INTRODUCTION

This Concept Paper is to shape OSCE programming related to detention and prison reform. It focuses on the following: the legal basis for incarceration, including an identification of areas in need of change; human-rights and sociological issues demanding attention; previous and current OSCE/ODIHR initiatives; potential partner organizations; and recommendations for future OSCE activities.

DETENTION: LEGAL CONSIDERATIONS

The Criminal Executive Code of the Kyrgyz Republic (CEC) sets the conditions for imprisonment, and therefore constitutes the most immediately relevant source of law. However, in points of time, the CEC applies only after a finding of guilt. The questions *Who is subject to incarceration (or What activities carry criminal liability)?* and *What rights does a detainee have pre-trial or during trial?* attach prior to operation of the CEC and are settled by the Criminal Code (CC) and Criminal Procedural Code (CPC), respectively.

Threshold Issue: Criminal versus Civil Liability

As an initial observation, the CC encompasses certain acts that more appropriately belong in the domain of civil law. Inclusion of Articles 127 (“Slander”), 128 (“Offense”), 342 (“Offense of a Public Official”), and 352 (“Defilement of the State Symbol or the State Flag of the Kyrgyz Republic”) indicates that the prison system is not only for violent offenders but also for the mass media and political dissidents. These provisions both chill free speech and contravene OSCE standards. Further identification of unwarranted provisions is available in

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1 The OSCE Conference on Libel and Insult Laws, held in Paris 24-25 November 2003, made, *inter alia*, the following recommendations to member-state legislatures:

- Criminal libel and defamation laws should be repealed and replaced, where necessary, with appropriate civil laws.
- So-called insult laws, particularly those that provide undue protection for public officials, should be repealed.
- Civil defamation laws should be amended, as necessary, to conform to the following principles:
  - only physical or legal persons should be allowed to institute defamation suits, not public or governmental bodies;
  - State symbols and other objects (such as flags, religious symbols) should not be protected by defamation laws;
  - proof of truth should be a complete defence in a defamation case;
  - and reasonable ceilings should be introduced for defamation penalties, based on the current economic situation in each country.
Pre-Trial Detention

At the next phase, the CPC, by providing for *prosecutorial* control of sanctions, conflicts with Kyrgyzstan’s treaty obligations and constitution. Article 9(3) of the International Covenant on Civil and Political Rights (ICCPR) envisions oversight by “a judge or other officer authorized by law to exercise judicial power . . .” Theoretically, interpretation of the words *a judge or other officer authorized by law to exercise judicial power* is settled by Article 79(1) of the Constitution, which states that “Justice shall be administered in the Kyrgyz Republic only by courts” (emphasis added). Yet local prosecutors have retained authority over search warrants, wire taps, and other key aspects of criminal investigations, as well as over detention itself. The lack of involvement of a judge in this process, and particularly over the issue of detention itself is of significant concern.

In his assessment of the CPC, Professor Stephen Thaman details the traditional local role of prosecutors as the “eye of the Communist Party”:

> In Soviet Law the procuracy was considered to be independent of the executive, legislative and judicial branches of government and was undoubtedly the most powerful institution in the administration of justice. Not only did the procurator supervise the criminal investigation and conduct it in serious cases, but it also prosecuted the case in court. It performed quasi-judicial functions during the criminal investigation, having the responsibility of ordering arrest, preventive detention, searches, seizures and wiretaps.

It is clear that according to the Kyrgyz internal legislation defendants granted pre-trial custody should be kept in SIZO under the authority of the Ministry of Justice. However, it happens often in practice that instead of being transferred from the IVS to a CIZO, numerous convicts remain in the IVS facility, under Police Authority, sometimes up to several months before they are taken to prison, without transiting through pre trial facilities. This is due to the lack of pre trial detention facilities, notably in the South of Kyrgyzstan, where one and only facility of this kind exists (in Osh) to cover the needs of the entire South of the Country. As a consequence the Police usually keeps custody of arrested persons for much longer than the maximum legal period of 72 hours. It is particularly during this stay in IVS that the highest number of abuses and tortures (often coupled with extortion of funds/briberies) are being noticed. Furthermore, the IVS facilities located in Osh Province (Kara-Suu, Uzgen, and Aravan districts), Jalalabat Province (Jalalabat town, Suzak), Batken province (Kyzyl-Kia town) are, in light of OSCE’s monitoring of these facilities in 2003 and 2004, in a very poor condition.: Only 40 percent of the necessary funding is available. The diet does not include sufficient meat, milk, or vegetables. The inmates are poorly clothed and without shoes. *(Observed by*
the OSCE FO in 2003 during the visit to Kara-Suu IVS). As a result of the lack of SIZO in the South up to 11 to 12 persons can be kept in one IVS cell, usually designed for a maximum of 5 people.

CPC Article 216(1), which mandates that the detainee be brought before a judge within 72 hours after being charged with a crime, is the only practical time constraint upon prosecutorial power: the duration between indictment and trial is virtually unlimited.

**Detention During Trial**

During trial, the practice of returning cases for further investigation again violates local law and international human rights. Article 85(8) of the Constitution states that “No one shall be held liable twice for one offense.” Likewise, Article 3(3) of the CC stipulates that “No one shall carry criminal liability twice for one and the same crime.” These supposed protections coincide with Article 14(7) of the ICCPR.

However, CPC Article 34(11), which has a lower status than both the Constitution and international treaty commitments, overrides them, allowing the prokuror to suspend a case pending further investigation when the evidence does not support a finding of guilt. In this regard the CPC Draft Law represents a regression in the administration of justice. Proposed new article 32(2)(5) would permit the first-instance judge to return the file to the procurator “to fill gaps in the investigation.” The revision to Article 264(3) would compel (rather than authorize, as is now the law) the prosecutor to petition for re-investigation in certain circumstances. Lastly, the suggested change to Article 351(4) would have appellate courts return cases to the prosecutor rather than the lower court.

The metaphor of “one bullet” is used in the West: prosecutors must take careful aim and fire within a prescribed period of time. By contrast, local procurators have multiple attempts at a conviction and exercise substantial control over the schedule. The effect leaves detainees lingering for undetermined periods.

**Verdict**

Eventual submission (or resubmission) almost inevitably leads to a guilty verdict. According to official statistics, Kyrgyzstan has an extremely low 1% acquittal rate. Contributing factors

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6 According to Article 12, “The Constitution shall have ultimate legal force and direct application in the Kyrgyz Republic.”

7 Article 27 of the Vienna Convention on the Law of Treaties (VCLT), 23 May 1969, U.N. Doc. A/CONF. 39/27 (entered into force 27 January 1980) provides that “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” The Kyrgyz Republic ratified the VCLT without reservation on 11 May 1999. Article 8 of the Law of the Kyrgyz Republic «On Normative Legal Acts of the Kyrgyz Republic», Government Resolution № 34 of 1 July 1996, restates the supremacy of international law in this regard: “In the event that a law or other normative legal act of the Kyrgyz Republic is inconsistent with international treaties, into which participation the Kyrgyz Republic has entered, or with widely recognized norms of international law, the rules established by these treaties and norms shall apply.”

8 Draft Law «On Entering Changes and Additions into the Criminal Procedural Code of the Kyrgyz Republic» ("CPC Draft Law").

9 There were 206 acquittals out of 20,854 prosecutions in 1998 (0.988%), 214 out of 21,294 in 1999 (1.004%), and 334 out of 23,086 in 2000 (1.447%). United Nations Office on Drugs and Crime, Centre for International Crime Prevention, *Seventh United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, covering the period 1998-2000*, pp. 240-41, available at [www.unodc.org/unodc/crime_cicp_survey_seventh.html](http://www.unodc.org/unodc/crime_cicp_survey_seventh.html). These figures are slightly misleading in that the Survey also contains an “other” category for prosecutions that lead neither to conviction nor
include lack of a meaningful procedure for suppressing illegally obtained evidence, including forced confessions, lawyers who instead of aggressively representing their clients’ interests pressure them into seeking leniency in exchange for a guilty plea, and possibly, the lack of trial by jury.

**Sentencing**

Sentencing practices show both negative and positive developments.

**Retention of Soviet-Era Sanctions**

The Polish expert Monika Platek offers a thorough assessment of this problem in her evaluation of the Criminal Code. CC Article 180, for example, authorizes deprivation of freedom for up to three years for operating an unlicensed business – for a first offense. Within the West, this action is normally punished by an administrative fine or a much lower sanction where criminality does apply.

**(Lack of) Alternative Forms of Punishment**

The disuse of alternative forms of punishment causes additional concern. Article 42(1) of the CC permits community service, fines, and treble damages in addition to detention. However, there is a clear trend toward imprisonment. In 1998, the first year that the present CC went into effect, alternatives constituted 33.2% of total sentences (12.3% fines, 9.9% treble damages, and 11.0% community service). In 2001, the figure was only 25.3% (in order, 10.6%, 5.6%, and 9.1%). Judges informally claim that alternative sentences have further decreased to approximately 15% and that community service is virtually non-existent. They also express a lack of confidence in alternatives and view incarceration as the only guarantee that convicts will not evade punishment.

**Capital Punishment**

Restriction on the use of the death penalty is one minor offsetting trend. In 2004 President Akaev signed into law legislation that removes capital punishment from three provisions of the CC, 294 (“Attempt on the Life of a Government or Social Official”), 319 (“Attempt on the Life of a Person Responsible for the Administration of Justice or the Preliminary Investigation”), and 340 (“Attempt on the Life of a Law Enforcement Official”). Aggravated murder (Article 97(2)), aggravated rape (Article 129(3)), and genocide (Article 373) still carry the death penalty. CC Article 50(2) prohibits application of this sanction to women and minors.

acquittal. No explanation is given, although CC Article 66, which removes criminal liability in certain instances when the accused reaches an agreement with the victim, provides at least a partial answer. 10 Presentation at the ABA/CEELI Round Table, “Independence of Advocates and their Professional Freedom of Speech,” 30 October 2003, Hotel Pinara, Bishkek, Kyrgyz Republic. 11 Figures for the Russian Federation might serve as a useful benchmark. The conviction rate is 99% in bench trials (i.e. where the judge decides issues of both law and fact) versus 84% before juries. This statistic appears, among other locations, at http://countrystudies.us/russia/74.htm. 12 The term used is тройной айып, which Article 45 defines as a monetary sanction, two-third of which goes to the victim with the remaining part paid into the state treasury. 13 National Statistical Committee of the Kyrgyz Republic, Social Development of the Kyrgyz Republic, 1997-2001 (Annual Publication, Bishkek 2002). 14 Law «On Entering Changes and Additions into the Criminal Code of the Kyrgyz Republic», Law № 46 of 23 March 2004. The legislation took effect on 26 March 2004. 15 There seems to be some confusion as to exactly how many provisions authorize the death penalty. I have frequently heard government officials refer to two, but the number seems to be three.
Interfax reports that 150 prisoners carry a sentence of capital punishment. At present this sanction is purely theoretical, as annual presidential decrees have extended the moratorium declared in 1998. According to the presidential decree of January 2005 the improvement of the conditions of prisoners on the death row is envisaged. The decree also instructs to develop a draft law by 30 June 2005 to fully abolish the death penalty in Kyrgyzstan, which can be seen as a very positive development, which contributes to further implementation of the National Human Rights Program 2002-2010. OSCE remains hopeful that the death penalty could be fully abolished by 2006.

CC Articles 75(3) and 49(4) permit persons assigned the death penalty to petition for commutation of their sentences to 30-years imprisonment. On the surface, at least, these provisions comply with Article 6(4) of the ICCPR.

**Post-Sentencing**

Under CC Article 49(1), “deprivation of freedom” may mean either detention in prisons (literally, “colonies-settlements”), discussed below, or in corrective colonies.

CC Article 49(5) envisions four “regimes” for the latter, general, reinforced, strict, and especially strict. These designations roughly correspond, in ascending order, to minor, less grave, grave, and especially grave crimes. Article 4 of the Law of the Kyrgyz Republic «On the Entry into Operation of the Criminal Executive Code of the Kyrgyz Republic» mandates implementation of each type of corrective colonies by 2005. As a consequence of the general and strengthened regimes not yet being put into effect, all persons sentenced to corrective colonies are sent into the strict and especially strict regimes – without a reduction in time served.

**SOCIOLOGICAL AND HUMAN RIGHTS PROBLEMS**

The following section focuses on causes and outcomes.

**Additional Contributing Factors**

**Inadequate Legal Framework**

As a telling example, Article 18 of the Constitution states that “No one may be exposed to torment, torture, or inhuman and humiliating punishments.” Municipal law, however, does not define these key terms. Accordingly, there is neither a meaningful legal basis for preventing related human-rights violations nor for prosecuting offenders. Proposed new Article 332-1 to the CC, quoted below, would institute the definition given by Article 1 of the UN Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, but it is not yet adopted.

**Lack of access to a lawyer**

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16 Kyrgyzstan: Kyrgyz President Extends Death Penalty Moratorium, [date]. This article is available on the website of the National Coalition to Abolish the Death Penalty, www.ncadp.org/news_headline_1_1_2004_kyrgyz.html. This number may now be lower due to the recent legislative changes.

17 This provision reads: “Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.”

18 Law № 143 of 13 December 1999.

Even though both the Kyrgyz Constitution and Criminal Procedure Code clearly stipulate that every arrested person is entitled to a defender, in practice, this is far from being true. Numerous arrested persons have approached OSCE explaining that they were not granted with a lawyer since they were not in a position to cover the fees for this service. They were allegedly told by the Police that no free of charge lawyer would be ready to defend them. Other cases reflect the lack of confidence that arrested persons expressed towards lawyers who are perceived as not impartial. Some of these lawyers, also named “pocket lawyers” by former clients, allegedly take their instructions more from the investigators, from which they secure an order. The OFO received complaints that arrested persons was forced by the police investigators to hire “pocket lawyer” who is subordinated by the investigators.

**Insufficient Training**

Many guards in Kyrgyzstan enter the profession not by choice, but because they have failed in other endeavors. Furthermore, they are given only 21 days of preparation, with the training concentrating on security rather than humane treatment.

**Lack of Public Monitoring**

There is now some level of public participation in Kyrgyzstan, but it is not yet systematic. Especially in the south of the country a couple of NGOs are specialized in monitoring of detention facilities. Anyway currently initiatives are under way to broaden public participation in the monitoring detention facilities through NGOs. To advocate public monitoring as a safeguard for effective protection of human rights in detention centers and to find tools for its implementation, the OSCE Centre in Bishkek and ODIHR organized a conference on the “Development of Public Monitoring of the Penitentiary Institutions in the Kyrgyz Republic” on 3-4 June in Bishkek. The conference allowed the Kyrgyz Ministry of Justice, local and international NGOs and representatives of governmental institutions to discuss approaches to the development of public monitoring, relevant international standards and lessons learned by previous public monitoring activities in Kyrgyzstan. Later on with the support of Soros Foundation and Prison Reform International a training took place for those NGOs which are willing to work on prison monitoring. ODIHR started in December 2004 a regional monitoring project which focuses on the monitoring on pre- and pre-trail detention facilities.

**Poor Internal Control**

The security situation in the prison system is a very dangerous one, and connected to it also the situation regarding human rights. By all accounts guards patrol only the perimeter of prisons; it is said that in fact in many prisons inmates control the insides.
Resulting Abuses

Overcrowding

According to the World Prison Population List, Kyrgyzstan had 19,500 detainees in 2002, or an incarceration rate of 390/100,000. By comparison, the figure is at or below 150/100,000 in two-thirds of the world’s nations. Consequently, it is believed that up to 100 inmates now occupy cell blocks designed for 30-40 persons. At present no new facilities are under construction. As a related problem, minors are often detained with adults in violation of Kyrgyzstan’s treaty commitments. Very dramatic is the situation especially in pre-trial/detention facilities because of overload of the courts, lack of pre trial detention facilities (SIZO) or cases sent back for further investigation a huge amount of allegedly law offenders are waiting in pre-trail detention facilities for their court cases.

Tuberculosis and HIV/AIDS

Between 372 and 686 detainees died annually from tuberculosis in the years 1999-2002. The reality is worse than these numbers indicate: whenever possible prisoners are released beforehand in order to lessen the government burden. Simply stated, punishment for even minor offenses can become a death sentence.

Radio Free Europe/Radio Liberty reports that half of Kyrgyzstan’s 451 documented HIV/AIDS cases are found in prison. It is unknown what percentage contracted the disease prior to incarceration, but the number is believed to be growing.

Other Unsanitary and Unhealthy Conditions

The republican budget appropriates approximately 45 som per detainee per day for food. Anecdotal evidence suggests that corruption may siphon off half of this amount, leaving many prisoners severely malnourished. Air quality is very poor, the water supply is frequently interrupted, and electricity has been cut off – in the winter -- due to the failure of the penitentiary system to pay its bills. It is estimated that 70% of children in pre-trial detention facilities have anemia.

Torture and Inhuman Treatment

The CiB and the OFO frequently receives reports about ill-treatment of detainees, which reaches sometimes even the level of torture. Moreover, prisoners who submit complaints about violations of their rights suffer retaliation, and judges tend not to consider the claims in good faith. These practices continue – and according to many, worsen – despite Kyrgyzstan’s accession to the UN Convention against Torture on 5 September 1997.

The recently (November 15, 2003) adopted Law «On Entering Changes and Additions into the Criminal Code of the Kyrgyz Republic» might help, if properly implemented prevent human rights abuses. Proposed new Article 305-1 (“Torture”) would prevent, in part:

20 This document is available at www.csdp.org. Figures were provided by the Kyrgyz government.
22 See, e.g., Article 10(3) of the ICCPR, which mandates that “Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.”
“The premeditated infliction of physical or psychological suffering committed by an official, or any other person with officials consent or allowance with the goal of receiving information or testimony from the victim or for punishing him for actions that he committed or is suspected of committing, as well as to scare or compel him”

The implementation of this new provision, which has been incorporated into the Kyrgyz Criminal Code should be closely monitored and referred to when dealing with cases of abuse and torture. The implementation of this article has so far not permitted to put an end to the practices and torture which are still an unfortunate reality. The high presumption of corruption among Law enforcement bodies staff coupled with the alleged connivance between Police and the Prosecutor represent an obstacle to the implementation of this provision.

General Amnesties

CC Article 74 authorizes amnesties, 13 of which have been declared since the Kyrgyz Republic gained independence. Though expressed in humanitarian terms, this measure is motivated primarily by the need to relieve prison overcrowding. Professor Platek in her assessment of the CC, criticizes this practice as a usurpation of judicial authority. The sequence of imprisonment (particularly when alternatives were or should have been available), hardening of criminal habits in prison, and then release without rehabilitation also poses a safety risk to society.

Recidivism

According to the Association of NGOs and Non-Profit-Making Institutions (ANGONPO), more than half of juvenile detainees become repeat offenders after release. The fact that convictions are stamped into passports, rendering the holders nearly unemployable, is a primary cause. Lack of attention to re-socialization is another. As a result, imprisonment for many becomes a recurring rather than a one-time event.

OSCE/ODIHR ACTIVITIES

Criminal Executive Code

Plans to cooperate with the working group responsible for redrafting the Criminal Executive Code to strengthen provisions on alternative means of sentencing are under discussion. In many ways this activity would be a natural extension of the Legal Reform Assistance Project.

Trainings

Under ODIHR sponsorship, six local prison guards visited the penal system in Eastern Kazakhstan, which includes a special hospital for treating tuberculosis. Their training concluded with a round table to discuss prospects for applying their new knowledge in the Kyrgyz Republic. The CiB organised in July 2004 a 10-day long regional course for staff of correctional institutions from Central Asia to support the reform of the prison system and humanise criminal legislation. These initiative was done in collaboration with the Ministry of Justice,

25 See page 122 of the LAP Assessment.
ODIHR, Prison Reform International and the Soros Foundation. The summer course focused on international and regional experiences of probation-service development.

**Round Tables and Conferences**

Together with Penal Reform International and the Soros Foundation -- Kyrgyzstan, the ODIHR conducted a round table 3-4 June in Bishkek on public monitoring of prison conditions. In May and June of 2003 the same three organizations convened to discuss the draft law on alternative forms of punishment. As a kick-start for the above mentioned regional training course for staff of correctional institutions (approbation) the CiB organised a conference on reform of the Kyrgyz probation service. The conference covered the role of probation as an alternative means of sentencing, and the possibility of transferring the service from the Ministry of Interior to the Ministry of Justice.

**PARTNER ORGANIZATIONS**

The principal donor groups (with locations listed in brackets) and programs (with funders identified in brackets) are given below. Coordinates are provided for organizations and individuals located outside the Kyrgyz Republic. A list of local NGOs, previously on file at the OSCE Centre in Bishkek, is attached for convenience.

**American Bar Association/Central European and Eurasian Initiative (Bishkek and Osh)**

Among its projects, the ABA/CEELI works on strengthening the *advokatura* and training judges. In 2003-2004 it placed a human rights specialist in Bishkek. Michael McCarthy, the liaison in Osh, has experience with habeus corpus review and decriminalization campaigns. Occasionally the US Department of Justice and CEELI jointly place a criminal expert in Tashkent. From 2005 on training activities will be in the focus of ABAs work in the Kyrgyz Republic.

Adress: 8 Isanova Street, Apt. 4, 720017 Bishkek, Tel: 0996-312-61-14-69/75/81, 21-19-47, Fax: 61-14-87, www.abanet.org/ceeli

**Drug Demand Reduction Project, 2002-07 (USAID)**

The Open Society Institute Consortium and the AIDS Foundation East-West (AFEW), regionally based in Almaty, are implementing partners. The AFEW conducts prevention interventions with prisoners. Atabek Rakhimov, project coordinator, Penal System Project for Kazakhstan and Kyrgyz Republic, AFEW, is the contact person: atabek_rakhimov@afew.org, +(7-3272) 73-57-46.

**Freedom House, Human Rights Defender Support Project (Bishkek)**

General activities are described in the Concept Paper on the Rule of Law. Additionally, FH frequently investigates the cause of “custodial deaths.”, and also works in close co-operation with NGOs who are conducting monitoring of detention facilities, like “Luch Solomon” and “Spravdelivost” (Osh)

Adress: 204 Abdrahmanov (Sovetskaja) Street, 4th Floor, 720040 Bishkek, Tel: 0996-312-66-46-36, Fax: 62-08-30

**Helsinki Foundation for Human Rights (Warsaw, Poland)**

Headquarter in Poland, this organization trains NGOs in human-rights monitoring and reporting and works with prison staff. Central Asia is one of its regional interests regarding human rights as well as methodological education on monitoring and reporting on human
In Kyrgyzstan, HFHR-supported NGOs like “Spravedlivost,” (Jalal-Abad) and “Luch Solomom” (Osh) are active on the field of monitoring of detention facilities. Additional information is available at www.hfhrpol.waw.pl.

**HIV Prevention in Central Asia, 2002-04 (USAID)**

The Soros Foundation is an implementing partner. This program seeks to reduce transmission of HIV/AIDS among high-risk groups, including prisoners. It gives technical support and small grants to five local NGOs that conduct HIV/AIDS prevention. Among them, “Inter Demilige” provides information materials to detainees and sponsors a needle-exchange program.

**International Committee of the Red Cross for Central Asia (Bishkek)**

The ICRC, via its regional headquarters in Tashkent, began programming in Kyrgyzstan in 1999, conducting detention visits to the prison under the authority of the National Security Agency and later extending this activity to MOI prisons. Earlier this year the ICRC opened an office in Bishkek and is now actively looking to partner with other donor groups. Tuberculosis and general prison conditions are the primary local emphases.

**Luch Solomona (Osh)**

This NGO monitors detention facilities and deals with individual complaints. Luch Solomona also defends Hizb-Ut-Takhir members accused by law-enforcement agencies. The head of the organization is an acting member of the Helsinki Foundation for Human Rights; he recently attended the OSCE PAP steering committee on behalf of the southern NGO sector.

**Penal Reform International (Almaty, Kazakhstan)**

PRI, based in London focuses on a wide variety of areas including alternative forms of punishment and abolition of the death penalty. A “Draft Index of Best Practices” relating to pre-trial detention is available on its website, www.penalreform.org. Locally, PRI conducts programming through its regional headquarters in Almaty. The Training Center that it co-sponsored within the MoJ Main Administration for the Enforcement of Punishments is a unique model within Central Asia. PRI is besides Soros Foundation Kyrgyzstan the main strategic partner on prison related projects. Vera Tkachenko: vtachenko@penalreform.org, +(7-3272) 50-64-75.

**Soros Foundation – Kyrgyzstan (Bishkek and Osh)**

The Soros Foundation maintains a constant interest in criminal law, among other activities implementing the programs and supporting the NGOs described herein. Soros Foundation Kyrgyzstan is besides PRI biggest partner of the MoJ Main Administration for the Enforcement of Punishment. Soros Foundation Kyrgyzstan supports inter alia the 2003 established Training Centre for Prison Staff, conferences on alternative means of sentencing, awarded together with the OSCE Centre in Bishkek and Prison Reform International journalists which covered the prison sector.

**Spravedlivost (Jalal-Abad)**

Spravedlivost is one of the main actors on human rights issues in the south of Kyrgyzstan, and the leading group in the Jalal-Abad province. With its own network of human-rights centers, Spravedlivost deals with individual cases of detention pertinent to political, social, and
economic issues. Spravedlovost systematically follows the situation in detention facilities and is one of the main sources on the particular situation in the law enforcement sector.

**SPECIFIC RECOMMENDATIONS**

Eight priority areas are outlined below. The first three concentrate on improving prison conditions, whereas the rest call for far-reaching legal and institutional change.

1. **Trainings for prison guards**

Realization of reform depends not only on political will but compliance at the rank-and-file level. Guards must continue to receive education in humanitarian norms. Here the United Nations Standard Minimum Rules for the Treatment of Prisoners might serve as a basis for trainings.

2. **Public monitoring**

Local law provides for NGO oversight of prison conditions, but at the moment no system has come into operation. The 3-4 June round table presented models that might be appropriate for adoption in the Kyrgyz Republic, and may therefore provide a basis for follow-up action.

3. **Broad-based legislative reform**

It is highly desirable to pursue legal change not only in the context of the Criminal Executive Code. Removing Articles 127, 128, 342, and 352 from the CC would protect political activists from criminal liability and incarceration. Within the CPC, transferring oversight of detention from the procuracy to the judiciary, discontinuing the practice of returning files for further investigation, and strengthening procedures for suppressing illegal evidence are priority issues. In many cases these shifts would comply with Kyrgyzstan’s treaty commitments, which should be taken into account as a source of binding law. Furthermore, introducing jury trials, which is not compelled by international norms but is envisioned by local law, would add an element of neutrality to the administration of justice. The importance of defining “torture,” “inhuman treatment,” and similar terms is discussed above.

4. **Strengthening the defense bar (advokatura)**

Lawyers must be trained to mount a vigorous defense, making the prosecution prove each and every element of the case, motioning to exclude illegally obtained evidence (including to suppress forced confessions), and so forth. Appellate work requires a slightly different skill set and should be addressed through separate targeted trainings. The OSCE Centre together with ODIHR and the American Bar Association will support a conference organized by the Kyrgyz Association of Lawyers on the reform of the defense bar, which should lead as a kick-start event to follow-up actions to create a strong and respected organization.

5. **Repairing of existing Police Custody facilities (IVS) and building of new pre-trial detention cells (SIZO)**

6. **Alternative forms of punishment**

According to PRI, alternatives to incarceration cost as little as 1% of detention. Community service and fines are viable sanctions for certain non-violent offenses, and the provisions that authorize them should be given their full intended effect. This effort will require strengthening institutional capacity and retraining judges in sentencing standards.

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27 ECOSOC Res. 663C of 31 July 1957.
28 The Administration of the President informs me that it has developed a Concept Paper on trials by jury, which would be known as trials by “peoples’ representatives” in the local context. A copy is promised but has not yet been sent.
The opportunity to package this reform together with other liberalizing measures should not go unexplored.

7. Rehabilitation

Programs designed to promote reintegration are essential. Interested groups should work to remove barriers to employment and to make social services available. Here, proposed new Part (6) to Article 63 of the CC, if adopted, should be utilized. The CC Draft Law reads: “The organ realizing control for the conduct of the convict may attract social organizations for the resocialization of convicts, philanthropic organizations, and private persons to the process.” A discussion on the topic of public work as well as facilitating agreements outside the courtroom between criminal and victims was conducted at the conference “Alternatives of depriving of liberties in the Kyrgyz Republic: perspectives of their development”, organized in September 2004 by four NGOs working closely with the Ministry of Justice with support by PRI.

CONCLUSION

With the new, progressive leadership at the top level of the MoJ Main Administration for the Enforcement of Punishment, now is an advantageous time to work on prison reform. A narrow, targeted approach may in itself improve the conditions of detainees. Recognizing that an unacceptably high number of persons are deprived of freedom due to miscarriages of justice, and working to prevent future victimization, will prove a more effective long-term strategy. To this end the Concept Paper identifies factors that work in combination to “funnel” the accused into prisons and corrective colonies. These areas will be beyond the ability of any single organization to fix, but an effort that envisions the problem as a mosaic and achieves a differentiation of responsibility may significantly advance the cause of prison reform.
APPENDIX:
Local NGOs working in the area of prison reform/detention

1. NGO “Centre for legal support for prison inmates”. Director Diljara Nazimova. 0996-(502) 320296, 299761. [prison@dialup.kyrgyz.ky]

2. NGO “Children in Danger”. Director Maksim Nikiforov. ОФ "Дети в опасности", 0996-312-68-02-43, (502) 36-23-39, [children@hotmail.kg]

3. NGO “Foundation for the support of the penitentiary system. Acting Director Indira Umurbekova
   Tel.: 0996-312-42-86-72, [penalreform@mail.ru]

4. NGO “Foundation for international legal co-operation”. Director Ruslan Myrsalimov.
   Tel.: 0996-312-66-19-62, 979545, [ruslanmm@hotmail.com]

5. NGO "Egl'", Working with children's colony. Director Cholpon Omurkanova. Tel: 0996-517-78-84-68, 285772

6. NGO "Karmel Director  Ondokeeva Ak-Bermet
   Tel: 0996-312-95-69-56, 59-12-68, 28-93-05
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