

## ***Central Asia, Closer To Becoming A Death Penalty-Free Region?***

*Brief report on the death penalty in Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, presented in the 3<sup>rd</sup> World Congress Against the Death Penalty, Paris, February 2007*

Central Asia is making progress apace. Kazakhstan and Tajikistan have adopted a moratorium on capital sentences, and Uzbekistan is committed to abolishing the death penalty in 2008, whilst Kyrgyzstan leads its neighbours having just adopted a constitution that abolishes the death penalty. However, nothing can be taken for granted in this region where prison conditions are deplorable, secrecy surrounds all matters relating to the death penalty and changing political wills could overturn the accomplished achievements.

This report presents a brief overview of the current situation regarding the death penalty in the four Central Asian republics which –to varying degrees- still retain the death penalty: Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan. Additional information on death penalty cases in Uzbekistan gathered during an IHF mission to the country in January 2007 is provided in Annex I. Turkmenistan is not included in this report as it abolished the death penalty in 2000.

## **KAZAKHSTAN**

**Death penalty status:** Moratorium

**Number of prisoners on death row:** 28 people (unofficial statistics as of January 2007)

In Kazakhstan, a moratorium on executions was declared in December in 2003. At this time, life imprisonment was established as an alternative to the death penalty, but as not all death sentences have been commuted into long-term ones there are an estimated 28 people in death row.

There are currently three civilian crimes which carry the death penalty: premeditated murder, genocide, and sabotage/treason and eight military ones. Since the adoption of the new Criminal Code in 1998 there has been a substantial reduction in the number of civil offences punishable by execution: from 18 to the current three.

Notwithstanding this positive trend, recent death sentences give rise to concern. In August 2006, Rustam Ibragimov, a former security officer and one of two primary suspects in the murder trial of political opposition party leader Altynbek Sarsenbaev, was sentenced to death. His conviction came amid a great deal of controversy surrounding the court proceedings and investigations, raising further concerns about violations of due process and the right to a fair trial. Ibragimov remains on death row.

Conditions in death row are harsher than those of ordinary prisons and death row prisoners have the added uncertainty of not knowing whether the moratorium will be revoked or consolidated into full abolition.

Parallel to the introduction of the moratorium, amendments to the Criminal Code resulted in the prohibition of executions for minors, women, and men over the age of 65. The amendments also established a minimum of a one year period in which death row inmates could not be executed after their sentencing.

Extraditions from Kazakhstan to countries where executions continue to take place are another factor of concern. In May 2006 Kazakhstan extradited two Uighur refugees to China: Yusuf Kadir Tohti and Abdukadir Sidik. The Kazakh authorities deported the two men following a decision by the specialized administrative court of Almaty for violation of the rules of stay in Kazakhstan. The charges they were accused of by the Chinese authorities are: separatism and protesting government. According to reports, they are being held in incommunicado detention in China and are at serious risk of being executed.

**Recommendations:** Kazakhstan has recently ratified the International Covenant for Civil and Political Rights (ICCPR), it should consolidate this positive step by moving towards full abolition of the death penalty and ratifying the Second Optional Protocol of the ICCPR. It should also uphold its international obligations vis-à-vis refugees and seize extraditing persons to countries where they risk facing the death penalty.

## **KYRGYZSTAN**

**Death penalty status:** Moratorium

**Number of prisoners on death row:** 167 (unofficial statistics as of January 2007)

In Kyrgyzstan, a moratorium on executions was first introduced in 1998 and has subsequently been extended several times, most recently in December 2005. In December 2006 amendments were made to the Kyrgyz Constitution which de facto abolish the death penalty. Article 14 of the adopted Constitution states that “in the Kyrgyz Republic everybody should have an inherent right to life. Nobody can be deprived of life”. Although complementary legislation is still necessary to implement these provisions, abolition of the death penalty in Kyrgyzstan is now very close to becoming a reality.

Notwithstanding the moratorium, death sentences continue to be pronounced, but are not implemented. According to unofficial statistics, 167 people remain on death row, and were reportedly held in deplorable conditions. Once the death penalty is fully abolished it is unclear what will happen to those already convicted to the death penalty. At present, people sentenced to death penalty are kept in basements of investigation jails as there is no specialized settlement for this category of convicted persons. Building projects are underway to construct detention facilities for inmates on death row. The current maximum jail sentence that a Kyrgyz court can hand down is 30 years.

**Recommendations:** Kyrgyzstan has taken a bold step in amending its Constitution to reflect its abolitionist stance. The challenge remains that legislation be quickly enacted to complement the Constitution so as to prevent any further death sentences. Kyrgyzstan should ensure that conditions for those serving long-term prison sentences are humane and do not represent a *de facto* death sentence in life.

## **TAJIKISTAN**

**Death penalty status:** Moratorium

**Number of prisoners on death row:** None; all death sentences have been commuted to long-term prison terms.

In Tajikistan, a moratorium on executions and death sentences was announced in April 2004 and has remained in force since then. Moreover, in March 2005, the Criminal Code was amended establishing long-term prison sentences as the replacement to death sentences. All death sentences in force at the time of the entry into force of the moratorium were commuted into prison sentences and nobody is currently on death row in the country. The maximum length of time they can be sentenced to is 25 years.

Until 2004 when the moratorium was put in place, all matters relating to the death penalty were considered a state secret in Tajikistan. Secret executions following unfair trials and cases of confessions being obtained through torture were not uncommon. Authorities divulged such scarce information that often families were often unaware whether their loved ones were still alive or dead. In 2004 (the last year before the moratorium) the executions of Rachabmurod Chumayev and Umed Idiyev took place despite requests from the UN Human Rights Committee – that had intervened on the basis of complaints submitted under the First Optional Protocol to the ICCPR – to stay the executions while it considered their cases.

**Recommendations:** While it can be commended for having put in place a moratorium and commuted all death sentences into long-term prison sentences, Tajikistan must take this engagement further to fully abolish the capital punishment. Prison conditions for those serving long-term sentences should be in accordance with international standards.

## UZBEKISTAN

**Death penalty status:** retentionist

**Number of death row prisoners:** no information available

In Uzbekistan, the death penalty has been gradually abolished for a number of crimes since 1998 and in August 2005 President Karimov signed a decree stating that the death penalty would be abolished as of 1 January 2008. In the interim, executions continue to take place and death sentences are pronounced (two crimes, “premeditated, aggravated murder” and “terrorism,” remain punishable with death). No official statistics about death sentences and executions are made public and it is therefore impossible to accurately assess their number. According to the authorities less than 100 executions are carried out each year, but the IHF and other human rights organizations believe that the real figure is likely to be higher.

The continued use of the death penalty in Uzbekistan gives rise to particular concern because court proceedings are often conducted in violation of international due process standards and self-incriminating statements made under torture are accepted as evidence. In recent years, several people have been executed in Uzbekistan despite interventions by the United Nations Human Rights Committee, which has requested that executions be put on hold while it investigates allegations that the proceedings resulting in the imposition of the death penalty were conducted in violation of international human rights standards.

Death row inmates in Uzbekistan are not informed about the date of their executions in advance, causing them to live in constant stress. Relatives are also not informed about the date of executions and are therefore deprived of the opportunity to say goodbye to their loved ones. In addition, the corpses of those executed are not given to the families for burial and the families are not told where the corpses have been buried.

Prison conditions for death row prisoners do not meet international standards, in particular with regard to living space and access to food, exercise and adequate medical services. According to the Uzbek NGO “Mothers against the Death Penalty and Torture” of the 25 people held on death row in Tashkent, at least 20 were reportedly suffering from tuberculosis. The quality and quantity of the food is low and families are not allowed to deliver food or personal hygiene items to death row prisoners.

Uzbekistan continues to extradite persons to countries where they risk being executed. In June 2006, Huseyin Celil, a Canadian citizen of Uyghur origin, was arrested in Uzbekistan and extradited to China where he has been sentenced to death in absentia for his human rights work relating to the Uighur people.

**Recommendations:** As a logical step following the decree abolishing capital punishment as of January 2008, Uzbekistan should introduce an immediate moratorium on all executions. Prison conditions for death row prisoners should be in line with international standards. The authorities should also release information relating to death penalty sentences and executions (including past ones), especially to the families of the deceased.

## ANNEX I – INDIVIDUAL CASES CONCERNING THE DEATH PENALTY IN UZBEKISTAN

### The state's non-compliance with the decision of the UN Committee on Human Rights

The case of Vazghen Arutyunyanz was reviewed by the UN Committee on Human Rights. The Committee issued a decision stating that Arutyunyanz "has the right to receive adequate legal assistance, including compensation, and either a new trial, or the release". In spite of this decision, Arutyunyanz is still being detained, allegedly for having violated the internal prison rules.

Vazghen Arutyunyanz was detained on 9 July 1999 on robbery and murder charges. He avowed being guilty of robbery, but denied the murder charges<sup>1</sup>. In the Yakkasaray District police department, police officers pressured him to confess, and beat and tortured him severely. Arutyunyanz' beatings were confirmed by medical expertise, carried out by the Ministry of Defence on 12 July 1999.

"When his father visited him shortly afterwards, Vazghen Arutyunyanz was covered all over with haematomae, could not stand upright, urinated blood, had headache and pain in his kidneys. The main official in charge of Arutyunyanz' case reportedly proposed to the father to pay US\$ 60.000; this in order to avoid his son's being tried according to an article allowing for capital punishment. The father had no means to find this money. He committed suicide in October 1999. In the letter he left behind, he wrote that he could not live any longer, knowing that he cannot pay for having his son's life saved.

On 31 May 2000 Vazgen Arutyunyanz and Armen Garushyanz, the second person accused in this case, were sentenced to capital punishment on grounds of "murder in aggravating circumstances" and "robbery".

### Extracts from an interview with Vazghen Arutyunyanz' mother, Irina Arutyunyanz

*In spite of all torture and beatings, my son did not admit the murder charges. Even when he was sentenced to the death penalty, he did not confess that he has murdered. And therefore he refused for a long time to write a request for pardon to the president. Yet we persuaded him to write it. And even in his request he wrote that he repents of his being an accomplice, but not a murderer. Nearly two years he spent on death row. In December 2000 we sent a complaint to the UN Committee. The 15 January 2002 became his second birthday. This day, Vazghen Arutyunyanz and Armen Gurushyanz were transferred from the death row cell to a prison in Andizhan in order to serve the remaining sentence. A decision of the Supreme Court of the Republic of Uzbekistan nullified the death sentence and replaced it with a 20-years-sentence, with the possibility of pardon. At the same time, many were executed. It was a great luck that Vazgen stayed alive.*

In April 2005 we received an answer from the UN Committee. It stated that that in my son's case the presumption of innocence was violated and that he shall be released. Furthermore, all material damage shall be compensated. The state is to fulfil this request within three months. Garushyantz, who was convicted along with Vazghen, has already been released. Yet Vazghen is still being detained in prison, allegedly for violation of the internal regulations. It is because he protested against the detention conditions and swallowed iron crosses. He was brought to a hospital, was operated and brought back to the detention zone. But after the

surgery he could not do physical work any longer. He requested to have his conditions eased. But instead, they brought him the Andizhan prison, where you have a tight regime. After the surgery, he had complications; his internal sutures came undone. He would need another stomach surgery, but his heart would not support the narcosis. Today he is on settlement in the Buka District. Because of the granted amnesties, his sentence was downsized, so that he has some months left.

### **Prosecution of the applicant to the UN Human Rights Commission**

Alexandr Kornetov was sentenced to a death penalty for murder. During the investigation he was beaten and tortured to make him sign confessions. The investigation revealed no single direct proof of Kornetov's guilt. Everything points to reasons that his case was fabricated. Following the registration of his complaint by the UN Human Rights Committee, it was decided that his case be reviewed. His death sentence was changed to 20 years' imprisonment without amnesty. In an attempt to avoid that his case be reviewed, or his possible release, he was infected with fatal diseases.

Alexandr Kornetov was arrested on 10 January 2001 by officers of the Chilanazarsky ROVD of Tashkent. During the arrest, he was subjected to beatings and ill-treatment, and required to confess to crimes he had never committed. When visiting the ROVD, Kornetov's mother Larissa Tarasova witnessed her son being beaten on two occasions.

#### **Extract from the story of Kornetov's mother**

*I witnessed my son being beaten twice. One time I was summoned to the ROVD. Walking along the corridor, I heard the voice of investigator Murod Shamuradov. I entered the room. Alexandr was sitting on the floor trying to protect his head with his hands while about five persons were kicking him. Murod stood nearby. Mikhail Lobas, a lawyer, was also there. I told him: «Why are you not doing anything?». As I learnt later, the lawyer was also with them.*

*They threatened him that they would rape his wife and cut up his mother». He did not possess the strength to tolerate this and tried to commit suicide.*

*Even during the trial, the traces of beatings were still visible. For instance, he had a scar on his head from being kicked. I indicated the scar to the judge but he did not consider it.*

At the trial, Kornetov maintained his innocence stating that he had to confess to crimes he had not committed under torture. On 7 August 2001, Kornetov was convicted to a death penalty for premeditated aggravated murder and put into a death ward. The cassation appeal against the 26 December 2001 verdict was rejected.

In December 2001, a complaint on behalf of Kornetov was sent to the UN Human Rights Committee where it was registered on 2 March 2002. The Committee made a decision on the revision of the case. After the notification was received, Kornetov's sentence was altered: the death penalty was changed to 20 years' imprisonment. In March 2002, he was transferred from the death ward to a prison in Andijan. Kornetov could have relied upon amnesty to decrease his term but since he had not confessed to a crime he was charged with, amnesty is not applicable.

#### **Extract from an interview with Kornetov's mother**

*His maintaining of innocence means his going against the system. In other words, if he is not guilty, those who put him into prison are guilty. He is a religious person and refuses to confess to a murder he has never committed.*

The data provided by independent human rights defenders indicate that the criminal case against Kornetov was fabricated.

#### Background

In August 2000, Kornetov decided to buy an apartment and paid a certain sum of money as a deposit to the owner of the apartment, Svetlana Petrova. As was discovered later, Petrova was not single heiress of the apartment, so Kornetov could not take on full ownership. In September 2000, Petrova disappeared with Kornetov's money. Kornetov then sought help from the militia. Some time later, a corpse of an unidentified woman without a head and arms was found. Despite the absence of any evidence showing that the woman killed was the missing Petrova, Kornetov was detained on suspicion of her murder. On 10 January 2001, Kornetov disappeared and only 3 days later did his mother learn that he had been arrested and kept in the basement of the Chilanazarsky ROVD of Tashkent.

#### Extract from an interview with Kornetov's mother

*First, they found a body of an unknown woman and then connected my son to this. Just to close the case. The corpse is impossible to identify. Yet, they didn't even try to. There was no single expertise which would confirm that the killed woman was Petrova. Furthermore, already after the so-called «murder» of this woman, two other apartments which also belonged to her were sold by straw men by proxy. I sought revision of the case with regard to these facts but this led to no results.*

Apparently, fearing the clear fabrication of the case and, possibly, that other facts connected with activities of the law enforcement agencies would be revealed, the authorities decided not to allow for the release of Kornetov by other means. While in prison, Kornetov was infected with syphilis and HIV via blood. In addition, Kornetov suffers from open tuberculosis. Malignant growths began in his lungs.

#### Extract from an interview with Kornetov's mother

*Alexandr's health status is so poor that on 16 March 2006 he was taken to Sangorodok in Tashkent. He is serving his term in a prison in Karshi – 540 km from Tashkent. This is a hostile environment: steppe, poor quality water, rarefied air, harsh temperature changes. When he was taken to hospital on 16 March, he was suffering from a neurological complication and could not open his eye.*

*In Sangorodok I have the right to visit the doctor once a week (I can only visit my son once every 3 months). Here, the chief doctor of the Sangorodok told me that Alexandr had HIV. It should be added that he has been infected since April 2005 but the doctor only informed me in August 2006. Not only did they infect him, they also hid this fact! HIV is a prohibited topic in Uzbekistan. Moreover, he was infected with syphilis. It is hard to live with these diseases even outside of prison. According to the law, my son should be freed from serving the sentence due to his suffering from a fatal disease. He has three diseases falling under this category. Currently, my son suffers from agnogenic tuberculoma of the lungs and following a consultation by an oncologist and a laboratory report of the lung, this disease was diagnosed on the left side. I wrote to the Main Directorate for Punishment Implementation but I am*

*afraid he will not survive long enough to see his case be reviewed at the UN. The official authorities are aware about the revision, so they are doing their best not to let him leave prison alive. I was deprived of hope. He will not be cured even at large».*

On 22 January 2007 the IHF received information that Kornetov had been again transferred to the Karshi prison from Sangorodok without any appropriate medical treatment being rendered.

### **Why Bakhtiyor Nurkhodzhojev has to pay for somebody else's crimes with his life**

*From the conversation with Takhir Nurkhodzhojev - the father of Bakhtiyor Nurkhodzhojev (born in 1984).*

My son deliberately wanted to serve in the army and then to go to study. I was already on the second disability group and could not help my son. Son served in Bukhara where he got beaten up by the older soldiers. He got severe injuries – concussion of the brain, kidney dysfunction. Bakhtiyor spent four months in the hospital. None of the offenders was punished. After recovery Bakhtiyor very quickly prepared all the documents in order to enter the military college. He studied there for half a year and then went on vacation.

During vacation it turned out that the squad leader together with the older course mates were robbing the cars – would break the windows, would take tape recorders, speakers, extra wheels. Bakhtiyor having driver's license was a driver for this group. He knew what they were doing, but was afraid to tell.

Their group was caught on the 30<sup>th</sup> of June, 2003. They were detained at 5PM, but only at 2AM the lawyer signed the official papers. Detainees had no any kind of contact neither with the lawyer, nor with the relatives. Instead of legally established 72 hours of detention, they were kept in the cellar of preliminary lock-up ward of Kibray Regional Department of Interior for 21 days. Until now Bakhtiyor is afraid to tell how they were beaten up. Based on this account the accusation was composed. All investigation was over on the 6<sup>th</sup> of July, and then detention was going on only in order to hide the traces of beating.

At the moment of arrest the squad leader attempted to commit suicide, but after he was operated he got conscious in three days. He told everything to his parents who were always present near him about the crimes, which he committed. No one else was allowed to him. He died later.

Bakhtiyor was presented as a head of the criminal gang. Members of a gang were sentenced to 18 and 16 years in jail, Bakhtiyor was sentenced to death. The sentence was supposed to be announced on the 13<sup>th</sup> of May, but it was announced only on the 18<sup>th</sup>. Sentence was announced in the military Supreme tribunal of Uzbekistan.

A month later we appealed. However it was not allowed and the sentence was kept in effect. The Panel of Appeal of the supreme tribunal verified the sentence. There were two complaints sent – to the President of the republic of Uzbekistan and to UN Human Rights Committee. Complaints are sent to the Supreme Court of Republic of Uzbekistan protesting and for calling off the death penalty to the son. From human rights committee we got a reply that complaint was registered and that an inquiry for an answer is sent to the state of Uzbekistan, but there is still no reply. As for an appeal on pardon and complaint to the President , we were



told that the case is transferred to the Supreme Court, but neither an appeal, nor a complaint are have been considered yet. We hope for the abolition of the death penalty based on the President's decree since the 1<sup>st</sup> of January, 2008.

Bakhtiyor is kept now in the cellar of the Tashkent jail.

#### Conditions in Tashkent jails

Court allows visits once a month. Now the Major Department on Correctional and Punishment Facilities permits only 45-minutes-long meetings once a month. The meeting is held in a room equipped by a cabin with a window, through which one talks in the presence of a guard. One can send only medication in the parcel to the prisoner. (Bakhtiyor, for example, was operated for appendix and already the next day after this he was transferred back to the death row).

In order to pass the packages people gather in front of the window of Tashkent jail by 9AM in a group of 50-60 people. There is somewhat more order in the jail lately and there is less corruption. They started to feed better – twice a week milk and butter are given and are now allowed to give them the Koran. There is also a library in jail, the one is allowed to take the books only from the library, and one cannot pass them. Newspapers are also given out only in jail. Doctor comes at first call, but does not always provide assistance.

The cell in the cellar – is a concrete building with a small window, with weak constant lighting. There is a toilet with a tap above it in the cell (1,8x2,5). Walks are organized once per day with handcuffs in pair inside the room (4x5 meters) with one wall made as the bars looking outside.

Every 3-4 months the cellar mates are being switched. Money to the prisoners is being transferred by the parents. There is a possibility to spend 7 thousand som (about 5\$) per month in the prison store ordering goods by a written request. But usually the products are expired, butter and sugar are absent.