

Legal reform in Central Asia: a tale of two associations

Research >
Central Asia

Rule of law minimally implies a system that respects the basic principles of human rights via democratic means; applies laws through a fair process independent of outside influence; and where laws and their application are generally accepted and respected by government and citizens. Under this definition, Central Asian republics are not yet governed by the rule of law.

By Delaine Swenson

A crucial part of the democratic transition of the five former Soviet Republics of Central Asia – Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan and Uzbekistan – has been the need to establish legal systems based on the rule of law. While significant and growing differences exist among the five republics, in the area of legal reform common problems and root causes explain the current state of affairs: the legacy of Soviet law, the

wreaked havoc on the economic and political institutions of the poorest part of the former Soviet Union. Despite peace accords with the Islamic opposition, President Rahmonov has managed to consolidate power in the presidency. Democracy in Kyrgyzstan, once touted as the democratic darling of Central Asia, has taken definite steps back over the past years as President Akaev, in a now familiar story, strengthened presidential control at the expense of independent media and political opposition.

to develop independent non-governmental associations for attorneys, judges and law students, specialized lawyers' groups for women and the creation of legal information centres and clinics.

The development of a sustainable civil society continues to be more of a challenge than many expected. The development of the Judges' Association in Uzbekistan and a law students' association in Turkmenistan serve as examples of the potential successes and failures possible in Central Asia.

The Association of Judges of Uzbekistan

Western assistance providers, primarily members of the American Bar Association's Central Europe and Eurasia Law Initiative (CEELI) program, have, for many years, worked with judges in Uzbekistan to develop an independent association to promote judicial independence and professionalism. Significant progress was made when the Association of Judges of Uzbekistan (AJU) sponsored a series of conferences on the training of judges, discussing topics such as developing judicial independence, judicial guarantees of human rights, and the role of judges in a democratic society. The organization also developed as an association, increasing its services to members and becoming more influential in decision-making concerning the judiciary.

The AJU was becoming an effective NGO; unfortunately, this came to a halt late in 2001 when the president of the association resigned. It was no secret that the president was forced to resign, made obvious by the fact that his replacement was a Ministry of Justice official. This selection was ratified by a vote of association members that was neither free nor fair, calling into question both the independence and long-term viability of the organization. The incident illustrated the tendency of

A picture of the Kalyan Minaret known as the Tower of Death, from which, legend has it, criminals were thrown. If you particularly offended the Kahn, you were sewn into a bag of cats who would scratch you on the way down. It was the only part of Bukhara that Chengis Khan didn't destroy because he liked it so much.



Courtesy of author

'criticism of the Turkmen government had to be avoided; students were given assignments under the guise of looking for American government or judicial violations of citizens' rights'

almost complete domination of politics by the presidency (and the corresponding weakness of the legislature and judiciary), corruption, lack of resources, and lack of meaningful civil societies.

The challenges of reform

Regrettably, the current situation in the five republics is not consistent with either democracy or respect for the rule of law. Turkmenistan is a Stalinist style dictatorship where President Niyazov has created a personality cult that would be laughable if it were not so serious for the citizens of his country. Uzbekistan runs a close second, where President Karimov has stamped out meaningful political opposition and the parliament is little more than a rubber stamp. Next on the scale is Kazakhstan, where President Nazarbaev has banned political parties and imprisoned their leaders; most independent media have been closed down or taken over by the president's family members or close associates.

The 1992-97 civil war in Tajikistan

In the early 1990s, with promise of reform in the air, Western assistance providers travelled to Central Asia with resources and experts to aid newly independent governments establish democratic societies. In many cases, this resulted in the creation of Western-style constitutions and free market-oriented laws. Everyone soon discovered that, as in the Soviet Union, the gulf between the words of the constitution and realities for citizens was substantial.

Building civil society

One outcome of this gulf between official pronouncement and practice was the realization by Western assistance providers that meaningful reform was unlikely when working with government officials. This led to a refocused effort to assist 'civil society', a more grass roots approach to legal reform. The next generation of leaders was deemed more open to change; greater focus was thus placed on working with the younger members of society. Starting from the mid 1990s, assistance largely took the form of programs

Central Asian governments to tolerate no other potential centres of power or opposition in society; any non-governmental organization's success quickly becomes its downfall.

The Ashgabat law students' club

Programs such as law students' associations illustrate the potential for the future. Law students, unlike their older peers, are unburdened by the prejudices of the old system. They embrace the ideas of democracy, human rights and improving the living conditions of their fellow citizens. As they will be the judges, lawyers, prosecutors and government officials of the future, they are an important resource to develop. As a result, the ABA and other assistance

human rights, the rule of law, and the role of lawyers and judiciaries in developing democratic societies. Criticism of the Turkmen government had to be avoided; students were given assignments under the guise of looking for American government or judicial violations of citizens' rights. Criticism of America was acceptable to the official minders present; the latter failed to realize that the lessons learned about human rights and limitations on government were lessons that applied with equal force to Turkmenistan.

Conclusion

Legal reform in Central Asia is a long-term process. Change is neither easy nor quick; progress will require patience and long-term commitment.

'everyone soon discovered that, as in the Soviet Union, the gulf between the words of the constitution and realities for citizens was substantial'

providers have developed numerous law students' associations and legal clinics in cities across Central Asia. One of the more interesting examples was the development of a law students' club at the only law school in Turkmenistan, at Turkmen State University in the capital, Ashgabat. I say 'club' because the Turkmen government officially frowns upon 'associations'.

The Turkmen government was at first reluctant to allow the ABA into the country, suspecting that its programs would undermine the legitimacy of President Niyazov's cult of personality (renamed Turkmenbashi – father of the Turkmen people). However, following some very embarrassing losses in international legal transactions, the government felt that having Americans assisting in the training of their future lawyers was a good idea. Even so, the government maintained tight controls over ABA activities, most obviously by refusing to register the ABA and by keeping CEELI activities under surveillance.

Still, Turkmen State University was able to develop a law students' association and a legal information centre exposing students to concepts of

It remains to be seen to what extent Western assistance providers will have the will to stay in the region if tangible results are not more quickly forthcoming. There is hope for the future development of the Central Asian republics in that there are significant numbers of genuinely talented, progressive-minded Central Asians who will some day have their say. The role of Western democracies is to patiently push this process forward while supporting reformists where possible. ◀

Delaine R. Swenson is Professor of Law at Catholic University of Lublin, Poland. Between 1999 and 2002 he served as the Regional Director of the American Bar Association Central European and Eurasian Law Initiative in Central Asia and as Central Asia consultant for the Organization for Cooperation and Security in Europe. An American Trial Attorney, he works on legal reform projects throughout Central and Eastern Europe and the Former Soviet Union. dswenson@kul.lublin.pl



The new Presidential Palace in Ashgabat, capital of Turkmenistan

Courtesy of author