>	<b>Regime Type</b>
Ukraine	3	2	Flawed Democracy
Moldova	3	4	Hybrid Regime
Georgia	4	4	Hybrid Regime
Armenia	5	4	Hybrid Regime
Kyrgyzstan	5	4	Hybrid Regime
Azerbaijan	6	5	Soft Authoritarian
Kazakhstan	6	5	Soft Authoritarian
Russian Federation	6	5	Soft Authoritarian
Tajikistan	6	5	Soft Authoritarian
Belarus	7	6	Hard Authoritarian
Turkmenistan	7	7	Hard Authoritarian
Uzbekistan	7	7	Hard Authoritarian

<sup>1</sup> Source: Freedom House, *Freedom in the World 2008* at <http://www.freedomhouse.org/uploads/fiw08launch/FIW08Tables.pdf>.

According to the same categorization, adding also the category “full democracy” for a composite Freedom House score of 2-4, the twenty-four Latin American countries (including also Belize, Guyana, Haiti, Suriname and Trinidad and Tobago for reasons of geographical proximity) are found to consist of ten full democracies, ten flawed democracies, three hybrid regimes and one hard authoritarian regime (Cuba). All EU members fall into the “full democracy” category. The CIS therefore lags far behind these other two regions in terms of democratic development.

In many of the twelve republics, a legal framework is in place that allows for a number of mechanisms for direct democracy, including citizens’ assemblies, citizens’ initiatives to enact local and national legislation, and local and national referendums that may also arise from citizens’ initiatives. However, in reality, these mechanisms are either hardly used at all or (worse) suborned by an authoritarian leadership in order to exert control. On occasions, citizens’ initiatives have been hijacked by the authorities or by economic agents with close links to the authorities (as in the 2000 referendum in Ukraine); on others nominal instruments of direct democracy have actually been used for purposes of coercion (as in the case of citizens’ assemblies in Uzbekistan). This use of direct democracy mechanisms for undemocratic ends relates both to a lack of a tradition of independent citizens’ initiatives (previously such initiatives could only be made through the institutions of the Communist Party) and to a profound weakness in the rule of law.

In most cases, referendums have been about consolidation of power, rather than public consultation. Typically, referendums in former Soviet republics have been used to approve proposals to augment the power of the president and the presidential administration at the expense of the legislative body. In some cases, the end result has been a presidential administration that virtually mirrors the old Communist Party in terms of hierarchical control. Most of such referendums occurred in the mid-1990s as a final act in a power struggle between the president and parliament, although some also occurred in the new millennium. They have often been marred by electoral fraud—especially to artificially inflate turnout figures—and very little time has been devoted to public consultation so that voters can consider the proposals they are supposed to vote on. Often there is a very short time period between the finalization of the referendum questions and the referendum itself. On occasions a number of diverse issues have been lumped together into a single proposal, preventing voters from expressing a positive attitude to one and a negative attitude to another.

The section below looks at each republic in the CIS in terms of (1) legal provisions for direct democracy and (2) the practical application of measures of direct democracy. In terms of practical application, this paper provides details of all national referendums held in the twelve republics. However, the list of local referendums held may not be exhaustive and further research is needed to find further evidence of referendums held at village and community level. Preliminary research suggests that such instances are rare.

## **2. Country Profiles**

### **Armenia**

#### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 111 of the Constitution, the Constitution of Armenia must be adopted or amended by a referendum, and referendums can be initiated either by the president of the Republic of Armenia or by the National Assembly (parliament). Similarly, Article 112 states that “laws may be submitted to a referendum upon the request of the National Assembly or the government” and “[l]aws passed by referendum may only be amended by referendum.” Prior to the 2005 amendments (see below), a referendum was only considered to have been passed if it received more than fifty per cent of the votes and more than one third of registered voters. After the amendments the latter figure was reduced to one quarter. The 2005 constitutional amendments also contained a clause stating that “community members can directly take part in the administration of community affairs by resolving local problems through local referendums”, adding that “the law shall define the procedure and terms for conducting a local referendum” (Article 107). Similarly the post-2005 version of Article 110 states that referendums may be used at local level to merge or separate units of local self-government (communities). A Law On Local Referendum was adopted in 2002, but was apparently only enacted in 2006. There is no evidence available that local referendums have yet been held.

According to Article 4 of the Law on Referendums (2001), the following issues cannot be submitted to referendum: a) the articles of the Constitution dealing with the sovereignty of the state and the democratic nature thereof (Articles 1, 2 and 114), b) issues of prolonging or reducing the powers of incumbent president and National Assembly as well as incumbent state and local self-governing bodies, c) issues related to human and citizens’ rights, freedoms and obligations, the elimination or restriction of constitutional guarantees providing their implementation, as well as issues directly bestowed to the exclusive competence of state and local self-governing bodies.

#### *Referendums*

Since 1991, four referendums have been held in Armenia. The first, held on 21 September 1991, to approve the independence of Armenia as a state, was overwhelmingly approved by voters. The second was held on 5 July 1995, simultaneously with parliamentary elections, to approve the Constitution of Armenia. The Constitution established a strong presidency and gave the president the right to represent the country in international negotiations, to sign agreements and treaties, to appoint the chief prosecutor and the prime minister and, following receipt of a list of candidates proposed by the prime minister, to appoint the Cabinet of Ministers. He was also made commander-in-chief of the armed forces, and was given the right to dissolve parliament following consultations with the prime minister. As irregularities were observed in the parliamentary elections, in which one of the main political parties, the Armenian Revolutionary Federation (Dashnaks), was banned, doubts

were cast as to the extent to which the referendum was truly free and fair. According to official results, around 70% of voters approved the Constitution on a 56% turnout. Following these two 'key' referendums, two further referendums were held to amend the Constitution. The first of these was held on 25 May 2003 and once again coincided with the parliamentary elections. This referendum was supposed to mark the culmination of a lengthy process of consultation on the Constitution, which began on 19 May 1998 when the newly elected president, Robert Kocharian, issued a decree to create a commission to amend the Armenian Constitution, in particular by reducing the sweeping powers of the president and augmenting those of parliament. This must be seen in the context of the fact that Kocharian had been propelled to the presidency just three months previously with the support of the powerful Yerkrpah union of Karabakh war veterans, who had ousted his predecessor Levon Ter Petrosian, and had yet to consolidate his own power base. There was also suspicion that the 1995 referendum on the Constitution had been manipulated by Ter Petrosian's administration (see above). However, following the assassination in October 1999 of one of the leaders of Yerkrpah, prime minister Vazgen Sarkisian, the constitutional reform programme was put on the back burner as power gradually consolidated around Kocharian and his close associates. In 1999 Kocharian replaced the commission's members with lawyers who occupied senior government posts. The commission only published its findings on 6 February 2001; these provided for a modest reduction in the president's powers. The president would now need the parliament's consent to appoint a prime minister, would no longer be able to approve or veto government decisions, and would be allowed to dissolve parliament only in six specific cases. If his candidates for premier were twice rejected by the legislature, then he would have to accept for that post the person nominated by the parliament speaker. The president would also forfeit the right to dismiss Constitutional Court judges. The amendments were generally accepted by the Council of Europe. However, in March 2003, President Kocharian abolished two of the key proposed amendments that, if approved, would have transferred some of his sweeping powers to parliament. In particular, the president retained the power to nominate and dismiss the prime minister and the cabinet. The opposition dismissed the remaining constitutional amendments as cosmetic and therefore neither government nor opposition was particularly concerned about getting them passed. Indeed, in Resolution 1458, the Council of Europe notes that the authorities "had not committed themselves to a campaign in support of the reform."<sup>2</sup> In the referendum held on 25 May 2003 on this modest package of reforms, 50.3% of valid votes were cast in favour of the amendments on a turnout of 52%.<sup>3</sup> However, the referendum was rejected as a third of registered voters did not vote in favour of the amendment as required by law.

Under pressure from the Council of Europe (see, for example, PACE Resolution 1361<sup>4</sup>, 27 January 2004), the authorities later agreed to reopen discussions on constitutional reform. In September 2004, three separate draft packages of proposed amendments were submitted to the Armenian parliament, prepared respectively by the ruling three-party coalition, the pro-government United Labor Party, and by the leader of the National

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<sup>2</sup> [http://www.coe.am/en/docs/pace/resolution\\_1458.pdf](http://www.coe.am/en/docs/pace/resolution_1458.pdf).

<sup>3</sup> Armenian Central Election Commission at [www.elections.am](http://www.elections.am).

<sup>4</sup> [http://www.coe.am/en/docs/pace/resolution\\_1361.pdf](http://www.coe.am/en/docs/pace/resolution_1361.pdf).

Democratic Party, Arshak Sadoyan. These three drafts were then submitted for evaluation by the Council of Europe's Venice Commission, which assessed the first two as an improvement on the present constitution, but rejected Sadoyan's draft as failing to address certain crucial issues related to human rights and the judiciary. The commission further suggested a number of changes to the government draft, specifically with regard to expanding the powers of the legislature, limiting the president's authority to appoint and dismiss judges, and introducing elections for the post of Yerevan mayor. In early May, the Armenian parliament approved a somewhat revised version of the draft prepared by the ruling coalition. Sadoyan denounced the draft and called on all political forces to reject it. For its part, in late May the Council of Europe's Venice Commission deplored the authorities' failure to take into account its recommendations regarding the balance of powers between the president and the Parliament, the independence of the judiciary and the election of the mayor of Yerevan.<sup>5</sup> In late June, Armenia submitted to the Venice Commission an amended draft that addressed these concerns. The Commission approved the revised draft on 21 July, but opposition parties nonetheless continued to reject the proposed amendments. The final draft made changes to 109 articles of the country's 117-article Constitution and, most importantly, envisaged a modest reduction in the powers of the president. Specifically, it obliged the president to appoint a prime minister with the approval of parliament, taking into account the distribution of seats between parliamentary factions, whereas previously his choice of prime minister depended entirely on his own discretion. It also stipulated that the prime minister, rather than the president, would chair meetings of the government. It sought to strengthen the independence of the judiciary and replaced the president as Chairman of the Justice Council with the Chairman of the Court of Cassation. Finally, it granted the city of Yerevan the status of a community, meaning that the city's mayor would henceforth be elected either directly by the population or indirectly by the elected city council, rather than appointed by the president. These changes were put to a referendum on 27 November 2005. Despite the fact that the effect of the changes would be to reduce the powers of the president somewhat, the opposition boycotted the referendum on the grounds that it was fundamentally aimed at providing legitimacy to the government, which they saw as illegitimate after the flawed presidential and parliamentary elections of 2003. Official results of the referendum gave a "yes" vote of 95% on a turnout of 65%, making the referendum valid, but domestic and international observers expressed severe doubts as to the level of the turnout and denounced numerous violations. The opposition claimed that the turnout was, in reality, less than 20%.<sup>6</sup> The constitutional amendments were presented to voters as a single package making it impossible for them to vote on them individually.

## **Azerbaijan**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 2 of the Constitution, the people of Azerbaijan can settle any issue connected with their rights and interests by means of a referendum, and a referendum must be held to adopt and amend the Constitution and to approve changes to Azerbaijan's state

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<sup>5</sup> See [http://www.coe.am/en/docs/pace/resolution\\_1458.pdf](http://www.coe.am/en/docs/pace/resolution_1458.pdf).

<sup>6</sup> [http://www.opendemocracy.net/democracy-caucasus/armenia\\_3075.jsp](http://www.opendemocracy.net/democracy-caucasus/armenia_3075.jsp).

border. According to the constitutional amendments of 2002, the following issues cannot be addressed by referendum: 1) Taxes and the state budget, 2) amnesty and pardoning, 3) election, appointment and approval of officials whose election, appointment and approval are under the responsibilities of the legislative and/or executive authorities. According to Article 41 of the 1998 Law on Referendum, a referendum is passed if more than half of all registered voters take part in the referendum and more than half of those voting approve the measure.

According to Azerbaijan's Law on Local Referendums, municipal governments in Azerbaijan may hold a referendum on any issue within their competence at their own initiative or at the request of at least ten percent of eligible voters in that territory. These referendums must be financed from local budgets.<sup>7</sup> There is no documentation of any local referendums having been held.

The law also permits citizens to take part in local decision-making through public assemblies. The Law on the Status of Municipalities (1999) allows public assemblies to adopt resolutions in municipalities with less than 500 inhabitants. In order for these assemblies to function, at least 25% of all adult residents must take part. In these assemblies, residents can give an opinion on local issues, initiate proposals and adopt, amend or dissolve the municipal charter. Similarly, according to the law, 10% of the population of a given municipality can call a session of the local council.<sup>8</sup> There is no documentation of these mechanisms having been used.

### *Referendums*

Since 1991, five referendums have been held in Azerbaijan. The first, proclaiming Azerbaijan a sovereign republic, was held on 17 March 1991—simultaneously with the referendum on the preservation of the USSR—and was overwhelmingly approved by voters. The second, held on 29 December 1991, to approve the independence of Azerbaijan as an independent state, was also overwhelmingly approved with more than 99% of voters supporting independence.

The third referendum was a referendum of confidence on former president Abulfaz Elchibey held on 29 August 1993. This referendum was held two months *after* Elchibey's overthrow and his replacement as acting head of state by former Communist party first secretary of the Azerbaijan SSR, Heidar Aliev. It was therefore held to secure Aliev's grip on power and, according to official results, a questionable 97% expressed no confidence in the former president.

The referendum on the new Constitution of Azerbaijan took place on 12 November 1995. The draft Constitution proposed a presidential republic with far-reaching powers for the president, including the right to appoint and dismiss members of the Cabinet of Ministers

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<sup>7</sup> Meriban Mamedova, Hafiz Bashir Oglu Hasanov, Abil Nazir Oglu Bairamov and Mirali Asad Huseinov, "Local Government in Azerbaijan" at <http://lgi.osi.hu/publications/2001/84/Ch7-Azerbaijan.pdf>.

<sup>8</sup> *Ibid.*

and to issue decrees and orders. According to the draft, if parliament were to reject his choice of prime minister three times, the president would have the right to override the will of parliament and appoint the prime minister without the need for further consultation. According to the Central Election Commission (CEC) of Azerbaijan, 86% of voters participated in the referendum, with 91.9% of those voting approving the new Constitution.<sup>9</sup>

The fifth and final national referendum was held on 24 August 2002 and was aimed principally at securing a smooth handover of power from the ailing president Haidar Aliev to his son Ilham. Its secondary aim was to make the Constitution of Azerbaijan compatible with the country's membership of the Council of Europe (which it joined in 2001) and with its membership of the European Convention on Human Rights. It appeared that the rather minor constitutional changes ostensibly aimed at bringing the country into line with its international commitments were used as a smokescreen to justify the other constitutional changes to the international audience. Eight separate packages of constitutional amendments were voted upon: 1) A package to make the Constitution of Azerbaijan compatible with the country's membership of the Council of Europe, which included empowering the parliament to elect an ombudsman and granting individuals access to the Constitutional Court, 2) a package harmonizing the Constitution with its membership of the European Convention on Human Rights, most notably by offering a civilian alternative to military service and by striking off an article allowing armed force to be used in executing orders given by 'authorized persons during martial law or state of emergency', 3) another package, of which the most noteworthy was an amendment submitting the Constitution of the autonomous republic of Nakhichevan for approval by parliament, 4) A package of judicial reforms, most importantly giving the right of legislative initiative to the Prosecutor-General's Office, 5) changes to the organization of parliament and government, of which the most important was to vest the prime minister, rather than the chairman of parliament, with the power of acting president in the event of the current president's resignation (clearly favouring Ilham Aliev, who was appointed prime minister the following year), 6) an amendment allowing the president to be elected with half the votes cast in the first round, rather than two-thirds as previously stated, 7) an amendment excluding from the list of issues that can be the subject of a nationwide referendum those that lie within the competence of the executive, such as taxes, the state budget, amnesties, elections, and appointments to executive posts, and 8) an amendment changing the existing mixed majoritarian-proportional system for parliamentary elections into a purely majoritarian system.

The referendum was marred by credible allegations of fraud. According to official results, between 95.18% and 96.37% of voters voted "yes" for each of the eight packages on a turnout of 83.86%. The closeness of the figures for the "yes" vote as well as their high values suggests that either the voters did not fully understand what the constitutional packages involved or that the vote was artificially inflated, or both. Opposition parties claimed that no more than 15-20% of voters went to the polls and the local observer organization "For the

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<sup>9</sup> See the website of the Central Election Commission of Azerbaijan at <http://www.cec.gov.az/en/common/election-referendum/1995.htm>.

sake of Civil Society” recorded a turnout of just 27.8% in the seven districts it observed.<sup>10</sup> U.S. State Department spokesman Richard Boucher suggested that there had been “widespread irregularities, such as voter-list fraud, multiple voting, and ballot-box stuffing”<sup>11</sup>, while the OSCE stated that “the process fell short of providing a credible and reliable means of eliciting the views of the population.”<sup>12</sup>

On 10 December 1991, a referendum was held in the war-torn enclave of Nagorno-Karabakh, which was then in the hands of separatist Armenian forces. The referendum proposed independence from Azerbaijan and was approved by 99.9% of voters on an 82% turnout.<sup>13</sup> Fifteen years later, on 10 December 2006, a second referendum was held in Nagorno-Karabakh, which since the end of the 1988-94 war had been under the full control of Armenia. The referendum proposal was to approve a draft Constitution defining Nagorno-Karabakh as a sovereign state. As virtually the entire population of the enclave is ethnic Armenian and those of other nationalities expelled from the autonomous region during the war were denied the vote, the outcome was not in doubt. The overwhelming majority of the existing population of the enclave favour independence or incorporation into Armenia. According to official results, 98.6% of voters approved the Constitution on an estimated turnout of 84%.<sup>14</sup> The outcome of the referendum was not recognized by the international community, which still considers Nagorno-Karabakh to be a part of Azerbaijan. The purpose of the referendum was an attempt by the Armenian authorities and the *de facto* authorities in Nagorno-Karabakh to push the international community towards recognizing the *de facto* status of the enclave.

## **Belarus**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to the Constitution of Belarus, “the direct participation of citizens in the administration of the affairs of society and the State shall be safeguarded by the holding of referendums, the discussion of draft laws and issues of national and local significance, and by other means specified in law. In instances determined by the law the citizens of the Republic of Belarus shall take part in the discussion of issues of state and public life at republican and local meetings” (Article 37). Moreover, “[n]ational and local referendums may be held to resolve the most important issues of the State and society” (Article 73); “[n]ational referendums shall be called on the initiative of the President of the Republic of Belarus, as well as on the initiative of the Council of the Republic or House of Representatives, which is taken at their separate sittings by a majority of the full number of deputies of each house, or on the initiative of no fewer than 450,000 citizens eligible to vote,

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<sup>10</sup> For the Sake of Civil Society Report on the Monitoring of the August 24th 2002 Referendum at <http://www.fscs-az.com/index.php?lngs=eng&cats=4&ids=3>.

<sup>11</sup> Anar Kerimov, “Azerbaijani Referendum: Soviet Legacy Continues”, *Central Asia Caucasus Institute Analyst*, 28 August 2002 at <http://www.cacianalyst.org/?q=node/392>.

<sup>12</sup> *Azernews*, Issue No. 35 (269), September 4 - 10, 2002, at [http://www.bakupages.com/pubs/azernews/9094\\_en.php](http://www.bakupages.com/pubs/azernews/9094_en.php).

<sup>13</sup> Nagorno-Karabakh Ministry of Foreign Affairs at <http://www.nkr.am/rus/facts/referendum.html>.

<sup>14</sup> RFE/RL Newslines, 11 December 2006, at <http://www.rferl.org/newsline/2006/12/111206.asp>.

including no fewer than 30,000 citizens from each of the regions (oblasts) and city of Minsk” (Article 74); “[l]ocal referendums shall be called by the relevant local representative bodies on their initiative or on the recommendation of no less than ten percent of the citizens who are eligible to vote and resident in the area concerned” (Article 75); “[t]he decisions adopted by referendum may be reversed or amended only by means of another referendum, unless otherwise specified by the referendum” (Article 77). Moreover, according to Article 140 of the Constitution, Sections 1 (on the principles of the constitutional system), 2 (on the individual, society and the state), 4 (on the president, parliament, government, and courts), and 8 (applying and amending the Constitution) of the Constitution may be reconsidered only by means of a referendum. This implies that Sections 3 (on the electoral system and referendums), 5 (on local government and self-government), 6 (on the prosecutor's office and the state supervisory committee), 7 (on the financial and credit system of the Republic of Belarus) and 9 (final and transitional clauses) can be amended with the support of a two-thirds majority in both chambers of parliament and without the need for a referendum. In terms of citizens’ initiatives, the right to legislative initiative belongs not only to the president, members of the upper and lower chambers of parliament and the government, but also to an initiative group of at least 50,000 citizens who are eligible to vote (Article 99). According to Article 97, however, the lower chamber of parliament (House of Representatives) considers draft laws put forward by the President or submitted by no less than *150,000 citizens* of the Republic of Belarus, who are eligible to vote. Similarly, “the issue of amending and supplementing the Constitution shall be considered by the chambers of the Parliament on the initiative of the President or of no fewer than 150,000 citizens of the Republic of Belarus who are eligible to vote” (Article 138).

There is ample legislative scope for direct democracy in Belarus; the only problem is that the relevant legislation is not applied in practice. Belarus has (on paper at least) a myriad of forms of community governance, such as neighbourhood and village committees and communities of elders. Such forms of community governance are regulated by the Law “On Local Government and Self-governance” (originally introduced as the Law on Self-government and Local Economy in 1991 and extensively amended). Moreover, the Law on National and Local Assemblies, adopted in July 2000, establishes the principle of citizen’s assemblies, which may be convened at the initiative of local councils, local executive committees, local administrations, community organizations and citizens’ initiative groups. Such an assembly must be attended by at least 25% of all (adult) local inhabitants or at least two-thirds of their authorized representatives. According to the Law, participants of citizens’ assemblies may discuss issues of national and local importance, make recommendations, establish and dissolve community organizations of self-government, participate in the preliminary discussion and drafting of local government decisions on vital issues and assess the activities of local self-government. Nevertheless, there is no documentation of any effective citizens’ assemblies being established in Belarus. Similarly, the Law “On Local Government” also envisages legislative initiatives by citizens on issues of local importance. However, the law does not stipulate procedures for realizing these initiatives, leaving it to local councils to establish procedures of their own. Local councils have proved unwilling or

unable to do so and by 2001, this instrument of direct democracy had yet to be put into practice.<sup>15</sup>

Despite the constitutional provisions for the holding of local referendums, by 2001 not a single local referendum had been held.<sup>16</sup> The same applies to the provision to recall deputies at national and local level if they fail to execute their duties or commit violations. According to Articles 129 and 130 of the Electoral Code (2000, amended 2006), voters of a constituency from which a deputy of the Chamber of Representatives (lower house) or a local council deputy is elected may take the initiative to vote on the recall of that deputy if he or she “has not justified confidence of voters, expressed in non-fulfilment of the Deputy’s duties envisaged by the law, infringement of the Constitution of the Republic of Belarus, laws of the Republic of Belarus, acts of the President of the Republic of Belarus.” However, by 2001 no council members (and no parliamentarian) had been dismissed in this way.<sup>17</sup>

The only channel of direct democracy that does appear to function to some degree is that of citizens’ appeals. The Law on Law “On Citizens’ Appeals” (1996) grants citizens the right to submit appeals to various government bodies on a variety of issues affecting everyday life. These appeals are confined to issues such as housing, parks and shopping facilities and do not touch upon more sensitive political matters.

### *Referendums*

In Belarus, neither the issue of independence, nor the Constitution, were put to a referendum. The Constitution was signed by prime minister Myechyslaw Hryb and approved by the Supreme Soviet (parliament) in March 1994. This Constitution provided a presidential system of administration with the prime minister and his government appointed and dismissed by the president with the consent of a unicameral parliament (the Supreme Soviet).

Three referendums have been held in Belarus since the country’s independence—on 14 May 1995, on 24 November 1996 and on 17 October 2004. The 1995 referendum put the following four propositions to voters, all of which were approved by the newly-elected president, Alyksandar Lukashenka (elected in July 1994). The fourth proposition was purely consultative and, if approved, would not have force of law:

- 1) To give the Russian language equal status with Belarussian.
- 2) To establish a new state flag and emblem (in fact, representing a return to the old Soviet-era symbols).
- 3) To pursue economic integration with the Russian Federation.
- 4) To change the Constitution to allow the pre-term dissolution of parliament in the event of systematic or blatant violation of the Constitution.

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<sup>15</sup> Miroslav Kobasa, Alexander Karamyshev and Valentin Dritz, “Local Government in Belarus” in Igor Munteanu and Viktor Popa, *Developing New Rules in the Old Environment* (LGI Books: 2001) at <http://lgi.osi.hu/publications/2001/84/Ch2-Belorussia.pdf>

<sup>16</sup> Ibid..

<sup>17</sup> Ibid..

All four propositions were passed with a handsome margin of at least 75%.

The 1996 referendum put the following seven propositions to Belarussian voters. The first four propositions (1-4) were posed by the President, who campaigned for a “yes” vote for the first two and a no vote for the second two. The last three propositions (5-7) were posed by the Supreme Council (parliament), which campaigned for “yes” votes in all three instances:

- 1) To move Independence Day to 3 July, which was the day Belarus was liberated from the Nazis.
- 2) To approve the 1994 Constitution subject to amendments and additions (in the form of a new edition of the document) proposed by the president.
- 3) To support the free and unrestricted purchase and sale of land.
- 4) To support the abolition of the death penalty.
- 5) To approve the 1994 Constitution subject to amendments and additions proposed by the Agrarian and Communist factions of the Supreme Soviet.
- 6) To make the heads of the local executive organs directly elected by the inhabitants of the relevant administrative-territorial units.
- 7) To ensure that the financing of all branches of power is open and derives exclusively from the state budget.

Here a word of explanation is required about propositions (2) and (5), which involved major constitutional changes. The amendments and additions proposed by the president involved a significant shift in the balance of power from the Supreme Soviet to the president. The 260-member Supreme Soviet was to be replaced by a two-chamber parliament, consisting of a 110-member House of Representatives (lower chamber), directly elected by secret ballot, and a Council of the Republic, made up of eight representatives elected from the councils of each region (oblast) of the country and from the capital city (Minsk) as well as eight members appointed directly by the President. In addition, many of the powers previously invested in the Supreme Soviet were to be transferred to the President. These included the right to appoint the Supreme Court, the Supreme Economic Court, the Chairman and the members of the board of the National Bank, the Prosecutor General, the Chairman of the Constitutional Court and the Chairman of the Central Commission for Elections and Referendums. Whereas previously the Supreme Council appointed all members of both the Constitutional Court and the Central Commission for Elections and Referendums, Lukashenka’s proposals envisaged that six members of both bodies (in addition to the chairmen) be appointed by the President and six by the Council of the Republic. The new presidential powers would also include the right to call national referendums as well as elections to parliament and to local councils. According to the amendments proposed by the president, if parliament twice rejected his choice of prime minister the president would have the right to dissolve parliament and impose an acting prime minister as he saw fit. Finally a transitional clause was added allowing the president to serve a full five-year term *from the date the new constitutional amendments* were passed, effectively extending his first term of office from five to seven years. The constitutional amendments proposed by the Agrarian and Communist factions of the Supreme Soviet (5), on the other hand, proposed the introduction of a purely parliamentary form of government.

The results of the referendum fully reflected the wishes of President Lukashenka, as proposals (1) and (2) were passed with over 80% of the vote, while all other proposals were rejected by a margin of at least 60%. The results of the referendum were made binding despite a last minute compromise brokered by Moscow between Lukashenka and parliamentary speaker Syamyon Sharetsky on 22 November, whereby the results of the referendum would be non-binding and consultations would continue. However, the following day, the compromise fell through and Lukashenka insisted that the results of the referendum would be binding.

The 1996 referendum was condemned both by critics of Lukashenka and by independent observers as unfair. Viktor Ganchar, the former head of the Central Commission for Elections and Referendums, who had been dismissed by Lukashenka in an apparent violation of the existing Constitution, declared the results to be forged<sup>18</sup> and a group of parliamentarians opposed to Lukashenka cited four procedural violations: the inability to establish how many ballot papers were issued, because the president's administration had printed them; early voting, which began before the publication of the final drafts of the constitution; funding for the referendum from unknown sources rather than the Central Electoral Commission; and state control over the media, favouring Lukashenka's campaign.<sup>19</sup>

The referendum of 17 October 2004 coincided with parliamentary elections and contained just one proposal; to remove the clause restricting presidential office to two five-year terms, thereby allowing Lukashenka to be president for an indefinite number of terms. This involved amending Article 81 of the Constitution, which stated that the President can stand for no more than two terms of office. According to official results, the proposal was approved by 88.91% of those casting a valid vote. However, there were widespread reports of violations; the local NGO "Partnership", which fielded 3,500 observers for the parliamentary elections and the referendum, registered more than 1,000 violations of the election law by members of election commissions. Although they did not monitor the referendum, the OSCE reported that the parliamentary elections fell short of Belarus's OSCE commitments.<sup>20</sup>

## **Georgia**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

Article 5 of the Constitution of Georgia states that "[t]he people shall exercise their authority through referendum, other forms of direct democracy and their representatives. According to Article 74:

1. At the request of the parliament of Georgia, of not less than two hundred thousand electors or on his/her own initiative, the president of Georgia shall schedule a

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<sup>18</sup> RFE/RL Newslines, 26 November 1996, at <http://www.rferl.org/newsline/1996/11/261196.asp>.

<sup>19</sup> RFE/RL Newslines, 27 November 1996, at <http://www.rferl.org/newsline/1996/11/271196.asp>.

<sup>20</sup> RFE/RL Belarus and Ukraine Report, 20 October 2004, Volume 6, Number 3, at <http://www.rferl.org/reports/pbureport/2004/10/38-201004.asp>.

referendum concerning the issues determined by the Constitution and the organic law within thirty days after receiving such a request.

2. The referendum shall not be held with the view of adopting or repealing laws in terms of amnesty or pardon, ratification or denunciation of international treaties and agreements, as well as on issues restricting the basic constitutional rights and freedoms of individuals.

In Georgia a referendum is *not* required in order to amend the Constitution. According to Article 68 of the Constitution, the Constitution can be amended with the consent of two-thirds of members of parliament. In this way, the Constitution was amended in July 1999 (to raise the threshold for parliamentary elections from 5% of the proportional vote to 7%), April 2000 (enshrining the status of Adjara as an “autonomous republic”), in March 2001 (giving international treaties precedence over domestic normative acts and determining that relations between Church and State be regulated by a Constitutional Agreement), in October 2002 (granting the Abkhazian language official status within the territory of Abkhazia), in February 2004 (to create a Cabinet of Ministers led by a prime minister, to grant the president the right to dissolve parliament and other constitutional changes), in December 2006 (to change the dates of the parliamentary and presidential elections so that they coincide in the autumn of 2008, to remove the President’s right to Chair the Justice Council, to enshrine the prohibition of the death penalty in the Constitution and other constitutional changes), in February 2008 (to move the date of parliamentary elections back to May 2008), and in March 2008 (to reduce the number of MPs elected on the proportional ballot to 75 and to reduce the threshold back down to 5%).

According to the Organic Law on Referendum (May 1996), an initiative group of citizens can be established (for example under the initiative of an NGO or NGOs), which can apply to the Central Commission on Referendums (or the Central Election Commission) posing a question that can be put to the public in a referendum. If the Commission deems that the petition is in accordance with the law, it will issue the initiative group with a certificate of registration within one month of receiving the petition (Article 10). The initiative group then has three months to collect the required 200,000 signatures (Article 12). If this process is successful, the Commission then presents the demand for a referendum to the president, who must fix the date of the referendum within 30 days unless he has well-grounded reasons to deem the request in contradiction with the Constitution or organic law (Article 13). On one occasion, such a petition was successful; in 2003 a coalition of NGOs including the Centre for the Protection of Constitutional Rights, Union 21st Century, Former Political Prisoners for Human Rights and Women's Club PEONI collected 218,000 signatures for a referendum to reduce the number of members of parliament from 235 to 150.<sup>21</sup> The referendum was held simultaneously with the parliamentary elections of 2 November 2003 and was passed (see below). Another attempt by an initiative group was less successful. In July 2005, the Central Election Commission (CEC) rejected an request sponsored by the opposition Conservative and Republican parties and the NGO Forum for Welfare and Democracy to begin collecting signatures for a referendum proposing the direct election of Georgia’s mayors. According to

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<sup>21</sup> Civil Georgia Online Magazine (9 September 2003) at [http://www.civil.ge/eng/article\\_ngo.php?id=7329](http://www.civil.ge/eng/article_ngo.php?id=7329).

the CEC, the decision was taken because the referendum question did not meet Article 10 of the Organic Law on Referendum, which states that the name, surname and residence of each of the members of the sponsoring group be specified and that the question be formulated clearly and concretely. However, the sponsors of the request dismissed the CEC's legal arguments as unconstitutional.<sup>22</sup>

There appears to be no specific legislation governing local referendums. Article 1 of the Organic Law on Referendum states that a referendum is a "*nationwide* interrogation through voting on the purposes to final decision of the questions of state importance" (italics mine).

### *Referendums*

After the key referendum on independence was held on 31 March 1991 and overwhelmingly approved by the Georgian population living outside the Autonomous Region of South Ossetia and the Autonomous Republic of Abkhazia, no further nationwide referendums were held in the next twelve years. Subsequently, two further referendums were held: the first on 2 November 2003 on reducing the number of members of parliament from 235 to 150 (see above) and the second on 5 January 2008, which contained two proposals: 1) To call parliamentary elections in the spring of 2008, rather than the autumn and 2) To support Georgia's accession to NATO.

As mentioned above, the first of these two referendums was a civil society initiative. Nevertheless, the holding of this referendum was not free of controversy, especially since it coincided with parliamentary elections in which 235 parliamentary seats were up for grabs. Legal expert David Usupashvili argued that if the referendum were passed, 85 of the new parliamentarians would lack legitimacy, casting a cloud over the legitimacy of the entire parliament—a situation that could clearly be exploited by certain power brokers. Although President Eduard Shevardnadze promised that the new arrangement would not be put in place until the subsequent parliamentary elections (scheduled for 2007), he refused to countenance a clause in the referendum clarifying this.<sup>23</sup> Similarly, the election monitoring organization the International Society for Fair Elections and Democracy (ISFED) argued that holding a referendum simultaneously with the parliamentary elections would complicate the counting process.<sup>24</sup> Indeed a chaotic counting process proved a major aspect of the flawed parliamentary elections that led to massive street protests and the resignation of Shevardnadze in what became known as the 'Rose Revolution'. Official figures showed that an overwhelming majority of voters supported the proposal and despite widespread electoral fraud it is likely that a majority voted in favour. The change was to be implemented in time for the 2008 parliamentary elections.

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<sup>22</sup> Vlado Ravich, "Georgian Opposition Cries Foul over By-Elections, *Eurasianet* (8 August 2005), at <http://www.eurasianet.org/departments/civilsociety/articles/eav080805.shtml>.

<sup>23</sup> Civil Georgia Online Magazine (15 September 2003) at <http://www.civil.ge/eng/article.php?id=4940>.

<sup>24</sup> Civil Georgia Online Magazine (12 September 2003) at <http://www.civil.ge/eng/article.php?id=4924>.

The second referendum was also conducted against the backdrop of a complicated political situation. The referendum was initiated by President Mikheil Saakashvili on 8 November 2007 after he had declared a state of emergency following large opposition-led demonstrations in the streets of Tbilisi. In December 2006, the Georgian parliament had amended the Constitution so that parliamentary and presidential elections would be held at the same time in the autumn of 2008, instead of a nearly a year apart as originally envisaged (parliamentary elections had been due in March 2008 and presidential elections in January 2009). While the authorities argued that this was to avoid holding Georgian parliamentary elections simultaneously with the Russian presidential elections, which may provide a pretext for the Russian authorities to destabilize Georgia, the opposition countered that the true motive was to use the president's authority and charisma to ensure a parliamentary majority for the ruling United National Movement. During the demonstrations, one of the key demands of the opposition was to reschedule the parliamentary elections for the Spring as originally planned. To defuse the tension, Saakashvili announced pre-term presidential elections for January 2008 as a vote of confidence in his presidency and to hold a referendum simultaneously with these elections in which the opposition's demand to hold early presidential elections was included. A second question was added to the referendum on whether voters supported Georgia's integration into NATO, a key policy priority of Saakashvili's administration.

The precise wording of the two referendum questions were as follows:

1. Do you support Georgia's integration into NATO (North Atlantic Treaty Organization)?
2. Do you agree that the next parliamentary elections be held in the spring of 2008?

The first question was approved with 77% of valid votes, while the second question was approved with nearly 80% of valid votes. Turnout was 56.2%.

At first glance, therefore, while the NATO vote appeared to legitimize the position of the Georgian authorities, the vote on the date of the parliamentary elections appeared to vindicate the opposition's position. However, the main aim of the authorities was to ensure that the presidential elections were held before the parliamentary elections; otherwise an unfavourable result in the parliamentary elections may have jeopardized Saakashvili's chances in the presidential elections. Given that the presidential elections were moved back to January, the necessity of holding parliamentary elections in spring rather than in autumn was, at worst, a minor inconvenience for the authorities.

Although the opposition claimed electoral fraud in the presidential elections, international monitors held the view that any violations that did occur did not alter the final result (in the presidential elections Saakashvili was declared the winner with 53.45% of the vote avoiding the need for a second round runoff). The results of the referendum also probably more or less reflected the will of the voters.

In addition to the nationwide referendums described above the breakaway territories of Abkhazia and South Ossetia have also held referendums within the unrecognized territories

themselves. These referendums were declared illegal by international organizations such as the OSCE and the Council of Europe, who do not recognize the independence of these territories and who did not send monitors. On 3 October 1999, Abkhazia held a referendum simultaneously with presidential elections to adopt a Constitution that had already been passed by the Supreme Soviet of Abkhazia in 1994 and that envisaged full independence for the republic. According to the Abkhaz authorities, 87% of voters participated in the referendum and 97% of those voted in favour of the proposal. However, former residents of Abkhazia living as displaced people in the rest of Georgia since the war over Abkhazia in 1992-93 were unable to vote. On 12 November 2006, a referendum was also held by the de facto authorities in South Ossetia simultaneously with presidential elections (in which only de facto leader Eduard Kokoity was the only candidate) with the question "Do you agree that the Republic of South Ossetia preserve its current status of an independent state and be recognised by the international community?" The motion on independence was approved with 99.88%, according to the figures provided by the de facto authorities.<sup>25</sup> At the same time, an alternative election and referendum were held in those parts of South Ossetia still under Georgian administration, prepared by the Tbilisi-backed "Salvation Union of Ossetia" that had been established a few weeks earlier. The alternative referendum proposed the start of negotiations with Georgia on a federal arrangement for South Ossetia. According to the "Salvation Union of South Ossetia" which organized the polls, 94% of voters supported the proposal.<sup>26</sup>

## **Kazakhstan**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 91 of the Constitution of Kazakhstan, amendments and additions to the Constitution can be introduced by referendum either on the initiative of the president or on the recommendation of parliament or the government. However, constitutional changes do not have to be put to a referendum if they have been submitted by the president and approved by a two-thirds majority in both houses of parliament (Article 62). If the initiative on constitutional amendments comes from the parliament, the president can veto the amendments. In such circumstances, the parliament can override the president's veto only by a four-fifths majority. Under such circumstances, the president can either pass the amendments or submit them to a nationwide referendum (Article 91). There is no provision for local referendums in Kazakh constitutional law.

According to the Constitutional Law on Referendums (1995, amended 1999), initiative groups of citizens can initiate referendums. However, in practice this is hard to do, at least without the blessing of the authorities. Thus, on 4 February 2002, an initiative group of 120 people submitted the relevant documents to the Central Election Commission (CEC) on 4 February to be registered in order to gather people's signatures in support of holding a

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<sup>25</sup> International Crisis Group, "Georgia's South Ossetia Conflict: Make Haste Slowly" (Europe Report No. 183, 7 June 2007) at <http://www.gees.org/documentos/Documen-02361.pdf>.

<sup>26</sup> Ibid...

referendum to make the post of *akim* (local administrator) an elective post at all levels. The CEC disqualified the petition on spurious technicalities.

Article 13 of the Law on Local Public Administration authorizes standing commissions at the level of the *masilkhat* (district, provincial and city councils) to hold public hearings in order to discuss certain key issues that are of interest to the public. Following this model, and with assistance from USAID/ICMA, public hearings were held in Pavlodar oblast (May 1999) to discuss the local budget and in Atyrau and Uralsk to discuss changes to tariffs for communal services.<sup>27</sup> However, in these cases, the decision to hold public hearings rests with the council, not the citizens.

### *Referendums*

Only two referendums have been held in Kazakhstan's post-independence history. Both were held in 1995 and both were exploited by President Nursultan Nazarbayev in a Machiavellian bid to amass power. Kazakhstan's first constitution, which was passed by the Supreme Soviet (Parliament) of Kazakhstan on 28 January 1993, established Kazakhstan as a presidential republic, but one in which the Supreme Soviet (parliament) still had significant powers. Parliamentary elections held in March 1994 gave a parliamentary majority to supporters of President (and former Communist Party First Secretary) Nursultan Nazarbayev and were criticized by OSCE observers as flawed. Nevertheless, the parliament still demonstrated considerable independence and even supported a vote of no-confidence in the government in May 1994. As a result, clearly under pressure from the president and his supporters, the Constitutional Court ruled in March 1995 that the parliament was illegitimate as a result of violations in the elections the previous year. Nazarbayev then dissolved parliament and, on the advice of an Assembly of the Peoples of Kazakhstan (an organization that was supposed to represent all of Kazakhstan's 101 nationalities but was, in reality, subservient to the will of the president), scheduled a referendum for 28 April to prolong his term of office until 2000, rather than standing for election in 1996 as originally scheduled. According to official results, 91.2% of voters turned out to vote and 96.2% of those casting valid ballots voted "yes". The turnout figures, in particular, stretch the limits of credulity and it is likely that considerable ballot fraud occurred.

Having dissolved parliament and having neutralized all threats to his continued hegemony, Nazarbayev ruled by presidential decree. He also announced his intention of amending the Constitution and set the pliant Assembly of the Peoples of Kazakhstan the task of reviewing the Constitution article by article. On 1 August 1995, the text of the new Constitution was unveiled. Compared to the earlier 1993 constitution, it increased the president's powers significantly at the expense of parliament, giving him broad powers to dismiss the legislative body. Instead of the old single-chamber Supreme Soviet, a new two-chamber parliament with a 67-member lower house elected in single-mandate constituencies (*Majilis*) and a 47-member upper house (Senate) representing the regions was put in place. Seven members of

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<sup>27</sup> Meruert Makhmutova, "Local Government in Kazakhstan", in Igor Munteanu and Viktor Popa, *Developing New Rules in the Old Environment* (LGI Books: 2001) at <http://lgi.osi.hu/publications/2001/84/Ch8-Kazakhstan.pdf>.

the Senate were to be appointed directly by the president. Moreover, the parliament no longer would have powers to exercise budgetary oversight over the executive branch. The parliament was also given the right, with a two-thirds majority, to delegate legislative powers to the president for a one-year period. Finally, the Constitutional Court was replaced by a Constitutional Council with reduced powers. The new Constitution was put to a referendum on 30 August 1995 and, according to official results, was passed with 90% of those casting valid ballots voting “yes” on a 90.6% turnout.

Once again, the turnout figures in the referendum are highly questionable. On 24 August an opinion poll showed that there was little public interest in the new Constitution. Of 1,500 respondents in eight cities only 8% of voters said they had read it closely, 32% knew about the draft and 31% said they knew nothing about it.<sup>28</sup> The poll also indicated that 52% of respondents intended to vote, of whom 71% supported the draft. According to the Chairman of the Human Rights Committee of Kazakhstan, in the 622 polling stations monitored by the opposition, only 34% turned out to vote.<sup>29</sup>

The subsequent amendments to the constitution were passed by parliament alone on the initiative of the president. These included the 1998 amendments that extended the term of the office of the president from five to seven years, increased the size of the Majilis by ten members elected by party lists, extended the term of the Majilis from four to five years, extended the term of the Senate from four to six years and reduced the number of senators from 47 to 39 (although seven remained presidential appointees). Constitutional amendments were also made in 2007 to reduce the presidential term from seven to five years as of 2012, to allow the president to hold office for an unlimited number of terms, to reform the Majilis so that 98 members would be elected by proportional representation based on party lists (with a 7% threshold) and nine represent the Assembly of the Peoples of Kazakhstan, to increase the number of senators appointed by the president from seven to fifteen, to allow parliament to table a vote of no-confidence in the government and to appoint the prime minister. The apparent delegation of powers to parliament must be seen in the context of the creation of a party of power, Nur-Otan, which is fully controlled by the president and which won all 98 elected members of the Majilis in the August 2007 parliamentary elections.

## **Kyrgyzstan**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to the Constitution of Kyrgyzstan, a referendum is called by the president on his own initiative, on the initiative of a majority of members of the Jogorku Kenesh (parliament), or on the initiative of at least 300,000 voters. Prior to the constitutional amendments passed in 2007, there was a degree of ambiguity as to whether or not a referendum was required to amend the Constitution. According to Article 96.1, “[a]mendments and supplements to the

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<sup>28</sup> OMRI DAILY DIGEST, Vol. 1, No. 166, 25 August 1995, <http://www.rferl.org/newsline/1995/08/2-tca/tca-250895.asp>.

<sup>29</sup> OMRI DAILY DIGEST, Vol. 1, No. 172, 5 September 1995, <http://www.rferl.org/newsline/1995/09/2-tca/tca-050995.asp>.

present Constitution are adopted by referendum called by the President of the Kyrgyz Republic”, while Article 96.2 stated that amendments or supplements may be adopted in the houses of the parliament after a proposal by the president, by a majority of the total number of deputies of both houses of parliament, or by no fewer than 300,000 voters. This ambiguity was exploited by President Kurmanbek Bakiev when he called a constitutional referendum in September 2007 (see below). However, following the 2007 amendments, it was clarified that Chapters 3 to 8 of the Constitution (i.e. those parts that deal with the relative competences of the various branches of government) could be amended without recourse to a referendum, providing the amendments were approved by parliament.

The Constitution grants legislative initiative to the president, members of parliament, the government, and a group of 30,000 voters (Article 64); however, there are no documented cases in which a popular initiative of 30,000 voters has been used to change legislation.

According to the Law on Referendums (adopted 1991), a referendum is only valid if 50% of the registered electorate turn out to vote. Local councils can also call referendums. However, as the Law on Referendums refers only to national referendums, no legal procedures are in place to regulate such local referendums. A new draft of Law on Referendums was adopted in September 2007, but no details are yet available as to its content.

According to Kyrgyz law, there is wide scope for community organizations to represent the interests of citizens to organs of local self-government or local executive authorities. According to the Law on Local Self-Governance and Local State Administration (2002 with subsequent amendments), citizens can participate in local self-government through village or community assemblies (known as *kurultais*) and other communal gatherings. Two forms of community organization are envisaged by the Law: *kurultais* and organs of territorial societal self-government. The former are convoked in response to a particular issue and provide non-binding recommendations for local councils or mayors, while the latter are voluntary organizations of citizens that operate at the level of the living block, street or village and can obtain legal status as an NGO. Organs of territorial societal self-government can take part in the work of local councils and also play a role in exercising a degree of social control by ensuring compliance with rules governing the use of common facilities. One type of organ of territorial societal self-government is the condominium association, regulated by the 1997 Law on Condominium Associations. According to one report, by 2000 there were approximately two hundred condominium associations in Kyrgyzstan.<sup>30</sup>

In May 2001, President Askar Akaev issued a decree increasing the role of *kurultais* in local self-government. The decree established the use of *kurultais* in approving the draft programme for economic and social development that each mayor or local administrator has to develop within four months of assuming office.<sup>31</sup>

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<sup>30</sup> Emil Alymkulov and Marat Kulatov, “Local Government in the Kyrgyz Republic” in Igor Munteanu and Viktor Popa, *Developing New Rules in the Old Environment* (LGI Books: 2001) at <http://lgi.osi.hu/publications/2001/84/Ch10-Kyrgyzstan.pdf>.

<sup>31</sup> *Ibid.*.

A similar mechanism of local community government in Kyrgyzstan is the institution of the *aksakals*. *Aksakals* (or ‘white beards’) are community elders (typically, but not always, senior in terms of age) who command respect. Since independence, the Kyrgyz authorities have attempted to formalize what was a hitherto an informal traditional institution. This was primarily the result of the incapacity of the state in the 1990s to provide basic law and order. In 1995 President Askar Akaev signed a decree authorizing the establishment of ‘*aksakal* courts’, to adjudicate over matters of administrative violations; property, family and other disputes; and minor crimes passed to them by state prosecutors. The courts were nominally elected by local residents, for a four-year period.<sup>32</sup> However, rather than being a vehicle for democratization, it would appear that *aksakal* courts reinforced the authoritarian social norms that were already in place in parts of rural Kyrgyzstan. The courts were alleged to have meted out harsh punishments to those found guilty, including whipping. A man was also allegedly stoned to death in a small village in Talas region in 1995 after an *aksakal* court found him guilty of extortion.<sup>33</sup>

More generally, critics have claimed that social institutions such as condominium associations and *kurultais* have done little to enhance direct democracy, since they are exploited by the executive branch at local level (appointed by the president) in an attempt to undermine the influence of elected institutions of local self-government (village and town councils).

### *Referendums*

Altogether seven nationwide referendums have been held in Kyrgyzstan since 1991. The first was held in March 1991 together with the all-Union referendum on the preservation of the USSR. It proposed to give state sovereignty to Kyrgyzstan (though not independence) and was passed by 62.2% of voters. Following independence (declared on 30 August 1991 following the failed August putsch in Moscow by Kremlin hardliners), referendums in Kyrgyzstan have been primarily about consolidating power.

The first Constitution of Kyrgyzstan, which was passed by the Supreme Soviet in May 1993, envisaged a presidential system with a clear separation of powers between the executive and the legislature with far-reaching powers for the latter. By the time of its passage, however, the Supreme Soviet was engaged in a bitter power struggle with President Askar Akaev. The parliament had been elected in February 1990 and contained a large number of Communist Party officials (including all 40 of the then district committee first secretaries), as well as directors of Soviet enterprises and collective farms (*kolkhozes*).<sup>34</sup> Many of these individuals had independent power bases within their regions, feared the possibility of increased presidential authority and therefore sought to strip the president of his authority. Indeed on 3 May 1993, just two days before the new Constitution came into force, parliament voted to transfer the powers of the head of government from the president to

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<sup>32</sup> Ibid..

<sup>33</sup> Amnesty International, “Kyrgyzstan: A Tarnished Human Rights Record”, at <http://asiapacific.amnesty.org/library/Index/ENGEUR580011996?open&of=ENG-2EU>.

<sup>34</sup> Eugene Huskey, “The Rise of Contested Politics in Central Asia: Elections in Kyrgyzstan 1989-90”, *Europe-Asia Studies*, Vol. 47, No. 5 (Jul., 1995), pp. 813-833.

the prime minister. It also embarrassed Akaev by criticising the way the government had allotted development concessions over the country's main gold deposits. Akaev responded to Parliament's challenge by scheduling a popular referendum of confidence in himself for January 1994. He won with a questionable 97% of valid votes cast on a 96% turnout, and then began moves to consolidate his own position at the expense of Parliament's.

Akaev struck by arranging a boycott of parliament by his own supporters and then using the lack of a quorum to accuse his Communist opponents (mainly allies of former first secretary of the Kyrgyz Communist Party Absamat Masaliev) of sabotage. Then with the help of his parliamentary backers he contrived to have the Parliament dissolve itself in September 1994, before announcing a constitutional referendum, which was held in October 1994, to establish a bicameral parliament with a 35-member upper house or Legislative Assembly that would sit permanently, and a 70-member part-time lower house or People's Assembly that would sit infrequently. By dividing the parliament and attempting to ensure that the lower house sat only part-time, Akaev clearly hoped to weaken the legislative body. The referendum also contained a question that would allow the Constitution to be further amended by a referendum. Following the approval of both proposals with over 80% of the vote, the new parliament that was elected in February 1995 was far more pliant to the wishes of the President. Akaev took advantage of the right to amend the Constitution by calling yet another referendum in February 1996 to give the president the power to personally formulate domestic and foreign policy, to appoint and dismiss cabinet ministers, ambassadors, and judges and to dissolve parliament if it fails three times to confirm his nominee as prime minister. According to official figures, it was passed with nearly 99% of valid ballots cast on a turnout of 96%. Once again, such high turnout figures raise serious suspicions of fraud.

A third constitutional referendum was held on 17 October 1998 at the initiative of the president to further augment his powers. The referendum came despite the resistance of parliament, who, despite the legislature's diminished authority, still managed to act as a forum for disgruntled local power brokers (especially from the south of the country) and had even, on occasions, been able to pass laws despite a presidential veto.<sup>35</sup> The referendum was presented as a package of constitutional amendments to: (i) introduce private ownership of land, with the proviso of a five-year moratorium on the sale and purchase of agricultural land, (ii) strip the parliament of the right to discuss budgetary spending without government approval, (iii) to increase the number of deputies in the Legislative Assembly from 35 to 60 (with 15 members elected proportionally by party lists and the other 45 elected from single-mandate constituencies) and to reduce the number of deputies in the People's Assembly from 70 to 45 (all elected from single-mandate constituencies), (iv) to allow deputies to be stripped of immunity in some cases, and (v) to increase somewhat the freedom of Kyrgyzstan's independent media. The referendum questions were offered as a package, making it impossible to vote on individual amendments. According to official results, more than 95% of those casting valid ballots voted in favour of the amendments, on a 96% turnout. Once again, official results should be treated with the utmost scepticism, given the high turnout figure.

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<sup>35</sup> RFE/RL Newline 9 September 1998, at <http://www.rferl.org/newline/1998/09/090998.asp>.

Following events in the southern Kyrgyz town of Aksy in 2002, when the arrest of opposition deputy Azimbek Beknazarov and the subsequent deaths of five demonstrators at the hands of the security services provoked months of street protests in the south of the country, President Akaev called a Constitutional Council that included both representatives of the authorities and of the opposition and tasked it with amending the way the country was governed in the light of the crisis. The Council managed to produce a compromise proposal of constitutional changes that would limit the powers of the president and enhance those of parliament. However, on 2 January 2003 Akaev declared that he would no longer cooperate with the Constitutional Council and instead introduced constitutional amendments drawn up by a hand-picked group of seventeen of his own legal experts.<sup>36</sup> On 13 January 2003 he scheduled a snap referendum for 2 February, giving little time for the public to become acquainted with the changes and instructing local authorities to ensure a favourable result.<sup>37</sup> The OSCE called for a postponement of the referendum on the grounds that there had been insufficient time for public discussion but their call went unheeded.<sup>38</sup> Two issues were put to the Kyrgyz public. The first was to allow President Akaev to serve until 2005, when his five-year term was due to end. This must be seen against the backdrop of calls for him to resign following the Aksy events. The second issue was to introduce a number of constitutional amendments, the most important of which was to restore a unicameral parliament consisting of 75 deputies, elected only from single-mandate constituencies. According to official results, around 90% of voters supported the two proposals on a turnout of 86.68%. However, the official results were widely disputed, and a delegation from the US-based National Democratic Institute, as well as a coalition of domestic observers called the "Coalition for Democracy and Civil Society" noted widespread violations by the executive authorities.<sup>39</sup>

Following President Akaev's hasty departure from the country in what became known as the 'Tulip Revolution' in March 2005, his successor, Kurmanbek Bakiev, promised far-reaching constitutional reforms to transfer significant powers from the presidency to the parliament. However, Bakiev did not follow his words with actions and the reform process was put on hold. Following an incident in the autumn of 2006 in which opposition deputy and former speaker of Parliament Omurbek Tekebaev had heroin planted on him and Bakiev's brother was implicated in the plot to discredit him, opposition supporters came out onto the streets demanding that Bakiev fulfil his promised constitutional reforms. The protests reached a peak in early November when over 10,000 'For Reforms' supporters gathered in Bishkek's Ala-Too Square, prompting Bakiev to sign a series of constitutional amendments that more or less corresponded to the opposition's demands. Nevertheless, at the end of December

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<sup>36</sup> RFE/RL Central Asia report, Vol.3, No.3 (16 January 2003) at <http://www.rferl.org/reports/centralasia/2003/01/3-160103.asp>.

<sup>37</sup> International Crisis Group, "Political Transition in Kyrgyzstan: Problems and Prospects" (Asia Report No. 81, Osh/Brussels, 11 August 2004) at <http://www.crisisgroup.org/home/index.cfm?id=2905&l=1>.

<sup>38</sup> Eurasianet "Contentious Constitutional Referendum Campaign Winding Down in Kyrgyzstan" (30 January 2003) at <http://www.eurasianet.org/departments/rights/articles/eav013003.shtml>.

<sup>39</sup> Office for Democratic Institutions and Human Rights, "Kyrgyz Republic Constitutional Referendum 2 February 2003: Political assessment Report" at [http://www.osce.org/documents/odihr/2003/03/1381\\_en.pdf](http://www.osce.org/documents/odihr/2003/03/1381_en.pdf).

Bakiev managed to cajole the Parliament to pass another set of hastily-drafted constitutional amendments that restored many of the transferred powers back to the president.

The pressure on Bakiev eased somewhat in April 2007 as the authorities put down a wave of public protests led by Bakiev's arch rival and former ally, Felix Kulov, and Bakiev was able to successfully co-opt another of the leaders of the opposition, Almaz Atambaev, by making him prime minister. By the autumn Bakiev was secure enough in his position to instigate constitutional changes of his own. The pretext he used was a ruling by the Constitutional Court on 14 September that declared the 2006 constitutional amendments illegal on the grounds that they had not been put to a referendum (see above). On 19 September, he issued a decree putting his own new constitutional amendments to a referendum, together with amendments to the electoral code. The proposed constitutional amendments maintained the dominance of the presidency and even broadened the powers of the president somewhat, for example by giving the president the right to appoint and dismiss the heads of local administration 'in consultation with the prime minister' but sparing him the necessity of obtaining the consent of local *keneshes* (councils). They also increased the number of parliamentary deputies to 90 and stipulated that *all* deputies be elected through party lists. Finally, the initiative for proposing a prime minister was now bestowed on the political party that wins more than 50% of seats in parliamentary elections or, failing that, a parliamentary coalition uniting a majority of deputies. This can be seen in the context of efforts underway by the authorities to form a 'party of power', called Ak-Zol Eldik (Best Path Popular), which won 71 out of 90 seats in the elections held in December 2007. As well as a proposal to amend the constitution, an additional proposal was put to voters in order to amend the Electoral Code in conformity with the constitutional changes.

According to official results, 81.6% of voters turned out for the referendum, which took place on 21 October 2007. 95.4% of valid votes were cast in support of the constitutional changes and the amendments to the electoral code.<sup>40</sup> The opposition rejected the official results, claiming that only around 35% of voters had come to the polling stations. Similarly, the head of the OSCE Center in Bishkek, Markus Mueller, expressed concern about reports of a "high number of irregularities" during the referendum.<sup>41</sup>

## **Moldova**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to the Constitution of Moldova, "problems of utmost gravity or urgency confronting the Moldovan society or state shall be resolved by referendum" (Article 75). Until constitutional amendments were passed in 2000, a referendum had to be held in order to remove the president from office (Article 89), but subsequently the issue could be decided by a qualified majority of the Parliament. Finally, a referendum must be held to alter "provisions [of the Constitution] regarding the sovereignty, independence and unity of the

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<sup>40</sup> See <http://www.electoralgeography.com/new/en/countries/k/kyrgyzstan/kyrgyzstan-constitutional-referendum-2007.html>;

[http://en.wikipedia.org/wiki/Kyrgyzstani\\_constitutional\\_referendum,\\_2007](http://en.wikipedia.org/wiki/Kyrgyzstani_constitutional_referendum,_2007).

<sup>41</sup> RFE/RL Newline, 23 October 2007, at <http://www.rferl.org/newline/2007/10/231007.asp>.

state, as well as those regarding the permanent neutrality of the state” (Article 142). According to the Constitution, a group of at least 200,000 citizens including at least 5,000 citizens from at least half of the country’s districts and municipalities can launch initiatives to revise the Constitution (Article 141). Such initiatives would then have to be approved by a two-thirds majority in parliament and with the consent of at least four out of six judges in the Constitutional Court (Articles 141 and 143).

The procedure for holding referendums is laid out in considerable detail in the Electoral Code (1997 with subsequent amendments, most recently in 2007). Article 143 of the Code defines three types of republic-wide referendums: constitutional, legislative and consultative (non-binding). A republic-wide referendum may be initiated by: a) at least 200,000 citizens, b) no less than a third of members of parliament, c) the president or d) the government (Article 144). The following issues may not be put to a referendum: a) issues relating to the state budget or taxes, b) issues relating to amnesty or pardon, c) extraordinary or emergency measures concerning public order, health or security, d) electing or dismissing persons whose positions are the competence of parliament, the government or the president and e) issues that fall under the competence of judicial or prosecution bodies (Article 147).

Citizens have the right to initiate a referendum. To do so, they must establish an initiative group at a meeting attended by at least 300 participants. No later than ten days before the meeting the initiators are required to inform the local authorities where and when the meeting is to be held and what its purpose is. If a majority of those attending the meeting vote in favour of holding the referendum, an initiative group is established of at least a hundred citizens, who will organize the collection of the required 200,000 signatures (Article 152). The initiative group must be registered with the Central Election Commission and signatures must be collected within a time frame of three months at the most (Article 153). According to Article 171 of the Electoral Code, the results of a national referendum are only valid if 60% of registered voters participate in that referendum.

The Electoral Code also regulates local referendums, which can be used to decide issues of special interest for the village, town, district or special-status administrative-territorial units (i.e. Gagauzia) or to dismiss town or village mayors (Article 177). A local referendum may be initiated by: a) ten per cent of citizens able to vote that are residents of the relevant administrative-territorial unit, b) mayors of villages or towns (except in cases where a referendum on their dismissal has already been initiated), c) half of all elected councillors in the relevant administrative-territorial unit, or, if the referendum concerns the dismissal of the mayor, two-thirds of elected councillors, or d) the representative bodies of special status administrative-territorial units (Article 180).

To initiate a local referendum, a citizens’ initiative group must be established of at least 20 citizens eligible to vote and residing in the relevant administrative-territorial unit. At least 30 citizens must participate in the founding meeting of the initiative group. At least three days before the meeting, the initiators must inform the mayor. The initiative group must register with the local public administration, or, if the referendum concerns the dismissal of the mayor, with the district or municipal court. The required number of signatures (10% of

registered voters) must be collected within a specified period that must not exceed 60 days (Article 181). According to Article 198 of the Electoral Code, the results of a local referendum are only valid if at least half of registered voters participate in that referendum, but can be revoked by the votes of at least two-thirds of local councillors.

## **Referendums**

Since independence, only two republic-wide referendums and just one officially-recognized local referendum have been held in the Republic of Moldova in the post-independence period. The first referendum was passed on 6 March 1994. The issue was on whether Moldova should conserve its independence and territorial integrity. The precise formulation of the question was as follows: “Do you want the Republic of Moldova to develop as an independent and unitary state, in the frontiers recognized in the day where Moldova declared sovereignty, to promote a policy of neutrality and to maintain mutually-benefiting economic relations with all the countries of the world, and to guarantee its citizens equal rights, according to international law?”<sup>42</sup> The importance of the issue relates both to the view among some nationalists that it would be better to “reunify” with Romania and also to the need to restore Moldovan sovereignty over the breakaway region of Transdniestria. Turnout for the referendum was 75% and over 95% supported the proposal, dealing a blow to those who wished for union with Romania.

A new constitution for Moldova was drafted in late 1993, but was only approved by the Supreme Soviet (parliament) in July 1994, i.e. after the February 1994 elections. It was not put to a referendum and became law in August 1994.

The second all-republican referendum was a consultative referendum on the Constitution held on 23 May 1999. It occurred against the backdrop of conflict between the parliament, which was becoming increasingly dominated by the Communist Party (which controlled 40 out of 101 seats), and the president, Petru Lucinschi. The 1994 Constitution had defined a mixed system of government that was a compromise between a presidential system and a prime ministerial-parliamentary system. The president was directly elected and had broad powers over matters of national defence (as commander-in-chief of the armed forces), but his government was responsible first and foremost to the parliament, which could pass a motion of no-confidence in the government. Following the resignation of prime minister Ion Ciubuc on 1 February 1999, parliament could not agree on Lucinschi’s nominee as his replacement, Serafim Urechemu, and only passed Lucinschi’s second nominee, Ion Sturdza, by the narrowest of margins six weeks later. Lucinschi therefore initiated a consultative referendum to augment his powers. The proposal put to voters in the referendum took the following wording:

“Do you support amending the Constitution in order to introduce a presidential form of government in Moldova, in which the president of the republic shall be responsible for

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<sup>42</sup> [http://en.wikipedia.org/wiki/Moldovan\\_referendum,\\_1994](http://en.wikipedia.org/wiki/Moldovan_referendum,_1994).

forming and leading the government, as well as for the results of the country's governance."<sup>43</sup>

In the referendum a majority of those casting a valid ballot voted in favour of the proposal. As only 58% of the voters turned out to vote, however, many argued that the referendum was invalid as it fell below the 60% threshold. However, the wording of the Electoral Code at the time was that a referendum "*may* be declared invalid" below the 60% threshold. This ambiguity allowed the Constitutional Court to declare the referendum valid on 16 June. However, as it was a consultative referendum, it still required a two-thirds majority in parliament to pass it. Meanwhile, parliamentarians elaborated their own proposal for a parliamentary system of government with a president elected by members of parliament. On 5 July 2000 parliament approved a law on constitutional reform based on these proposals. Although the bill was vetoed by the president, on 21 July parliament was able to overturn the veto by a massive majority of 87 votes to six.<sup>44</sup>

Following the passage of the Law on the Special Legal Status of Gagauzia (Gagauz-Yeri) on 23 December 1994, which gave a degree of autonomy to the still-undefined region of Gagauzia, local referendums were held to determine the boundaries of the new entity. According to the law, all localities in which ethnic Gagauzians made up at least 50% of the population automatically became a part of Gagauzia and those in which at least a third of the population expressed a desire to join the region through a petition could vote by local referendum whether or not to join. The local referendum, held in all Gagauz localities, would also determine the location of the capital of Gagauzia. Information about the number of localities in which the referendum took place and the results of voting in each locality is sketchy and often contradictory; most sources indicate that voting took place in thirty-six localities, including those twenty-seven localities in which there was a majority Gagauz population. As a result of the referendum, which was held on 5 March 1995, twenty-three communes including thirty-two localities (twenty-nine villages, two cities and one municipality) voted to become a part of the new administrative-territorial unit, suggesting a "no" vote in four localities. The referendum also made Komrat the capital of Gagauzia, supported by 54.4% of voters, compared with 42.4% for Chadyr-Lunga. According to one report, overall turnout was 79% and Council of Europe observers described the vote as fair.<sup>45</sup>

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<sup>43</sup> Ian Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-First Century: The Baltic and European States in Transition* (London and New York: Routledge, 2004), 29.

<sup>44</sup> RFE/RL Newline, 21 July 2000, at <http://www.rferl.org/newline/2000/07/210700.asp>.

<sup>45</sup> Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-First Century*, 328; Claus Neukirch, "Autonomy and Conflict Transformation: The Case of the Gagauz Territorial Autonomy in the Republic of Moldova, in: Kinga Gal (Ed.), *Minority Governance in Europe, Budapest 2002* (Series on Ethnopolitics and Minority Issues, Vol. I), 105-23 at <http://www.ecmimoldova.org/fileadmin/ecmimoldova.org/docs/Gagauz.Pub/C.Neukirch-Autonomy%20and%20Conflict%20Transformation%20The%20gagauz%20Territorial%20Autonomy%20in%20the%20Republic%20of%20Moldova.pdf>; <http://en.wikipedia.org/wiki/Gagauzia>; Research Directorate of the Immigration and Refugee Board of Canada, "Moldova State Protection (Issue Paper, March 1995) at [http://www.irb-cisr.gc.ca/en/research/publications/index\\_e.htm?cid=0&docid=260&version=printable&disclaimer=show](http://www.irb-cisr.gc.ca/en/research/publications/index_e.htm?cid=0&docid=260&version=printable&disclaimer=show) RFE/RL Newline, 7 March 1995 at <http://www.rferl.org/newline/1995/03/070395.asp>; RFE/RL Newline, 7 March 1995 at <http://www.rferl.org/newline/1995/03/060395.asp>.

Unofficial referendums have also been held in the territory of Moldova. In the self-declared republic of Transnistria, an unauthorized referendum was held on 26 March 1995 to prevent the withdrawal of the Russian Fourteenth Army under General Alexander Lebed. According to the separatist authorities, 91.3% of voters voted to retain the Russian army.<sup>46</sup> Another referendum was held in Transnistria on 17 September 2006, this time on the independence of the enclave. The referendum included two proposals: 1) Should Transdnierster seek independence and possible integration with Russia? 2) Should Transnistria abandon its quest for independence and integrate with Moldova? According to the separatist authorities, 97.1% of voters voted in favour of the first proposal and 95% voted against the second proposal.<sup>47</sup>

Similarly, there was an unofficial referendum in Taraclia on 24 January 1999, an area in which Moldova's Bulgarian minority is concentrated, that proposed making Taraclia district a separate county. The referendum was held by the local authorities in Taraclia in response to an administrative reform passed by parliament in late 1998, which incorporated Taraclia into Cahul County. The referendum was passed but was not recognized by the Moldovan Central Election Commission. The conflict was resolved in October, when Taraclia was made into a county of its own.<sup>48</sup>

Despite the legislation that facilitates the holding of referendums on citizens' initiatives both at national and local level, there are no documented instances of such referendums being held.

## **The Russian Federation**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

In the Russian Federation it is not necessary to hold a referendum to adopt constitutional changes. According to Article 135 of the Constitution, if a proposal to amend Chapters 1, 2 and 9 of the Constitution is supported by a three-fifths majority in both the lower and upper houses of parliament (the State Duma and the Federation Council), a Constitutional Assembly will be convened, which will either approve or reject the changes. In order to be enacted, the relevant constitutional changes must either be approved by two-thirds of the members of the Constitutional Assembly, or adopted by a popular referendum in which at least half of the total electorate participate and over of those who participate support the changes. Similarly, according to Article 136, amendments to Chapters 3-8 of the Constitution, i.e. those dealing with the distribution of powers between the various branches of government, come into force providing "they are approved by the bodies of legislative power of not less than two thirds of the subjects of the Russian Federation." By "subjects of the Russian Federation" the Constitution is here referring to the 83 federated units (see below).

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<sup>46</sup> Jeffries, *The Countries of the Former Soviet Union at the Turn of the Twenty-First Century*, 328.

<sup>47</sup> RFE/RL Newline, 18 September 2006, at <http://www.rferl.org/newline/2006/09/180906.asp>.

<sup>48</sup> Kaarlo Tuori, "Notes on the Fact-Finding Trip to Chisinau (22-26 May 1999)" (Venice Commission) at [http://www.venice.coe.int/docs/1999/CDL\(1999\)029-e.asp](http://www.venice.coe.int/docs/1999/CDL(1999)029-e.asp).

According to the 1995 federal constitutional law on referendums, a referendum cannot be held on such matters as recall of the president of the Russian Federation, dissolution of the parliament, prolongation of the terms of the president or parliament, postponement of elections or holding by-elections, adoption or amendment of the federal budget, changes to or fulfillment of the financial commitments to the state, change or cancellation of federal taxes, changing the status of a federated unit, extraordinary measures to protect public health and security, as well as amnesty and mercy. All other matters can be the subject of a national referendum.<sup>49</sup>

The Russian Federation consists of 83 federated entities: autonomous republics, provinces, regions and national homelands (autonomous okrugs), as well as two federal cities (Moscow and St.Petersburg). Referendums can be held at the level of the federated unit, although at this level the referendum will be regulated by regional legislation, which may be different in different federated entities.

The Constitution of the Russian Federation also envisages a role for referendums in local self-government. According to Article 130, “[l]ocal self-government shall be exercised by citizens through a referendum, election, other forms of direct expression of the will of the people, through elected and other bodies of local self-government.” The scope of the local referendum is developed further in the Law on Local Self-Government, which asserts the (theoretical) independence of decisions made by referendums from local executive power structures. According to Article 22, “a decision made by local referendum does not require approval by bodies of state power, state officials or local self-government bodies. If a regulatory act must be issued in order for such a decision to be implemented, the relevant local government body shall pass the required act.”

Procedures for holding referendums are set out in detail in the Law “On basic guarantees of electoral rights and the right of citizens of the Russian Federation to participate in a referendum”. According to Article 12 of the Law, a referendum at local level and at the level of the federated entity cannot be held to revoke the authority of bodies of state power or of individual deputies or officials, to call early elections, or to address issues of personal membership of bodies of state power. Neither can such referendums be used to amend budgets or to adopt extraordinary measures to ensure the health and security of the population. The Law also allows the formation of an initiative group by any citizen, group of citizens or public association (Article 14). The number of members in an initiative group must be not less than 100 for national referendums, not less than 20 for referendums at the level of the federated unit, and not less than 10 for local referendums. The group must also apply for registration with the relevant local and national election commissions which examine the referendum questions to judge whether or not they are in conformity with the law. The referendum questions must also be approved by the relevant legislative (representative) body, i.e. the parliament of the federated entity in which the referendum is held or the

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<sup>49</sup> Alexei Avtonomov, “Russian Federation” in Andreas Auer and Michael Bützer (eds), *Direct Democracy: The Eastern and Central European Experience* (Ashgate: Aldershot, 2001), 155.

relevant body of local self-government. If approved, the relevant election commission will register the initiative group (Article 36).

Once registered the initiative group for a referendum will attempt to collect the number of signatures required by law. This shall not exceed shall not exceed two percent of the number of referendum participants registered on the territory of the referendum, and, in the case of an initiative to hold a local referendum, shall not exceed five percent of the number of referendum participants registered on the territory of the referendum (Article 37).

In addition to holding local referendums, Article 25 of the Law on Local Self-government grants citizens the right to legislative initiative on matters of local importance: "Bills on issues of local importance submitted by the citizenry to local government bodies are subject to mandatory consideration at open sessions attended by representatives of the public." However, there have been few cases in which such initiatives have been made. According to one observer, "alternative municipal charters were drafted in at least eleven out of forty-one municipalities in Saratov oblast, but none of these drafts was presented in an open session or put to the vote."<sup>50</sup>

### *Referendums*

There have been only three nationwide referendums held in the Russian Federation. The first was held on 17 March 1991 simultaneously with the all-Union referendum on the preservation of the USSR and the proposal it contained was to establish the elected post of President of the Russian Federation. According to official figures, turnout was 75.1% and 71.4% of valid votes were cast in favour of the proposal.<sup>51</sup> This paved the way for presidential elections in June 1991, which Boris Yeltsin won with 57% of the vote.

The other two referendums both took place in 1993 against the backdrop of an increasingly acrimonious conflict between President Yeltsin and the Congress of People's Deputies. After the Congress refused to confirm Yeltsin's choice of prime minister, Yegor Gaidar, in December 1992, the conflict was temporarily assuaged by a compromise agreement between Yeltsin and the parliamentary speaker Ruslan Khasbulatov. The compromise covered the following points: the need to schedule a national referendum for April 1993 to frame a new Constitution, to extend most of Yeltsin's emergency powers until the referendum, to preserve the right of the Congress to nominate and approve its own choice of prime minister, and to give parliament the right to reject the president's choice of Minister of Defence, Minister of Foreign Affairs, Minister of Interior, and Minister of State Security. Yeltsin and the Congress also agreed on a compromise candidate for prime minister—Viktor Chernomyrdin.

However, tensions once again increased in early 1993, as the Congress gradually repealed the extraordinary powers it had granted Yeltsin in late 1991. Yeltsin set the referendum for

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<sup>50</sup> Galina Kourliandskaia, Yelena Nikolayenko and Natalia Golovanova, "Local Government in the Russian Federation" in Igor Munteanu and Viktor Popa, *Developing New Rules in the Old Environment* (LGI Books: 2001) at <http://lgi.osi.hu/publications/2001/84/Ch4-Russia.pdf>.

<sup>51</sup> Search Engine for Direct Democracy at <http://www.sudd.ch/event.php?id=ru011991>.

11 April, but the Congress promptly cancelled it. Yeltsin responded by introducing a decree giving him the right of extraordinary executive power pending the results of the referendum, which he rescheduled for April 25 and which he announced would concern the timing of new legislative elections, the drafting of a new constitution, and public confidence in the president and vice president. The vice president was Yeltsin's arch-rival, Alexander Rutskoy. The Congress then attempted to impeach Yeltsin, but fell 72 votes short of the 689 votes needed to obtain the required two-thirds majority to do so. At the same time, Congress insisted on imposing their own questions for referendum; specifically on confidence in the President, on approval of his reforms and on early presidential and legislative elections. They also passed a vote stipulating that in order to win Yeltsin would have to win a majority of *all* registered electors (not just a majority of those voting); however, the Constitutional Court ruled that the president would require a simple majority on the issue of confidence in his presidency and on approval of his economic policies. A majority of all electors would be required for the calling of new elections.

The questions put to the electorate on 25 April 1993 were the following:

- 1) Do you have confidence in Boris Yeltsin, the President of Russia.
- 2) Do you approve the social and economic policy of the President of Russia and Russia's Government since 1992?
- 3) Do you consider early presidential elections necessary?
- 4) Do you consider early elections of People's Deputies of the Russian Federation necessary?

A majority of those participating in the vote voted "yes" to all questions except (3), where a "no" vote prevailed by a narrow margin. Two-thirds of those participating voted "yes" to question (4), but this was still a little less than half of all registered voters.

The referendum did not signal the end of the power struggle between president and Congress, however. Following the referendum, Yeltsin decreed the establishment of a constitutional convention uniting political institutions, public organizations and political parties to examine the draft constitution that he had presented in April. The Constitutional Committee of the Congress also decided to participate and presented its own draft constitution. However, the two main drafts differed significantly in terms of division of powers between the executive and legislature and the draft that finally emerged on 12 July, which envisaged a bicameral parliament that the president would have the right to dissolve, was unacceptable to the Congress.

Amid the increasing escalation between Yeltsin and the Congress, Yeltsin dissolved the latter on 21 September. However, the deputies remained holed up in the building and declared Rutskoy president. As tension increased, Yeltsin cut off electricity, telephones and hot water to the Congress. The standoff ended after a pitched battle for the national television centre, in which over 60 people died, and the storming of the White House building (where Congress was barricaded) on October 4 by Russian army units in which many more were killed. Both Rutskoy and the Chairman of the Congress Ruslan Khasbulatov were arrested and taken away in buses. Free of the Congress, Yeltsin then ruled by decree and set 12

December as the date for a referendum on his favoured Constitution to take place simultaneously with parliamentary elections. The referendum narrowly approved the new Constitution with 58% of valid votes cast on a 55% turnout, which would allow the president to dissolve parliament if it rejected his choice of prime minister three times or if it passed a motion of no confidence in the government. Andrew Wilson estimates that turnout in the referendum was probably below 50% and that of those voting it is quite possible that less than 50% voted in favour. He points to a major discrepancy in the number of valid ballots in the parliamentary elections (53.8 million) and the referendum (56.4 million) and suggests that a number of 'dead souls' were added to the latter.<sup>52</sup>

In terms of regional referendums, a regional vote was held in Chechnya on 23 March 2003 with the aim of cementing the centre's new-found hegemony in the region during the latter stages of a long and bitter war. The referendum was called by President Putin and the pro-Russian Chechen administration, led by Akhmad Kadyrov. It was intended to undermine the position of the separatist leader, Aslan Maskhadov, who had been elected president of Chechnya in 1997, and to pave the way for new presidential elections that would anoint Kadyrov as president. It was also aimed at approving a new Chechen constitution, which confirmed Chechnya as subordinate to Russia. The questions put to voters in the referendum were the following:

- 1) Do you accept the holding of new legislative elections?
- 2) Do you accept the holding of presidential election?
- 3) Do you accept the new constitution?

According to official results, almost 90% of voters turned out to vote and around 96% of these supported all three proposals. The turnout figures stretch the limits of credulity and suggest significant falsification. An opinion poll conducted by the Russian human rights association shortly before the referendum suggested that only 12% of Chechens had intended taking part in the poll.<sup>53</sup>

A second referendum was held in Chechnya on 2 December 2007 to coincide with elections to the Russian State Duma. Two proposals were submitted to voters for approval. The first involved amendments to the Chechen Constitution. These amendments included the replacement of the two-chamber legislature with a unicameral parliament, the establishment of Chechen and Russian as official languages, the extension of the term of office for the head of the republic from four to five years and the abolition of direct elections for the head of the republic. This last amendment was designed to bring Chechnya in line with other subjects of the Federation, after a law enacted in December 2004 eliminated the direct election of the country's regional leaders (see below). The second proposal involved the abolition of the old electoral law for the Chechen parliament. According to official

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<sup>52</sup> Andrew Wilson, *Virtual Politics: Faking Democracy in the Post-Soviet World* (New Haven and London: Yale University Press, 2005), p.75.

<sup>53</sup> *Prague Watchdog*, 27 March 2003 at <http://www.watchdog.cz/?show=000000-000004-000001-000068&lang=1>.

figures, a highly suspect 99.1% of voters were said to have turned out to vote and 96.9% of valid votes were allegedly cast in favour of the two proposals.<sup>54</sup>

In 2003 President Vladimir Putin had begun a policy of consolidating the regions of the Russian Federation by merging small and economically weak subjects of the Federation with larger and more prosperous ones. However, the motive was not purely economic—the Kremlin was at the same time attempting to reduce the political autonomy of the regions. In this respect the Kremlin-backed law enacted in December 2004 to abolish elections for regional governors and to give the president of the Russian Federation the power to nominate the presidents of autonomous republics and regional governors is also significant. Moreover, it is no coincidence that the mergers of Federation subjects involved the dissolution of previously autonomous regions that had originally been established on the principle of ethnicity: Komi-Permyatski Autonomous Okrug, Evensk Autonomous Okrug, Taymyr (Dlogan-Nenets) Autonomous Okrug, Koryak Autonomous Okrug, Ust-Orda Buryat Autonomous Okrug and Agin Buryat Autonomous Okrug. As a result of the mergers, the number of autonomous okrugs (national homelands) fell from ten to four. Superficially, it could be argued that the mergers came about through the exercise of direct democracy as all mergers were approved by popular referendum. In reality, it was a top-down exercise in power consolidation in which citizens had minimal impact.

Five such mergers have taken place since 2003, all of which have been approved by referendum. On 7 December 2003 (coinciding with elections to the Russian Duma) a referendum was held in Komi-Permyak Autonomous Okrug and Perm Oblast to merge the two entities into a unified Perm Krai. According to official results, 84.89% of voters in Perm and 89.69% of voters in Komi-Permyak supported the proposal with an overall turnout of 62.67%.<sup>55</sup> The new merged entity was born on 1 December 2005. The next referendum was held on 17 April 2005 to merge Evensk Autonomous Okrug and Taymyr (Dlogan-Nenets) Autonomous Okrug into Krasnoyarsk Krai. The consolidated region came into being on 1 January 2007. The merger was ostensibly supported by 92.4% of voters in Krasnoyarsk, 69.95% in Taymyr and 79.87% in Evensk.<sup>56</sup> The third merger—between Kamchatka Oblast and Koryak Autonomous Okrug—was approved by referendum on 23 October 2005, with 84.87% of voters supposedly supporting the proposal in Kamchatka and 89.04% in Koryak.

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<sup>54</sup> Radio Free Europe/Radio Liberty Newline, 22 June 2007 at <http://www.rferl.org/newline/2007/06/220607.asp>; Izbiratel'naia Komissiiia Chechenskoi Respublika (website of the Chechen Electoral Commission) at [http://www.chechen.vybory.izbirkom.ru/region/region/chechen?action=show&root=1&tvd=220200092757&vrn=220200092756&region=20&global=&sub\\_region=20&prver=0&pronetvd=null&vibid=220200092757&type=232](http://www.chechen.vybory.izbirkom.ru/region/region/chechen?action=show&root=1&tvd=220200092757&vrn=220200092756&region=20&global=&sub_region=20&prver=0&pronetvd=null&vibid=220200092757&type=232).

<sup>55</sup> J. Paul Goode, "The Push for Regional Enlargement in Putin's Russia", *Post-Soviet Affairs*, Vol.20, No.3 (July-September 2004).

<sup>56</sup> See Konstantin Simonov (ed.), *Russia 2005: Report on Transformation* (Instytut Wschodni, publication for II Europe – Russia Forum, Vilnius, March 23–24, 2006), Chapter 9. Regional Development – Sustaining Of Federal Tendencies at <http://www.forum-ekonomiczne.pl/docs/reportRu2006chapter09.pdf>.

Turnout was 76.71% in Koryak and 52.23% in Kamchatka.<sup>57</sup> The newly merged Kamchatka Krai was formed on 1 July 2007. The next referendum was held on 16 April 2006 in Irkutsk Oblast and Ust-Orda Buryat Autonomous Okrug on the merger of the latter into the former. According to official results, turnout was 68.98% in Irkutsk oblast and 99.51% in Ust-Orda Buryatia and the “yes” vote was 89.77% in Irkutsk and 97.79% in Ust-Orda Buryatia. The very high turnout in Ust-Orda Buryatia raises questions about the extent to which the referendum was free and fair. The last of the ‘merger referendums’ to be held to date occurred on 11 March 2007 and involved the merger of the Agin Buryat Autonomous Okrug and Chita Oblast into Zabaykalsky Krai. The Central Election Commission reported 89.9% turnout in Agin Buryat and 80.4% in Chita, with approval of the merger given as 94% and 90.29% respectively.<sup>58</sup> Buryat human rights activists reported instances of disinformation, harassment, intimidation and ballot-rigging.<sup>59</sup> It is likely that the “merger referendums” will continue, as the Kremlin eventually wants to reduce the number of subjects of the Russian Federation from the current 83 to less than 50.

Finally, a number of local referendums have been held in the Russian Federation, although there is little documentation is available about the manner in which they were held. A significant number were held in the late 1990s; seven local referendums were held in the first half of 1998, including two in the Volgoda district to adopt a charter for one district and to amend the charter of another, four in the Kamchatka region to adopt charters in one town and three districts, and one in the town of Gelendzhik on the construction of a new cargo seaport. The last was not considered valid as less than 50% of resident turned out to vote. Similarly a number of sub-national referendums took place on the same day as the parliamentary elections of 19 December 1999.<sup>60</sup> However, most of these referendums appear to have been instigated by the local authorities, rather than by citizens.

One example of an independent initiative was that of a local referendum held in the Kostroma region of Russia in December 1996 as a result of an initiative by the environmental NGOs “In the Name of Life” and Greenpeace Russia on the building of a nuclear power plant. 58% of voters in the region went to the polls and 87% rejected the construction of the plant. After protracted debates on whether or not the referendum was legal, on 20 July 2000 the Kostroma regional Duma adopted a resolution annulling its earlier decision to allow construction. However, in early 2007, they voted to repeal the 2000 resolution, giving the go-ahead for the construction of the plant.<sup>61</sup>

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<sup>57</sup> Radio Free Europe/Radio Liberty Newslines, 25 October 2005 at <http://www.rferl.org/newslines/2005/10/251005.asp>.

<sup>58</sup> Radio Free Europe/Radio Liberty, 12 March 2007 at <http://www.rferl.org/newslines/2007/03/120307.asp>.

<sup>59</sup> Terry Glavin, “The Land Democracy Forgot”, *Ottawa Citizen* (July 12 2007) at <http://www.canada.com/ottawacitizen/views/story.html?id=5bd58f2a-baaa-4943-817c-92f70d561065&k=30294>.

<sup>60</sup> Avtonomov, “Russian Federation”, 166-67.

<sup>61</sup> Dmitry Efremenko, “Public Participation in the Debate and Decision Making in Energy Policy: A Russian View” (August 2006) at <http://www.itas.fzk.de/tatup/062/efre06a.htm>; Rashid Alimov, “Lawmakers revive proposed NPP in Kostroma Region, overriding a referendum against it”, *Bellona* (13 March 2007) at [http://www.bellona.org/articles/articles\\_2007/kostroma\\_npp](http://www.bellona.org/articles/articles_2007/kostroma_npp).

## **Tajikistan**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 98 of the Constitution of Tajikistan, a referendum is required to make changes and additions to the Constitution. A referendum can be initiated either by the president or by two-thirds of the members of the Majlis of Representatives (lower house). According to Article 99, "amendments to the Constitution shall be proposed by the President or at least by two thirds of the total number of the members of the Majlisi Milli [Upper House] and deputies of the Majlis of Representatives." No provision is made for local referendums and the legislation does not envisage any other forms of direct democracy.

### *Referendums*

Tajikistan has held three referendums since independence, all of which concerned the Constitution or the amendment thereof. During the Tajik civil war, which began in June 1992, a coalition of regional groupings dominated by Tajiks from the Kulob region and supported by Russia rapidly gained the upper hand. In November 1992, the Supreme Soviet (parliament) elected Emomali Rakhmon, a native of Kulob, as its Chairman and Head of State. In 1994 the Supreme Soviet scheduled a referendum on a new Constitution that envisaged a presidential republic as well as simultaneous presidential elections (thereby assuming that the Constitution would be approved). Both the referendum and presidential elections were held on 6 November 1994. Itar-Tass reported a turnout figure of 2,338,356 out of 2,647,398 eligible voters (88%), while Dushanbe radio gave figures of 2,409,330 out of a possible 2,535,754 voters (95%). Whatever the figure, such a high turnout is highly unlikely given that opposition forces in Gorno-Badakhshan announced a boycott of the process. According to official results, 90% of voters approved the referendum. CSCE observers were not present.<sup>62</sup>

After a power-sharing deal known as the Tajik Peace and Reconciliation Accord was signed between President Rakhmon and the United Tajik Opposition in June 1997 to end the civil war, a national Reconciliation Council was formed to discuss the implementation of the accord. In February 1999, the Council recommended creating a bicameral parliament and these ideas were included in proposals that were put to a referendum on 26 September 1999. In all, the amendments provided for creating a bicameral parliament, extending the president's term in office from five to seven years, and allowing the formation of religious-based political parties (given that one of the main opposition groupings was the Islamic Renaissance Party). According to official results, 75% of valid ballots were cast in favour of the amendments on a 93% turnout. Once again the high turnout figures give grounds for scepticism.

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<sup>62</sup> RFE/RL, *Tajikistan Votes 2005: Dates Related to Elections, Officials and Policy* at <http://rferl.org/specials/tajikelections/timeline1994.asp>.

Immediately after the referendum, blatantly rigged presidential elections were held in which Rakhmon emerged once again as victor. The United Tajik Opposition had pulled out of the Central Election Commission prior to the elections in protest and expelled one of its leaders, first deputy prime minister Hoja Akbar Turajonzoda, for his proximity to the authorities. Having divided the opposition, Rakhmon gradually consolidated power, marginalizing and dismissing those opposition members who gained posts as part of the power sharing deal. By 2003, he had succeeded in neutralizing the opposition and called a referendum to consolidate his position. The referendum that was held on 22 June 2003 proposed a number of constitutional amendments, the most controversial of which aimed to allow President Rakhmon to stand for a further two seven-year terms as president once his current term expired in 2006. Official results indicated a “yes” vote of over 93% on a turnout of over 96%, a result that was hardly plausible. According to the leader of the opposition Democratic Party of Tajikistan, Mahmadrusi Iskandarov, only around 20% of eligible voters participated in the referendum.<sup>63</sup>

## **Turkmenistan**

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to the Constitution of Turkmenistan, parliament can be prematurely dissolved by decision of a referendum (Article 64). According to Article 94, both national and local referendums can be used to decide the most important questions of governmental and social life. Moreover, a national referendum can be called by the People’s Council (the President, all members of parliament, the People’s Advisors, one of whom is elected by the people from each district, the Chair of the Supreme Court, the Chair of the High Commercial Court, the General Prosecutor, the members of the Cabinet of Ministers, the heads of regional administrations, and the heads of the municipal councils of towns and of those villages which are the administrative centers of their respective districts) on the initiative of no less than a quarter of its members or by a minimum of 250,000 citizens who have the right to vote (Article 95). Finally, a local referendum can be called by a local meeting at its discretion or upon the petition of no less than a quarter of voters living in the relevant locality (Article 96). Referendums do not have to be held in order to amend the Constitution of Turkmenistan; it is the jurisdiction of the parliament to amend the Constitution (Article 67), although in practice this prerogative has been exerted by the president. Indeed, the Constitution has been amended many times without a referendum: in 1995, 1997, 1998, 2000, 2001, 2002, 2003, 2005 and 2006. In practice, Turkmenistan is a highly centralized authoritarian state and all referendums have been called at the initiative of the Turkmen president, Saparmarat Niyazov, prior to his death in December 2006 and have achieved near unanimous backing according to official results. There is no documentation of any local referendums or of any citizens’ initiatives occurring in Turkmenistan.

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<sup>63</sup> RFE/RL Newline, 24 June 2003, at <http://rferl.org/newline/2003/06/240603.asp>.

### *Referendums*

The first referendum in Turkmenistan was held on the 26 October 1991 with two proposals: first to approve Turkmenistan's independence from the USSR and second to express confidence in the policies of President (and former Communist Party First Secretary) Niyazov. According to official figures, more than 97% of voters participated in the referendum and around 94% approved both proposals.

The second referendum was held on 15 January 1994 and proposed to extend President Niyazov's term of office until 2002 without the need for a presidential election. The official results of the referendum were not plausible. Allegedly, the referendum was approved by 99.99% on a turnout of 99.9%. In December 1999, the parliament amended the Constitution to allow Niyazov to be president for life.

### **Ukraine**

#### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 72 of the Constitution of Ukraine, a national referendum can be called either by the Verkhovna Rada (parliament) of Ukraine, or by the president of Ukraine, or by popular initiative at "the request of no less than three million citizens of Ukraine who have the right to vote, on the condition that the signatures in favour of designating the referendum have been collected in no less than two-thirds of the oblasts, with no less than 100,000 signatures in each oblast." Moreover, "[i]ssues of altering the territory of Ukraine are resolved exclusively by an All-Ukrainian referendum" (Article 73). Certain issues cannot be put to a referendum; namely issues relating to taxation, the budget and the granting of amnesties (Article 74). Three Chapters of the Constitution—Chapter 1 (General Principles), Chapter 3 (Elections, Referendum) and Chapter 13 (Introducing Amendments to the Constitution)—can only be amended on the initiative of either the president or by two-thirds of members of the Verkhovna Rada and the amendments must then be approved both by two-thirds of members of the Verkhovna Rada and by a national referendum (Article 156). Other chapters of the Constitution, including those that deal with the division of powers between the various branches of government can be amended with the approval of two-thirds of members of parliament without need for a referendum (Article 155).

In terms of local referendums, the Constitution contains provisions for the autonomous republic of Crimea to hold local referendums (Article 138). Moreover, territorial communities of villages, settlements and cities of Ukraine can, either directly or through bodies of local self-government, organize local referendums. According to Article 7 of the Law on Local Self-Government in Ukraine (1997), local referendums are "form[s] of resolving issues of local significance by a territorial community, directly through the will of the people" but cannot be used for issues relating to the competence of bodies of state power. Article 17 of the same law provides for a referendum in order to decide whether or not to provide city councils with the right to manage property and financial resources owned by sub-municipal territorial communities. Finally, a local referendum can be used to revoke the powers of a village, settlement, city, or sub-municipal council if the council has violated the law, failed to

hold sessions as demanded by the law, or failed to resolve issues ascribed to its competence (Article 78). A local referendum can be used in similar circumstances to dismiss the village, settlement or city head (Article 79).

The Law of Ukraine on All-Ukrainian and Local Referendums (1991 with subsequent amendments in 1992 and 2001) establishes the procedure for citizens' initiatives in calling referendums. To launch a referendum, an initiative group must be formed at a meeting attended by no less than 200 citizens in the case of a national referendum or 50 citizens in the case of local<sup>64</sup> referendum. The initiators must inform the local authorities at least ten days before the meeting takes place. The meeting will elect an initiative group of no less than 20 persons in the case of a national referendum, or ten persons, in the case of a local referendum (Article 16). The initiative must then be registered with the Central Commission for all-Ukrainian Referendums, in the case of a national referendum, and with the relevant council of people's deputies in the case of a local referendum (Article 17). The initiative group then has to collect the required number of signatures within three months in the case of a national referendum, and within one month in the case of a local referendum (Article 18). The precise number of signatures is not specified by the Law, although the Constitution sets a number of three million in the case of national referendums and Articles 78 and 79 of the Law on Local Self-Government stipulate that the initiative for a local referendum on the dismissal of a local council or the head of a village, settlement or city must come from at least one tenth of the voting population of the respective territory.

Other forms of direct democracy are also defined by the Law on Local Self-Government. Article 8 envisages general assemblies of citizens to advise bodies of local self-government in resolving issues of local significance. Similarly, Article 9 provides for local initiatives whereby citizens can put certain important local issues up for discussion by local councils. Assemblies of citizens can also introduce local fees on the basis of voluntary self-taxation (Article 69). Finally, all territorial communities—i.e. towns, settlements and cities—must conduct a public hearing at least once a year in which citizens can raise issues and voice proposals with regard to matters of significance which belong to the competence of local self-government (Article 13).

### *Referendums*

Since 1991 Ukraine has held three national referendums. The first of these took place on 17 March 1991 simultaneously with the all-Union referendum called by the President of the USSR, Mikheil Gorbachev, on the preservation of the Soviet Union. In the all-Union referendum, voters were asked whether they wanted to live in a renewed Soviet Union. However, the Ukrainian Supreme Soviet inserted a second question on the sovereignty of Ukraine: "Do you approve of Ukraine being part of the Union of sovereign States on the basis of the declaration of the sovereignty of Ukraine?" Support for the all-Union question

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<sup>64</sup> Village, settlement or city of district subordination.

was 71% in Ukraine as a whole, but only 38.8% in Western Ukraine. The second question received the support of over 80% of voters. The turnout for the referendum was 83.5%.<sup>65</sup>

On 24 September 1991, the Ukrainian parliament approved Ukraine's independence and agreed to put the proposal to a referendum. The referendum was held on 1 December 1991 and 92.3% of valid votes were cast in favour of independence on an 84% turnout.

On 15 January 2000, the president of Ukraine, Leonid Kuchma, scheduled an all-Ukraine referendum for 16 April 2000. The principle aim of this initiative was to augment the president's powers at the expense of those of the Verkhovna Rada. The impetus behind the referendum had supposedly come from a popular initiative signed by around four million Ukrainian citizens. However, the collection of signatures was allegedly organized by pro-Kuchma loyalist Oleksandr Volkov, through his Social Protection Fund Network.<sup>66</sup> The speed at which the signatures were collected seemed to stretch the limits of credulity and many signatures turned out to be forged: according to one report none of the 140 signatures received from Lviv City Council proved to be genuine and some names were blatantly faked.<sup>67</sup> The decision to call a referendum and the indecent haste at which signatures were collected (or forged) must be understood in the context of the stand-off that was taking place in the Ukrainian parliament between supporters of the president and Kuchma's opponents from leftist parliamentary factions.

The proposals posed by this 'popular initiative' were: 1) to give the president the right to dissolve parliament if it fails to form a majority or to approve a state budget, (2) to limit the immunity of parliamentary deputies from criminal prosecution, (3) to reduce the number of parliamentary deputies from 450 to 300, (4) to establish a bicameral parliament, 5) to allow the Constitution to be amended by referendum alone (presumably without the required two-thirds majority of parliamentary deputies), and 6) to allow the president to dissolve Parliament if voters express no confidence in the body in a national referendum.

On 29 March Ukraine's Constitutional Court deemed proposals 5) and 6) to be unconstitutional. The rejection of point 5) reaffirmed the fact that the referendum would be consultative and would still require a two-thirds majority in parliament for any constitutional changes that may result from the referendum to be enacted. On 16 April, voters approved the other four measures with a majority of between 82% and 92% on an 81% turnout. However, significant violations occurred in the vote as the presidential apparatus put huge pressure on all executive branches of power to deliver a favourable outcome.<sup>68</sup> In the end, the constitutional changes were not passed as the president was unable to muster the

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<sup>65</sup> Sarah Birch, "Electoral Behaviour in Western Ukraine in National Elections and Referendums, 1989-91", *Europe-Asia Studies* (November 1995).

<sup>66</sup> RFE/RL Newline, 25 January 2000, <http://www.rferl.org/newline/2000/01/250100.asp>.

<sup>67</sup> Names collected in Lviv included Khuy Khuylo Khuyovych (Prick Pricko Prickovich), Pyzden Khuyyov Mikhuyovych (Cunty Prickov Myprickovich) and Bolt Khuylo (Shaft Pricko). See RFE/RL, *Poland, Belarus and Ukraine Report* (10 October 2000, Vol. 2, No. 37) at <http://www.rferl.org/reports/pbureport/2000/10/37-101000.asp>.

<sup>68</sup> Freedom House, *Nations in Transit: Ukraine* (2001), at <http://unpan1.un.org/intradoc/groups/public/documents/NISPAcee/UNPAN008085.pdf>.

required two-thirds majority in parliament. His position had been weakened by the publication in late 2000 of tapes documenting his giving orders to harass the opposition and suggesting the president's involvement in the kidnapping and murder of independent journalist Heorhiy Gongadze.

Subsequent amendments to Ukraine's Constitution to reduce the role of the president somewhat were enacted by a two-thirds majority in the Verkhovna Rada in December 2004 to resolve the political crisis that became known as the 'Orange Revolution'. No referendum was held to obtain public approval for these changes.

As well as the national referendums described above, referendums have also been held in Ukraine's regions. On 20 January 1991, a referendum was held on the territory of Crimea, which gave the oblast of Crimea special status as an Autonomous Soviet Socialist Republic within Ukraine. The referendum was passed with 93% of the vote.<sup>69</sup>

In March 1994, a number of unofficial consultative referendums were held at oblast level to coincide with the Ukrainian parliamentary elections. In Donetsk and Luhansk oblasts (collectively known as the Donbas), the respective oblast councils held referendums on making Russian an official state language, allowing dual citizenship with Russia and forging closer ties with the CIS. More than 90% of voters supported these proposals. Simultaneously in Crimea, the president of the autonomous region called a referendum on greater autonomy of the peninsula within Ukraine, which was supported by 75% of voters.<sup>70</sup>

In 2006, preparations were made to hold another referendum in Crimea to grant the Russian language the status of second official language within the territory of Crimea. It was called by the Supreme Council of Crimea on the initiative of supporters of Party of the Regions' leader Viktor Yanukovich. However, on 22 March 2006, it was announced that the initiative had failed due to the failure of Crimean deputies to form special committees on holding the referendum.<sup>71</sup>

Local referendums have also been held in a number of districts of Ukraine on local issues, although there is little documentation on them. The first documented example was one held in the summer of 1995 in the settlements of Nikopol, Marganets and Kamienets-Dneprovskiy on the initiative of the ecological organisation 'Zeleny Svit' ('The Green World') opposing the construction of a sixth reactor and further radioactive waste storage facilities at Zaporizhia nuclear power plant (ZAES). A majority of those voting rejected the construction, although the authorities chose to ignore the referendum.<sup>72</sup> Similarly, in August 2005, residents of the villages of Zashkiv and Zavadiv voted overwhelmingly against a proposed highway that

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<sup>69</sup> <http://www.geocities.com/ai320/crimea.htm>.

<sup>70</sup> Robert S. Kravchuk and Victor Chudowsky, "Ukraine's 1994 elections as an economic event", *Communist and Post-Communist Studies*, Vol. 38, Issue 2 (June 2005), pp 131-165.

<sup>71</sup> *Kyiv Weekly*, 22 March 2006 at <http://www.kyivweekly.com/?art=1142976276>.

<sup>72</sup> See Sacred Earth Network, the Western Sector, at <http://sen.igc.org/EurInfo/TheWesternSector.html> and Informatsiinii Potal Kharkivskoi Pravoza khisnoi Grupi at <http://khpg.org.ua/en/index.php?id=958889402>.

would cut through the villages, overturning preliminary approval granted by the village council.<sup>73</sup> Local referendums have also been used to rename villages.<sup>74</sup>

## Uzbekistan

### *Constitutional and Legislative Basis for Referendums/Voter Initiatives*

According to Article 9 of the Constitution of Uzbekistan, “major matters of public and state life shall be submitted for a nation-wide discussion and put to ... a referendum.” In order to amend the Constitution, the amendments need *either* to be passed by a two-thirds majority in both chambers of parliament or by a popular referendum (Article 127). Finally, rather unusually for a post-Soviet constitution, provision is made for a territory to secede from the state. According to Article 74, “[t]he Republic of Karakalpakstan shall have the right to secede from the Republic of Uzbekistan on the basis of a nation-wide referendum held by the people of Karakalpakstan.” In reality, however, this is rather like the *de jure* right of the union republics to secede from the USSR during the Soviet period; Uzbekistan is an authoritarian state and *de facto* it is inconceivable that a referendum would lead to Karakalpakstan’s exit from Uzbekistan at the present time.

According to Article 105 of the Constitution of Uzbekistan and Article 7 of the Law on Community Self-Government, each settlement, *kishlak* (rural township or village), *aul* (village in Karakalpakstan) and *mahhala* (neighbourhood of a city, township or village) holds a citizens’ assembly that elects an assembly council (*kengash*) to implement decisions of the assembly and to exercise local self-government. The *kengash* consists of the chairman of the citizens’ assembly, various advisors, chairmen of assembly commissions and the executive secretary and sits for two-and-a-half years. By 2001, 8,043 self-government bodies had been created in this way.<sup>75</sup> At *mahhala* level, local officials play a major role in community life, including in matters such as law enforcement.

However, these assemblies have little to do with direct democracy. The mahhalla and the notion of “community government” embedded within it are part of a top-down nation-building exercise in which the mahalla is seen as the cornerstone of Uzbek society and Uzbek nationhood. As Eric Sievers points out:

While “Uzbek” was a vague term and no “Uzbekistan” existed prior to Soviet administrative and ethnolinguistic engineering, Uzbekistan leaders have foreclosed any reflexive revisitation of these terms. In deciding by fiat that the Uzbek nation is a distinct entity that has existed

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<sup>73</sup> National Ecological Centre of Ukraine (NECU) comments on the HLG report on TEN-T extension to the neighbouring countries at [http://ec.europa.eu/ten/transport/external\\_dimension/hlg/2006\\_02\\_17\\_tent\\_consultation/doc/stakeholders\\_contributions/environmental/08national\\_ecological\\_center\\_of\\_ukraine.pdf](http://ec.europa.eu/ten/transport/external_dimension/hlg/2006_02_17_tent_consultation/doc/stakeholders_contributions/environmental/08national_ecological_center_of_ukraine.pdf).

<sup>74</sup> See, for example, <http://dpa.sta.gov.ua/english/page.php3?r=3&id=new73>.

<sup>75</sup> Kuvatbay Bektemirov and Eduard Rahimov, “Local Government in Uzbekistan” in Igor Munteanu and Viktor Popa, *Developing New Rules in the Old Environment* (LGI Books: 2001) at <http://lgi.osi.hu/publications/2001/84/Ch9-Uzbekistan.pdf>.

for centuries or longer, the state has correspondingly recast mahhalla as the traditional, romantic basic structure of Uzbek society.<sup>76</sup>

The citizens' assemblies at *mahhalla* and higher levels are little more than an instrument of state power. According to the law the chairman of the citizens' assembly is elected with the agreement of the *khokim* (head of the local administration) of the respective province or city, turning him into a servant of Uzbekistan's authoritarian state. In reality, the *kengash*, especially at mahhalla level, is used as an instrument of the state to exert control over local communities and even to spy on community members in its struggle against alleged Islamic fundamentalism.

There is no documentation for any legal precedent for local referendums in Uzbekistan, except in the case of Karakalpakstan (see above).

### *Referendums*

All four referendums held in Uzbekistan since 1991 have registered both an official turnout figure and a "yes" vote at over 90%. Generally, they have been subject to overwhelming voter fraud and were not an expression of the democratic will of the people.

The first referendum was the all-Union referendum on 17 March 1991 on the preservation of the Soviet Union (see above). In Uzbekistan, voters were asked to approve a proposal that a "sovereign and independent" Uzbekistan should remain in the USSR. The proposal was approved by a 95% "yes" vote on a 95% turnout.

Uzbekistan declared independence on 31 August 1991 and the proposal to make the country an independent republic was put to voters by means of a referendum on 29 December 1991. 98% of voters approved the motion on a 94% turnout.

It was the results of the third referendum, held on 26 March 1995, that stretched the imagination most of all. The aim of the referendum was to prolong President Islam Karimov's term of office until 2000, without the need for a presidential election. According to official results, both the "yes" vote and the turnout exceeded 99%.

The fourth referendum was held on 27 January 2002 and its main purpose was once again to reaffirm President Karimov's grip on power. Two proposals were put to the electorate: to create a bicameral parliament at the subsequent election and to extend the president's constitutional term of office from five to seven years. According to official results, 91.58% of the electorate turned out to vote, of whom 93.65% approved the creation of a bicameral parliament, and 91.78% approved the proposal to extend the presidential term to seven years.<sup>77</sup>

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<sup>76</sup> Eric W. Sievers, Uzbekistan's Mahalla: From Soviet to Absolutist Residential Community Associations, *The Journal of International and Comparative Law at Chicago-Kent*: Volume 2, 2002.

<sup>77</sup> RFE/RLNewline, 4 February 2002, at <http://www.rferl.org/newsline/2002/02/040202.asp>.

### 3. ANNEX

#### National Referendums in the CIS (1991-2008)

Country	Date	Referendum Type	%Yes	Accepted	Issue	Turnout
Armenia	21 Sep. 1991	Binding	99.51	YES	Independence	95.05
Armenia	5 July 1995	Binding	70.31	YES	Approval of Constitution	55.60
Armenia	25 May 2003	Binding	50.33	NO	Constitutional changes	51.97
Armenia	27 Nov. 2005	Binding	94.51	YES	Constitutional changes	65.34
Azerbaijan	17 Mar. 1991	Binding	n/a	YES	Sovereignty	n/a
Azerbaijan	29 Dec. 1991	Binding	99.76	YES	Independence	95.27
Azerbaijan	29 Aug. 1993	Binding	2.07	NO	Confidence in President Elchibey	91.96
Azerbaijan	12 Nov. 1995	Binding	93.27	YES	Approval of Constitution	86.05
Azerbaijan	24 Aug. 2002	Binding	97.49	YES	Constitutional changes to harmonise with CoE	83.86
Azerbaijan	24 Aug. 2002	Binding	97.38	YES	Constitutional changes to harmonise with ECHR	83.86
Azerbaijan	24 Aug. 2002	Binding	97.23	YES	Various constitutional changes	83.86
Azerbaijan	24 Aug. 2002	Binding	97.29	YES	Constitutional changes on judicial reform	83.86
Azerbaijan	24 Aug. 2002	Binding	97.19	YES	Constitutional changes on organization of parliament and government	83.86
Azerbaijan	24 Aug. 2002	Binding	97.37	YES	Constitutional changes on electoral procedure for presidential elections	83.86
Azerbaijan	24 Aug. 2002	Binding	97.26	YES	Constitutional changes excluding certain issues from referendums	83.86
Azerbaijan	24 Aug. 2002	Binding	97.12	YES	Constitutional changes on voting system for parliamentary elections	83.86
Belarus	14 May 1995	Binding	86.75	YES	Equal status for Russian language	64.78
Belarus	14 May 1995	Binding	78.56	YES	New state flag and emblem	64.78
Belarus	14 May 1995	Binding	86.97	YES	Economic integration with Russian Federation	64.78
Belarus	14 May 1995	Consultative	81.39	YES	Allow pre-term dissolution of parliament	64.78
Belarus	24 Nov. 1996	Binding	89.39	YES	Move Independence Day to 3 July	84.14
Belarus	24 Nov. 1996	Binding	88.24	YES	Approve 1994 Constitution with president's amendments	84.14
Belarus	24 Nov. 1996	Binding	15.62	NO	Free and unrestricted purchase and sale of land	84.14
Belarus	24 Nov. 1996	Binding	18.23	NO	Abolition of the death penalty	84.14
Belarus	24 Nov. 1996	Binding	10.02	NO	Approve 1994 Constitution with Agrarian and Communist parties' amendments	84.14
Belarus	24 Nov. 1996	Binding	28.69	NO	Direct elections for local government heads	84.14
Belarus	24 Nov. 1996	Binding	32.83	NO	Open financing of all branches of power	84.14
Belarus	17 Oct. 2004	Binding	88.91	YES	Constitutional changes to remove term restrictions for presidential office	90.28
Georgia	31 Mar. 1991	Binding	99.49	YES	Independence	90.57
Georgia	2 Nov. 2003	Binding	89.62	YES	Reduce number of MPs to 150	59.90
Georgia	5 Jan. 2008	Consultative	77.00	YES	NATO integration	56.19
Georgia	5 Jan. 2008	Consultative	79.74	YES	Spring parliamentary elections	56.19
Kazakhstan	28 Apr. 1995	Binding	96.21	YES	Extend President Nazarbayev's term to 2000	91.21
Kazakhstan	30 Aug. 1995	Binding	90.01	YES	New constitution	90.58
Kyrgyzstan	17 Mar. 1991	Binding	62.20	YES	Sovereignty	81.70
Kyrgyzstan	30 Jan. 1994	Consultative	97.03	YES	Confidence in President Akaev	96.02
Kyrgyzstan	22 Oct. 1994	Binding	88.11	YES	Constitutional changes to introduce bicameral parliament	86.00
Kyrgyzstan	22 Oct. 1994	Binding	89.03	YES	Allow further constitutional amendments by referendum	86.04
Kyrgyzstan	10 Feb. 1996	Binding	98.56	YES	Constitutional changes to increase president's power	96.62
Kyrgyzstan	17 Oct. 1998	Binding	95.38	YES	Package of constitutional changes	96.44
Kyrgyzstan	2 Feb. 2003	Consultative	91.75	YES	Allow President Akaev to serve until 2005	86.68
Kyrgyzstan	2 Feb. 2003	Binding	89.25	YES	Establish a unicameral parliament elected from single-mandate constituencies	86.68

<b>Kyrgyzstan</b>	21 Oct. 2007	Binding	95.44	YES	Constitutional changes: parliamentary majority to propose prime minister	81.58
<b>Kyrgyzstan</b>	21 Oct. 2007	Binding	95.36	YES	Amendments to Electoral Code	81.58
<b>Moldova</b>	6 Mar. 1994	Consultative	97.9	YES	Moldova as a independent and unitary state in existing borders	75.1
<b>Moldova</b>	23 May 1999	Consultative	64.20	YES	Introduce a presidential form of government	58.33
<b>Russian Fed.</b>	17 Mar. 1991	Binding	71.38	YES	Creation of an elected president	75.09
<b>Russian Fed.</b>	25 Apr. 1993	Binding	51.21	NO	Early presidential elections	64.51
<b>Russian Fed.</b>	25 Apr. 1993	Binding	69.06	NO	Early parliamentary elections	64.51
<b>Russian Fed.</b>	25 Apr. 1993	Binding	54.35	YES	Approval of the social and economic programme of government and president	64.51
<b>Russian Fed.</b>	25 Apr. 1993	Binding	59.95	YES	Confidence in President Yeltsin	64.51
<b>Russian Fed.</b>	12 Dec. 1993	Binding	58.43	YES	Approval of Constitution	54.81
<b>Tajikistan</b>	6 Nov. 1994	Binding	90.00	YES	Approval of Constitution	95.01
<b>Tajikistan</b>	26 Sep. 1999	Binding	75.32	YES	Various constitutional changes	92.54
<b>Tajikistan</b>	22 June 2003	Binding	93.82	YES	Constitutional changes including allowing the president to stand for two more 7-year terms	96.37 <sup>78</sup>
<b>Turkmenistan</b>	26 Oct. 1991	Binding	94.10	YES	Independence	97.39
<b>Turkmenistan</b>	26 Oct. 1991	Consultative	93.50	YES	Approval of President Niyazov's policies	97.39
<b>Turkmenistan</b>	15 Jan. 1994	Binding	99.99	YES	Extend President Niyazov's term to 2002	99.90
<b>Ukraine</b>	17 Mar. 1991	Binding	83.50	YES	Sovereignty	83.50
<b>Ukraine</b>	1 Dec. 1991	Binding	92.26	YES	Independence	84.18
<b>Ukraine</b>	16 Apr. 2000	Consultative	85.92	YES	Give the president the right to dissolve parliament	81.08
<b>Ukraine</b>	16 Apr. 2000	Consultative	90.24	YES	Limit the legal immunity of MPs	81.07
<b>Ukraine</b>	16 Apr. 2000	Consultative	91.14	YES	Reduce the number of MPs from 450 to 300	81.07
<b>Ukraine</b>	16 Apr. 2000	Consultative	82.94	YES	Establish a bicameral parliament	81.07
<b>Uzbekistan</b>	17 Mar. 1991	Binding	94.90	YES	Sovereignty	95.50
<b>Uzbekistan</b>	29 Dec. 1991	Binding	98.26	YES	Independence	94.14
<b>Uzbekistan</b>	26 Mar. 1995	Binding	99.64	YES	Extend President Karimov's term to 2000	99.34
<b>Uzbekistan</b>	27 Jan. 2002	Binding	93.65	YES	Establish a bicameral parliament	91.58
<b>Uzbekistan</b>	27 Jan. 2002	Binding	91.78	YES	Extend the presidential term to from 5 to 7 years	91.58

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<sup>78</sup> Estimate given by Associated Press.