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## *Report on the outputs of monitoring of courts, penal jurisdictions, conflict situations related to human rights violations in Kyrgyzstan after 24 March 2005*

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## ***Kyrgyzstan:***

### ***Introduction***

From January till October 2006 conflicts, both in a political and social and economic life of Kyrgyzstan, proceeded. The constitutional reform promised by President of KR K.Bakiev in its pre-election platform before Presidential elections of 10 July 2005 as the key tool of changes has not been executed. Under Presidential Decrees the composition of the Constitutional Meeting, as well as that of the Working Group were changed several times. As a result under different pretexts the Constitutional reform is being delayed, that generates reinforcement of confrontation between various political groups. Thus, on 2 October 2006 leaders of 5 political parties, united in "For reforms" staff, declared the beginning of the termless action of opposition starting with 2 November 2006 with the demand of resignation of Bakiev-Kulov tandem, giving the present authority a chance to correct its mistakes and to implement the requirements of opposition within a month. The key demands of opposition are constitutional reform, freedom of speech, human rights and balance of system

### **Wild redistribution of property and capture of land:**

After revolution of 24 March noticeable changes in the improvement of ordinary citizens life were not observed. Growth of system corruption is marked; poverty is growing in Kyrgyzstan. On a background of struggle of various groupings, a wild redistribution of the property, illegal capture of other's property, capture of earth, increase of ethnic minorities and other vulnerable groups' rights violation is taking place. The new authority did not manage to really change a situation with human rights through providing citizens with access to fair trial, reduction of application of tortures or protection of refugees looking for asylum in Kyrgyzstan as a result Andijan events in May 2005, as well as ethnic minorities living in Kyrgyzstan or to provide citizens with the constitutional right of on private property.

From April to July 2006 lawyers of the Human Rights Center examined the documents of businessman Yuldash Ergashev, an ethnic Uzbek, the President of the International transport company "Khan-Tek", whose uncompleted hotel on the beach of Issyk-Kul lake costed 1 million 100 thousand US dollars the Administration of the President's Office through violation of his constitutional rights wanted to take away by force despite the decisions of courts. Thanks to interference of HRC "Citizens against corruption" lawyers it was managed to restore the legitimacy and justice.

As a result of such violations some 300 meetings-protests took place in the country, most of which were registered in Bishkek, Djalal-Abad, Osh, as well as in many settlements of Chuj oblast. The majority of mass-meetings were the result of illegal capture of earth and private property.

### **Involvement of unemployed women in unconstitutional activities:**

Often actions of those groups were of radical character, it can definitely be named "an exit from a legal field". After revolution of 24 March 2005 the groups of "professional" people holding mass-meetings appeared – women, who participated in meetings and pickets for financial reward, contributing to discredit of the format of peaceful mass-meetings and peaceful protests of citizens. These female groups and radical movements are financed and supported by supporters of the present authority. They name themselves "revolutionaries", who struggle for redistribution of wealth, determining their purpose as "to take off from rich and distribute among poor and needy". At the end of September 2006 they held their congress, where decided to create female army already to protect of gains of the revolution of 24 March 2005. The given initiative is raised by female groups of of Jalalabat.

In February 2006 as a result of violent capture of earth in Iskra village the interethnic conflict between the Dungan and Kyrgyz of the rayon flared up, which resulted in fights and mass pogroms; two Dungan were called to criminal account. Thanks to advocate protection of the lawyer Nina Zotova, provided on the initiative of HRC " Citizens against corruption ", at a level of a regional court of Chuj oblast two accused Dungan-teenagers were justified and released in the court's hall. Until now the staff of our organization have been monitoring the situation and conducting meetings with the village residents.

### **Conflicts related to activity of criminal elements:**

On the basis of the results of the monitoring, which is carried out by partners and staff our Center, participation of criminal elements in the politics was fixed even before March revolution in the southern areas of KR. Involving of criminal elements in preparation of the revolution and financing of the revolution by them generated crises and confrontation between new authority and civil society. Participation криминала in politics and repartition of property was planned even before revolution, and the present authority of Kyrgyzstan bears responsibility for involving crime (criminal elements) in politics and redistribution of property. After the revolution series of murders occurred - both deputies of the Kyrgyz Parliament and businessmen. No one of them has been detected yet by law enforcement bodies.

Representatives of civil society repeatedly stated about new challenges and threats in the post revolution Kyrgyzstan, where the crime demanded openly participation both in politics and decision-making at all levels of authority. As a result of large-scale protests in April 2006 against criminal elements' influence on the authority and threats to public security the leader of the Coalition " For democracy and a civil society " Edil Baisalov was wounded by unknown persons in the head. From October 2005 to May 2006 revolts and protest actions of various character in prisons of Kyrgyzstan happened. The murder of a deputy the Parliament Tynychbek Akmatbaev and other members of the commission on 20 October 2005 became the most noted event. Akmatbaev arrived in ИТК (colony) N31 to study the conditions of condemned persons' keeping. According to data, received from the staff of the law enforcement bodies, employees of the colony No 31 had asked deputy Akmatbaeva to refrain from visiting the colony, where a well known criminal authority (leader) in the republic Aziz Batukaev, who had conflict relations with Ryspek Akmatbaev, was serving the sentence. On a trip the deputy was accompanied by his bodyguard and employees of the committee, which he headed. Contrary to the rules of correction facilities' visiting, established by the law, the persons accompanying deputy Akmatbaev, including his bodyguard, were admitted on internal territory of the colony with fire-arms. According to the information, got from persons, who participated in the settlement of the situation, indignation of prisoners was caused by excessively rigid and sharp conversation of the deputy with a group of prisoners. The conflict of the deputy with prisoners developed into a fight, as a consequence of which the deputy and persons accompanying him were grasped as hostages. Prisoners killed Tynychbek Akmatbaev and three more persons of those, who accompanied him. The Head of GUIN (Main Directorate of Treatment and Punishment) of the Ministry of Justice of Kyrgyzstan Ihmatula Polotov was heavily wounded. He died subsequently in hospital. A few days later the court sentenced accused Rustam Abdullin, Evgeny Golovin and Azamat Zakirov to death penalty. Other prisoners, accessorial to murders, who passed under that criminal case, were sentenced to various terms of punishment. In particular, the well known criminal authority in the republic Aziz Batukaev was sentenced to 16 years of imprisonment. Illegal extradition of UN mandatory refugees to the authorities of Uzbekistan: About 15.00 o'clock on 9 August 2006 all five arrested persons were transported by the Kirghiz authorities to the territory of Uzbekistan through border in area of Dostuk check-point. Four refugees whom we are speakin about, are: Jahangir Maksudov, Rasul Pirmatov, Odildzhon Rakhimov and Yakub Tashbaev. The fifth – Faizjon Tadjihalilov - had been officially registered by UNHCR as an asylum seeker. The Kyrgyz authorities had informed neither attorneys of arrested persons, nor UNHCR beforehand about

forthcoming forced returning. Already after the operation's completion the UNHCR found out, that transfer of refugees to law-enforcement structures of Uzbekistan was conducted by the staff of the Ministry of Internal Affairs and Attorney-General's Office of KR. All five extradited were among more than 400 Uzbek refugees who had escaped on territory of Kyrgyzstan after the Andizhan events of May 2005. On 9 June 2005 four of them, officially recognized as refugees were detained by the Kyrgyz authorities on inquiry of Uzbekistan about their return. The government of Uzbekistan accuses them of participation in violence during the Andizhan events. Maksudov, Pirmatov, Rakhimov and Tashbaev had been recognized as refugees by UNHCR, that had come also to the agreement with the third countries about their accommodation, however, the Department of migration service of KR refused to satisfy their applications for refugee status. Attempts to appeal this decision judicially failed, when in June the Supreme court of KR upheld the decision of migration authorities on the last applicant, the final decision was left for the Attorney-General's Office.

### **Combating terrorism and introduction of passport regime in the south of Kyrgyzstan:**

Interborder and interstate conflicts of different character between Uzbekistan, Kazakhstan, Tajikistan proceeded, reprisals against believers increased. Having declared the fight against terrorism as one of the basic strategies, President K.Bakiev made friends with the President of Uzbekistan Karimov. The following Bakiev's official visit to Tashkent is planned from 3 to 4 October 2006.

*Violations were revealed in the order of passport regime observance in Jalalabat oblast. First of all, citizens were not informed in advance by law enforcement bodies on introduction of a passport regime. Also, those, who appear not to have documents with themselves, are detained by force. At the same time the staff of block posts do not submit citizens any certificates and documents confirming the legality of passport regime introduction. Human rights activists felt that on themselves.*

*On 28-29 June there were mass searches in Bazar-Korgon district of Jalalabat oblast. According to local residents 80 employees of Special purpose troops and about twenty employees of the Department on counteraction to illegal migration and terrorism and local GAI (state auto inspection) were involved in this special operation. They checked 22 houses. In one of houses 82 year old pensioner, 64 year old woman and the 20-year old girl lived. 22 soldiers of Special purpose troops rushed into their house, as a result the infarct occurred with 82 year-old pensioner. But in spite of that they searched the total house, attic, vault, etc.<sup>1</sup>*

### **The authorities' attempts of limiting NGO's activities in Kyrgyzstan:**

On 24 January 2006 Minister of Justice of KR Marart Kaiypov in his speech to the board of the Ministry of Justice ordered to the registration department of the Ministry of Justice to inspect all republican NGOs financed from abroad. Later he explained, that the purpose of such order was not to lead full check, but rather to make sure, that the finances, provided for certain programs, are expended according to the purposes to prevent functioning of illegal international organizations under NGO mask. On 26 January representatives of the Ministry stated, that Raiypov's speech had been misunderstood its incorrect translation from Kyrgyz into Russian, that such checks is a prerogative of the National Security Service and Attorney-General's Office.

On 9 March 2006 the meeting-discussion of plans of Ombudsman Tursunbai Bakir uulu on changes and additions to the Kyrgyz legislation " About non-profit organizations" took place in the conference-hall of the Ministry of Justice. Ombudsman suggested to rename the Article 4 of the law in " Purposes and principles of establishment and functioning of non-profit organizations " and to change Article 4, having added the following: " Foundation and activities of foreign non-profit organizations, including their foreign representations and branches, as well as non-profit

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<sup>1</sup> On the outputs of monitoring of the human rights situation in southern regions – Osh and Jalalabat cities, conducted by the leader of NGO "Kylym Shamy", member of the Presidential Commission on Human Rights A.Abdirasulova.

organizations funded by foreign states, political parties, legal and the private persons, pursuing political aims or threatening constitutional order are prohibited. Further Ombudsman noticed, that " the given offer was submitted due to the fact, that not all foreign states and international organizations pursue positive purposes. It is a gap in the national legislation, allowing to use NGOs in political aims. The offered norm is not copying of provisions of the Constitution. Political activities do not include elections observation, human rights protection or assistance to the establishment of democratic institutes, but refer to the activities aimed on reaching certain political objectives and support of some political forces in their attempt to get power.

Another one obstacle, created by new Kyrgyz authority to NGOs, combating corruption of state structures officials and defending the rule of law, was the adoption by the new government of the law " About guarantees of activities of the President of the Kyrgyz Republic " in edition of 9 April 2005, No 29, ratified by the Kyrgyz Parliament on 26 June 2003. Its Article 4e provides the Attorney-General's Office with special powers: " The President of Kyrgyzstan is under protection of the state. Honour and dignity of the Kyrgyz President are guaranteed by law. In case of distribution of the information discrediting the President, the Attorney-General is obliged, if other measures undertaken by the Attorney-General have no effect, to complain on behalf of the President a claim to the court to protect the honour and dignity of the President. Thus the Attorney-General is recognized as the lawful representative of the President of Kyrgyzstan with all rights of a complainant, accountant and affected party, conventional by procedural legislation, including assignment of these rights to other persons; these rights on commencement of criminal cases should not be confirmed with any additional documents.

The Attorney-General has already several times applied sanctions conventional by the specified law on slander towards opposition to the President and independent mass-media, confining himself to notifications. For instance, doctor K.Apas, deputy K.Karabekov, former governor of Osh oblast received notifications from the Attorney-General's Office for the accusation of the President in corruption and other crimes in interview to "Litza" newspaper, as well as chief editor of "Litza" newspaper B.Bukasheva, chief editor of the "Komsomolskaya Pravda" newspaper in Kyrgyzstan A.Kulinskiy; on 15 February the TV company NTS received such notification as well. Undoubtedly, the Attorney-General will pass to more rigour measures of punishment - penalties, arrests and 3-years imprisonment conditional by the new law, prosecuting MM, human rights protectors and other persons, who bring objective information, compromising the current and previous activities of the President K.Bakiev to the public.

Two American diplomats were expelled from Kyrgyzstan They were accused " in interference in internal affairs of Kyrgyzstan and inadmissible relations with NGOs", that speaks about further threats to NGO sector on behalf of the power structures.

Access to the information for ordinary citizens remains a problem, as K.Bakiev's promises concerning public TV and a freedom of speech in Kyrgyzstan, contained in his electoral programme, have appeared to be fiction.

The signing by President Bakiev of the next annual prolongation of the moratorium on death penalty down to its abolition may be noted as a positive influence of human rights protectors.

### **Suppression by force of peace civil mass-meetings and demonstrations; avoiding by authorities to incur liability for committed crimes and preventing their investigation:**

The lawyer of the HRC "Citizens against corruption" Makembaeva D. monitored A. Rakhimov's and M. Cholponbaev's criminal cases, who were accused of the organization of mass disorders and violent seizure of power, connected with the events of 17 June 2005. A. Rakhimov, native of Issyk-Kul oblast, a colonel, a teacher of the Usenbekov Bishkek higher military school. His case was under consideration in Bishkek garrison military court of the KR since 22 December 2005, and judicial proceeding came to the end on 17 March 2006. During judicial investigation the party of charge did not manage to provide completely witnesses' appearance. 30 persons passed under that case as victims, but only more than 5 victims were examined. The majority of victims had no certificates of

medicolegal examination, though they affirmed, that they had been easily and heavily injured. T.Ismailova and M. Frolov acted as public defenders on behalf of the Human Rights Center. As a result the court adjudged in accordance with the Article 295 to give the benefit for the absence of evidence of power seizure, and according to Article 233 for the organization of mass disorders sentenced for 3 years conditionally, 2 years of which to be a trial period.

Similar M.Cholponbaev's case was examined in Pervomaiskiy rayon court. T.Ismailova acted as a public counsel in that judicial proceeding on behalf of the HRC. Proceeding began on 2 November 2005, and ended on 7 June 2006. 48 witnesses passed under that case, the party of the state charge could not provide full their complete appearance. That judicial proceeding lasted 8 months due to the nonappearance of witnesses and those, who had aggrieved. On this business has justified under clause 295 YK KP as during trial the party of charge could not prove completely, and on item 233 YK KP behind validity of some items in the organization of mass disorders 1 year conditionally. The court discharged in accordance with the Article 295 of the Kyrgyz Criminal Code, as during the proceeding the party of charge did not manage to submit full evidence, and according to Article 233 for the validity of some points in organization of mass disorders sentenced for 1 year conditionally.

On 3 February 2006 in the Trade Unions' House the case on newly found circumstances on Aksy events was examined. Advocate S.Zhajchibekov, Ashirkul uulu Toktorbek, human rights defenders A.Abdirasulova, T.Ismailova and E.Bajsalov represented interests of 13 victims. According to the Article 148 of the Kyrgyz CC " Illegal preventing peace mass-meeting " the criminal case on Kudaibergenov, Kalbaev, Osmonova, Rakisheva, Kulueva, Tokoeva was newly set up. The judges of the Supreme Court, having examined and listened to justified and victims, took the decision, that article 389 of CPC contradicts to articles 83, 87 p. 2 of the Kyrgyz Constitution and that is why it was necessary to leave the case for Constitutional court for consideration. Judicial proceeding in the Constitutional Court will last for 1 and 1,5 months.

On 29 May 2006 the examination of the case on Aksy events started at the session of the judicial board of the Supreme Court. The senior prosecutor of the Attorney-General' Office Abykeev informed in court, that decisions concerning the senior officials of the republic had not been taken, the legal assessment to "Typhoon" and "Buran" plans had not been made. Also, there had been contradictions in testimony of witnesses and accused about the time of starting the plans implementation. In this connection the Attorney-General' Office applied for sending the case for supplementary examination on newly occurred circumstances. In their turn, the victims supported the the Attorney-General' Office' and defenders petition about supplementary examination of the case.

On June, 2nd the Supreme court rejected the petition of the Attorney-General Office to reexamine the criminal case on Aksy events. Session of the court took place in the building of the republican trade union. Right after announcement victims and their defenders did not hear the decision, as the judge read quickly and muffledly, that is why attendants did not understand the sense of value of the decision. Instead of explaining the decision to the attendants, judges hurried to leave the hall. Human rights protectors and victims went to the White House for explanations. They tried to pass to the White House and meet with the President, but the brush there occurred between the security of the White House and victims. On 3 June the President agreed to receive the delegation of Aksy residents.

### **Tortures, abuse and illegal actions of the police:**

On 17 October 1994 Kyrgyzstan ratified the International Pact about civil and political rights; on 5 September 1997 – The Convention against torture and other kinds brutal, hellish or debasing humiliating treatment and punishment

In 1997-98 Kyrgyzstan was the object of consideration in the UN Commission on Human Rights under special procedure 1503, which is applied to the countries where serious human rights violations take place.

### **Development of national legislation:**

In accordance with the Article 15 of the current Constitution of the Kyrgyz Republic human dignity in the Kyrgyz Republic is absolute and inviolable. According to the Article 18 of the Constitution no person may be exposed to torture and inhumane humiliating punishment.

In the formulation of the Law of 15 November 2003 No 223 the special provision, forbidding tortures (article 305-1), to the Kyrgyz Criminal Code KP position, was added.

Deliberate causing of physical or mental sufferings to any person with the purpose to receive from him/her data or confession, to punish him/her for the action, which he/she has not made or in execution of which he/she is suspected, as well as to huff and force to execute certain actions, when such an action is taken by an official or with his/her privity or consent by any other person, - is punished by imprisonment for the term from three till five years with deprivation of the right to be engaged in certain activities or without that.

According to the developed practice of criminal judicial proceeding in cases of execution by an official of the actions falling under definition "torture", a guilty person is called to account under art. 305, part 2 of the point 3 of the Criminal Code of the Kyrgyz Republic (excess of official authority with the application of physical violence).

But in practice in the majority of cases law enforcement bodies at disclosing and investigation of crimes, violating the law, with a view to receive certain confessions apply physical violence towards detained, suspected and accused.

Only during 2005 and the first half of 2006 13 criminal cases, related to similar facts, were sent to court, though it is only a small part of those violations, as a result of which suits were filed.

In August 2006 the HRCP "Kylym shamy" and a member of the Commission on Human Rights under the President of KR visited southern region to clarify the situation around *IVS (ITD) (Insulator of Temporary Detention)* of Jalalabat and Osh oblasts and the influence of antiextremist preventive work on human rights.

As a result she declared, that "In Kyrgyzstan human rights are not observed absolutely and violated. The international conventions are not observed at present time".

The human rights protector commented such statement with the disappointment, which she had faced a trip to Osh and Jalalabat. As it is known, the trip of director of the CHRP "Kylym Shamy" was organized in connection with the collective application of the prisoners of IVS (ITD) of Jalalabat. Also, relatives of prisoners who had been by during mass violence of prisoners on 5 August and heard shouts and misereres addressed to human rights organizations.

On 16 August Aziza Abdirasulova and chairman of the Council of the human rights organization "Spravedlivost" (Validity) Valentina Gritsenko visited the IVS (ITD) of the Jalalabat department of internal affairs. The reason of visiting was the application of a group of parents and relatives of the persons, detained in IVS (ITD), to the human rights organization "Spravedlivost" about the facts of violence towards prisoners

According to detained persons the main reason of violence is that starting with 2 August they demanded from the management of IVS (ITD) and CDIA to invite the prosecutor on supervision to check the conditions in IVS (ITD) and inspect the facts of violence of prisoners human rights. They ranked the facts of beating, insult, bad conditions, prohibition of appointments with relatives and attorneys, lack of showers, etc. as violations. Detained are allowed once in the morning and once in the evening to visit a toilet room, but for these purposes they are given only from 10 to 30 seconds. On the way to and back from the toilet room employees of militia beat them with billy, it was

witnessed by everyone, whom human rights activists talked to. According to prisoners, the public prosecutor does not visit IVS (ITD); even those, who had been staying there for 4-5 months, admitted, that they never saw the public prosecutor. Prisoners also demanded employees of Ombudsman institute and journalists to visit IVS (ITD). But nobody did visit them. *Furthermore, according to prisoners, some 60 soldiers, of whom some 15 were soldiers of special troops, went down to IVS (ITD). They in turn took away detained persons from each camera to the corridor and beat them with billies. Relatives, who wrote applications to "Spravedlivost", really heard their shouts and groans. Ajbek Yakubov' mother Tursunaj Zhumagulova stated, that " militia employee with a submachine gun left CDIA building and demanded to depart from the building, threatening, that he had an order to shoot "*.

One more case of torture by employees of law enforcement bodies, registered and submitted to the public by the staff of HRC " Citizens against corruption " and Network "People changing the world ":

Up the spout cooperative society " Yntymak " selected Dosaly Dujshalieva as its liquidator. Raya Konoeva, Doolatbakov and Orozobekov worked under the the liquidating commission too. When the facts of embezzlement and abuses by former members of the cooperative society became obvious, the criminal case was filed against above mentioned four persons under the pressure of authorities not to announce the actions of the true causers. The court sentenced on the basis of not examined documents and quasi guilty got from 7 to 15 years of imprisonment. Condemned, having disagreed with the decision of the court, pass all instances and when they have nothing to do, they apply to the Commission on human rights under the President. On interference of the Commission all documents, on the basis of which the charge has been constructed and the sentence has been passed, are subjected to the analysis. And after long negotiations with the Supreme court, the repeated consideration of the case is appointed. This time the court bears the verdict of "not guilty". And the main thing here is that absolutely innocent persons had to stay in the trial center for seven months and they were exposed to cruel treatment and tortures. And investigatory bodies and court have not been punished for their actions.

### **Results of Monitoring or penitentiary facility of Karakol town (SIZO#23)**

Karakol is a small town at the northeast coast of the Yssyk-Kul Lake, located too far from the shore to attract many tourists, in an area economically depressed despite of climate very favorable for farming. The major part of annual income of local people is gained during the summer season though tourism and harvest sales. The level of unemployment in the region is high, especially among youth, that results in significant crime rates.

The general Investigatory Isolation Ward (SIZO#23) of Karakol was chosen for monitoring by CAC because of human rights violations reported there, and because the date chosen for monitoring coincided with the annual inspection of the correctional facility by representative of the state Special Office of Public Prosecution. The CAC observers would not gain access to the facility if not followed by him.

The monitoring commission consisted of CAC Director Tolekan, CAC Reporter Anton, and an independent journalist Tolkun; monitoring started around 11:00, after arrival of Nadyr, the representative of Special Office of Public Prosecution (SOPP). The aims of CAC monitoring were the following: 1) access the capitally convicted; 2) observe the conditions the prisoners live in and interview them; 3) reveal the violations of human rights and cases of injustice; 4) investigate certain cases of possible illegal imprisonment and process procrastination. Initially the IIW were informed about the inspection, so everything was prepared thoroughly beforehand.

The very entrance to the correctional facility reflected its essence – a façade of an old worn administrative building with a small window and a door armed with rusty sheets of metal painted



blue, the building's fence topped with barbed wire, shouts and whistles heard from beyond it. Behind the iron entrance door there was a checkpoint where our IDs were checked and taken, then the prison's yard. At the entrance we were informed that August 12<sup>th</sup> was proclaimed the professional Day of Criminal Worker, that's why the prisoners were allowed a volleyball match.

The observers were introduced to Mirbek Sazanovich Seydaliev, Director of IIW#23, then the SOPP representative and the CAC members asked their questions about facility. According to the Director, there are 160 persons imprisoned, 4 out of that number are women (the "nuns"), 7 persons are "temporarily imprisoned", waiting for the court's verdict, 27 persons are assigned for relocation to Bishkek central Investigatory isolation ward, 17 are persistent violators, 76 are convicted, 31 under investigation, 8 are underage, 2 persons are condemned to capital punishment (plus 1 person pardoned), 2 male prisoners were raped, 3 persons are suffering tuberculosis, 3 persons are suffering chronic somatic ailments, there are 12 registered acute cases of alcohol abuse.

The staff of the prison is 66; 20% out of that number are women; half are maintenance and service workers. The salaries paid to the prison's managerial personnel are under \$140 per month, the minimum salary for jailers ("controllers") dealing immediately with the prisoners and the service personnel is around \$20, plus according to the director the guards and service personnel wasn't sufficiently provided with safety means, were prohibited to use batons and had no insurance despite of regular threats from the convicts. However in addition to regular workers some militants serve as IIW guards and controllers. Unlike the prisoners, all IIW workers pass annual medical expertise.

According to the director the designed maximum capacity of Karakol IIW is 180, so around 20 places were supposed to be free, however we observed that in one 1.5 x 4 meter cell containing 10 persons only 6 beds were available, so the prisoners had to sleep in turns; evidently the facility was overcrowded, despite of information provided by director. According to the criminal court's decision 27 prisoners were supposed to be relocated to Bishkek, but due to unavailability of special transport means and Bishkek Investigatory Isolation Ward itself overcrowded the convicts had to stay at Karakol IIW. Basically, the problem of transportation is created by another state department, since IIW itself only has one small car in working condition.

The inventory officer of IIW reported they had enough bed-cloth and mattresses, yet nothing was mentioned about the conditions the prisoners face during the cold season, when no municipal coal and gas is supplied to the correctional facility.

The Director reported they had enough of all products but potatoes, e.g. macaroni, butter, margarine and serials, and that they spent 5300 soms per diem on food supply for all prisoners. We didn't observe the IIW's food storage, but judging by the condition of the kitchen equipped only with a big steam pot, the facility cannot provide healthy nutrition to the prisoners. Also he mentioned that the maximum monthly funding they got from GDPE (the General Department of Penalty Execution) is 50,000 soms, plus 100-120 thousand soms from the local administration, plus 18,000 from Ministry of Health on medicaments they received thanks to the medical attendant's connections at the Ministry. This information doesn't seem to be true taking into consideration malnutrition of the prisoners and the state of their health, as well as the condition of IW buildings. According to the medical attendant the facility isn't provided with any medical equipment, save some bactericide lamps.

The ombudsman of Karakol paid irregular visits to IIW as well as some lecturers on HIV and AIDS, but they only visited the personnel, not the prisoners.

Overall, according to the Director governmental financing of IIW maintenance government is insufficient. Although they managed to do some minor repairs of the kitchen and the investigatory cell, plus renewed the roof and improved the territory for 30,000 soms they got from Karakol social foundation, no reconstruction was done for decades since the facility was founded, so the cells, the lavatories and the bath-cell are the same as they used to be back in 60ies. In addition they don't have

laundry and gas supply, so they scarcely do laundry and use wood and coal for heating water for weekly washing and for cooking meals. As for food supply, for the funds IIW gets from the government it's unable to provide healthy nutrition and medical support to all prisoners. According to the director the Red Cross and Crescent foundations occasionally donate some medicaments, food and clothes to the facility, but presumably these donations as well as most of the state money are seized by the corrupted management of IIW. The facility used to run a small farm, but it's no longer available. The money taken away from convicts during arrest were said to be included into the facility's budget (actually expropriated by IIW personnel).

According to the medical attendant Kanatbek Kurmanovich Eshemkanov the prisoners took bath once a week and despite there is no equipment for cleaning clothes they had no lice. No psychological or religious support is available neither to prisoners nor IIW workers. Also, no regular sport or work activities are available to the convicts; there is no library and no educational work; the medical examination and treatment is done by municipal doctors.

After meeting the facility's medical attendant and registrar as well as the deputy director the observers went to observe the cells. The cells were located in a separate building behind two more iron fences, guarded by several people wearing military uniform. While the SOPP representative was checking superficially the territory and cells condition, we focused on the prisoners themselves. At the building for regular crimes there were 20 cells of different size, each protected by an old deformed solid iron door with a small window designed for observing the convicts. Each cell was provided with a small TV set (presumably put there right before inspection), a bad-smelling lavatory pit screened in corner, several beds, a table and stools. We weren't shown the washing cell.

We walked around asking the prisoners for any complaints they had, but as long as the IIW Director was following us we didn't learn much about the real state of things in the prison. One teenager was imprisoned for 5.5 years for stealing products on 1200 soms, for one month he was imprisoned without a verdict determined. We took pictures of the cells and interviewed prisoners; some of them spoke up and described us the way they understood their cases. Some of them accepted their guilt, others didn't; some said they didn't even see the official court verdict concerning their imprisonment, some convicts told their cases were still being processed by the court, yet they were already put in prison for many months. After meeting the regular prisoners we headed to the second special corps containing 5 smaller cells with persistent violators, capital convicted (2 persons, both convicted for killing) and convicted officials. Their smaller cells were provided with more comfort. One of the convicted officials was blamed in storing and selling drugs (after around 5 grams of hashish were discovered in his pockets), another for theft. The third capital convicted for killing, member of organized crime group, put under unexpected presidential pardon, was in fact kept isolated from the rest in considerably better conditions because of his high status among criminal structures. He was interviewed and revealed a reasonable point of view towards contemporary government and system of punishment, "founded during Stalin's regime".

Results of monitoring indicate that further investigation of correctional facilities is necessary for revealing corruption and non-professionalism among workers of system of justice of KR, and the necessity for public spreading of the information describing the real state of things, for lobbying of system reformation and for promotion of basic human rights principles in prisons.

Overall, the situation in Karakol is quite typical for penitentiary system of KR, perhaps somewhat milder than average.

### **Current situation in the penal system:**

At the end of September 2006 HRC " Citizens against corruption " expressed concern on today's situation in the penal system of KR. For today the general debts the penal system to creditors accounts to 57 million soms. The reasons are the corruption of officials of the system and embezzlement of state finances, materials and food, obviously unprofitable contracts on purchases.

Despite of allocation by the government in 2006 of additional funds for the maintenance of the penal system institutions, these means simply do not reach jails, as under the decision of court the GUIN (MDTP) accounts for purchasing medicines are frozen. Thus, penal system institutions, completely devoided of public funds, are not capable to provide the prisoner with the worthy conditions, feed and any medical assistance. GUIN (MDTP)'s debts only for medicines make 12 million soms. September-October - the beginning of a cold season; in this connection indicators of diseases among prisoners are increasing.

According to special prosecutor's office tuberculosis among prisoners recently has increased on 35 %; death rate among ill prisoners has increased for 15 %. GUIN (MDTP) cannot provide neither blankets, nor clothes and fuel, necessary for prisoners survival in winter, nor sufficient feed and health services necessary for tuberculosis and other illnesses treatment. Deputy of the Priament A.Sabirov is concerned, as according to his data the provision of jails with food is not sufficient: for example, this year deliveries of meat for a diet of prisoners were 21 tons less than necessary quantity. In a colony No 19 prisoners continue to consume the water, containing a rust and excrements due to the defect of the waterpipe; trial center No 1 is still 1,5 times overcrowded, in the Borstal institution, as well as in other places of imprisonment, there is no functioning bath and laundry.

This situation threatens to lead to inevitable public explosion, revolts of prisoners, not caused by provocative activities of criminal groupings, and being the natural protest against inhuman conditions of their maintenance. It is necessary to keep in mind, that the main part of the contingent of prisoners make up representatives of the poorest, most vulnerable layer of the population. As to official criminals and representatives of the organized crime, they avoid imprisonment by means of bribes.

To prevent revolts it is necessary to take urgent measures. It should not be violent methods, applied by the government in the past - such as entry of special troops into the trial center. Instead of this, it is necessary to develop long-term strategies of solution of the of the GUIN (MDTP) problems.

One of the most necessary measures is the penal system's debts forgiveness. It is also necessary to take the officials, guilty in the such a situation, to law to force them to return appropriated means and prevent further abuses.

### **Monitoring of conditions in penal institutions and IVS (ITD) of Kyrgyzstan:**

The monitoring of penal institutions (trial centers, regime institutions, colonies) and the system of punishment itself is carried out in the KR by the special Prosecutor's Office on supervision of execution of laws in the penal system, the Commission on Human Rights under the President, local ombudsmen and few NGOs, among them HRC " Citizens against corruption ". Special Prosecutor's Office carries out planned and nor frequent inspections of institutions to determine problems, ombudsmen and the Commission on Human Rights under the President visit jails and colonies as well, public informing of the real situation and prevention prisoners rights violation, prevention of torture and outcrop of cases of judicial injustice and officials corruption remain the important NGOs function.

The presidential Commission was especially active within last months, keeping objectivity and undertaking valid measures to prevent arbitrariness of prison chiefs - their researches in Jalalabat trial center allowed to reveal all scales of violation of the rights of prisoners and forced power structures to admit for the first time tortures as a method of interrogation and punishment. Nevertheless, as a whole functioning of regional penal institutions remains closed from the public. Their conditions remain awful, that is caused, as reflected in reports of the special Prosecutor's Office, by sharp deficiency of financing of GUIN (MDTP) institutions (in 2006 state budget allocated only about 30 % of the means necessary for the maintenance of institutions), as well as the scope of embezzlement

by officials, non-observance of laws by employees of institutions and court decisions and other manifests of corruption.

### **The Right for Life:**

The Kyrgyz Republic as an OSCE member has undertaken obligations to be guided by the relevant documents on the issues of abolition of death penalty. The Copenhagen and Moscow Document of OSCE meeting on Human Dimension contains reminder for member-participants on restrictions and particular guarantees regarding death penalty, with the view to abolish this type of punishment.

### **Actions Undertaken to Abolish Death Penalty**

After shift of ruling regime in Kyrgyzstan people sentenced to death penalty submitted the letter to the new Government, requesting them to form an independent commission for evaluation of sentences for QEM passed under Akaev's ruling.

At present, people sentenced to death penalty are kept in basements of investigation jails since 1998, as there is no specialized settlement for this category of convicted persons (due to moratorium on executions). The total number of persons sentenced to death penalty is 165 people.

17 Som (0.40 USD) is allocated for food for one person sentenced daily, while the actual need is 40 Som (1 USD).

In December 2005, a number of human rights organizations requested the President of the country to adopt the decree on extension of moratorium on executions until complete abolition.

On December 29, 2005, under Decree of the President of the Kyrgyz Republic "On Extension of Moratorium on Executions in the Kyrgyz Republic", moratorium term was extended from January 1, 2006 until complete abolition following the legislation framework.

In May, Draft Law "On Introducing Amendments into Criminal Code of the Kyrgyz Republic" stipulating replacement of death penalty with life imprisonment did not get the required number of deputies' votes and was eventually rejected. This is evidence that the public opinion on the need of death penalty is still retained.

On the threshold of the Constitutional Reform, there is no provision on application of death penalty in three drafts of the Constitution of the KR developed by experts headed by Azimbek Beknazarov, a Parliamentarian. It will allow securing the abolition of death penalty in the fundamental law of the country. In its turn, the Human Rights Center "Citizens Against Corruption" jointly with a group of independent experts developed their draft of the Constitution, where the provision on application of this punishment is absent as well.

Under Article 18, paragraph 4, acting Constitution of the KR, which complies with Article 6, ICCPR, and death penalty may be imposed only by the law and in exceptional cases under the sentence of a court and any person sentenced to capital punishment shall have the right to appeal for pardon.

Since March 24, 2005 till present time the death penalty for six persons sentenced to QEM was commuted with longer imprisonment, 30 years pursuant to the KR Presidential Decree, as proposed by the Commission on Pardon Affairs under the President of the Kyrgyz Republic.

The Human Rights Center "Citizens Against Corruption" undertakes activity on personal complaints of people sentenced to QEM (quite exceptional measure). At present, the work on three complaints of

Uzbekistan citizens, two complaints of Kyrgyzstan citizens, one complaint of Turkey citizen, and two complaints of Tajikistan citizens is performed.

Based on analysis of complaints of people sentenced to the death penalty and records of criminal cases, it is evident that in many cases the prosecution rest upon evidences of convicted persons, thus conflicting Article 89 of the KR Constitution stating that *No one shall be sentenced based upon his/her own confession in committing a crime.*

Thus, the system of tortures during investigative proceedings still exists in practice, inherited from the Soviet times, although Kyrgyzstan ratified UN Convention on Tortures and Other Cruel, Inhuman or Degrading Treatment or Punishment. Accordingly, the Criminal Code of the KR stipulates liability of persons for tortures.<sup>2</sup>

The Criminal Procedural Code also envisages that in case of torturing of a suspected person, he/she should pass medical examination<sup>3</sup>.

In such cases, experts connive and do not document physical injuries; as such conclusion is made by experts of government bodies. The officers of inquiry bodies, in their turn, use tortures that do not leave visible signs, but injure internals.

**Therefore, it is necessary** to lobby changes in the legislation with the view to include medical conclusion by a private doctor, as an evidence of tortures with respect to suspected person in the course of preliminary investigation and to broaden the notion of tortures, by including psychological and moral tortures as well. These changes will increase the level of provability of tortures and will facilitate punishability of persons torturing someone. It will also reduce the number of cases, where a person suspected takes liability for crimes that he/she has not committed because of tortures, and where prosecution is built upon confessionary statements of an accused person.

#### **Cases of Citizens Sentenced for QEM (quite exceptional measure):**

**Ahadov Otabek Mavlyanovich**, born: June 19, 1979. He is 26, a citizen of the Republic of Uzbekistan.

#### **Circumstances of Torturing and Cruel Treatment**

Ahadov Otabek Mavlyanovich was detained on July 6, 2000, by investigating agencies of the Ministry of Interior of the Kyrgyz Republic on suspicion of committing attempt on life of a public person on March 28, 2000 and murder of a public person, chairman of Society of Uigurs of Kyrgyzstan, Mr. Bazakov N.A., as well as commitment of terrorist act in respect of members of

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<sup>2</sup> CC, Article 305-1. Torture

Intentional physic or mental suffering to any person with the view to get information or confessions, punish him for act that he made or suspected to make, as well as intimidate or compel to making certain acts, if such is performed by an official or any other person under the consent of the official shall be punished by imprisonment for 3 to 5 years, with or without revocation of the right to engage into particular activity for the period from one to three years. (As amended by the Law of the KR of November 15, 2003, No.223)

<sup>3</sup> Article 40, paragraph (5) At each delivery of a suspected person into temporary custody ward, as well as in case of complaint from such person, his counsel, relatives on application of violence by officers of inquiry and investigatory bodies a suspected person shall have mandatory medical examination with relevant documentation. The duty to perform medical examination shall be assigned to the administration of the temporary custody ward.

Chinese delegation on May 25, 2000, resulted in murder of Abdykadyr Gulam, Chinese citizen and wounding of other people.

Under verdict of Sverdlovsky Rayon (district) court of Bishkek City, Kyrgyz Republic, of December 31, 2001 Mr. Ahadov was sentenced for death penalty for above indicated crimes. The given sentence was not changed by Bishkek City Court on July 30, 2002, and the Supreme Court of the Kyrgyz Republic on June 22, 2006 (the higher judicial body of the country).

**Death penalty**, to which Mr. Ahadov O. M. was sentenced for, is not the only type of punishment for the above stated crimes. Other penalties are stipulated for such crimes, like imprisonment for the period from 12 to 20 years. Moreover, on the moment when the Supreme Court took the given decision (June 22, 2006), the death penalty as such was excluded from Article 294 of the Criminal Code. Mr. Ahadov O. M. was sentenced for capital punishment based on this Article of the Criminal Code as well.

Mr. Ahadov O. M. was 21 years old on the moment of detention and mentally capable.

Mr. Ahadov O. M. was initially detained by militia on July 6, 2000, about 7 am, in Bishkek City (capital of the Kyrgyz Republic), as one of the persons suspected, with no prove of guilty. The protocol on arrest was not registered. Ahadov has not explained on his right for counsel and refusal to give evidence. His relatives were not informed on the arrest. The detention was registered only on July 7, 2000, that is one day later. The issue on legality of his detention was not considered by the court.

During the period from detention on July 6, 2000 to July 21, 2000, staying in the temporary custody ward of the Division of Interior of Bishkek City (TCW DI), Mr. Ahadov O. M. was daily tortured and cruelly treated by officers of the criminal investigation department of militia (police). The time of tortures is different hours, in the morning after 9 am in the Ministry of Interior of the Kyrgyz Republic, between 9 and 12 am, after 2 pm local time, from 5 to 11 pm. The place of tortures is the building of the Ministry of Interior of the Kyrgyz Republic. Besides, he has undergone mental influence and use of psychoactive drugs. Torture and cruel treatment was made by two officers of criminal investigation department of militia. One of them, T. A., the officer of criminal investigation department of the Minister of Interior. The name of the second officer was not identified.

The second officer was not examined.

Torturing took place, while the case was considered by Mr. A.A., the senior investigator of investigatory department, Division of Internal Affairs, Bishkek City with his consent and without consent given. According to Mr. Ahadov, a convicted person, Mr. B.D. came into the room during tortures and saw signs of tortures and watched them.

The place of tortures was the building of the Ministry of Interior of the Kyrgyz Republic (rooms located in the building), division of the criminal investigating department of the MI of the KR. Methods of tortures included brutal beating by fists, legs, baton to the most vulnerable parts of body, like head, back near kidneys, liver, lungs, and application of psychoactive drugs.

Mr. Ahadov O. M. had been tied his hands beyond back, had been beaten on heels and head with dumb bells weighed 25 kg; he was moved by his chest to a table and beaten with things filled with water on back of the head; his hands were burnt by cigarettes; the traces are still on. They beat his ears by two palms. Often he was beaten on head. As a result of beatings blood flooded from various

parts of face, from ears and head (see Copy of petition of Golysheva E.V., counsel, conclusion of forensic medical expert of the department of examination of victims, suspected and other persons of the Republican Office of Forensic Medical Examination S.V.K No. 2184 of August 10, 2000); written evidence of Ahadov O. M. for Bishkek City Court, appeal by Ahadov O. M. to Bishkek City Court, President of the KR Mr. Akaev A. A. and UN Human Rights Committee of July 22, 2002.

Tortures affected the victim. His health condition has worsened. Ahadov O. M. is still ill. He has frequent head aches.

The only aim of application of violence was to get confession of committing crimes, even through false confession, since no other evidences existed; acute need to report to bodies on clearance of crimes, which was a usual reporting practice for getting awards and incentives for the law enforcement bodies of Kyrgyzstan.

Ahadov's relatives were not informed on detention and custodial placement by the law enforcement bodies. The access to counsel was not granted to Ahadov within first day after detention by law enforcement bodies. Upon coming of the counsel, the access was also restricted.

The evidence of tortures is the forensic medical examination of August 10, 2000, which proves presence of bruise on Ahadov's chest, abrasion in supraclavicular area, made during the period as Ahadov declared. The examination was held after one month from the petition of the counsel and resolution of the investigator on performance of the examination. The reason for delay of examination was the attempt to hide presence of traces and fact of tortures over Ahadov. The medical aid was not rendered to the victim. It is nearly impossible in the Republic, since government bodies do not wish to publicize tortures.

Ahadov O.V. was under arrest for one year and 5 months prior to beginning of hearing. He was imprisoned before trial from July 6, 2000 to December 31, 2000.

On July 10, 2000 Ahadov was informed that he is suspected of murder of Nigmat Bazakov and Abdykadyr Gulam. Ahadov has got the access to the counsel only from July 7, 2000.

### **Legal Actions on Case:**

After 24 hours of detention, the investigating bodies provided Ahadov O.M with the counsel, not chosen by him. No complaints were made by the counsel and no requests for rights protection of detained person.

From July 10, 2000, Ahadov's friends invited another counsel, Golysheva Elena Vasilievna, who submitted petition addressed to Suleimanov A., investigator of the investigating department of the Division of Internal Affairs of Bishkek City, requesting to perform medical examination with respect to Ahadov for finding body injuries resulted from beatings by militia officers. Following the petition, Suleimanov A., passed resolution on performance of forensic medical examination for Ahadov O. M. The Resolution was sent for further examination only in one month, on August 10, 2000. On August 10, 2000, the expert gave expert conclusion on presence of body injuries on Ahadov's body relevant to dates indicated by him as dates of torturing.

The counsel has not written and submitted other complaints and petitions on violation of Ahadov's rights. No such complaints were accepted from Ahadov, and he had no possibility to pronounce them. According to Ahadov, the counsel was afraid of repression.

Later, Ahadov O. also informed on tortures in his written evidence submitted to Bishkek City Court on July 22, 2002. However, the judicial body did not put attention to this issue.

Ahadov O. in his petition for the President of the Kyrgyz Republic, Bishkek City Court without a date, but submitted in July 2002, also stressed facts of beatings, but these facts were not considered. The counsel was not acting on these issues. Complaints on tortures were not considered. There are no results.

The prove of tortures is the conclusion of Saaliev V.K., a forensic medical expert of the Republican Office of Forensic Medical Examination, No. 2184, of August 10, 2000 on presence of body injuries on Ahadov in period indicated in the circumstances of the case (that is after his arrest and start of interrogation).

At present, the case is reviewed by the Supreme Court of the Kyrgyz Republic. The victim is sentenced for capital punishment and kept in basement of Investigatory Isolation Ward No. 1, Bishkek City. His procedural status is a condemned person.

The Human Rights Center “Citizens Against Corruption” requested President Bakiev K.S. on July 25, 2006. The Statement indicated that the Resolution of the Judicial Board on criminal cases and administrative violations of the Supreme Court of the KR on case of Otabek Ahadov of June 22, 2006 is a flagrant violation of human rights (see Statement).

On August 3, 2006, President’s Office (No. 15-2980) has informed on transfer of the statement to the Chairman of the Supreme Court of the KR, Osmonov K. E., for consideration of the statement on return of the criminal case on accusation of O. Ahadov to the prosecutor for filling in the gaps in the investigation (see Response of the KR President’s Office)

## **Legal Review**

The state violated the following international commitments with respect to Ahadov O. M.:

- Kyrgyzstan commitments under UN Convention Against Tortures and Other Cruel, Inhuman or Humiliating Treatment and Punishment (1984)
- Article 7, International Act on Civil and Political Rights on Prohibition Tortures or Other Cruel, Inhuman and Humiliating Treatment (1966)
- Article 10, Act on Human Treatment and Dignity of Persons Imprisoned (during preliminary investigation)
- Human Rights Declaration is violated (1948)

The following provisions of the national legislation were violated **in the given case**:

- 1) Part 1, Article 15, Constitution of the Kyrgyz Republic on absoluteness and inviolability of human dignity in the Kyrgyz Republic;
- 2) Part 2, same Article on belonging of the basic human rights and freedoms to every person which shall be recognized as absolute, inalienable and protected by law and the courts from infringement by any other person;



- 3) Part 3, under which “all persons in the Kyrgyz Republic are equal before law and the court. No person shall be subject to any kind of discrimination, violation of his rights and freedoms on the ground of ethnic origin, sex, race, nationality, language, religion, political and religious convictions, as well as under other conditions and circumstances of private or social nature”.
- 4) Part 4 “Human rights and freedoms are valid in the Kyrgyz Republic. Such rights shall determine the meaning, content and application of the laws, shall be respected by legislative and executive branches and local self-government, and shall be guaranteed by the judicial system”.
- 5) Article 16, Constitution, stating “In the Kyrgyz Republic the basic human rights and freedoms shall be recognized and guaranteed in accordance with universally accepted norms and principles of international law, international treaties and agreements on the issues of human rights which have been ratified by the Kyrgyz Republic”.
- 6) Article 85, Constitution of the KR, on right of Ahadov not to testify against himself, to be represented by the counsel from the moment of detention, on immediate informing, on causes of arrest and detention. His rights were not explained and he was not granted the opportunity to defend himself and legal assistance of the counsel from the moment of arrest. The rights had not been explained to Ahadov O. M. for the long time. On the moment of detention Ahadov O. M. was not informed on his right to refuse from testifying, that is proved by absence of reference to refusal from testifying and signature in transcript of investigation.
- 7) Article 18, part 1 of the Constitution of the Kyrgyz Republic was abused, according to which: “No one may be tortured, subjected to ill-treatment or inhuman degrading punishment”.
- 8) Article 6, Criminal Procedural Code (CPC) of the Kyrgyz Republic on Lawfulness of Legal Proceeding.
- 9) Article 10, CPC On Inadmissibility of Threats, Violence and Other Illegal Actions in Examination and Other Investigating Acts.
- 10) Article 11, CPC, On Prohibition of Violence, Cruel or Humiliating Treatment.
- 11) Constitution of the Kyrgyz Republic and Article 12, CPC on right of Ahadov not to testify against himself and refuse from testifying.
- 12) Part 5, Article 12, CPC, that no one may be sentenced based on his own confession in committing a crime.
- 13) Article 15, CPC on Presumption of Innocence
- 14) Article 19, CPC, on Comprehensive, Full and Impartial Examination of Circumstances of the Case.
- 15) Article 20, CPC, on the right for defense, as Ahadov O. On the moment of detention did not get assistance from the counsel during the first 24 hours.
- 16) Article 81, CPC, on Inadmissibility of Evidence (witnesses evidence, based on conjecture).
- 17) Article 199, CPC, on examination, since the resolution to perform examination for Ahadov O. was not submitted before the examination, but later after it, therefore, neither Ahadov, nor his counsel

has a possibility to ask questions and take part in the examination. Ahadov and his defender were not able to submit objection to the expert.

2. Legal remedial and compensations available for Ahadov O. M. Under the law are as follows:

- 1) To address to the Prosecutor's Office with the statement on bringing to criminal liability of persons applied tortures.
- 2) To request the compensation of moral damage due to beatings under legal proceedings. The amount of compensation of moral damage may be determined only by the court. The problem is that both the Prosecutor's Office and the court will not base upon legality and justice principles, but take all actions not to satisfy requirements of Ahadov O. M.

Recently, "Radio of Liberty" Russian service informed on the Internet that the trial is in the place for Mr. D., who is accused of murder of Bazakov, Uigur leader of Kyrgyzstan and that Kyrgyzstan requested extradition of this person. In this regard, the Supreme Court of Kyrgyzstan will have to reconsider the case of Ahadov O. due to new findings. No response has been given yet.

**Abdullaev Asadullo Ahmadjanovich**, born 26.12.1980 and **Izzatullaev Ilhom Tairovich**, born 1975, citizens of the Republic of Uzbekistan, persons not subject to call-up were accused of terrorist acts at Dordoi market, Bishkek City, and explosion of "Bakai" bank branch office in Osh City, as well as of belonging to terrorist organizations, and sentenced by the court martial of the Kyrgyz Republic to the extreme penalty.

#### **Legal Review of the Case:**

Legal situation with violation of rights of convicted by the Court Martial of the Kyrgyz Republic to the extreme penalty, death penalty of Izzatullaev Ilhom and Abdullaev Asadullo is similar.

Both persons convicted strongly state on torturing and cruel treatment by militia officers and National Security Agency at their detention and further performance of operational actions. However, in addition to violation of rights of detained persons, the officers of militia of Osh City, Kyrgyzstan performed inhuman and inadmissible humiliation over a pregnant young woman, wife of Izzatullaev Ilhom.

Totally innocent young woman, Muminova Rahima, a citizen of Kyrgyzstan, being pregnant (7 weeks) was detained together with her husband Izzatullaev Ilhom in May 2003, with no registration of detention, no accusations brought, no registration on her presence in temporary custody ward (TCW) of the Division of Internal Affairs, Osh City, Kyrgyzstan. She was illegally detained with the only purpose to force Izzatullaev I. to give the required evidence to militia. She was kept for five days in TCW, and then moved to the NSA of the Kyrgyz Republic. She stayed for 2.5 months in the Investigatory Isolation Ward. Both in TCW and IIW of the NSA a pregnant woman was kept with no assistance of the counsel, with no right for defense or medical aid, but only due to suspicion of her husband in committing the above crimes (however, under acting legislation not only persons detained, but witnesses as well have the right for counsel).

During the detention, Muminova Rahima has undergone inhuman treatment by militia officers. At the same time, Izzatullaev was requested to sign the required evidence under various types of the threats.

As Izzatullaev marks, he has been exposed to tortures even during the trial, so that he would not refuse from data before confessionary statement.

Izzatullaev was detained on May 8, 2003 in Osh City, on suspicion of committing robbing and explosion of “Bakai” bank branch office in Osh City, and explosions at Dordoi market in Bishkek City. However, the documents on his detention on this day were not registered, thus keeping back the date of actual detention by inquiry bodies of militia. He strongly objected his guilt at detention which is confirmed by initial interrogation.

For four days he was kept in TCW of Osh City and then moved to Bishkek City. For the next week he was at TCW of the DIA of Bishkek City. According to Izzatullaev, he was not only beaten by a group of militia officers, but they also put gunpoint into his mouth.

Pursuant to the sentence of the Court Martial of the Kyrgyz Republic of February 19, 2004, he was sentenced to the death penalty.

According to an imprisoned person, he has undergone beatings by militia officers of Osh City and moral pressure with threat to torture his wife during his detention. Such actions were headed by a lieutenant colonel, Zulimov Shakir. Later, he was beaten in NSA of the Kyrgyz Republic, as directed by investigator, Medet Galiev.

On the moment of detention and later, Izzatullaev was not given the assistance of the state counsel and he has no possibility to inform his relatives on hiring the counsel. The relatives of Izzatullaev and Muminova, his wife, were not informed on the arrest.

Despite that according to criminal and criminal procedural legislation, sufficient procedural rights are envisaged for persons detained on suspicion of committing a crime, these rights are de jure and de facto on paper, and not observed by law enforcement bodies. No control over observance of international and procedural rights by investigatory bodies with respect to a suspected person is performed by the state. The result is a number of infringements of international law provisions (see above) and national law regarding such persons.

**The State has not secured a number of the following international obligations with respect to Izzatullaev Ilhom and Abdullaev Asadullo:**

- 1) Kyrgyzstan commitments under UN Convention Against Tortures and Other Cruel, Inhuman or Humiliating Treatment and Punishment (1984);
- 2) Article 7, International Act on Civil and Political Rights on Prohibition Tortures or Other Cruel, Inhuman and Humiliating Treatment (1966)
- 3) Article 10, Act on Human Treatment and Dignity of Persons Imprisoned (during preliminary investigation)
- 4) Human Rights Declaration is violated (1948)

**In addition to international obligations the state made numerous violations of criminal and criminal procedural national legislation.**

1) Izzatullaev and Abdullaev were prevented from a possibility to appeal detention under legal proceedings, thus infringing Article 16, Constitution of the Kyrgyz Republic, thus to avoid tortures and cruel treatment;

Also Muminova Rahima, Izzatullaeva’s wife was also deprived of such possibility. If the state granted legal defense on the moment of detention, the court would immediately freed her from TCW.

At present, the Human Right Center “Citizens Against Corruption” carries out own investigation of this fact.

2) Article 15, part 1 of the Constitution of the Kyrgyz Republic on absoluteness and inviolability of human dignity in the Kyrgyz Republic and Part 2 of the same Article on belonging of the basic human rights and freedoms to every person which shall be recognized as absolute, inalienable and protected by law and the courts from infringement by any other person are infringed. With respect to these persons the Article of the Constitution had purely declarative nature and not applicable in practice.

3) Part 3, Article 15 of the Constitution was infringed on equality of all persons in the Kyrgyz Republic before law and the court and on prohibition to discriminate, violate rights and freedoms on the ground of ethnic origin, sex, race, nationality, language, religion, political and religious convictions, as well as under other conditions and circumstances of private or social nature.

4) Article 16 of the Kyrgyz Constitution on recognition and guarantee of the basic human rights and freedoms in accordance with universally accepted norms and principles of international law, international treaties and agreements on the issues of human rights which have been enforced.

5) Constitutional and procedural rights of Izzatullaev, Muminova and Abdullaev for legal defense of the counsel (Article 85 of the Constitution and Article 20 of the Criminal Procedural Code).

Despite the fact that in few days after detention and during investigation the signature of the counsel was present on the transcript and other documents on investigating actions, Izzatullaev has never seen this counsel; no any investigating actions with his participation and counsel’s involvement were held. It means that the counsel appearing in Izzatullaev’s case and militia officers abused of their official duties in performance of investigatory actions, falsifying transcripts of examination, confrontation, identification, examinations, etc.

6) Article 85 of the Constitution of the KR on the right of Izzatullaev and Abdullaev not to testify against himself, to be represented by the counsel from the moment of detention, right for immediate information, on cause of arrest and detention were violated. They were not explained on their rights and no chance was given to be protected from the moment of detention and enjoy legal assistance of the counsel. No one was explained on procedural rights and there is no such information in the case papers. On the moment of detention they were not explained on their right to refuse from testifying, as it is confirmed by absence of reference to such refusal from testifying and signature in transcript of interrogation.

7) Article 18, part 1, of the Kyrgyz Constitution stating “No one may be tortured, subjected to ill-treatment or inhuman degrading punishment” was infringed.

8) Article 6 of the Criminal and Procedural Code of the Kyrgyz Republic on lawfulness of legal proceedings

9) Article 10, CPC, on Inadmissibility of Threats, Violence and Other Illegal Acts in Interrogations, and Other Investigating Actions

10) Article 11, CPC, on Prohibition of Violence, Cruel or Humiliating Treatment.

11) part 5, Article 12, CPC, that no one maybe condemned based upon his own confession in committing a crime only.

12) Article 15, CPC on Presumption of Innocence

13) Article 19, CPC, on Comprehensive, Full and Impartial Examination of Circumstances of the Case.

14) Article 199, CPC, on examination, as Izzatullaev and Abdullaev were presented the resolution on examination not prior to it, but later, after performance of this examination. In this regard, he could not ask his questions and take part in performance of the examination. They were deprived of the possibility to declare objection to experts and be present at performance of examination.

15) Article 19 of the Criminal Procedural Code of the Kyrgyz Republic, obliging an investigator and the court to take all legally stipulated measures for comprehensive, full and impartial examination of the circumstances of the case. The court did not pay attention that Izzatullaev had no counsel representation at the investigation. Therefore, Izzatullaev's evidence on staying in the Russian Federation for earnings, **from the end of 2002 to the end of April of 2003 was not verified, neither by the investigation, nor by the court. He was the assistant to head-cook and rented a flat. It is easy to check these facts, but the investigation and the court have not undertaken actions to exclude this fact or confirm it.**

16) Neither Abdullaev, nor Izzatullaev received a copy of resolution on institution of criminal case against them, transcript of detention, written explanation of their rights (even verbal one), were not acquainted with the records of investigatory actions. There were not even granted a possibility to see these investigatory documents.

Abdullaev Asadullo was actually detained on May 9, 2003 in a flat in Bishkek City. However, the detention was not documented by this date, thus it is evidence of the attempt of investigatory bodies to conceal the date of actual detention, and later make excuses for not granting the right for defense and be represented by the counsel.

The counsel has not cooperated with Abdullaev, since he was invited by the investigatory bodies (the state). According to Abdullaev, the NSA intimidated the counsel, so that to deprive her of a possibility to defend Abdullaev properly. As Abdullaev informed nearly 10-15 officers of militia and National Security Agency officers had beaten him by heads and legs in the building of the Ministry of Interior and the IIW of the NSA. He was beaten to his face, eyes and was brought to the prosecutor with traces of beatings; the later has not reacted to visible traces of force. He was also beaten before going to court building for trial.

We believe that the sentence on the death penalty is illegal and unjustified, as it is made with violation of Article 310 of the CPC of the Kyrgyz Republic, without observance of all above stated legal provisions and not based upon the Law.

### **The Story of the Karimovs and Abdullaev:**

After explosions (February 16, 1999) mass repressions of Muslim believers took place in Uzbekistan. The Karimovs who lived in Andijan also faced the problem. Djurahon Karimova had three sons – Azizbek Karimov, Asadullo Abdullaev (Nodirbek Karimov) and Akmal Karimov. Elder son Azizbek Karimov was a religious man, and read Mohammedan prayer five times a day. People who prayed were getting arrested and tortured so, he had to leave home country for Osh, Kyrgyzstan. Then he got married and started to work at wholesale bazaar “Shahidtepa”. At that time authorities declared an inquiry for him. Also president of Uzbekistan gave his speech on national television saying that parents will be held responsible for their children's acts. After that speech Agency of Internal Affairs (UVD) of Andijan arrested Ahmadjon Mamedovich Karimov (Djutahon's husband).

Simultaneously, another member of the family Negmatulla Mamedovich Karimov (Ahmadjon's brother) was also arrested. During the arrest and investigation process they were tortured and forced to give evidences against Azizbek Karimov and against themselves. After the terrible tortures they were forced to sign the documents saying that Azizbek and themselves were members of Islamic Movement of Uzbekistan (IMU).

In 1999 the Supreme Court of Uzbekistan sentenced Ahmadjon and Negmatullo Karimovs to seventeen years in prison.

In May 21, 2000 Djurahon Karimova received a telegram saying that her husband Ahmadjon Karimov died in prison in Navoi region of Uzbekistan. She conducted the burial ceremony of her husband. A year later she received another telegram about the death of Negmatullo Karimov (Ahmadjon's brother). Law enforcement bodies did not leave the family in peace. Every day and every night they visited Djurahon's house demanding to find Azizbek. Djurahon lost her job. She was the director of kinder garden № 69 in Andijan. Every month the family was forced to attend police department for giving evidences against Azizbek Karimov.

In May 9, 2003 Azizbek came home with his wife and was arrested by Andijan city UVD. During investigation process Azizbek Karimov was tortured and his wife Gulchehra Halilova was beaten in basement of UVD in Andijan. Azizbek was accused of explosions at "Bakai" Bank in Osh (May 9, 2003) and of being an IMU member.

In May 10, 2003 Asadullo Abdullaev was arrested while in Bishkek to visit his aunt in Bishkek. During the investigation process Abdullaev was put to terrible tortures to sign confession to crimes that he never committed. When Asadullo found out that his brother Akmal Karimov was in UVD in Osh, he signed the confessions against himself for brother's discharge. Younger son of Akmal Karimov was secretly transfered to UVD of Osh by the UVD staff of Andijan. Akmal stayed there for 2 months. The only food he had there was just rye bread and green pepper which he was forced to eat that. He was beaten and offended there. Djurahon Karimova did not know that Akmal was in Kyrgyzstan and was always around in the UVD of Andijan, hoping to see her son. When she was told about her son, she went to Osh for seeking Akmal in different detainment facilities. Djurahon found Akmal in small prison in Aravanskiy rayon in Osh that was located in the mountains. When she saw her son, Akmal told her about his taunts. In two months Akmal was sent to National Security Service (SNB) of Andijan. Asadullo Abdullaev was accused of explosions (December 27, 2002) at "Dordoi" market. During the enforcement proceedings accusations regarding that case were not proved.

In February 17, 2004 Court Martial of Kyrgyzstan sentenced Asadullo Abdullaev to death penalty. Till present Abdullaev stays with others sentenced to death in pretrial prison (SIZO) №1 in Bishkek.

The wife and eight-month-old son of Abdullaev Asadullo were detained for ten days in the Department of Internal Affairs in Andijan. Militia threatened to use violence if they would not sign documents against Azizbek and Asadullo. Ten days later Azizbek Karimov was sent to National Security Service (SNB) of Uzbekisatn in Tashkent. During the investigation and court process Azizbek Karimov was exposed to tortures and forced to confirm the given information. He also was forced to give a speech on a National Television asking mercy from the President of Uzbekistan.

He was told, that if he would confirm his connection to terrorism, they would help to release his innocent brother Asadullo in Bishkek. For the sake of relatives' freedom Aziz Karimov agreed and signed death verdict against himself. During one of the processes, the court has declared a break and all relatives left the court hall. After that, suddenly a scream was heard and panic started. Djurahon Karimova frightened, rushed inside the hall. There she saw the burned face of Azizbek. His face, neck and shoulders were severely burned. Someone poured acid at him. Djurahon Karimova fainted. When she came to sense she saw ambulance taking Azizbek to hospital.

There were no investigations and decisions regarding the case. Nobody knows who was the attacker. On February 16, 2004 the Supreme Court of Uzbekistan sentenced Azizbek Karimov to a death penalty. Though case of Azizbek Karimov has been registered in Committee under human rights of the United Nations in August 10 2004, Djurahon Karimova has not received the certificate on Azizbek's death (source - materials of "Mothers against tortures and death penalty", Uzbekistan, director Tamara Chikunova).

Djurahon and younger son Akmal cannot get a job anywhere. Every month they have to visit SNB or the Department of Internal Affairs in Andijan. They are also forced to write to presidents of Uzbekistan and Kyrgyzstan with the request to extradite the middle son Asadullo Abdullaev back to Uzbekistan. Djurahon had to sell her apartment and move to another place because of the pressure from police officials.

But law machinery did not leave the family alone. Akmal Karimov regularly writes declarations, that he will not participate in demonstrations, is not a member of illegal organizations and will not take revenge on militia for death of his brother. Because of constant mental pressure Djurahon Karimova feels much worse. She had to have an ontological operation. Akmal Karimov has also received concussion of the brain. In May, 2006 unknown persons have beaten Akmal and broke his right hand. That also led to an operation.

### **Problems of legislature:**

Numerous situations with human rights violations in Kyrgyzstan in the sphere of constitutional and criminal procedural legislature. Cases of Akhadov, Izzatullaev, Abdullaev and others are just several examples of human rights violations. The given problem is defined very simply: norms of constitutional and criminal procedural legislature on the rights of suspects and the accused, and especially those who are sentenced to capital punishment, are far away from the reality and factually are ignored by the three “punishment” official bodies: the National Security Service, the Ministry of Interior and the General Prosecutor’s Office. Those norms are only declared and not actually followed.

Those offices conduct both inquiries and investigations. Control of legality of inquiries and investigations in the NSS and the MoI, according to the Kyrgyz legislature is conducted by the General Prosecutor’s Office.

The fact of existence of such a big number of punishment organs does not facilitate the respect for human rights in the process of arrest, inquiry and investigation and does not add to legality in conducting inquiry and investigative measures, which is supported by ample amount of factual data.

General prosecutor’s office conducts formal control of the activities of the NSS and the MoI in investigating materials and criminal cases, but does not discover and prevent violations and moreover, sometimes with its apathy indulges such violations.

Despite of their obligation to prevent legal violations in conducting criminal investigations and primarily in procedural rights of suspects and the accused, the prosecutor’s office intentionally fails to fulfill its obligations.

Everywhere organs of the NSS and the MoI violate the Article 95 of the Criminal Code of the Kyrgyz Republic, according to which the protocol of arrest of a person suspected of criminal deeds is to be written within the first three hours of arrest.

The article obliges the officials to provide the list of the arrested person’s rights in the protocol of arrest. The investigator is obliged to report to the public prosecutor about the arrest within 12 hours of writing the protocol, but the common practice is that the arrest is reported considerably late to allow time to torture and “extract” confessions from the suspect. Public prosecutor’s office is well aware of that, but does nothing to prevent such facts.

As a rule, suspects do not confess to their crimes right away, bring proofs and provide alibi, after which methods of physical pressure are applied by the officials and the protocols are rewritten with suspect’s “confessions”. This was the case with Akhadov, Izzatullaev and Abdullaev, with the protocol not written up at all to conceal the date and time of the actual arrest of suspects.

Although the prosecutors sanction arrests and confirm accusations, facts of protocol ignorance and the plea of suspects about procedural violations are usually not examined by the them.

Not a single time, throughout the history of the prosecutor's service of the Kyrgyz republic, was a person brought to responsibility for violating the procedural rights, human rights and norms of international and national legislature on those rights.

Declaration of the rights of arrested persons in national legislature and ignoring those rights in reality is the ground for concealing facts of torture and fabrication of criminal cases.

Non-correspondence of the declared legal norms with the reality concerning the rights of suspects is one of the very serious problems of the Kyrgyz legislature. Only under the condition of intolerance of such non-correspondence is it possible to solve the problem with the direct support of appropriate state structures. The basis for this could be introducing amendments to the Criminal Code of Kyrgyzstan, according to which investigation and inquiry officials are to report immediately about the arrests of an individual; and amendments imposing serious responsibility on persons who fail to comply with the procedural rules and regulations. The judicial system can contribute to the cause by giving strict sentences for tortures and cruel treatment of suspects and the arrested, but it is not ready for open and systematic actions in that direction.

Unless state organs actually bear responsibility for violations they have made, both in action and inaction, problems of legislature will exist.

One of the problems of legislature in Kyrgyzstan could be deep distrust of the population to all of the above-mentioned offices, including the judicial branch. This distrust is well grounded, which is supported by factual data about the influence of financial status and connections of a person on decision making in such bodies.

**The judicial system consists of three levels:**

Regional, provincial and the Supreme Court.

The Supreme Court is the last instance and the imposed sentence are not to be appealed against..

In the Criminal-Procedural Code, an article has been foreseen, which states that under the wish of the court it is possible for the accused to participate at the session, In practice there was no case that the accused had been present at hearings in the Supreme Court , which contradicts the clause of Constitution of KR about the right of protection.

In its June 22, 2006 decree the collegium of the Supreme Court declares that "investigative measure regarding Ahadov A., where conducted with participation o the lawyer, who did not appeal to appropriate organs about illegal methods used against Akhadov by the law enforcement officials. However, this conclusion contradicts case materials.

The board of the Supreme Court consists of three members: the reporter on case materials, the chairman and three judges.

The reporter gets acquainted with case materials only, the chairman conducts session and tries the case only at the session, the board makes a decision on the case based on a position of one person-reporter. Whether it is possible to speak thus that case materials have been comprehensively studied by court at revision of the cases of condemned ones to a death penalty.

*So, in the decision from June 22nd 2006 the board of the Supreme Court specifies, " investigative actions concerning Ahadov A. were carried out with participation of the lawyer who did not declare to corresponding bodies about use of illegal methods by investigator against Ahadov ". However the given conclusion contradicts case materials.*

So, in volume № 2 there is a petition of my lawyer Golysheva E.B addressed to the inspector from the Department of Internal Affairs of Bishkek Suleymanov A. with the purpose to appoint judicial-medical examination in which it specifies, " on July 9th, 2000 at 11 o'clock 15 minutes Ahadov A. at my presence have been interrogated as a suspect on murdering Bazakov. During interrogation Ahadov has declared, that from the moment of imprisonment and till present time, in other words



from July 6th till July 9th, 2000 the workers of militia in cabinet of Ministry of Internal Affairs KR have been beating the various parts of a body, that is on a head, back, on a stomach with weights, belt ".

On the list of case the volume № 125 № 2 are available the decision of the inspector from July 10th, 2000 about appointment of judicial-medical examination for detection on my body the facts of physical influence.

*On list of case volume № 130 № 2 are available the conclusion of judicial-medical examination № 2184 from August 10th, 2000 which proves, " physical injuries of citizen Ahadov A.M. were characterized with bruise on a thorax, on a back by a graze on supraclavicular areas which were formed from actions of a firm subject with the limited injuring surface. On term of formation physical injuries can be received in time, specified in case materials " (case lists volume № 130-131 № 2).*

*I ask to consider that the examination has been carried out only in a month after imposition of the decision, when the traces of mockeries and tortures partially begun to leave. And the reason of this delay in carrying out of examination was that there was no unbeaten part in my body and both operatives and the inspectors were afraid of themselves and consequences.*

*How it was possible to sentence to a death penalty if the judge-reported of the Supreme Court at presence of above-named case did not noticed indisputable documents, such as applications of the lawyer on beatings, application about appointment of examination, as well as decisions of examination.*

It is impossible to agree with court conclusion that said all the proofs were comprehensive and are objectively investigated in the court, as at those above-named facts it is impossible to investigate them objectively and sentence the person to a death penalty, besides session lasted approximately about an hour, and judges held consultation approximately 10-15 minutes for rendition proceeding.

### **Crisis in advocating:**

Problems of the legislation in Kyrgyzstan led to certain crisis in legal profession. On the one hand, there are a lot of lawyers and the license for employment is not very hard to receive, it is possible even for the persons who had only one year of work experience at public service, on the other hand the number of skilled expert-lawyers in the field of international law is very small and they seldom deal with the affairs related to infringements of international law norms.

One of the reasons of this crisis is that only a few questions on international law are asked during the record examination at the Ministry of Justice of the Kyrgyz Republic, which demonstrates low commitment to the issue of international law. It is because legislation of Kyrgyzstan does not provide citizens with the right of appeal to European Court so there is no necessity to study international law.

In view of poverty and lack of information among the population of Kyrgyzstan the cases of appeal to the Committee of the United Nations are very rare, and those are the ones involving repression from the state or state bodies.

It is a common practice that the sentenced to death penalty after investigation of their cases in the highest judicial instance of Kyrgyzstan - the Supreme court – are deprived of the opportunity to have a lawyer for registration of applications on the pardon, submission of any complaints and participation in courts under their complaints, because the state provides the free help of a lawyer only during the preliminary and judicial investigation. And meanwhile such people, held in cellars of investigative insulators, in connection with absence of a special colony for the persons condemned to a death penalty, are in great need of lawyer protection. And, as a consequence, such legal protection cannot be given because of inability to pay the lawyer. Those who have a good lawyer have other

problems, and this problem is also a problem of Kyrgyz legislation. Generally the persons accused of terrorism or other grave crimes are sentenced to death penalty. Also there is a problem concerning safety of lawyers; proper performance of the lawyer's duties in protecting one's client often leads to trouble. The lawyers are often exposed to pressure from the government, the state bodies and criminal structures. As a consequence the lawyer often cannot directly inform the client in presence of the investigator about one's right to refuse giving an evidence and not testifying against oneself through false confession under psychological or physical pressure of investigating bodies.

And taking into account the order of things peculiar to any post Soviet countries including Kyrgyzstan, crisis in advocating has raised because of insolvency of the population to pay for the lawyer's services according to one's intellectual and financial expenses. At present the lawyers don't find it profitable to carry out compound international cases requiring significant efforts, time and expenses almost for free.

At present the situation is that the private lawyers arrogated to collegiums of lawyers that can be considered independent comparing with those who are the real members of these collegiums.

Basically the people don't trust to young inexperienced lawyers, and this category of lawyer don't even attempt to gain the status of highly professional specialists.

In Kyrgyzstan the situation about securing protection of rights of the suspects, accused, persons sentenced to capital punishment, arrested for investigation is especially complicated because those people have no money for hiring a qualified lawyer. In some cases the advocate provided by the state may even serve as a prosecutor; HRC "Citizens Against Corruption" registered such cases when the court's decision was pre-ordered, and the advocate played one's role by accusing the defendant himself.

There are some cases dealing with accusations in terrorism when the lawyers do not dare to perform their tasks properly feeling unsafe and fearing revenge to be taken on them and their families. That was about the case of A. Abdullaev.

In cases of advocating persons condemned to capital punishment even if a lawyer performs one's duties to full extent there is no result because of the court's resistance. The case of O. Ahadov was an evidence of that.

Basically the human rights NGOs are the only power striving for solving this crisis of unavailability of legal assistance to persons from certain categories.

Another case illustrating the bias of Kyrgyz courts was conviction of two young Dungans (an ethnic minority in Kyrgyzstan) who were never charged before. They were sentenced for 4-year imprisoning, and only involvement of HRC Citizens Against Corruption in their protection led to change of the sentence to 2 years conditionally.

**The recommendations presented by Human Rights Center to authorities of Kyrgyzstan with the purpose of solving the problems of systematic infringement of human rights in penitentiary system of the Republic.**

### **Problems of facilities of penitentiary system of Kyrgyz Republic, and recommended solutions.**

In Kyrgyzstan monitoring of penitentiary facilities ("*SIZO*", investigative detention facilities; *settlement colonies* (prison camps) of all categories; "*IVS*", temporary detention facilities) and the penalty system itself is conducted by: the Special prosecutor's office for supervision of law execution in penitentiary system, Human Rights Commission under the President of KR, local ombudsmen, plus several NGOs, including Citizens Against Corruption Human Rights Center. Basically the *SIZO*

prisons and settlement colonies are within jurisdiction of GUIN (the State Department of Penalty Execution) structure, while IVS facilities are governed by the Ministry of Internal Affairs. Also there is a special facility controlled by National Security Service that is used for keeping the former workers of law enforcement state structures sentenced for corruption or official malfeasance. Plus there is a special state department for reformation of GUIN.

The special prosecutor's office conducts infrequent scheduled checks of dependent facilities for revealing problems in the field of the facility's maintenance; the state Ombudsmen (*akiykatchy*) and the Human Rights Commission under the President also pay occasional visits to prisons and prison camps; still elucidation of the actual situation in mass-media and prevention of tortures and other violations of prisoners' rights, and indication of cases of injustice of Kyrgyz courts and corruption of officials of penitentiary system, as well as providing legal assistance to inmates are among the important functions of human rights NGOs.

The President's Human Rights Commission became especially active during the recent several months, maintaining objectivity of monitoring results and taking effective measures in stopping impunity of prison administration. Their inspection of Jalalabad SIZO and IVS facilities revealed the extents of inhumanity of violation of rights of inmates, and even made the workers of prisons officially confess implementation of beating and tortures as means of interrogation and punishment. Nevertheless, generally functioning of penitentiary facilities is still closed from public.

The conditions at detention facilities are still horrible, conditioned by sharp financial deficiency of GUIN reflected in reports of the Special prosecutor's office. In 2006 the state budget provided only 30% of estimated financial need for maintenance of the facilities. Another cause of such a deficiency is systematic embezzlement of money and materials by the system's officials and intentionally uneconomic purchases. In addition the Kyrgyz penal authorities tend to ignore the state laws and court decisions, demand bribes and demonstrate many other signs of deep-rooted corruption of penitentiary apparatus.

Since 2003 Citizens Against Corruption Human Rights Center conducts monitoring of these problems and develops effective solutions for these cooperating with workers of GUIN and the Ministry of Justice. On the basis of this many-year monitoring of detention facilities and studying of international experience of improvement of functioning of penitentiary system the Human Rights Center suggested GUIN, MIA and Special take the following specific short-term and long-term measures:

#### ***A. In the field of providing effective protection of rights of citizens of vulnerable groups;***

1. Provide legal assistance to inmates of SIZO and IVS facilities. The carelessness of judicial organs of KR led to considerable overcrowding of SIZO#1 of Bishkek city as well as all regional SIZOs and settlement colonies. The example of SIZO#1 demonstrates the common tendency – designed for maximum capacity of 1329 inmates it actually holds 1800 persons. Out of this number 234 cases are still being processed by the courts, 77 are waiting for court orders, 49 were imprisoned without adjudgement, 109 were put there under investigatory arrest.

According to A. Kydyshev, the head of SIZO#1, despite of his numerous appeals to judicial organs, Special prosecutor's office, Prosecutor general's office and the Ombudsman, neither of these institutions solved this problem of the court system. As long as the facility is artificially overcrowded we face recurrent conflicts and crisis situations at SIZO#1. Situation is the same about the convicts and arrested for investigation at SIZO#5 (Osh town), at SIZO#29 (Karakol town, Yssyk-Kul oblast), SIZO of Voznesenovka village for juvenile inmates and women located at the territory of settlement colony #5 etc. In most cases the courts procrastinate giving their judgments and decisions; terms of keeping the persons under investigation at SIZO are extended through investigators' fault. That leads to sever violation of constitutional rights of inmates and persons arrested for investigation, including women and minors, and nobody bears responsibility for that. As a result it's impossible to appeal timely against illicit sentences, provide legal protection to inmates and persons arrested for investigation, and investigate and prevent cases implementation of tortures on time. The victims are not provided any opportunity to appeal for help; they even cannot initiate an independent

investigation of cases of torturing or choose a doctor or a medical facility for getting an independent medical expertise necessary for punishing the torturers in uniform.

2. Another problem of Kyrgyz judicial system is total absence of state advocacy. When the cases are being processed the accused don't get any legal protection, because the state doesn't provide qualified lawyers to advocate the defendants before the court. In Bishkek there are private lawyers providing their advocacy for reasonable fees which the state cannot afford, plus most of these lawyers got their education and practice in the punitive judicial system of USSR. Also there are "advocates" cooperating with corrupted courts that offer the accused court decisions in their favor for considerable bribes.

In such conditions formation of a new category of advocates is truly vital; for promoting justice in Kyrgyzstan we need lawyers whose services would be available to citizens of any categories. In making this important step towards fair judicial system Kyrgyzstan can be assisted by international human rights organizations.

3. Another major reason of impunity of torturers in law enforcement bodies of KR and total corruption of courts is jural ignorance of the citizens of Kyrgyzstan, because during all these decades of Soviet power the people got used to enduring the self-will of state officials and violation of their constitutional rights. Being unaware of their basic rights like the right for equitable court examination of their cases, for inviolability of personal honor and dignity and impermissibility of implementation of any violence against any person, even one that violated the law, which are supposed to be guaranteed by Constitution and the state power of Kyrgyzstan, the majority of regular Kyrgyzstani don't even lodge complaints about violation of their rights, don't publicly protest against the self-will practiced by state officials, workers of Prosecutor General's Office and law-enforcement bodies, and judges. In fact they don't even have an opportunity to appeal against their illegal actions and decisions, because all state structures demonstrate considerable solidarity in their corruption.

For overcoming jural ignorance of population of Kyrgyzstan we need to organize systematic legal trainings in human rights, court procedures and basic state laws for all categories of citizens all across the Republic. That could be accomplished by the State, or NGOs, or international organizations. As long as the government neglects this problem, only local human rights organization are providing legal education to the people.

4. After the change of power in Kyrgyzstan a group of prisoners sentenced for capital punishment addressed the President of Kyrgyzstan K.S. Bakiev, the guarantor of constitutional power in Kyrgyzstan. Their appeal was concerning creating an independent expert commission of lawyers, advocates, workers of Prosecutor General's office, members of local human rights organizations and international legal experts, in order to conduct independent expertise of lawfulness of their sentences necessary for recovering law and order in judicial system of KR. Overall if such a commission was formed and worked effectively the judicial branch of power and law-enforcement bodies of Kyrgyzstan could gradually regain the people's trust.

***B. In the field of improvement of conditions of keeping prisoners and conditions of work of personnel of penitentiary facilities:***

1. Provide timely medical help and regular examination of health of both prisoners and GUIN personnel. Currently over 2725 prisoners suffering different forms of tuberculosis are kept in correctional facilities of GUIN. The mortality rate for prisoners is immense – during the recent 5 years over 2,000 persons died in prisons because of different diseases. Most of them died of TB. Because of lack of funding of penitentiary facilities and worthlessness of obsolete medical equipment they have in SIZO prisons neither the inmates nor GUIN workers pass photofluorography; neither the officers nor even the medical personnel are provided masks or changeable special clothes. As a result all workers including office personnel of the facilities are always at risk of becoming infected with tuberculosis, and as long as the TB prisoners are not isolated the healthy prisoners also catch it very often. In case of catching TB all civilian workers of GUIN facilities (nurses, warders, administrative

personnel) don't obtain any compensation or insurance for this dangerous disease they get infected with at their work places; the state doesn't even cover their expenses on treatment. At present these problems are especially burning for SIZO #27 located in Moldovanovka village, Chuy oblast, and SIZO #31, where prison TB hospitals are located. Prisoners from all over the Republic suffering tuberculosis are concentrated there, yet they are not effectively treated.

Also it's necessary to improve the situation about medical treatment of all prisoners in general and persons condemned to capital punishment in particular. In July 2006 on a regular visit to SIZO workers of CAC Human Rights Center conducted interviews of persons condemned to capital punishment kept at SIZO #1 of Bishkek city concerning the medical services at SIZOs. All of them complained that no qualified medical treatment is available to them; when they have toothache the prison dentists just pull their teeth out instead of curing them.

2. Legally permit and encourage access to facilities of penitentiary system for representatives of local and foreign human rights organizations and religious leaders, e.g. representatives of Muftiat and Church, including the category of prisoners condemned to capital punishment. After the prison riots in October 2006 all penitentiary facilities adopted a special policy concerning denial of their access to closed facilities of GUIN and MIA. This policy is itself an obvious violation of constitutional rights of inmates, because being imprisoned and condemned they are especially in need of spiritual and psychological support, as well as legal assistance for verifying the rightfulness of sentences.

3. Establish social protection from the influence criminal authorities have in prisons by strengthening GUIN personnel with new professional officers. During the recent 15 years the number of inmates increased two times, now it is **16 thousand** prisoners; as for GUIN personnel they are still **3500** as 15 years ago. At present a brigade of **45 overseers without and special training** takes the nightshifts at prison camps with population of **1000-2000** prisoners. This bitter insufficiency of supervisory personnel is a serious threat both to safety GUIN workers and public security. The GUIN structure wasn't any modified since Kyrgyzstan proclaimed its independence back in 1991. The collapse of Soviet system also impacted the state of things in penitentiary facilities; the prison workshops were all looted during regime change, and since then the state didn't make a single attempt of providing the prisoners any labor activities. At that time the kitchen appliances and means of transportation were also stolen from penitentiary facilities.

Generally, the state budget covers only **27%** of the estimated need of GUIN, and they don't have funds for sponsoring any development projects like constructing a brick plant the inmates would work at, as noted S. Zubov, the deputy of Minister of Justice in GUIN supervision, on a press-conference in September 2006. Also, a considerable part of these money is systematically stolen by administration of the facilities. The prison riots of October 2006 showed that criminal authorities play the key role in inner life of the facilities. They are not only making their business on the facilities, but also to great extent influence the inmates' destinies and represent a serious threat both to prison personnel and the outer society. As long as the prisoners don't have any work to do they are left on their own with the horrible conditions they are kept in and the level of discipline among them is rather low. Still this fact doesn't provide any excuse for inhumane means of punishment some overseers implement. Instead of punishing the inmates for the discontent they may express regarding the conditions they are kept in the prison authorities should rather isolate the informal criminal leaders, this way stopping their influence. The investigation indicated that the riots are initiated by criminal leaders; they are the key factor of violence among inmates.

5. It is absolutely necessary to provide special safety means to GUIN workers for their personal security. For example, in SIZO#1 there are only 10 pairs of handcuffs for almost 2 thousand prisoners; in SIZO#19 there are only 2 pairs. Also, the facilities don't have any special vehicles and ambulance cars for transporting inmates from one facility to another and for transporting inmate to a doctor if one gets sick. Often the GUIN workers must use their personal cars for

transporting prisoners or take taxi cabs paid by the prisoners themselves. The technical means of security used at correctional facilities were supposed to be discarded back in 90<sup>ies</sup>.

Also it's vital to increase the salaries of workers of penitentiary system. In most cases the people are just forced to work as SIZO prisons not having any other employment opportunities. Their lack of motivation for work always leads to inferior accomplishment of work duties. For example, a nurse working in prison camp #1 with prisoners suffering open tuberculosis has a salary of 450 soms (10,1 USD) and two children she's raising alone. She agreed to work there because she is living in the neighborhood of prison camp. Overall, it's necessary to provide social protection to GUIN workers. The monthly salary of overseers ranges from 450 to 700 soms (\$10.1 - \$17), 3000 - 4400 soms (\$77 - \$113) for facility directors. The GUIN workers are not provided with uniform, and there is no insurance against accidents for workers of GUIN and their relatives. Also the salaries and money for food should be given to GUIN workers on time, without several months delay, as it currently is.

6. Also it's important to provide the inmates showers, cabinets of psychological support, access to information, because currently there is no radio, no TVs, now newspapers and magazines available to most prisoners of SIZOs. As for the prison libraries, we encountered numerous books of Lenin, Dzerzhinskiy, Krupskaya, Marks, Engels and other obsolete Soviet books there.
7. The inmates' relations, local NGOs and charitable organization should be provided an opportunity to pass food, medicines and clothes to the inmates. At present most of what they try to pass is stolen by prison workers.
8. Establish social programs of adaptation and points of psychological support for people that completed their sentences. It's especially important to such vulnerable groups as women and minors.
9. Urgently introduce monthly medical expertise of prisoners by independent civil doctors and doctors representing international organizations, first of all of the most vulnerable categories of prisoners - condemned to capital punishment, suffering TB and AIDS. It's also going to contribute to prevention of tortures.
10. Provide separation of CP prisoners, murderers, thieves and prisoners of all other categories.
11. Provide trainings in basics of human rights to officers of penitentiary system.
12. Find funding by submitting appropriate proposals to international foundations of support, human rights organizations and other potential donors. Use the money received for building additional SIZOs and expanding the number of cells for providing enough room for all prisoners. At present 8-10 persons are kept in a cell designed for 5, so the people must sleep in turns. Provide sufficient heating of cells during the cold season, provide new warm clothes to inmates. Repair showers, lavatories and laundries of SIZOs, provide new kitchen appliances and utensils. Repair or construct anew water supply systems of penitentiary facilities, hospitals and administrative buildings. The people in prison camp #19 must drink rusty water with feces because the pipe system there is malfunctioning; the administration of TB prison hospital in Moldovanovka village doesn't even have water to wash their hands, in addition they don't have a phone there, so in case of an accident they can't ever call for help opportunely. It's also necessary to totally reconstruct the inmates' cells by warming their concrete floors and walls, decrease humidity and provide regular cleanups, in order to create minimum conditions for saving the prisoners' health preventing them from catching cold, rheumatism and tuberculosis.

### ***C. In the field of improvement of legislation of KR and increase of role of civil sector in problem-solving:***

1. Completely abrogate life-sentences and sentences for capital punishment in Kyrgyzstan, introduce effective alternative ways of punishment or rather correction of convicts. In addition to developing legal basis for implementation of these it's important to reform penitentiary and judicial systems and inform their officials about the changes of legislation through series of trainings. It's also vital to modify Constitution so that use of tortures, threatening and deception of accused for forcing them accept the crimes they didn't commit is strictly prohibited. Another important addition to

Constitution should be total prohibition of consideration of confessions as a ground for court decision, it should only be considered as a reason for pardoning.

2. The Parliament of Kyrgyz Republic should take measures for changing the penal articles of Criminal Code of KR and soften it by accepting all kinds of alternative way of punishment from global experience, this way the national criminal law would be humanized.

3. Provide regular access to representatives of NGOs and mass-media to any penitentiary facilities through change of legislation, in order to provide their transparency.

4. Through legislation: harden the penalty for implementation of tortures and beating by workers of state organs; guarantee total resignation from state structures of officials caught in using tortures.

5. Soften the laws concerning theft and other minor crimes so that a teenager that stole a sheep or a cellular phone isn't sentenced for 5 years; provide milder punishment to persons accused for the first time and representatives of vulnerable social groups, including economical vulnerability.

6. Establish a special non-governmental commission for investigating distribution of state money in penitentiary facilities of GUIN; even the State Purchase Agency supplying GUIN with food, clothes, medicines and materials should be strictly controlled because of its evident corruption.

7. One of the main causes of ineffectiveness of judicial system of Kyrgyz Republic is its limitation in 3 instances. Neither of them provides the citizens access to objective independent court trial, because their judges are absolutely corrupted. That's why at this point the main task of the government and the civil society is developing and adopting an effective constitutional reform that will serve as a basis for purification and prevention of corruption of judicial authorities. Only this way we'll manage to increase efficiency and objectivity of courts so that the people don't have to spend months in detention facilities being under investigation waiting for the court's decisions.

8. Establish a special dynamic and confidential system of appealing available to any prisoner that will be run by representatives of civil society; it will allow people speak up and inform the government about cases of violation of their rights and corruption of courts and workers of penitentiary facilities, plus timely register and prevent tortures.

9. Kyrgyzstan should adopt the Second Optional Protocol of International Pact of Civil and Political Rights and develop a corresponding legislation.

10. Summarizing all these recommendations, it's vital that the President of KR K.S. Bakiev realizes all his pre-electoral promises concerning reformation of Constitutional that will secure the people's access to equitable administration of justice, protect human and political rights of Kyrgyzstani and superiority of law in Kyrgyzstan.

All the recommendations we elaborated and presented for consideration of the government, the parliament and the President are really practical steps towards positive change in the country.

***Please contact attorney Nina Zotova and legal expert Lira Ismailova from Citizens Against Corruption Human Rights Center (Kyrgyzstan) concerning any questions you have about this report.***

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