

The abolition of the death penalty and its alternative sanction in Central Asia: Kazakhstan, Kyrgyzstan and Tajikistan



Contents

Acknowledgments	2
Acronyms	3
Introduction	4
Research methodology	5
Executive summary	6
Country-by-country analysis	
Republic of Kazakhstan	8
Republic of Kyrgyzstan	23
Republic of Tajikistan	38
Comparison of the application and implementation of the death penalty and its alternative sanction in Central Asia	51
Annex I:	
Recommendations from Kazakhstan national conference (19 November 2010)	57
Annex II:	
Recommendations from Kyrgyzstan national conference (20 October 2010)	59
Annex III:	
Recommendations from Central Asia regional conference (26 April 2011)	61

Acknowledgements

This research paper has been created by Penal Reform International. It was written by Indira Barykbayeva, Dinara Amanzholova and Jacqueline Macalesher based on national research papers prepared by Raissa Yurchenko (Kazakhstan), Evgeniya Krapivina (Kyrgyzstan) and Nigina Bakhriyeva (Tajikistan).

This research paper has been produced in conjunction with Penal Reform International's project "Progressive Abolition of the Death Penalty and Alternatives that Respect International Human Rights Standards", with the financial assistance of the European Union under the European Instrument for Democracy and Human Rights (EIDHR).

The contents of this document are the sole responsibility of Penal Reform International and can in no circumstances be regarded as reflecting the position of the European Union.

Acronyms

CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
EIDHR	European Instrument for Democracy and Human Rights
EU	European Union
GA	General Assembly
GSIN	State Penitentiary Service (Kyrgyzstan)
GUIN	State Penal Agency (Kyrgyzstan)
ICCPR	International Covenant on Civil and Political Rights
ICDP	International Commission against the Death Penalty
ICRC	International Committee of the Red Cross
MP	Member of Parliament
NGO	Non governmental organisation
NPM	National Preventative Mechanism
ODIHR	Office for Democratic Institutions and Human Rights
OPCAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OSCE	Organization for Security and Cooperation in Europe
PMC	Public Monitoring Commission
PRI	Penal Reform International
TB	Tuberculosis
UK	United Kingdom
UN	United Nations
USA	United States of America
YMYT-2	National Development Strategy for the Correctional System (Kyrgyzstan)

Introduction

The death penalty is the ultimate cruel, inhuman and degrading punishment. It represents an unacceptable denial of human dignity and integrity. It is irrevocable, and where criminal justice systems are open to error or discrimination, the death penalty will inevitably be inflicted on the innocent. In many countries that retain the death penalty there is a wide scope of application which does not meet the minimum safeguards, and prisoners on death row are often detained in conditions which cause physical and/or mental suffering.

The challenges within the criminal justice system do not end with the institution of a moratorium or with abolition of the death penalty, as the problem of what to do with the most serious offenders remain. Many countries that institute moratoria do not create humane conditions for prisoners held indefinitely on 'death row', or substitute alternative sanctions that amount to torture or cruel, inhuman or degrading punishment, such as life imprisonment without the possibility of parole, solitary confinement for long and indeterminate periods of time, and inadequate basic physical or medical provisions. Punitive conditions of detention and less favourable treatment are prevalent for reprieved death row prisoners. Such practices fall outside international minimum standards, including those established under the EU Guidelines on the Death Penalty.

This research paper focuses on the application of the death penalty and life imprisonment as an alternative to it across the Central Asia region. Its aim is to provide up to date information about the laws and practices relating to the application of the death penalty in Kazakhstan, Kyrgyzstan and Tajikistan. It includes an analysis of the alternative sanctions to the death penalty, and whether they reflect international human rights standards and norms.

This paper takes a country-by-country approach and focuses on:

- The legal framework of the death penalty and its alternative sanction (life imprisonment).
- Implementation of the sentence, including an analysis of fair trial standards.
- Application of the sentence, including an analysis of the method of execution, the prison regime and conditions of imprisonment.

- Statistical information on the application of the death penalty/life imprisonment.
- Criminal justice reform processes in each country.
- Abolition movement in each country.

This paper provides detailed and practical recommendations tailored to each country to bring it in line with international human rights standards and norms.

We hope this research paper will assist advocacy efforts towards abolition of the death penalty and the implementation of humane alternative sanctions in the region. We also hope this paper will be of use to researchers, academics, members of the international and donor community, and all other stakeholders involved in penal reform processes including parliamentarians, prison officials and members of the judiciary.

February 2012

Research methodology

Access to information on the application of the death penalty and its alternative sanctions is often unavailable or inaccurate in many countries. Statistical information is not always made available by state bodies, and information provided is not always timely, or lacks clarity. As such, although Penal Reform International (PRI) aims to undertake an in-depth analysis of legal, policy and practice areas within this research paper, access to some information was sometimes beyond the abilities of the researchers and therefore is not complete.

A research questionnaire was designed in late 2010 to assist researchers in identifying relevant information. The research questionnaire was designed by PRI in partnership with Sandra Babcock (Northwestern University, USA) and Dirk van Zyl Smit (Nottingham University, UK).

The research was undertaken by PRI in all three countries and included field visits and desk based research.

The researchers looked at primary sources, including legislation and case law. They interviewed relevant government officials (within the various departments of the Ministries of the Interior, the Ministries of Justice, Constitutional Councils, and the Penitentiary Services), prison officials, national human rights commissions/ombudsmen, lawyers and judges, journalists, and members of civil society/human rights defenders in all three countries, as well as death row and life sentenced prisoners where access was made available to researchers.

The researchers also looked at reports by people or organisations with first-hand experience in the region. This included inter-governmental organisations, such as the OSCE, and by UN treaty bodies, as well as reports by international NGOs, such as Human Rights Watch, Amnesty International, Death Penalty Worldwide and the World Coalition against the Death Penalty. Reports and articles by journalists and academics were also analysed.

The research was carried out during 2011.

Executive summary

Central Asia presents a unique picture of a region on the cusp of abolition of the death penalty. Kyrgyzstan abolished the death penalty in June 2007 (the last execution took place in 1998) and adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at the abolition of the death penalty) in December 2010. In Kazakhstan and Tajikistan, official moratoriums have been in place since January 2004 and July 2004, respectively, however both retain the death penalty in their statute books and constitutions, raising the risk that executions could be resumed.

While Central Asia is fast becoming an execution-free zone (Turkmenistan and Uzbekistan abolished the death penalty in law in 1999 and 2008, respectively), the classification of the death penalty as a state secret makes accountability almost impossible, and the families of those executed are still in the dark over the whereabouts of the place of burial of their loved ones.

Life imprisonment is now used as the most severe sanction in all three countries. In certain circumstances this amounts to life without the option of parole, and where there is a determinate 'life' sentence, its length is overly punitive.¹

In Kazakhstan, the prisoners who were on death row at the time the moratorium was established had their sentences commuted to life without the option of parole. Following the moratorium, a new 'life' sentence was created by lawmakers to replace the death penalty, and established the maximum sentence as 25 years imprisonment (30 years for cumulative offences). This effectively established a parallel but discriminatory system, whereby those initially sentenced to death are serving a harsher sentence than those sentenced after 2004. Both Kyrgyzstan and Tajikistan also provide whole life sentences. In Kyrgyzstan, however, a pardon procedure allows life imprisonment to be replaced with a 30 year sentence.

The number of life sentenced prisoners is growing. Kazakhstan has 95 lifers (29 of whom are serving a whole life sentence); Kyrgyzstan has 257 lifers (133 of whom were initially sentenced to death); and Tajikistan 52 lifers. There are no women or juveniles serving a life sentence, and the maximum age up to which a man can be sentenced to life is 65 in Kazakhstan, 60 in Kyrgyzstan, and 63 in Tajikistan. Furthermore, the types of crime for which a life sentence may be imposed raise doubts about whether this severe sentence is being used only for the most serious of offences. Kazakhstan, for example, has 24 crimes for which a life sentence may be imposed. These include drug-related offences, smuggling, and various non-lethal military offences.

The growing use of life imprisonment in the region, its disproportionate length and overly punitive nature raise a number of legal and practical issues.

Across the region, people are sentenced to life after proceedings which fail to meet international standards for a fair trial as guaranteed under Article 14 of the International Covenant on Civil and Political Rights (ICCPR), to which all three countries are state parties. Although the right to a fair trial is not impeded by a lack of legal guarantees, it is impeded in practice. One of the fundamental problems lie in the fact that in the judicial systems across the region, which date back to the times of the Soviet Union, the office of the prosecutor has got disproportionate powers, often exhibited through its influence over the judiciary and an unfair advantage vis-à-vis the accused. This is amplified by a judiciary that is overly influenced by the executive, lacks security of tenure, and is subject to allegations of corruption. As a consequence thorough investigations are not carried out. Instead investigations are often focused only on collecting evidence sufficient to demonstrate guilt rather than collecting information that may reveal innocence. This results in notoriously low acquittal rates.

¹ While the purpose of sentencing is ultimately punitive, the nature of the sentence should be proportionate to the seriousness of the offence and individualised to the specificities of the crime, including the circumstances in which it was committed. Sentences should not, therefore, be used to serve wider political purposes or purely to punish the offender. Effectively locking away criminals for life and creating a discriminatory and arbitrary regime purely because of the type of sentence a prisoner is serving fails to tackle the structural roots of crime and violence. Prisoners serving life or long-term imprisonment often experience differential treatment and worse conditions of detention compared to other categories of prisoner. Examples include separation from the rest of the prison population, inadequate living facilities, excessive use of handcuffing, prohibition of communication with other prisoners and/or their families, inadequate health facilities, extended use of solitary confinement and limited visit entitlements. Punitive conditions of detention and less favourable treatment are known to be particularly prevalent for reprieved death row prisoners. Sentences should reflect international human rights standards and norms, and provide the offender with a meaningful opportunity for rehabilitation and reintegration back into society, thereby leading to law-abiding and self-supporting lives after their release.

Ineffective access to legal aid for indigent defendants, obstruction of detainees' access to a lawyer during the arrest and pre-trial stages, and lawyers with limited expertise or experience further undermine the right to an adequate legal defence.

Allegations of widespread ill-treatment and torture made before, during or after trial by investigative and other officials to obtain information also raise serious concerns across the region. There is evidence to demonstrate that allegations of torture are inadequately investigated or are ignored, and although evidence obtained under torture is legally inadmissible in a court of law, courts continue to rely on "confessions" extracted through torture as evidence in criminal trials.

A harsh and discriminatory prison regime, and a lack of rehabilitation for life or long-term prisoners, reinforces the punitive nature of life imprisonment. Prison conditions across the region are far below international standards. Improvements are desperately needed to be made in terms of accommodation, nutrition, sanitation, access to medical and psychological care, visitation rights, sentence planning, and reformation and social rehabilitation programmes including work and education programmes. Life and long-term prisoners are often separated from the rest of the prison population and kept under a much harsher and stricter regime – including solitary confinement and semi-isolation – which is unrelated to prison security, but based on their legal status as lifers. Financial and other resources are under-committed, demonstrating a lack of prioritisation by governments in the region in upholding a human rights model for the administration of justice.

To their credit, concerns related to fair trial safeguards and humane sentencing practices have prompted both government and civil society across the region to engage actively in various reform programmes aimed at humanising the criminal justice and penal systems, and establishing more stringent controls. However, these reform processes are having a slow or limited effect on those who are accused of, or sentenced to, life imprisonment. One important reform that is taking place in Kazakhstan and Kyrgyzstan is the establishment of National Preventative Mechanisms (NPM) under the Optional Protocol to the Convention against Torture (OPCAT). As draft bills are awaiting approval in each country, it

is hoped that with the future establishment of NPMs, a mechanism will be in place to effectively prevent torture and ill-treatment towards those serving the most severe of sentences.

Penal Reform International trusts that this report will provide detailed analyses and recommendations on the various political, legal and practical issues to be addressed in each of the three countries regarding abolition of the death penalty and the alternative sanctions to it. It is hoped that this report will assist governments within the region in implementing a more holistic approach to penal reform which focuses on reformation and the respect for human dignity, rather than a punitive approach to punishment.

Republic of Kazakhstan

I. Basic country information

Geographical region: Kazakhstan is part of the Central Asian sub-region. Ranked as the ninth largest country in the world, it is also the world's largest landlocked country; its territory of 2,727,300 km² is greater than Western Europe. It borders Russia, China, Kyrgyzstan, Uzbekistan and Turkmenistan. The capital was moved in 1997 from Almaty, Kazakhstan's largest city, to Astana.

Type of government: According to Article 2 of the Constitution, the Republic of Kazakhstan is a unitary state with a presidential form of government.

Language: The state language is Kazak. Russian may be used in an official capacity.

Population: The Republic of Kazakhstan has a population of more than 16 million people,² composed of over 140 nationalities and ethnic groups, including Kazakh, Russian, Uyghur, Ukrainian, Uzbek, and Tatar. Around 63 percent are Kazakhs.

Religion: Islam is the religion of approximately more than 70 percent of the population, and Christianity for most of the remainder.

which resulted in substantially reducing and limiting the number of death penalty applicable crimes. Article 15(2) of the new Constitution guaranteed a qualified right to life by providing that the death penalty can be established by law as an exceptional punishment for 1.) acts of terrorism which results in death; and 2.) especially grave crimes committed during times of war.

In July 2009, the number of death penalty applicable crimes on the statute books was further reduced,⁴ and the Criminal Code now sets out 18 circumstances in which the two crimes established in the Constitution may be imposed.

The 2009–2012 National Human Rights Action Plan of the Republic of Kazakhstan, which has been approved by the President, sets out that one of its goals is to abolish the death penalty.⁵ However there are serious concerns that this final step is being hindered by a lack of political will based on the assumption that the death penalty is necessary to deter terrorist activity.⁶

Public opinion still indicates support for the death penalty. According to an opinion poll conducted in the first half of 2008, 66.6 percent of Kazakh nationals consider that the death penalty must be imposed in extreme cases, and 44.3 percent consider the death penalty to be a deterrent to crime, while 38.3 percent consider it ineffective and incapable of influencing the spread of crime.⁷ In practice, however, the significant humanisation of criminal legislation, the reduction in the number of death penalty applicable crimes, the implementation of a moratorium on executions, and the introduction of life imprisonment has had no noticeable effect on the national crime rate.⁸

While the death penalty remains the ultimate and maximum criminal sentence in Kazakhstan, life imprisonment is now readily used as the most severe sanction.

II. Overview of the status of the death penalty in Kazakhstan

The government has regularly emphasised that Kazakhstan implements a policy of gradual abolition of the death penalty. Despite numerous controversial debates in the parliament and a polarised public opinion, the President declared an indefinite moratorium on executions on 19 December 2003.³

Following the establishment of the moratorium, a constitutional reform process took place in May 2007,

2 The Agency of Statistics of the Republic of Kazakhstan, <www.stat.kz> (accessed 1 December 2011).

3 Presidential Decree No. 1251 "On the introduction of a moratorium on the death penalty in the Republic of Kazakhstan", 19 December 2003.

4 Presidential Decree "On making amendments and additions to some legislative acts of the Republic of Kazakhstan on Death Penalty", 10 July 2009.

5 National report to the working group on the Universal Periodic Review, A/HRC/WG.6/7/KAZ/1, 3 November 2009, para. 166.

6 PRI interview with the Chair of the Constitutional Council, 25 April 2011, Astana, Kazakhstan.

7 National report to the Universal Periodic Review, supra n. 5, para. 36.

8 See for example, interventions made by Belorukov Nikolay Bassilievich (Member of the Constitutional Council of Kazakhstan) and Turmagambetova Zhemis Utegenovna (Director of the NGO "Charter for Human Rights", Kazakhstan) at the PRI conference "Partial abolition of the death penalty in Central Asia: how to move the process of death penalty abolition forward", 26 April 2011, Astana, Kazakhstan.

Introduced to the Kazakhstan Criminal Code in 2003, life imprisonment was not widely discussed or debated in society; however, it is seen as the most appropriate alternative to the death penalty. According to the 2009–2012 National Human Rights Action Plan: “There is good reason to believe that the establishment of institutions for life imprisonment will keep the instances of execution by judges of death sentences to a minimum and create the necessary prerequisites for the possible complete abolition of the death penalty.”⁹ In fact, Article 58(4) of the Criminal Code of the Republic of Kazakhstan states “[l]ifetime imprisonment may be imposed for the most serious crimes, as well as an alternative to the death penalty”.

While executions are no longer carried out and an alternative sanction has been established, Kazakhstan continues to stall in its path of gradual abolition. Civil society and inter-governmental organisations repeatedly call on government officials to take the final steps towards full abolition in law.

III. Legal framework: application of international human rights standards in Kazakhstan

According to Article 4(3) of the Constitution, international instruments ratified by the Republic of Kazakhstan take precedence over national legislation and should be applied directly unless it is necessary to introduce new legislation to take effect. However, Resolution No. 2 of the Constitutional Court of Kazakhstan provides that where an international instrument, or specific provision of that instrument, contradicts national legislation, the international instrument or provision(s) will not be executed.¹⁰

The Constitution requires that all laws and international treaties by which the Republic is bound must be published.¹¹ The official publication of

normative legal acts concerning the rights, freedom and obligations of citizens is a compulsory condition for its application.

Kazakhstan is party to most international human rights instruments relevant to the death penalty.

Kazakhstan ratified the International Covenant on Civil and Political Rights (ICCPR) on 24 January 2006, and the First Optional Protocol to the ICCPR on 20 June 2009, however is not a signatory to the Second Optional Protocol to the ICCPR (aiming at the abolition of the death penalty). Kazakhstan ratified the Convention against Torture (CAT) on 26 August 1998, the Optional Protocol to CAT (OPCAT) on 22 October 2008, and the Convention on the Rights of the Child on 12 August 1994. It is not a state party to the Rome Statute of the International Criminal Court.

In 2006, Kazakhstan joined the European Union (EU) statement on abolition of the death penalty, which became the basis for the United Nations (UN) General Assembly (GA) resolution “On a moratorium on the death penalty”, which was adopted in 2007 under resolution 62/149. The moratorium resolution was reaffirmed in 2008 in UN GA resolution 63/168 and again in 2010 in UN GA resolution 65/206. Kazakhstan repeated its positive voting pattern in each year.

In September 2010, Kazakhstan joined the group of founding members of the International Commission against the Death Penalty (ICDP),¹² by signing a declaration on the establishment and activities of the commission.¹³

There is an ongoing political discussion about the possibility of ratification of the Second Optional Protocol to the ICCPR and about taking the final steps towards abolition of death penalty. Following its Universal Periodic Review in 2010, Kazakhstan agreed to recommendations to work towards

9 2009–2012 National Human Rights Action Plan of the Republic of Kazakhstan, p. 9.

10 Resolution No. 2 “About official interpretation of Article 54(7) of the Constitution of Kazakhstan”, issued by the Constitutional Court of the Republic of Kazakhstan, 18 May 2006.

11 Article 4(4) of the Constitution of the Republic of Kazakhstan.

12 The International Commission against the Death Penalty (ICDP) is an initiative launched by the Spanish Government on 7 October 2010 in Madrid. Its aim is to reinforce the fight against the death penalty. The initiative is supported by 15 countries representing all the regions of the world. Its members are individuals who have a reputable international standing, high moral authority and recognised expertise in human rights, thereby guaranteeing high visibility on the international level. The members do not represent any particular country to ensure complete independence and freedom of action of the Commission.

13 Statement on the constitution of the International Commission against the Death Penalty, Madrid, 7 October 2010, <http://www.icomdp.org/cms/wp-content/uploads/2011/02/Statement-on-the-constitution-of-the-ICDP_71010.pdf>.

abolishing the death penalty in law, and confirmed its intention to continue its policy of gradual abolition.

IV. Legal framework: the death penalty in Kazakhstan

Death penalty applicable crimes

Immediately following independence of Kazakhstan on 16 December 1991, the death penalty was abolished for seven offences: theft, counterfeiting, violations of regulations on foreign exchange operations, banditry, acts to disorganise the work of correctional officers, rape and bribery. This positive approach of progressively reducing the application of the death penalty was followed-up by the introduction of a new Criminal Code on 1 January 1998, which further reduced the scope of application of the death penalty from 34 to 17 crimes.

The constitutional amendments of May 2007 further reduced the number of death penalty applicable crimes from 17 to 2 offences: Article 15(2) of the Constitution provides the death penalty only for 1.) acts of terrorism which result in death, and 2.) for especially grave crimes committed during times of war.

The Criminal Code of the Republic of Kazakhstan contains eighteen articles which specify the offences which fall into the two categories for which the Constitution permits the imposition of the death penalty:

1. Planning, preparation, starting, or waging an aggressive war: Article 156.
2. Application of prohibited means and methods of conducting a war: Article 159.
3. Genocide: Article 160.
4. Employment of mercenaries: Article 162(4).
5. High treason: Article 165.
6. Attempt upon the life of the First President of the Republic of Kazakhstan (leader of the nation): Article 166(1).

7. Attempt upon the life of the President of the Republic of Kazakhstan: Article 167.
8. Subversion: Article 171.
9. Terrorism: Article 233.
10. Promotion of terrorism or public appeals for commission of an act of terrorism: Article 233(1).
11. Disobedience or other non-execution of an order (military): Article 367.
12. Resistance to a superior or coercion of him to violate service duties: Article 368.
13. Violent actions with regard to a superior: Article 369.
14. Desertion: Article 373.
15. Evasion of military service by way of self-mutilation or other method: Article 374.
16. Violation of the rules for being on active duty: Article 375.
17. Abuse of power, exceeding competence or inaction: Article 380.
18. The surrendering or leaving to the enemy of material for waging war: Article 383.

For all these offences the imposition of the death penalty is discretionary. Article 52 of the Penal Code provides that a severe form of punishment should only be imposed if a lesser form of punishment will not fit the purpose. The court will take into consideration the gravity of the offence, the characteristics of the defendant, including his mental state, and other circumstances, when determining which sentence to hand down.

Prohibited categories

Article 49 of the Criminal Code provides that the death penalty cannot be applied to the following categories:

- Persons under 18 years of age at the time the crime was committed.¹⁴
- Women (irrespective of age, pregnancy, whether they have small children or any other characteristic).
- Men who reached the age of sixty-five at the time of sentencing by a court.

¹⁴ Criminal responsibility in Kazakhstan starts at 14 years of age.

Article 16 of the Penal Code also exempts the mentally ill from criminal liability. Article 16 provides that those who cannot understand the real character of the crime and social dangerousness of his actions or could not control himself because of a persistent psychic disease, temporary mental insanity, or other disease or psychic state are exempt from criminal responsibility.

Article 17 of the Penal Code provides that a mental illness which does not reach the threshold of precluding criminal liability can yet be taken into consideration by courts during the sentencing phase as a mitigating circumstance.

If the accused has alleged the possibility of suffering from a mental illness at the time the crime was committed or thereafter, it is the obligation of the prosecuting agency to undertake an expert examination of the defendant. Furthermore, all those accused of an offence for which death penalty or life imprisonment may be imposed must be submitted to an expert examination to identify whether there are any mental health issues.¹⁵

A person established to have suffered from a mental illness during the commission of a crime is not criminally liable, but may be detained under medical enforcement measures.¹⁶

If an accused recovers from a mental illness, he or she may be held criminally responsible and punished if the statute of limitation has not expired.¹⁷

Persons found to be suffering from other serious illnesses which hinder the execution of a prison sentence may also be released by the court, or the penalty may be commuted to a more humane sentence.¹⁸

V. Legal framework: alternative sanctions to the death penalty in Kazakhstan

Life imprisonment as a penalty for serious crimes came into effect in Kazakhstan on 1 January 2004 as an alternative to the death penalty. Article 58(4) of the Penal Code of the Republic of Kazakhstan states “Life imprisonment can be established for felonies and as an alternative to the death penalty”.

Length of life imprisonment

Following the establishment of the moratorium in 2003, the President issued a pardon for all prisoners on death row (31 in total) to have their sentences commuted to a whole life term. However, Article 75(4) of the Penal Code provides that the death penalty is replaced with imprisonment for 25 years, or 30 years for cumulative crimes. This has created a parallel but discriminatory system whereby 31 individuals are serving a whole life sentence, whereas those sentenced to life after the moratorium came into force may be paroled after serving 25 years.

Clarity over the meaning of life imprisonment is further undermined by the lack of specific legislation in the Criminal Code setting out the nature of the penalty and how it should be executed.

According to the Chair of the Constitutional Council, legislation could be amended by Parliament to remove the whole life prison sentence, and make it clear that all ‘life’ prisoners have a right to apply for parole after 25 years.¹⁹

Life sentence applicable crimes

Although life imprisonment has in practice now replaced the death penalty as the ultimate and maximum sentence in Kazakhstan, the range of offences for which life may be imposed seems

¹⁵ Article 244(3–1) of the Code of Criminal Procedure of the Republic of Kazakhstan.

¹⁶ Article 73 of the Penal Code of the Republic of Kazakhstan.

¹⁷ The Supreme Court of Kazakhstan adopted normative act No. 7 (7 April 2002) about “release from penalty due to the illness”, confirmed by Ministry of Justice Decree No. 145 (18 November 2009).

¹⁸ Articles 69 and 75 of the Penal Code of the Republic of Kazakhstan.

¹⁹ PRI interview with the Chair of the Constitutional Council, 25 April 2011, Astana, Kazakhstan.

excessive and often goes beyond the “most serious crimes” principle. This includes life imprisonment for drug-related offences, smuggling, political-related offences, and non-lethal military offences. There is a danger that life imprisonment will increasingly be used for a wide range of criminal offences in the Republic of Kazakhstan if the government does not act to reduce the number of life applicable crimes.

Under the Criminal Code, life imprisonment as a punishment has been provided for in 24 articles:

1. Murder: Article 96.
2. Planning, preparation, starting, or waging an aggressive war: Article 156.
3. Application of prohibited means and methods of conducting a war: Article 159.
4. Genocide: Article 160.
5. Employment of mercenaries: Article 162.
6. High treason: Article 165.
7. Attempt upon the life of the First President of the Republic of Kazakhstan (leader of nation): Article 166(1).
8. Attempt upon the life of the President of the Republic of Kazakhstan: article 167.
9. Diversion: Article 171.
10. Terrorism: Article 233.
11. Smuggling contraband: Article 250.
12. Illegal manufacture, purchase, storage, transportation, sending, or sale of narcotic or psychotropic substances: Article 259.
13. Stealing or extortion of narcotic or psychotropic substances: Article 260.
14. Inclining to the use of narcotic or psychotropic substances: Article 261.
15. An attempt upon the life of a person administering justice or carrying out a preliminary investigation: Article 340.
16. Disorganisation of normal activity of institutions providing for isolation from the society: Article 361.
17. Disobedience or other non-execution of an order: Article 367.
18. Resistance to a superior or coercion of him to violate service duties: Article 368.
19. Violent actions with regard to a superior: Article 369.
20. Desertion: Article 373.
21. Evasion of military service by way of self-mutilation or other method: Article 374.
22. Violation of the rules for being on active duty: Article 375.
23. Abuse of power, exceeding competence or inaction: Article 380.
24. The surrendering or leaving to the enemy of material for waging war: Article 383.

Prohibited categories

The restrictions on the application of life imprisonment are the same as for the death penalty:

- Persons under 18 years of age at time the crime was committed.
- Women.
- Men who reached the age of sixty-five at the time of the passing of a sentence by a court.
- Mentally-ill.

VI. Application of the death penalty/life imprisonment: fair trial procedures

Presumption of innocence

Article 77 of the Constitution guarantees a presumption of innocence. Subsequent criminal legislation underlines that presumption by stating that any doubts of guilt should be considered in favour of the defendant.²⁰ However the presumption of innocence is often undermined in practice.

Criminal procedure requires the agency that carries out the preliminary investigation to identify evidence both for and against the accused. In practice, judicial investigators often only collect evidence of guilt, wrongly expecting the defendant to collect

²⁰ Article 19 of the Code of Criminal Procedure of the Republic of Kazakhstan.

evidence speaking in favour of their innocence or any other evidence on behalf of the accused. As a consequence the body of evidence submitted to the trial judge tends to be weighted in favour of the prosecution and a guilty verdict, with little or no evidence collated on behalf of the accused. As a result, defendants are disadvantaged in defending themselves effectively at trial.

On 11 January 2005, after his visit to Kazakhstan, the Special Rapporteur on the independence of judges and lawyers noted with concern the dominant role prosecutors continue to play in the entire judicial process, which results in a very low number of acquittals, around 1 per cent.²¹ The Special Rapporteur called for legislative changes to reduce prosecutors' dominant role throughout the judicial process and to secure, in both law and practice, a balance between the respective roles of prosecutors, defence lawyers, and judges.²²

Even the 2009–2012 National Human Rights Action Plan concedes that this form of accusatory approach continues to prevail in criminal investigations.²³ In this regard, the National Action Plan recommends raising the legal status of lawyers and entrusting the qualification of lawyers to a bar association rather than by a government agency, and to secure the right of each individual to receive free legal assistance.

All of this points to the systematic underlying problem, that one of the key elements of a fair trial, namely the principle of equality of arms, which requires each party to be given a reasonable opportunity to present his or her case under conditions that do not place him or her at a substantial disadvantage vis-à-vis his opponent,²⁴ is not being upheld for the defence, and the prosecution has an unfair advantage.²⁵

Trial by jury

Article 543 of the Criminal Procedure Code of the Republic of Kazakhstan introduced new provisions on 1 July 2007 for trial by jury for serious crimes, with the death penalty and life applicable crimes falling into this category. A case may now be heard either by a judge, or according to the new code, if the defendant files a motion, by a mixed panel of one judge and a jury of ten lay assessors.

The right to adequate legal assistance

The right to legal counsel is legally guaranteed in Kazakhstan, including a right to legal aid at both the trial and sentencing stage for those accused of a serious crime.²⁶ The right to legal aid is compulsory in certain cases, for example, cases where the defendant is a minor, mentally ill, does not know the language on which the court proceedings will be carried out, or where life imprisonment or the death penalty is a possible sentence.²⁷

However, according to local legal experts, the quality of legal representation in criminal cases remains low. State appointed defence lawyers often have limited experience and expertise and receive shockingly low fees from the state. They do not have a mechanism for gathering evidence; they receive no assistance or funding to undertake investigations necessary for the defence.

Furthermore, the right to receive qualified legal assistance for an appeal is often denied or delayed, infringing the right of the defendant to issue an effective appeal.²⁸

21 Report of Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Mission to Kazakhstan, 11–17 June 2004, U.N. Doc. E/CN.4/2005/60/Add.2, paras. 53 and 70.

22 Ibid, para. 79.

23 National Human Rights Action Plan, supra n. 9, pp. 97, 108.

24 This right means, in principle, the opportunity for the parties to a trial to have knowledge of and comment on all evidence adduced or observations filed, with a view to influencing the court's decision.

25 National Human Rights Action Plan, supra n. 9, p. 108.

26 Articles 26, 28 and 73 of the Code of Criminal Procedure of the Republic of Kazakhstan.

27 Article 71 of the Code of Criminal Procedure of the Republic of Kazakhstan.

28 National Human Rights Action Plan, supra n. 9, p. 97.

Language of the court

Article 19 of the Constitution guarantees a right for defendants to use their native language during the trial process. Article 13 of the Law “On Languages” provides that legal proceedings are in the official language, and, if necessary, proceedings can be held in Russian or another language. The accused therefore has the right to make statements, testify, submit petitions, familiarise themselves with case materials, plead and make their defence in their native language and use the services of an interpreter.²⁹

Open hearings

Under Article 29 of the Code of Criminal Procedure, unless there are specific grounds for holding a closed hearing, the public and representatives of the media are allowed into the courtroom. A closed court procedure can be permitted in cases of juveniles, crimes of a sexual nature, and in other circumstances where necessary to prevent disclosure of information about the private life of those involved, or if required to protect the interests of victims, witnesses or other persons involved.

In practice, however, courtrooms are not always open to the public and it has been alleged that Article 29 of the Code of Criminal Procedure is often abused.

Right to an appeal by a court of higher jurisdiction

Criminal procedural law provides that verdicts become effective 15 days after they have been handed down. During this time both prosecution and the defendant may submit an appeal against the verdict. The defendant can appeal the decision of the court of first instance to the regional appeals court, and then to the Supreme Court.

Right to seek pardon or commutation of the sentence

Article 15(2) of the Constitution provides those sentenced to death with a right to petition for a pardon. The President of the Republic of Kazakhstan has the power to issue a pardon. All individuals sentenced to death are automatically considered for pardon regardless of whether a request has been submitted by the prisoner.³⁰

Persons sentenced to life imprisonment are also eligible to apply for a pardon within one year from the date of entry into force of the sentence (decision) of the court.³¹ All petitions must be submitted in writing by the prisoner, and sent through the administration of the prisoner’s correctional facility. The pardon request must be filed with copies of the original judgement; a submission on the appropriateness of an act of clemency; characteristics of the person requesting pardon; health certificate; any other relevant documents. When considering a pardon, the President may take into consideration the nature and degree of public danger of the crime committed, the person convicted, his behaviour, term of sentence, and other characteristics such as attitude to work and marital status.

Pardon can take on a number of forms: 1) replacing a death sentence with life imprisonment or imprisonment for a term of twenty-five years, or a more lenient punishment; 2) release from further punishment; 3) expunction of the criminal record.

The decision of the President is not subject to appeal.

On 6 December 2007, 31 death row inmates were pardoned and issued with a whole life sentence. The Pardon Commission has not received any requests from lifers since the new sentence was established.³²

²⁹ Article 30 of the Criminal Procedure Code of the Republic of Kazakhstan.

³⁰ Presidential Decree “On the procedure for pardon of citizens by the President of the Republic of Kazakhstan”, of 7 May 1996.

³¹ Presidential Decree No. 140 “On the Commission on Presidential Pardon of Kazakhstan”, of 5 July 2006, paras. 20–24.

³² PRI interview with Deputy Prosecutor General, and with the Head of Deputy Prosecutor for Prisons, 25 April 2011, Astana, Kazakhstan.

VII: Implementation of the death penalty: method of execution

Before the moratorium, the death penalty was executed by shooting.³³ It was carried out in a non-public location, with participation of the public prosecutor, a penal committee representative and a doctor. Where there was more than one execution to be carried out, they were conducted individually.

According to Article 167 of the Criminal Execution Code, relatives were not informed about the date of the execution in advance, but were notified after the execution had taken place. The body of the convicted person was not returned to the relatives, and the place of burial was not disclosed for two years.

The death penalty could not be executed until one year after all appeals had been exhausted.³⁴

VIII. Application of the death penalty: statistics

The last executions in Kazakhstan were carried out on 12 people in 2003.

Following implementation of the official moratorium on executions, and the establishment of life imprisonment, death penalty trials are now virtually non-existent.

The last death sentence was handed down on 31 August 2006. Although Kazakhstan does not publish official statistics on the application of the death penalty, it is known that in 2005, two people were sentenced to death for aggravated murder.³⁵ During the period June 2003 to June 2004, nine death sentences were handed down.³⁶ However, although death sentence trials are virtually non-existent today, there is still the possibility that the courts could sentence someone to death as the official moratorium does not extend to sentencing.

To date, there are no prisoners on death row. The last group of death row prisoners, 31 in total, had

their sentences commuted to whole life in 2007 by Presidential pardon. There remain 29 whole life prisoners (two of which died in custody).

IX. Application of life imprisonment: statistics

As of 15 November 2011, the number of prisoners serving a life sentence in Kazakhstan is 95. This breaks down to 29 whole lifers, and 66 prisoners serving a 25 year term. The average age of lifers is 37–43 years.

All 95 lifers have been sentenced for committing murder pursuant to article 96(2) of the Criminal Code (in conjunction with articles 175 and 88 [intentional destruction or damaging of another's property] of the Criminal Code of the Republic of Kazakhstan).

X. Implementation of the death penalty/life imprisonment: prison regime and conditions

Location of imprisonment for death row and life sentenced prisoners

Persons convicted to life imprisonment (both whole term and fixed term) serve their sentence at Zhytykary Colony (UK161/3) (90 lifers) and in Arkalyk prison (UK161/12) (5 lifers). Both colonies are based in the remote Kostanay region, which is approximately 500 miles from Astana.

At Zhytykary Colony (UK161/3), the whole lifers are separated on one wing of the prison, and the fixed term lifers on another wing.

The colony is approximately 30 miles from the nearest city, and weather conditions (blizzards, extreme cold) sometimes make it inaccessible for employees and other service providers (such as independent doctors)

³³ Article 49 of the Criminal Code of the Republic of Kazakhstan; Article 167 of the Criminal Execution Code of the Republic of Kazakhstan.

³⁴ Article 49 of the Criminal Code of the Republic of Kazakhstan.

³⁵ The Death Penalty in the OSCE Area: Background Paper 2005, OSCE Office for Democratic Institutions and Human Rights (ODIHR), September 2005, p. 21.

³⁶ The Death Penalty in the OSCE Area: Background Paper 2004, OSCE-ODIHR, October 2004, p. 23.

or relatives for visitation. This has implications for essential services, as well as for maintaining social connections with relatives and the community.

Cost of imprisonment

The daily cost of imprisoning one lifer is approximately 1,250 tenge (US\$ 12), which equates to approximately 456,250 tenge (US\$ 4,250) per year.³⁷ For 95 inmates, that equates to US\$403,750 a year.

Prison regime

The Kazakhstan prison system has three different regimes: general, high and strict. Those sentenced to both a whole life term and fixed life term serve their sentences in penal colonies under a “strict” regime separated from other prisoners.³⁸ Prisoners serving a life sentence are subjected to a very harsh regime, and Zhytykary Colony has been called by many detainees “the Guantanamo of Kazakhstan”.³⁹

A prisoner can eventually move from a “strict” regime to a lower security regime after serving at least ten years imprisonment. However the 29 men serving a whole life sentence may never move from the “strict” regime.

Article 122 of the Criminal Execution Code states that those sentenced to life are to be housed in cells, of no more than two people. At the request of the prisoner or in other necessary circumstances such as a threat to the personal safety of other prisoners, a prisoner may be accommodated in solitary confinement. This decision may only be taken by the Head of the Colony.

According to the Deputy Director of the Kostanay branch of the Kazakhstan International Bureau for Human Rights and Rule of Law, and Chairman of the Public Monitoring Commission of the Kostanay

region, “prisoners are held in cells of 3–4 people. The cell is equipped with two bunk beds. During the day beds are tucked ‘in white’ – which means that during the day the convict is unable to lie down on the bed”.

Paragraph 12.1(4) of the Internal Regulations for the colony prohibited the opening and closing of window vents without permission. This restriction was subsequently removed in accordance to the order of the Minister of Justice of 29 December 2005. However, in practice, those sentenced to life are not able to independently open/close vents to access fresh air, because windows are behind bars and inaccessible.

A visit by PRI Board Member and academic, Professor Dirk van Zyl Smit (Nottingham University), to the Zhytykary Colony in April 2011 elicited the following response regarding the regime and conditions of imprisonment:

“They [the lifers] are held for the first ten years of their sentences in what is a form of semi-isolation where they are not allowed to work and, with the exception of contact with prison officials, effectively are allowed only to communicate with the two or three other prisoners in their cells. Time out of the cell is restricted to one and a half hour of exercise a day and even then cellmates are separated from all other prisoners. Exercise is in a small yard and may be further restricted by bad weather. The alternative is a small, cell-sized “gymnasium”, which cannot possibly accommodate more than a small number of prisoners, and is inadequate for the numbers involved. I was told that prisoners are able to read and have access to medical and psychological services. Even so, the regime as a whole is clearly not geared to rehabilitation and is more severe than is necessary merely for maintaining safety and security in an extremely isolated prison colony.”⁴⁰

According to the UN Special Rapporteur on torture, most prisoners perceive being sent to certain penitentiary institutions, such as the Zhytykary Colony

³⁷ See for example, interventions made by Salamatov Eskali Amangeldyevich (Deputy Chair of the Penitentiary Committee of the Ministry of Justice of the Republic of Kazakhstan) at the PRI conference “Partial abolition of the death penalty in Central Asia: how to move the process of death penalty abolition forward”, 26 April 2011, Astana, Kazakhstan.

³⁸ Article 122 of Criminal Execution Code of the Republic of Kazakhstan.

³⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/13/39/Add.3, 16 December 2009, para. 19.

⁴⁰ Visit to colony UK161/3 in Kostanay on 24 April 2011 by Dirk van Zyl Smit, academic at Nottingham University and PRI Board Member.

as a punishment in itself.⁴¹ The Special Rapporteur made specific reference to cases of alleged torture and other cruel, inhuman or degrading treatment or punishment at Zhytykary Colony. In two different cases, the Special Rapporteur reported beatings by police guards with truncheons against inmates, and medical units not paying attention or reacting to those injuries of prisoners.⁴²

Other major concerns regarding the penal regime in Kazakhstan have been highlighted by the Special Rapporteur, including “overly long prison terms”,⁴³ “restrictions on contact with the outside world as punishment”,⁴⁴ and that hierarchy among prisoners “appears to lead to discriminatory practices and, in some cases, to violence.”⁴⁵ A major criticism of the Special Rapporteur was that the penal system was not geared to the social rehabilitation/reintegration of prisoners but to their additional punishment.⁴⁶

The 2010 Universal Periodic Review of Kazakhstan made specific recommendations for reforms to prison conditions, including “to improve the standards and the situation of human rights in prisons”.⁴⁷

Conditions and treatment of detention

Prisoners are allowed to spend money earned in prison on food and other essentials such as soap or newspapers on a monthly basis. Relatives can put money onto the accounts of lifers for them to spend. They may receive one parcel per year.

The prison administration is only obliged to provide prisoners one 200 gram piece of soap per month, and no other personal hygiene items for washing clothes or bedding.

Furthermore, due to limited funds and the rocky conditions in the location of the colony, there is

no central sewage system. Prisoners are therefore required to use plastic buckets in their cells.

Life prisoners are required to wear prison clothing which has specific insignia and strips. In connection with this form of clothing, lifers are sometimes called “striped” as a derogatory term.

Lifers are entitled to two short visitation meetings per year (no more than three hours) with family, religious leaders, or their lawyer. They are allowed a daily walk for one hour per day in a tiny courtyard with walls all around and bars above.⁴⁸

Payphones have recently been installed into the prison; however prisoners are only entitled to use the telephone in exceptional circumstances as agreed by the Head of the Correctional Institution. As explained by the Head of Prison Zhytykary to PRI researchers, exceptional circumstances means “the death of a close person, some emergencies in places where relatives live, natural disasters, etc”.

Access to medical care

According to legislation, lifers cannot be removed from Zhytykary Colony. This means that any medical treatment must be arranged within the correctional facility. To do so, the colony is equipped with prison doctors, and independent doctors are able to visit (according to the administration of the institute, doctors can be at the colony within one hour for emergencies). However, there are concerns that ambulances do not always reach the colony due to the rocky and remote conditions.

There are problems with the treatment of tuberculosis (TB) among life prisoners. 41 of the 95 life prisoners are currently diagnosed with TB. Prisoners who are diagnosed with TB are usually referred for specialist

41 Report of the Special Rapporteur on torture, supra n. 39, para. 45.

42 Ibid, paras. 74 and 113.

43 Ibid, para. 75.

44 Ibid, para. 75.

45 Ibid, summary.

46 Ibid, summary.

47 Report of the Working Group on the Universal Periodic Review: Kazakhstan, 14th session of the Human Rights Council, A/HRC/14/10, 23 March 2010, recommendations 47 (Azerbaijan) and 48 (Slovenia).

48 Report of the Special Rapporteur on torture, supra n. 39, para. 27.

treatment at a prison hospital; however lifers have to be treated at Zhytykary Colony, although it is not a specialist medical institution. The prison is unable to properly equip special rooms, or provide appropriate medical equipment to treat prisoners with TB. In addition, 24 of the life inmates have been diagnosed with other illnesses, and at least 4 have been diagnosed with mental illnesses. Eight lifers have died in Zhytykary Colony (UK161/3). The cause of deaths were myocarditis (1 person), purulent ulcer (1 person), TB (5 persons), and pneumonia (1 person).

Rehabilitation and social reformation programmes

According to the Kazakh Interior Ministry, each person sentenced to life imprisonment will have a sentence plan developed for one year with subsequent correction. The plan reflects all areas of educational work, as well as additional, individual programmes, which include self-education, professional training, treatment of alcoholism and/or drug addiction, maintenance of relationships with family, exercise of religious practice, and literary activity.⁴⁹ However, there are no special rehabilitation programs for persons sentenced to life imprisonment, and there are no current plans to implement such a programme.

Although there are some facilities for self-education at Zhytykary Colony, lifers are not entitled to obtain primary or secondary education, either in the prison or through distance learning. Currently the education level of the 95 lifers is the following: 17 have some but not completed secondary education, 55 have completed secondary education, 13 have secondary-technical education, and 10 have higher education.

There is access to some social and legal studies conducted in the form of lectures through local radio. Unfortunately the remote location of Zhytykary Colony further restricts access to any other rehabilitation services.

Life prisoners are entitled to use the general library of the colony. In addition, newspapers and magazines can be provided if the prisoner has the appropriate

funds on his prison account. According to the Head of the Colony, almost all cells have been equipped with a television and with access to local and regional radio.

The prisoners at Zhytykary Colony are also unable to work. In recent months, the administration has attempted to organise some kind of work for the prisoners by providing space for sewing machines and facilities for the manufacturer of brushes, however due to a lack of space, the work area had to be converted into cells. This has a negative impact on lifers, denying them the opportunity to earn any money, to learn a new skill, or keep busy.

Conditions for parole

Article 70(5) of the Penal Code provides that “a person who is serving a court appointed term of life imprisonment may be released on parole if the court finds that it needs no further serving of this punishment, and in fact has served not less than twenty-five years in prison.”

Article 70(8) of the Criminal Code prohibits parole for those who serving a life sentence following a pardon of the death penalty.

It is the court and not a parole board that makes the decision on early conditional release.

To date, there are no persons who have yet served the minimum term of 25 years, and so no practice has been developed yet as to dealing with such applications. The first lifers will not be able to apply for parole until 2025 at the earliest.

Prison staff and management

Most correctional facilities are located outside the main regional centres and cities in Kazakhstan, which leads to difficulties in the quality of employees. The ability to recruit appropriate prison staff with the requisite skills and experience is also undermined by low wages (on average about 32 thousand tenge / US\$200 per month), and a lack of career development.

⁴⁹ Various interventions made at the PRI conference “Partial abolition of the death penalty in Central Asia: how to move the process of death penalty abolition forward”, 26 April 2011, Astana, Kazakhstan.

According to government officials, law enforcement and prison administration officials regularly undergo training and career development programmes, including international human rights standards and laws.⁵⁰

Monitoring prisons

On 25 September 2007, Kazakhstan signed and ratified the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT); undertaking to establish a national preventive mechanism (NPM) for the monitoring of prisons.

Under its Universal Periodic Review in 2010, recommendations were made to Kazakhstan to establish an effective complaint mechanism for victims of torture, and to carry out independent investigations into cases of violence in prisons.⁵¹

For prison facilities, Kazakhstan already has some monitoring mechanism in place through the Commissioner for Human Rights, and the Public Monitoring Commission (PMC) established in all regions of Kazakhstan. The implementation of OPCAT through the designation of an NPM for all places where persons are deprived of their liberty has not yet been finalised. A law on the establishment of an NPM has been drafted and will be submitted to Parliament in the first quarter of 2012.

XI. Transparency and accountability

The collection of statistical information on the number and characteristics of those serving a death sentence or life imprisonment falls under the responsibility of the Committee on Legal Statistics and Special Accounts of the General Prosecutor's office of the Republic of Kazakhstan. However, statistics are not published.

Data published in this study was obtained from the Committee of the Correctional System of Kazakhstan

of the Ministry of the Interior and the Committee on Legal Statistics and Special Accounts of the General Prosecutor office, at the request of PRI, or through non-official means such as news articles, information received at conferences etc. (see Research Methodology above).

XII. Current reform processes in the criminal justice

Kazakhstan is in the process of reviewing its penal policy, and in January 2011, the law of humanisation was adopted, which aimed to take a step-by-step approach towards humanising the Criminal Code over a ten-year period (2010 to 2020). According to government representatives, this will include decriminalising specific articles of the Criminal Code, simplifying investigative procedures, and strengthening safeguards against unwarranted prosecution.⁵²

However, despite this reformist attitude, the criminal justice system still retains a punitive characteristic. The Criminal Code is more stringent than in the Soviet period and maximum sentences of imprisonment have significantly increased, for example from imprisonment of 15 years under Soviet times, to 25 years (and 30 years for cumulative sentences). Also, life imprisonment without parole has been introduced as an alternative to the death penalty.

On 26 July 2011, Presidential Decree "On the Penitentiary System," announced that the prison system authority for the penitentiary system would be transferred from the Penal Committee within the Ministry of Justice back to the Ministry of the Interior. This transfer will undermine positive steps Kazakhstan took in 2001 when it implemented a recommendation by the UN Committee against Torture to transfer authority to the Ministry of Justice. The 2001 transfer was considered one of the main achievements of legal reform at that time as it permitted the demilitarisation of the penitentiary system."⁵³

50 National report to the Universal Periodic Review, supra n. 5, para. 52

51 See for example, Report of the Working Group on the Universal Periodic Review, supra n. 47, recommendations 48 (Slovenia) and 64 (Czech Republic).

52 National report to the Universal Periodic Review, supra n. 5, para. 40.

53 Concluding observations of the Committee against Torture: Kazakhstan, A/56/44, 17 May 2007, para. 129(h).

Since then, Kazakhstan has focused on strengthening the capacity of state services and civil society, aiming at a modern, civilian, efficient and human rights compliant penal system with a focus on the rehabilitation of inmates.

As a result, the prison population has noticeably decreased, with Kazakhstan moving from 3rd place in 2001⁵⁴ (as assessed by the World Prison Brief prepared by the International Centre for Prison Studies), to 29th place in 2011.⁵⁵

Public control over prisons has been enhanced, and significant progress has also been made with regard to dealing with the problem of tuberculosis in prisons.

However, there are serious concerns that the 2011 transfer of the penitentiary system from the Ministry of Justice back to the Ministry of Interior will undermine these recent reforms. Prison management requires skills very distinct from those of policing, and experience across the globe has confirmed that rehabilitation of offenders, highly relevant as to the prevention of reoffending, has a far higher prospect of success if allocated to judicial authorities rather than police. Moreover, the separation of the functions of investigation and prosecution on the one side, and of execution and supervision of criminal sanctions on the other side, has proven to be the far superior division of tasks between government entities.

In many countries best practice is for penal services to be either under the Ministry of Justice or set up as independent agencies. Where this is not the case, the unequivocal trend is to initiate a transfer of authority from Ministries of Interior to Ministries of Justice, rather than the other way round.

XIII. Abolitionist movement in country

Civil society has played a vital role in pushing for reforms in the criminal justice and penal systems in Kazakhstan. Along with PRI, Charter for Human Rights, the Kazakhstan International Bureau for Human Rights and Rule of Law, and other NGOs

such Saugu, Taraz Initiative Center, Ray of Hope, Committee for Monitoring Reform and Human Rights, the International Fund for freedom of Speech, and Adil Soz have been advocating consistently for reforms.

The donor community has been sympathetic towards this work in Kazakhstan; the UK Foreign & Commonwealth Office, the Open Society Institute, the government of the Netherlands, the Organization for Security and Co-operation in Europe, the UN Office on Drugs and Crime, and the European Commission being the main donors and supporters of penal reform activities in Kazakhstan.

As part of PRI's programme of work in Kazakhstan, a number of key events and initiatives have taken place. This has included training prison officials, NGOs and journalists on international standards for the treatment and the rights of those who face life imprisonment.

A national conference focusing on reform challenges for life imprisonment was held in Kazakhstan on 19 November 2010 with the participation from both government representatives and civil society. One of the key outcomes of the national conference was the agreement of a 12-point plan setting out recommendations for a reform process (see Annex I).

A regional conference entitled "Partial abolition in Central Asia: how to move the process of death penalty abolition forward" brought together participants from Kazakhstan, Kyrgyzstan and Tajikistan was convened in Astana, Kazakhstan on 26 April 2011. Participants agreed 26 recommendations to take the abolition process forward across the Central Asia region (see Annex III).

Continued advocacy efforts at the national and regional (through the EU and the OSCE) level have continued to push for reforms in the penal and criminal justice systems.

54 540 people imprisoned per 100,000 of the population of the Republic of Kazakhstan.

55 323 people imprisoned per 100,000 of the population of the Republic of Kazakhstan.

XIV. Recommendations to the Republic of Kazakhstan

1. Fully abolish in law the death penalty by eliminating it as a form of punishment from the 18 articles in the Criminal Code as a first step, and subsequently from Article 15(2) of the Constitution, thereby guaranteeing an unqualified right to life. Kazakhstan should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. As an interim measure, the moratorium should be broadened to include sentencing (and not just a moratorium on executions).
2. Draft and adopt a strategy to reform the penal system with a clear vision that makes specific reference to reforming life imprisonment which is consistent with international human rights standards and norms. Organise a public discussion on the strategy, with participation of all interested parts of civil society.
3. End the discriminatory practice which prohibits parole for those prisoners whose death penalty was replaced by life imprisonment under article 70(8) of the Kazakhstan Penal Code. All life sentenced prisoners in Kazakhstan should have a realistic right of parole. Ensure that such release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review. Remove all references in the criminal justice system of a whole life term of imprisonment.
4. Shorten the minimum length of term which a life sentenced prisoner must serve before being able to apply for parole (currently 25 years). According to the UN Crime Prevention and Criminal Justice Branch's 1994 report 'Life Imprisonment', all prisoners sentenced to life should have their suitability for release reviewed after serving between 8 to 12 years of incarceration.
5. Humanise the system of punishment by reducing the number of crimes (currently 24) for which life imprisonment may be prescribed, and limit these cases to only the most serious crimes (at a minimum abolish life imprisonment for drug-related offences, smuggling, political-related offences, and non-violent military offences).
6. Reform the system of legal aid in Kazakhstan to ensure that indigent defendants can obtain free legal assistance at all stages of the case: pre-trial, trial, appellate, pardon and parole stage. At the same time, ensure all legal aid lawyers are independent of the state, adequately paid, and have the same rights of investigation and evidence-gathering as the prosecutor. Introduce an obligation that all criminal defence lawyers owe a duty of care towards their client and not the state.
7. Uphold the independence and integrity of the judiciary; ensure judges are well trained, paid an appropriate salary, and have security of tenure.
8. Establish an effective mechanism of investigating reports of torture and/or inhuman or degrading treatment or punishment, and hold perpetrators to account. Ensure that confessions and any other evidence obtained through torture, inhuman or degrading treatment or punishment is inadmissible in a court, except against a person accused of torture as evidence that the statement was made (Article 15 CAT).
9. Amend the Code for Execution of Punishment in Kazakhstan so that it is in accordance with the UN Standards Minimum Rules for the Treatment of Prisoners, and other international human rights standards and norms.
10. Reform the penitentiary system of Kazakhstan so that the automatic allocation of life sentenced prisoners to a high security regime and replace it by a case-by-case assessment of the adequate type of prison regime for each individual prisoner (including dangerousness towards prison staff, other prisoners and any other members of society they may come in contact with). This individual assessment of each prisoner should be undertaken by an independent special commission under the prison system, and include various practitioners such as doctors and psychologists.
11. Eliminate discriminatory practices and regulations applicable to life sentenced prisoners. This should include lifting the requirement that life prisoners wear a special uniform, increasing contact of life prisoners with the outside world, and increasing their opportunity to use funds on their accounts.

-
12. End the practice of solitary confinement for those serving a life sentence merely by virtue of their sentence.
 13. Ensure that prison conditions of life sentenced prisoners approximate as closely as possible the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration. This should include the possibility to study, to work, to have contact with the outside world, and to receive medical treatment (in particular for prisoners suffering with tuberculosis).
 14. Develop and implement medical and non-medical measures to support and rehabilitate those prisoners suffering from a mental illness, specifically those individuals who have been a victim of torture or inhuman or degrading treatment or punishment.
 15. Introduce a system of progressive transfer of prisoners from high security, to medium security, to open prisons, depending on their behaviour and genuine dangerousness towards staff and other prisoners, with the aim of eventual release back into society.
 16. Improve the pardon procedure and system of early review of life sentences. Ensure that judges who have the responsibility to review pardon applications are specialised penal judges, with experience of dealing with such cases and are effectively trained.
 17. Simplify parole procedures, in particular by establishing a system of direct appeal for life sentenced prisoners to apply to a judge following refusal of a parole application. In circumstances where parole is refused, there should be a system to permit an application of parole to be reconsidered at regular, not too widely spaced intervals.
 18. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff is appropriately trained in international human rights standards.
 19. Halt the retrogressive transfer of authority of the prison service from the Ministry of Justice to the Ministry of the Interior, and continue to expand on the process of modernisation and professionalization of the penal system.
 20. Adopt the draft Bill on a National Preventative Mechanism (NPM), and ensure that the new NPM is independent, competent to monitor all places where persons are deprived of their liberty, and is well resourced and financed to ensure effectiveness.
 21. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence and place of sentence. Declassify the regulations and orders related to the rights of life sentenced prisoners. Publish historical information on the application of the death penalty.
 22. Establish a mechanism at the national level in Kazakhstan to implement recommendations and views of the UN Committee on Human Rights and other UN Treaty Bodies.
 23. Co-sponsor and vote in favour of the upcoming fourth UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
 24. Become a state party to the Rome Statute of the International Criminal Court.
 25. Encourage further collaboration between government officials and civil society, including journalists, on criminal justice issues, and protect the rights of human rights defenders.
 26. Encourage relevant international organisations and donor states in a position to do so, to promote and support criminal justice reforms within Kazakhstan at both the financial and political level.
-

Republic of Kyrgyzstan

I. Basic country information

Geographical region: Kyrgyzstan is located in Central Asia, near to the Pamir-Altai and Tian-Shan mountain ranges. It is a landlocked country, covering a territory of 199,900 km². It borders Kazakhstan, Tajikistan, Uzbekistan and China. The capital is Bishkek.

Type of government: According to Article 1 of the Constitution, Kyrgyzstan is defined as a sovereign, unitary, democratic state. The executive branch includes a president and a prime minister.

Language: The state language is Kyrgyz. Russian may also be used in an official capacity.

Population: The Republic of Kyrgyzstan has a population of approximately 5.3 million people. Its ethnic group is made up of mainly Kyrgyz, Russian and Uzbek.

Religion: Kyrgyzstan is a secular state. Islam is the religion of approximately more than 80 percent of the population, and Russian Orthodox makes up the majority of the remainder.

II. Overview of the status of the death penalty in Kyrgyzstan

Kyrgyzstan is abolitionist in law for all crimes.

Following its independence from the Soviet Union in 1991, the Constitution of the Kyrgyz Republic provided that the death penalty may be used in exceptional cases.⁵⁶ However on 8 December 1998 an official moratorium on executions was declared by the President⁵⁷ launching Kyrgyzstan's gradual policy

towards abolition, which would be fully realised in July 2007.

In its initial report to the UN Human Rights Committee's in July 2000, the Kyrgyz delegation referred to a growing trend within Kyrgyz society in favour of abolishing the death penalty.⁵⁸

The 1998 moratorium on executions was extended on an annual basis four times, until the President declared on 29 December 2005 that there would be an indefinite moratorium until the death penalty was completely abolished by a legislative process.⁵⁹ The same decree instructed the government of Kyrgyzstan to draft relevant legislation to abolish the death penalty by 30 June 2005.⁶⁰

One of the key steps taken by the government in its gradual policy towards abolition was the reduction in the number of death penalty applicable crimes. On 23 March 2004, the President signed into law amendments to the Criminal Code of the Kyrgyz Republic, which abolished three death penalty applicable crimes: 1.) Attempts upon the life of a state or public official; 2.) Attempt upon the life of a person administering justice or conducting an investigation; 3.) Attempt upon the life of a law enforcement officer.⁶¹

The death penalty was subsequently retained for: murder,⁶² rape of a female minor⁶³ and genocide.⁶⁴

Draft amendments to the Constitution of the Kyrgyz Republic proposing to abolish the death penalty were approved by the Constitutional Council of Kyrgyzstan on 9 June 2005.⁶⁵ On 25 June 2007, the President signed into law amendments and additions to the Criminal Code of the Kyrgyz Republic and other laws, which abolished the death penalty and

⁵⁶ Article 18 of the Constitution of the Kyrgyz Republic, 5 May 1993.

⁵⁷ OSCE Background Paper 2005, supra n. 35, p. 24.

⁵⁸ Concluding Observations of the Human Rights Committee, CCPR/CO/69/KGZ, 24 July 2000, Para. 8.

⁵⁹ Presidential Decree No. 667 "On the extension of a moratorium on executions in the Kyrgyz Republic", 29 November 2005.

⁶⁰ Presidential Decree No. 4 "On prolongation of the term of the moratorium on execution of the death penalty in the Kyrgyz Republic", 10 January 2005.

⁶¹ Law No. 46 "On amending the Criminal Code of the Kyrgyz Republic", 23 March 2004.

⁶² Article 97(2) of the Criminal Code of the Kyrgyz Republic, 1 October 1997.

⁶³ Ibid, Article 129(4).

⁶⁴ Ibid, Article 373.

⁶⁵ OSCE Background Paper 2005, supra n. 35, p. 23.

replaced it with a sentence of life imprisonment as the alternative sanction.⁶⁶ Following abolition, the Kyrgyzstan parliament (the ‘Zhogorku Kenesh’) adopted a package of laws on the humanisation of criminal legislation and its regulations, including those concerning the right to life.

The new Constitution of the Kyrgyz Republic, which guarantees the inalienable right to life and prohibited the death penalty,⁶⁷ was approved by public referendum on 27 June 2010.

On 6 December 2010, Kyrgyzstan took the final step on its abolitionist process, and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights (aiming at abolition of the death penalty). In less than 20 years after gaining its independence, the Kyrgyz Republic went from executioner to a protector of the inalienable right to life.

III. Legal framework: international human rights standards in Kyrgyzstan

International treaties and agreements entered into legal force in accordance with the Constitution, as well as generally recognised principles and rules of international law, are an integral part of the legal system of the Kyrgyz Republic.⁶⁸

In the event of a conflict of an international treaty or agreement, national law takes precedence. Kyrgyz law requires national law to be amended, rather than the direct applicability of international law.

Kyrgyzstan is party to most international human rights instruments relevant to the death penalty.

Kyrgyzstan acceded to the International Covenant on Civil and Political Rights (ICCPR) and to the First Optional Protocol to the ICCPR on 7 October 1994.

Kyrgyzstan was the third country in Central Asia to accede to the Second Optional Protocol to the ICCPR on 6 December 2010 (Turkmenistan and Uzbekistan having acceded on 11 January 2000 and 23 December 2008, respectively). Kyrgyzstan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 5 September 1997 and the Optional Protocol to CAT (OPCAT) on 29 December 2008. It also acceded to the Convention on the Rights of the Child on 7 October 1994. It is not a state party to the Rome Statute of the International Criminal Court.

In 2007, Kyrgyzstan voted in favour of the United Nations General Assembly (UN GA) resolution 62/149 “On a moratorium on the death penalty.” The resolution was reaffirmed in 2008 by UN GA resolution 63/168, and again in 2010 by UN GA resolution 65/206. The Kyrgyz Republic voted in favour of both these subsequent resolutions, and co-sponsored the 2008 and 2010 resolutions.

IV. Legal framework: the death penalty in Kyrgyzstan

Death penalty applicable crimes

Prior to abolition in 2005, the Criminal Code of the Kyrgyz Republic had three death penalty applicable crimes:

1. Aggravated murder: Article 97(2).
2. Child molestation: Article 129(4).
3. Genocide: Article 373.

All sentences were at the courts’ discretion, and not mandatorily applied.

⁶⁶ Law No. 91 of the Kyrgyz Republic, 25 June 2007, “On Amendments to the Criminal Code of the Kyrgyz Republic, the Criminal Procedure Code, the Code of Administrative Liability, Penal Code of the Kyrgyz Republic, the Laws of the Kyrgyz Republic, On the Supreme Court of the Kyrgyz Republic and local courts, On the Prosecutor of the Kyrgyz Republic, On the procedure and conditions of detention of persons detained on suspicion and charges of committing crimes, On general principles of amnesty and pardon, On introduction of the Criminal Procedure Code of the Kyrgyz Republic, and On the introduction of the Criminal Code of the Kyrgyz Republic”.

⁶⁷ Article 21 of the Constitution of the Kyrgyz Republic.

⁶⁸ See Article 6 of the Constitution of the Kyrgyz Republic, and Preamble of Law No. 89 “On International treaties of the Kyrgyz Republic”, 21 July 1999.

Prohibited categories

In accordance with Article 50(2) of the Criminal Code of the Kyrgyz Republic, the death penalty was not applied to:

- Persons under 18 years of age at the time the crime was committed.
- Women (irrespective of age, pregnancy, small children etc).
- Men who had reached the age of 60 at the time of the passing of a sentence by a court.

Article 19 of the Criminal Code of the Kyrgyz Republic provides that an individual who suffers from chronic mental illness, temporary mental disorder, dementia or other mental condition during the commission of a crime shall not be held criminally responsible. The individual may, however, be liable for compulsory medical measures.

Where an individual was unfit to plead at the time of the commission of the crime, but suffers some other mental disorder, he is criminally liable, however the mental disorder shall be taken into consideration by the court at the time of sentencing.

Compulsory treatment in an institution with close supervision may be administered by the court in response to individuals who, for their mental state and the nature of the socially dangerous acts, pose a particular danger to society and are in need of hospitalisation and treatment.⁶⁹

V. Legal framework: alternative sanctions to the death penalty in Kyrgyzstan

On 25 June 2007, the President signed into law amendments to the Criminal Code, which replaced the death penalty with life imprisonment. Accordingly, life imprisonment is now the most severe punishment in Kyrgyzstan.

Length of life imprisonment

Life imprisonment in Kyrgyzstan means a whole life sentence without the possibility of parole. However in some circumstances life imprisonment can be commuted to 30 years imprisonment.

Life sentence applicable crimes

Under the Criminal Code of the Kyrgyz Republic, there are six crimes where life imprisonment as a punishment has been provided for:

1. Aggravated murder: Article 97(2).
2. Child molestation with grave consequences: Article 129(4). The child is considered to be a “girl under the age of fourteen years”. Grave consequences are understood as the following: where the victim subsequently attempts or commits suicide; where the victim suffers mental illness; where the victim suffers a severe medical condition (such as ectopic pregnancy, loss of ability to bear children, loss of ability to engage in sexual activity); where the perpetrator infects the victim with HIV; where the perpetrator inflicts serious bodily harm on the victim resulting in their death.
3. Murder of a state official or public person: Article 294.
4. Murder of a person administering justice or carrying out an investigation (this may include a police officer): Article 319.
5. Murder of a law enforcement person or military officer: Article 340
6. Genocide: Article 373.

Prohibited categories

The restrictions on the application of life imprisonment are the same as for the death penalty:

⁶⁹ Law No. 177 “On implementation of compulsory and other measures of medical nature in respect of individuals with mental disorders who committed socially dangerous acts”, approved by order of the Ministry of Health of the Kyrgyz Republic, 29 April 2002, registered in the Ministry of Justice of the Kyrgyz Republic, 23 May 2002 (registration number 74–02).

- Persons under 18 years of age at the time the crime was committed.⁷⁰
- Women (irrespective of age, pregnancy, small children etc).⁷¹
- Men who reached the age of 60 at the time of the passing of a sentence by a court.⁷²
- Those suffering from mental illness, temporary mental disorder, dementia or other mental condition.⁷³

VI: Application of the death penalty/life imprisonment: fair trial procedures

Kyrgyz law guarantees the judicial protection of rights and freedoms at every stage of the proceedings.⁷⁴ This includes the legal guarantee that courts have sole responsibility for handing down a sentence of imprisonment: “No one shall be found guilty of having committed a crime; no criminal penalty shall be imposed unless there is such a verdict of the court.”⁷⁵

Presumption of innocence

The presumption of innocence is legally guaranteed by the Criminal Procedure Code of the Kyrgyz Republic.⁷⁶ In practice, however, this right is not always respected. The judicial system, which dates back to the times of the Soviet Union, does not carry out thorough investigations and often the focus of the pre-trial investigation is to collect evidence sufficient to show guilt and not innocence.

Many judges, prosecutors and investigators are wary of appearing corrupt in the eyes of the public in case of acquittal, and so routinely push for and uphold a guilty verdict. Acquittal rates in Kyrgyzstan are extremely low, with very few defendants being found innocent.⁷⁷

Trial by jury

Trial by jury was established by legislation in 2007; however it has not been implemented in practice.⁷⁸ Criminal trials are currently conducted by one judge; in appeal cases by three judges.

The right to adequate legal assistance

Kyrgyz law guarantees that all persons arrested or charged with a criminal offence have the right to a legal defence.⁷⁹ This includes the right to:⁸⁰

1. Collect evidence in favour of the accused, and/or use a private detective agency.
2. Receive witness statements and make an examination of the crime scene/s.
3. Present evidence and participate at the indictment and during all court and any other judicial proceedings.
4. Examine the suspect/s, defendant/s, witness/es and any others involved.
5. Communicate with the defendant in private without restrictions.
6. Receive all case material including evidence of guilt and innocence, and any protocols on

70 Article 50(2) of the Criminal Code of the Kyrgyz Republic.

71 Ibid.

72 Ibid.

73 Article 19 of the Criminal Code of the Kyrgyz Republic.

74 Article 9(1) of the Criminal Procedure Code of the Kyrgyz Republic.

75 Ibid, Article 7(2)

76 Ibid, Article 15.

77 The watershed between past and present: The right to life in Kyrgyzstan, Citizens against Corruption, Bishkek, 2011, p. 7.

78 Article 7 of the Criminal Procedure Code of the Kyrgyz Republic.

79 Ibid, Article 20.

80 Ibid, Article 48(3).

investigative actions, court rulings, rulings on the application of preventive measures, protocols on detention, and all other relevant documents from the prosecution through disclosure.

7. To make copies of all case materials.
8. To use any means and methods of defence consonant to the laws of the Kyrgyz Republic.

By law the accused has the right to consult with their defence lawyer immediately upon arrest in private and without limitations of time and number of such meetings.⁸¹ However, in practice the first meeting often does not happen until trial, or they are unable to meet in private.⁸²

In September 2011, the UN Human Rights Committee found that Kyrgyzstan had violated article 14 of the ICCPR after sentencing an individual to death following an unfair trial. The Committee made specific reference to the right of everyone to communicate with counsel as guaranteed by article 14 of the ICCPR, and that the accused must be granted prompt access to counsel (General Comment No. 32, para. 34). The Committee found a direct violation because the claimant was refused legal assistance, was interrogated on several occasions in the absence of a lawyer, and the defence lawyer was refused copies of the Prosecutor's Office applications to the Supreme Court and therefore was deprived of the right to raise any objections in relation to those submissions.⁸³

Indigent defendants are entitled to legal assistance at the state's expense.⁸⁴ However payment of a public defender is alarmingly low: approximately 120 Kyrgyz Soms per working day (approximately US\$2.50 per day).

According to *Human Rights Watch*, lack of proper legal representation by state-appointed defenders is a common problem:

"One of the main problems is the use of 'pocket lawyers'. No investigator wants a normal lawyer to work on the case because a normal lawyer will break his case. ... Every investigator therefore has his 'pocket lawyer'. This lawyer is present during the detention, during the first interrogation. ... The problem is that the pocket lawyer agrees with the accusations. He does not bring forth arguments in favor of his client. He is very passive. He is just an observer. He just sits there and signs documents."⁸⁵

Independence of the judiciary

The independence of the judiciary is legally guaranteed by the Constitution of the Kyrgyz Republic,⁸⁶ and any interference in the work of judges in the administration of justice is prohibited and punishable by law.⁸⁷

However the independence of the judiciary is undermined by very low salaries and the lack of tenure for judges. The Executive is able to appoint and dismiss judges, which means that citizens, including lawyers, commonly believe judges to be open to bribes or susceptible to political pressure resulting in innocent people being found guilty.

On 30 December 2005, after his visit to Kyrgyzstan, the Special Rapporteur on the independence of judges and lawyers welcomed reforms related to the administration of the justice sector in Kyrgyzstan, but expressed concerns in a number of areas. In particular, he noted that prosecutors played a dominant, including a supervisory, role in the administration of justice and exerted a

81 Ibid, Article 48(3)(6).

82 See for example cases listed in *Distorted Justice: Kyrgyzstan's Flawed Investigations and Trials of the June 2010 Violence*, Human Rights Watch, June 2011, p. 25–26.

83 Para 6.3, *Gunan v. Kyrgyzstan*, 1 September 2011, CCPR/C/102/D/1545/2007.

84 Articles 45(5) and 46 of the Criminal Procedure Code of the Kyrgyz Republic.

85 Human Rights Watch interview with a lawyer, Osh, 10 October 2010, in *Distorted Justice*, supra n. 82, p. 26.

86 Article 77(1) of the Constitution of the Kyrgyz Republic.

87 Ibid, Article 77(2).

disproportionate amount of influence over the pre-trial and trial stages of judicial proceedings. He noted that higher-level prosecutors had the executive power to instigate a supervisory review once a case had been closed. He concluded that the procedures related to the appointment, length of tenure, and dismissal of judges prevented the judiciary from operating in a fully independent manner. He also noted the failure to implement the principle of equality of arms. Widespread corruption among the judiciary was also pointed out.⁸⁸

Admission of evidence

Kyrgyz law provides that judges are obliged to examine and assess testimony, including confessions, together with other evidence in the case, which is interpreted to mean that confessions cannot be the sole basis for a conviction.⁸⁹

Evidence, including statements and confessions, obtained in violation of the Criminal Procedure Law is inadmissible and cannot be used as evidence.⁹⁰ This means that evidence obtained by torture and all other forms of cruel, inhuman, and degrading treatment and punishment, as prohibited by the Constitution,⁹¹ are inadmissible in court.

However, there have been serious allegations that court decisions involving life imprisonment have been based on evidence obtained under torture. In a number of cases, judges generally failed to critically assess allegations that defendants had submitted stating that confessions and statements were extracted under torture and ill-treatment. According to *Citizens against Corruption*, who carried out an examination of life-sentenced prisoners in January 2010, 28 cases (out of 91 cases analysed) made allegations that torture was used on them to obtain a confession. Examples of torture methods include

being forced to put on a gas mask or plastic bag effectively restricting the oxygen supply, as well as other methods that leave no visible injuries.

According to *Human Rights Watch*, in the cases following the June 2010 violence, judges either ignored allegations or completely dismissed them without further investigation and accepted confessions which defendants alleged were coerced by torture.⁹² Judges commonly justified dismissing torture allegations by pointing to the defendants' failure to complain about the torture or ill-treatment during the investigation stage.

*“On 15 September 2010, a Jalalabad court sentenced human rights activist Azimjon Askarov to life imprisonment, following alleged killing of a police officer and inciting ethnic hatred. On 10 November 2010 an appeals court upheld the sentence. Human rights organisations reported that Askarov was tortured while in custody and that trial sessions were marked by threats and abuse against the defendant and assaults against his attorney. At year’s end authorities had moved Askarov to a prison hospital in Bishkek, and the Supreme Court had agreed to hear an appeal of the case.”*⁹³

*“On 29 October 2010, a court sentenced five ethnic Uzbeks to life in prison and four others to various terms for killing a local police chief and his driver during the ethnic clashes in June. The trial process had significant shortcomings, including threats and abuse in the courtroom against defendants and their attorneys. The defendants claimed that they had confessed under torture and appealed their sentences. On 27 December 2010, the judge upheld the original sentences.”*⁹⁴

88 Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, Addendum, Mission to Kyrgyzstan, U.N. Doc. E/CN.4/2006/52/Add.3, 30 December 2005.

89 Article 83(5) of the Criminal Procedure Code of the Kyrgyz Republic.

90 Ibid, Article 81(3).

91 Article 22 of the Constitution of the Kyrgyz Republic; see also Article 305(1) of the Criminal Code of the Kyrgyz Republic.

92 *Distorted Justice*, supra. n. 82, p. 34.

93 2010 Human Rights Report: Kyrgyz Republic, US Department of State, Bureau of Democracy Human Rights and Labor, 8 April 2011.

94 Ibid.

95 Article 23(1) of the Criminal Procedure Code of the Kyrgyz Republic.

Language of the courts

Court proceedings can be conducted in the national (Kyrgyz) or official (Russian) language.⁹⁵

Individuals involved in a case who do not speak the language of the proceedings have the right to make statements, testify, to put forward motions, familiarise themselves with case materials, and appear in court in their native language with the assistance of an interpreter at the state's expense.⁹⁶ Copies of the decision to prosecute and the sentence (ruling, decision) must also be given to the defendant translated into their native language.⁹⁷

Open hearings

Courtrooms are open to the public, except where the publicity of the hearing would contradict the interests of protecting state, military or commercial secrets, or where it is needed to protect the security of victims or witnesses.⁹⁸

Right to appeal by a court of higher jurisdiction

Defendants and prosecutors have the right to appeal the court's decision.⁹⁹ Sentences of district (city) courts may be appealed to the regional or Bishkek court. Appeals must be lodged within ten days of the date of announcement of the sentence, and the appeal must be considered within thirty days of receipt. Appeals are considered by a panel of three judges. Sentences of the regional or Bishkek Court may then subsequently be appealed to the Supreme Court, which is the highest court in Kyrgyzstan.

Right to seek pardon or commutation of the sentence

Prior to abolition, the Constitution gave the President the authority to grant clemency and provided that all individuals sentenced to death have the right to seek clemency.¹⁰⁰ Those sentenced to death were automatically considered for pardon by the Presidential Clemency Commission, regardless of whether the sentenced person had submitted an appeal for clemency or not.¹⁰¹

Although official statistics on clemencies granted by the President are not provided, according to the OSCE Office for Democratic Institutions and Human Rights (ODIHR), during the period 30 June 2005 to 30 June 2006, seven death sentences were commuted to prison terms;¹⁰² and during 30 June 2004 to 30 June 2005, two death sentences were commuted to prison terms.¹⁰³

Following abolition in 2007, the Supreme Court reviewed the cases of the final 133 prisoners on death row and automatically commuted their sentences to life imprisonment without any consideration of the merits of the case or the characteristics of the inmate.¹⁰⁴

Anyone sentenced to life imprisonment also has a right to petition for a pardon. The petition must be addressed to the President and be submitted within ten days after the final verdict has been issued by the Supreme Court and entered into force. In the petition, the inmate is required to confess and repent for their crime. Applications are first reviewed by a Clemency Commission, which is made up of seven members. The final decision, based on the findings of the Commission, can only be taken by the President. If the prisoner receives a negative response to their petition, he may file a new petition only after serving ten years imprisonment. If he receives a positive answer, Article 50 of the Criminal Code provides that

⁹⁶ *Ibid*, Article 23(2).

⁹⁷ *Ibid*, Article 23(3).

⁹⁸ *Ibid*, Article 254.

⁹⁹ Article 16 of the Constitution of the Kyrgyz Republic.

¹⁰⁰ *Ibid*, Article 18(4) and Article 46.

¹⁰¹ Law "On general principles of amnesty and clemency" and Presidential Decree No. 100 on "Regulations on the procedure for providing pardon in the Kyrgyz Republic", 13 April 1995.

¹⁰² The Death Penalty in the OSCE Area: Background Paper 2006, OSCE-ODIHR, October 2006, p. 62.

¹⁰³ OSCE Background Paper 2005, *supra* n. 35, p. 25.

¹⁰⁴ Response of the Supreme Court of Kyrgyz Republic ref. No. 01–11/582 dated 4 June 2009, to an enquiry made by Citizens against Corruption ref No. 52 dated 22 May 2009.

life imprisonment is replaced by imprisonment for a term of 30 years as a way of pardon.

According to research studies made, in most cases the President refuses the petition for pardon.¹⁰⁵ This has meant that many life-sentenced prisoners have lost faith in the criminal justice system, and often do not exercise their right to petition for pardon. Kyrgyz law does not allow relatives, advocates or human rights organisations to apply for pardon on behalf of a life sentenced prisoner.

Official statistics on the number of pardoned persons is not available.

VII: Implementation of the death penalty: method of execution

From 1991, when Kyrgyzstan gained its independence, to 1998, when the moratorium on executions was established, the death penalty was implemented by shooting.¹⁰⁶

Article 155 of the Criminal Executive Code of the Kyrgyz Republic provided executions were not to be carried out in public. Relatives were only notified of the execution after it had taken place, and the date of the execution was not disclosed. The body was not returned to the family, and the place of burial not disclosed.¹⁰⁷ Executions were effectively carried out in secret.

VIII. Application of the death penalty: statistics

The last execution in the Kyrgyz Republic took place in 1998.

Information on the number of persons executed during the period prior to the moratorium is unavailable to researchers; it is classified as a state secret.

The last death sentence issued by the courts in Kyrgyzstan was in 2007.

During the period 30 June 2005 to 30 June 2006, death sentences were issued to six people. All individuals were sentenced for murder.¹⁰⁸

During the period 30 June 2004 to 30 June 2005, 17 people were sentenced to death. At least two of those individuals were sentenced for murder and one for rape of a female minor.¹⁰⁹

During the period 30 June 2003 to 30 June 2004, 31 people were sentenced to death. All individuals were sentenced for murder.¹¹⁰

No information on the identities of those executed or sentenced to death has been made available by the state.

IX. Application of life imprisonment: statistics

At 1 January 2012 the number of persons serving a life sentence in Kyrgyzstan is 257.

This includes 133 people whose death sentences were commuted to life imprisonment by the Supreme Court in 2008.¹¹¹

Date	Total number of life prisoners
1 January 2012	257
1 January 2011	231
1 January 2010	209
1 January 2009	188
1 January 2008	164
1 January 2007	133 death sentence commutations

¹⁰⁵ The watershed between past and present, *supra* n. 77, p. 12.

¹⁰⁶ Article 155(2) of the Criminal Executive Code of the Kyrgyz republic, 13 December 1999.

¹⁰⁷ *Ibid*, Article 155(5).

¹⁰⁸ OSCE Background Paper 2006, *supra* n. 102, p. 61.

¹⁰⁹ OSCE Background Paper 2005, *supra* n. 35, p. 24.

¹¹⁰ OSCE Background Paper 2004, *supra* n. 36, p. 26.

¹¹¹ Response of the Supreme Court of Kyrgyz Republic ref. No. 01–11/582 dated 4 June 2009, to an enquiry made by Citizens against Corruption ref No. 52 dated 22 May 2009.

Of those serving a life sentence in Kyrgyzstan, 69 percent are of Asian nationality. 12 lifers are foreigners: 3 Russian; 4 Uzbek; 1 Tajik; 1 Turkish; 2 Chinese; 1 Kazakh.

70 percent of lifers are Islamic, 10 percent Christian, and 20 percent other religions.

X. Implementation of death sentence/life imprisonment: prison regime and conditions

Location of imprisonment for death row and life sentenced prisoners

Prior to abolition, those persons condemned to death were incarcerated in pre-trial detention centres operated by the State Penal Agency (GUIN) under the Interior Ministry until 2002, and then following a transfer of authority in 2002, controlled by the Ministry of Justice. The pre-trial detention centres, which were used to detain prisoners on death row in Kyrgyzstan were considered overly harsh and did not meet international human rights standards.

In December 2008, Law No. 273¹¹² established that prisoners whose death sentence has been replaced by life imprisonment, as well as those sentenced to life, should be incarcerated in detention facilities and cell-like buildings of the correctional colonies until the construction of a new facility for lifers could be put in practice.

In 2009, a number of additional isolated areas assigned for lifers were created in maximum-security facilities. These additional areas had a maximum capacity of 145 inmates, which meant that there are still life prisoners who have not been relocated to a maximum-security facility, and are still serving their sentences in pre-trial detention centres.

At present, lifers are housed at pre-trial detention centre No. 1 in Bishkek, No. 4 in Naryn, and No. 5 in Osh. 50 lifers are kept in the basement of centre No. 1 in cells built in 1943 specifically for death row prisoners. Lifers are also housed in maximum-security prison Nos. 1, 3, 16, 21, 24, 25, 27, 31, and 47.

In November 2009, following a reorganisation of the penal system, control was transferred from the Ministry of Justice to a newly formed independent State Penitentiary Service (GSIN).

On 29 December 2009, the Committee on Constitutional Legislation and State, and the Kyrgyz Parliament (the 'Jogorku Kenesh'), recommended that the government raise 20 million Kyrgyz Soms (approximately US\$440,000) to construct a new prison for lifers (to be called Special Facility No. 19). However civil society has estimated that the construction of a prison inline with international standards would cost approximately 270 million Kyrgyz Soms (approximately US\$5.8 million). Accordingly construction of Special Facility No. 19 has not progressed, and at the current rate, will not be completed for another 15–20 years.

Cost of imprisonment

The daily cost of imprisoning one lifer is approximately 215 Kyrgyz Soms per day (approximately US\$4.50 per day, or US\$1,645 per year). This covers staff salaries, a contribution towards utilities and food.

Food costs approximately 54–84 Kyrgyz Soms per inmate per day (less than US\$2 per day).

Prison regime

According to the Criminal Procedure Code of the Kyrgyz Republic, persons sentenced to life imprisonment must serve at least the first ten years of their sentence in penal colonies under a "strict regime".¹¹³

¹¹² Law No. 273 "On Amendments and additions to the Criminal Code of the Kyrgyz Republic, the Criminal Procedure Code, the Code of Administrative Liability, Penal Code of the Kyrgyz Republic, the Laws of the Kyrgyz Republic, On the Supreme Court of the Kyrgyz Republic and local courts, On the Prosecutor of the Kyrgyz Republic, On the procedure and conditions of detention of persons detained on suspicion and charges of committing crimes, On general principles of amnesty and pardon, On introduction of the Criminal Procedure Code of the Kyrgyz Republic, and On the introduction of the Criminal Code of the Kyrgyz Republic", 29 December 2008.

¹¹³ Article 99 of the Criminal Procedure Code of the Kyrgyz Republic.

In practice, the replacement of the death penalty with life imprisonment has only changed the form, but not the essence, of the punishment. Lifers are maintained in the same conditions and under the same regime that death row prisoners were subjected to before abolition. The lifers' regime is just as inhumane and there are serious concerns that conditions do not meet international standards.

Conditions and treatment of detention

Prison conditions on death row and for lifers in Kyrgyzstan have been widely criticised by local and international human rights groups as being cruel and inhumane. Kyrgyz Ombudsman, Mr Tursunbai Bakir-uulu, noted that inmates on death row were often kept in unacceptable conditions.¹¹⁴ Dozens reportedly died from illnesses or by committing suicide and some who had been kept in single cells for a long time had lost the ability to move around unaided. He also reported that short visits by relatives and daily exercise periods had been banned.¹¹⁵

The 2010 report of the UN Human Rights Council Working Group on the Universal Periodic Review of Kyrgyzstan recommended that the Kyrgyz Republic improve conditions in prisons and detention facilities.¹¹⁶

Articles 19 and 41(1) of the Criminal Code of the Kyrgyz Republic states that criminal penalties are not intended to cause physical suffering or humiliation and no one shall be subjected to inhumane or degrading treatment.

However, Kyrgyzstan faces a number of challenges with regard to prison conditions. It suffers from infrastructure deterioration, has acute overcrowding, extremely poor sanitary facilities, a lack of appropriately trained staff, and remains desperately underfunded. Inadequate healthcare in prisons is also an ongoing challenge. Tuberculosis (TB) remains widespread among prisoners, the rate of diagnosis being 40 times higher than that of the general

population.¹¹⁷ The spread of infectious disease is exacerbated by very poor living conditions, especially in terms of sanitary facilities.

Prisoners on death row were housed in facilities that were grossly inconsistent with international standards. Cells of 2x3m² contained 3–5 inmates. Some had to sleep on the floor. The toilet and utilities for drinking water and washing were located in the same cell. Many lifers are still housed in the same facilities that death row inmates were housed in.

In pre-trial detention centre No 1, for example, convicts are housed in an underground cellar, where cells are narrow and dark. Floors are of concrete, and windows are covered with metal shutters that prevent access to natural light and fresh air. The light must be turned off by a prison official – the only thing a prisoner can do is to twist out the light bulb to stop it shining at night. Pre-trial detention centres suffer from overcrowding and there are not enough beds for inmates.

The supply of toiletries is insufficient across all prison colonies. Inmates are provided with two bars of soap between six people to clean themselves and do their laundry.¹¹⁸ Clothes are dried in the cells, which increases the risk of TB. Linens are changed once a week. Isolated parts of institution Nos. 1, 16 and 27 lack sufficient bathing and laundry facilities. Inmates serving in prison No. 21 are allowed to shower once a week, on Mondays. According to GSIN, prisoners in institution No. 1 now have access to their own soap, towel and other hygiene supplies.

According to GSIN, all prisoners now have mattresses, pillows, coats, hats, under-shirts and a uniform. 80 percent of prisoners have sheets, pillowcases and towels. 65 percent of prisoners have footwear (tarpaulin boots). 50 percent have blankets.

The quality of prison meals lack variety and nutrition. The food budget for each prisoner is 54 Soms (prison) and 84 Soms (hospital) per day (less than US\$2 per day). The only produce served in the amount close

114 Central Asia: trend is away from capital punishment, Radio Free Europe/Radio Liberty, 10 December 2004.

115 See for example, Amnesty International Yearbook 2005 Kyrgyzstan.

116 Report of the Working Group on the Universal Periodic Review of Kyrgyzstan, A/HRC/15/2, 16 June 2010, recommendation 76.53 (Czech Republic).

117 Support to prison reform in the Kyrgyz Republic, UN Office on Drugs and Crime Programme Office in Kyrgyzstan, June 2011.

118 Interviews with convicted life prisoners, jail No. 21 Bishkek, July 2009.

to the norm is bread as most institutions have their own bakery. Meat and fish are often replaced by concentrated products. There is a lack of potatoes or vegetables. The cost of feeding inmates shifts to their relatives.

Prison conditions are aggravated by the fact that the prisons were built at the beginning or middle of the last century. The penitentiary system is grossly underfunded and suffers from decades of accumulated unresolved problems which have led to non-compliance of international human rights standards and social isolation of the prisoners. The budget for the Kyrgyz penitentiary system covers staff salaries and feeding inmates, but does not cover other necessities to tackle existing problems within the system.

Access to medical care

The penitentiary system also suffers from a shortage of medical personnel. The working conditions and low wages (especially among nurses, who earn between 1,020 and 1,705 Soms per month – approximately US\$22–36 per month) make it difficult for prisons to recruit adequate medical personnel. There is a lack of specialised medical doctors, including ophthalmologists, neurologist and surgeons. Along with the Central Hospital in prison No. 47 there are only three other specialised hospitals in institution Nos. 3, 31 and 27.

Providing medical access to lifers in pre-trial detention centre No. 1 is especially challenging. There is only one nurse and no space for a hospital department. Prisoners with TB are treated in their cells. There is a lack of any surgical or post-operative care. Many convicts have to arrange medical treatment at their own expense.

Rehabilitation and social reformation programmes

The Kyrgyz Republic makes no provision for social or psychological assistance for life-sentenced prisoners, or provides any rehabilitation or social reintegration programmes.

Lifers are not entitled to access education or work programmes, although these are available for other prisoners.¹¹⁹ They have limited access to their families and often lose social connections with the outside world.

According to Article 100 of the Criminal Executive Code of the Kyrgyz Republic, lifers are entitled to one long and two short-term visits of their family per year. They may receive up to three parcels, and make two telephone calls per year. In practice the number of parcels delivered to an individual in prison is not limited, and almost every inmate has a mobile telephone on them in the penitentiary system, and so the right to use the payphone is never exercised.

Lifers are entitled to a daily walk for 90 minutes and, to be extended to two hours where possible in case of good behaviour. Prisoners are permitted access to television and books from the prison library.

According to the head of prison colony No. 16, the schedule of a lifer is as follows:

- Awake at 6am.
- Walk in the yard at 7am.
- For the rest of the day they are entitled to read, play games (chess, backgammon), take up woodwork activities or watch television.
- Lifers are checked every two hours by prison guards.

Conditions for parole

Article 69 of the Criminal Code provides that a person can be released on parole if the court is convinced that the individual does not need to serve their sentence in full to achieve appropriate correction. The prisoner may be fully or partially exempt from additional punishment.

For a lifer to petition for parole, the prisoner must have received a pardon under Article 50 of the Criminal Code of the Kyrgyz Republic, which replaces a life sentence with a 30-year sentence. The prisoner must have served a minimum of 80 percent of that sentence (24 years),¹²⁰ and have no subsequent

¹¹⁹ Article 84(5) of the Criminal Procedure Code of the Kyrgyz Republic.

¹²⁰ Article 50(5) of the Penal Code of the Kyrgyz Republic.

violations since serving his sentence, before being eligible to submit their petition. Parole is considered by the court and not by a parole board.

Hope for prisoners serving a 30-year sentence that they might be paroled is limited. Due to the very harsh prison conditions that their sentence is served under, local human rights experts believe that there is little chance that lifers will survive the minimum 24 years under existing conditions.

If the court refuses a petition for parole, three months must pass before a new application can be submitted.

If the court does grant parole, it is often conditional on certain requirements by the prisoner, such as: not changing permanent residence without permission; not going to certain places; and to perform certain activities that may contribute to his rehabilitation.

At present there are no lifers who have received parole because they have not been in prison long enough. 2028 is the year when the first prisoners will be able to petition for pardon.

Prison staff and management

Kyrgyzstan has 6 pre-trial detention centres, 11 prisons and 19 open type prisons, with 3,700 prison staff. The annual budget for the prison service is €11,700,000 (which represents approximately 37 percent of the required funding).¹²¹

Poor prison conditions are compounded by inadequate prison staff. Low wages of prison officers, lack of professionalism, and dangerous working conditions make it hard to recruit qualified staff to the prison service.¹²²

The 2010 Universal Periodic Review of Kyrgyzstan recommended that the government “introduce human rights education to members of the police and prison and detention staff, and ensure their accountability for human rights violations.”¹²³

Monitoring prisons

Complaints by prisoners are not well documented and are not always passed along by prison staff. One of the reasons for this is a lack of monitoring of places of imprisonment to prevent or stop torture or cruel, inhuman or degrading treatment or punishment.

One of the recommendations coming out of the 2010 Universal Period Review process for Kyrgyzstan was to establish a complaint mechanism for victims of torture, and to ensure prompt, impartial and comprehensive investigation into all complaints involving torture of persons subjected to arrest, detention and imprisonment.¹²⁴

Kyrgyzstan has ratified the Optional Protocol to the Convention against Torture (OPCAT), which requires the establishment of a National Preventive Mechanism (NPM). The government Working Group on bringing Kyrgyzstan’s legislation into compliance with OPCAT is engaged in drafting a law “On National Preventive Mechanisms”. On 14 September 2011, the draft NPM law was submitted to parliament (the ‘Jogorku Kenesh’) by nine MPs. Several MPs however obstructed the law from passing for two main reasons: lack of finance in the state budget, and because they perceived the NPM as duplicating the work of the Ombudsman’s office. The initiators of the Bill withdrew it and plan to resubmit it for consideration during the next parliament hearing in 2012 with some amendments and improvement to the original text.

The government has, however, continued to permit international and domestic human rights observers, including from the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) and PRI to visit prisons. However this is on an ad hoc basis, and in no way matches the commitments made under OPCAT.

121 UNODC Support to prison reform in the Kyrgyz Republic, supra n. 117.

122 The watershed between past and present, supra n. 77, p. 22

123 Report of the Working Group on the Universal Periodic Review: Kyrgyzstan, supra n. 116, recommendation 76.71 (Czech Republic).

124 Ibid, recommendation 76.53 (Czech Republic) and 76.54 (Denmark).

XI. Transparency and accountability

The Kyrgyz Republic does not publish official data on the application of the death penalty or cases involving the application of life imprisonment. Although civil society often request information on the number, location, gender, age, and other characteristics of prisoners, they receive the answer that the information is a state secret. However, this information has in the past been provided to civil society informally at conferences and round tables.

Court judgements are made public, and the website of the Kyrgyz judicial system is: <<http://www.sudsystem.kg>>.

XII. Current reform processes in the criminal justice system

In April 2011 a National Development Strategy of the Correctional System “YMYT-2” for 2011 to 2015 was established. The Strategy aims to reform the penal system and improve the legal framework, to humanise criminal policy (including with attention to life imprisonment), and to build a new detention facility for persons convicted of life imprisonment in order to provide adequate living conditions.

Unfortunately many activities set out in “YMYT-2” need funding, which has not been made available, and adversely affects their ability to implement adequate reforms to the correctional system.

XIII. Abolitionist/reformist movement in country

Civil society in Kyrgyzstan has been focused on reforming the penal system including improving conditions and treatment of those sentenced to life imprisonment. Among these organisations are “Citizens against corruption” and “Voice of freedom”.

As part of PRI’s programme of work in Kyrgyzstan, a number of key events and initiatives have taken place. This has included training of prison officials on international standards for the treatment and protecting the rights of those who face life/long-term imprisonment (for example on the UN Standard Minimum Rules for the Treatment of Prisoners, and Recommendation (2003) 23 of the Committee of Ministers of the Council of Europe on “the management by prison administrators of life sentence and other long term prisoners” which contain the most developed guidance on life and long-term sentence management).

A national conference focused on challenges for reforming the institute of life imprisonment was held in Bishkek on 20 October 2010, with the participation from both government and civil society representatives. One of the key outcomes of the national conference was a set of recommendations for a reform process (see Annex II).

A regional conference entitled “Partial abolition in Central Asia: how to move the process of death penalty abolition forward” which brought together participants from Kazakhstan, Kyrgyzstan and Tajikistan was convened in Astana, Kazakhstan on 26 April 2011. Participants agreed 26 recommendations to take the abolition process forward across the Central Asia region (see Annex III).

Continued advocacy efforts at the national and regional level have continued to push for reforms in the penal and criminal justice systems, including lobbying activities to implement international standards for the treatment of life sentenced prisoners.

XIV. Recommendations to the Republic of Kyrgyzstan

1. Abolish the whole life sentence, and ensure that the maximum and ultimate sentence in the Kyrgyz Republic is determinate and provides a realistic possibility of early release. Ensure that the maximum term of years is proportionate and reflects human dignity and international standards. According to the United Nations Commission on Crime Prevention and Criminal Justice, a 1994 report on "Life imprisonment" recommends that States should provide in national legislation a possibility of parole for persons sentenced to life imprisonment, which should be carried out after 8–12 years of their actual sentence.
2. Uphold the independence of the judiciary, consider increasing the salary and strengthening the security of tenure for judges, ensure they are well trained, and held accountable for corruption.
3. Reform the system of legal aid in Kyrgyzstan to ensure that legal counsel is available at the state's expense at all stages of the proceedings: arrest, pre-trial, trial, appellate and pardon stage. In practical terms, this must include providing adequate fees and expenses for the defence counsel to undertake a proper investigation, to meet with and talk to their client without any restrictions prior to trial, and to uphold the independence of lawyers whose primary duty is to work in the interests of their clients and not the state.
4. Uphold the presumption of innocence, and ensure that both the prosecution and defence have equality of arms during both the investigative and trial procedures.
5. Develop an effective mechanism to thoroughly investigate all allegations of torture by those accused or convicted of a criminal offence. Ensure that any evidence obtained through torture, inhuman or degrading treatment or punishment, such as confession evidence, is not admissible in a court of law, except against a person accused of torture as evidence that the statement was made (Article 15 CAT).
6. Develop an effective mechanism to thoroughly investigate and prosecute illegal methods of investigation and interrogation by state investigators.
7. Implement the 2007 law providing for jury trials in criminal proceedings.
8. Eliminate discriminatory rules and practices with respect to persons sentenced to life imprisonment: all prisoners should be treated equally and humanely, irrespective of the type of sentence imposed. Strict regimes should not be imposed on lifers based purely on the type of their sentence.
9. Establish a system of individual assessment of each individual based on their level of dangerousness (for prison staff, other inmates, and other members of society who might have contact with the prisoner) to determine the type of regime, in which a convicted person must serve the sentence.
10. Introduce a system of progressive transfer through the prison system to prepare a prisoner for release: from stringent regime to less strict, and finally to an open prison. Transfer through these types of prison regime should depend on the behaviour and dangerousness of the prisoner, and not be based on the type of sentence he serves.
11. Improve treatment and conditions for life-sentenced prisoners. This should include: ensure cell size meets international standards, and allows access to fresh air and natural light; abolish solitary confinement for prisoners; improve sanitation conditions and increase and improve food to ensure adequate nutrition; increase medical facilities and services, including for the treatment of tuberculosis and the provision of psychiatric care, especially for victims of torture, cruel, inhuman or degrading punishment or treatment.
12. Prison life of those sentenced to long-term or life imprisonment should be as close as possible to the realities of life in society. There should be rehabilitation and reintegration programs. This should include access to education, work, re-training etc. for long-term and life sentenced prisoners.

-
13. Increase the budget for the penitentiary system, and financially commit to either building or re-furbishing new facilities that meet international standards for those serving a life/long-term sentence.
 14. Improve working conditions and salary for prison staff including prison warders and medical personnel.
 15. Train prison staff in international human rights standards and best practices, and make sure that they would be held accountable for any human rights violations.
 16. Expand the list of those who may submit a petition for pardon for a life prisoner to include their lawyer, family member, or human rights organisation, as well as the prisoner themselves.
 17. Clearly define in law the procedures for parole, and ensure that they meet due process safeguards and are subject to appeal or review. In case of refusal, allow for parole applications to be reviewed on a regular basis after a defined period. Where judges are required to decide on a parole application, ensure that the judges who make up the board have relevant penitentiary expertise and experience. Consider developing and implementing an independent parole board to take over this responsibility.
 18. Finalise the establishment of the National Preventive Mechanism, and ensure that it is independent, competent to monitor all places where people are deprived of their liberty and effectively operative in terms of its budget and resources.
 19. Uphold the strongest principles of transparency. Provide official and regular (at least annually) information regarding the implementation of criminal justice. This should include publishing data on the number and characteristics of prisoners including length of sentence and what crime they were convicted of, statistics of pardon and parole applications: publish instructions and orders relating to the rights of persons sentenced to life imprisonment, and publish historical data on the application of the death penalty including informing family members of the place of burial. Kyrgyzstan should consider developing websites for the various departments of their criminal justice system to publish information and statistics.
 20. Establish a mechanism to implement the views and recommendations of the UN Human Rights Committee and other UN treaty bodies.
 21. Co-sponsor and vote in favour of the upcoming fourth UN GA resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
 22. Become a state party to the Rome Statute of the International Criminal Court.
 23. Encourage collaboration between government and civil society, including journalists, on criminal justice issues, and uphold the rights of all human rights defenders.
 24. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Kyrgyzstan at both the financial and political level.
-

Republic of Tajikistan

I. Basic country information

Geographical region: Tajikistan is located in Central Asia. It is a mountainous landlocked country bordering Afghanistan to the south, Uzbekistan to the west, Kyrgyzstan to the north, and China to the east. The capital is Dushanbe.

Type of government: The Republic of Tajikistan is a sovereign, democratic and unitary state.¹²⁵ The head of state and executive power rests with the President.¹²⁶

Language: The official language of Tajikistan is Tajik.¹²⁷ Russian may be used in an official capacity.

Population: According to the Agency on Statistics of the Tajik Republic, on 1 July 2010 the population of Tajikistan was almost 7.6 million people.¹²⁸ Tajikistan is a multi-ethnic state made up of mainly Tajiks, Uzbeks, Russians and Kyrgyz.

Religion: Tajikistan is a secular state. Islam is the religion of the majority of the population.

II. Overview of the status of the death penalty in Tajikistan

The Constitution of the Republic of Tajikistan legally guarantees a qualified right to life. Article 18 states “Everyone has the right to life. No one shall be deprived of life except under a court sentence for a particularly serious crime.”

Following its independence from the Soviet Union in September 1991, Tajikistan retained the death penalty for 47 crimes. Following the gradual stabilisation of the country in its post-Soviet era and the undertaking

of numerous international obligations, Tajikistan amended its Criminal Code in 1998, and reduced the number of death penalty applicable crimes to 15.

Further amendments were made to the Criminal Code on 1 August 2003,¹²⁹ and the number of death penalty applicable crimes was reduced from 15 to 5: murder; terrorism; rape of a minor; genocide; and biocide. The amendments effectively abolished the death penalty for drug-related crimes and robbery.¹³⁰

Nine months later President Rahmon announced his intention to introduce an official moratorium in Tajikistan, stating that the right to life is of supreme value and no one should deprive anyone else of this right.¹³¹ On 7 May 2004, the President submitted a Bill for consideration by the lower house of Parliament, which was unanimously approved on 2 June 2004, and was endorsed by the upper house on 8 July 2004. On 15 July 2004, the President signed the Death Penalty (Suspension) Act, which introduced the official moratorium on the pronouncement of death sentences and on executions. The moratorium is not limited in time. It applies to those who were sentenced to death prior to 30 April 2004 and to those convicted of crimes to which the death penalty applied prior to the moratorium on 30 April 2004. In the former case, death sentences were to be commuted to 25 years’ imprisonment; in the latter case, a sentence of 25 years imprisonment was to be passed.

Following the establishment of the moratorium, Abdumannon Holikov, Deputy Chairman of the Parliamentary Committee on Constitutionality, said that the effects of the moratorium will be monitored, and, if circumstances warrant, full abolition may follow.¹³²

¹²⁵ Article 1 of the Constitution of the Tajik Republic.

¹²⁶ Ibid, Article 64.

¹²⁷ Ibid, Article 2.

¹²⁸ Available at Agency on Statistics under President of the Republic of Tajikistan, <<http://www.stat.tj/ru/population-census/>>.

¹²⁹ Law No. 45 “On amendments to the Criminal Code”, 2003.

¹³⁰ Crimes included: drug trafficking resulting in death (Article 204(4) of the Criminal Code 1998); storage of drugs (Article 200(54) of the Criminal Code 1998); and robbery (Article 206 of the Criminal Code 1998).

¹³¹ Paraphrased from the president’s address to the parliament on 30 April 2004, in International Experience and legal Regulation of the Application of the death Penalty in Tajikistan, Khakifabobo Khamidov, in OSCE Background Paper 2006, supra n. 102, p. 33.

¹³² Tajikistan Daily Digest, Eurasianet, 4 June 2004.

On 30 September 2009, at the annual OSCE Human Dimension Implementation Meeting in Warsaw, the Tajik delegation stated a political will to fully abolish capital punishment in the future.¹³³

Further political steps have been taken to bring Tajikistan towards this goal. In 2009, Tajikistan established the institution of the Ombudsman for Human Rights. In its work-plan for 2010, the Ombudsman identified activities aimed at the full abolition of the death penalty as one of his priorities.

In April 2010, the President established a Working Group on the Death Penalty to analyse the social and legal aspects of abolishing the death penalty. The Working Group consists of ministers and deputy ministers from various ministries and departments, as well as representatives of the Supreme Court, the office of the Prosecutor-General and the Commissioner for Human Rights (Ombudsman). The Working Group is headed by Mr. Juma Davlatov, State Adviser of the President of Tajikistan on Legal Policy. The Working Group has drafted a plan of action that includes studying international practice and the national legislation of countries that have abolished the death penalty, analysing crime trends before and after the moratorium was introduced, carrying out sociological studies of the various social strata, and considering the possibility of Tajikistan ratifying the Second Optional Protocol to the ICCPR.

In October 2010, on the occasion of the 2010 OSCE Review Conference, Mr Davlatov stated that Tajikistan will abolish the death penalty “in the near future”. This was reinforced in May 2011, when Mr Davlatov, at an international conference in Dushanbe, stated that “[s]ooner or later our country will completely abolish the death penalty.”¹³⁴ However, the Working Group is not the final decision-maker; that still rests with the President. As such, the Working Group is due to present their findings to the President at the

beginning of 2012. It is hoped that a final decision will be taken on this occasion.

Political will towards abolition can also be reflected by the change in public opinion towards the use of the death penalty in Tajikistan. A study on public opinion was carried out by *Note Bene* (a local civil society organisation) with the financial assistance from the Office for Democratic Institutions and Human Rights of the Organisation for Security and Cooperation in Europe (ODIHR-OSCE) in November-December 2010. Of the 2,046 respondents polled, 61.18 percent were against the use of the death penalty in Tajikistan, 10 percent were undecided, and 28.98 percent supported its continued use. Of those polled who were in favour of retaining the death penalty, the majority came from the rural population. Many of the respondents polled believed that life imprisonment could be an alternative to the death penalty (42.04 percent). Interestingly, 93 percent of judges and court officials polled were against the use of the death penalty, whereas 88 percent of prosecutors and employees of investigative agencies of the prosecution services polled were in favour of retaining the death penalty.

It is important to note that the establishment of an official moratorium has not had a negative impact on the rates of serious crimes committed in Tajikistan. The most recent crime statistics presented by the Prosecutor General demonstrate that the adoption of the moratorium did not result in any increase in serious crimes.¹³⁵ According to his data, in 2000 there were 283 murders, in 2010 that number had decreased by half.

The Deputy Head of correctional work for the Ministry of Justice, Abdulhakov Bahram Akramovich, stated at an international conference in May 2011 that the death penalty is not a panacea for reducing crime.¹³⁶

133 The Death Penalty in the OSCE Area: Background Paper 2010, OSCE-ODIHR, September 2010, p. 7.

134 Official says Tajikistan will eventually abolish death penalty, Asia-Plus, 18 May 2011.

135 Report of the International Commission against the Death Penalty's Mission to the Republic of Tajikistan (16–18 May 2011), p. 4.

136 Speech by Deputy Head of corrective work of the Ministry of Justice of the Republic of Tajikistan, Mr. B A Abdulhakov, at the international conference “Central Asia without death penalty”, Gissar, 17 May 2011. <<http://www.humanrts.tj/ru/index/index/pageId/242/>>.

III. Legal framework: application of international human rights standards in Tajikistan

International treaties signed by Tajikistan are recognised as a part of the Tajik legal system.¹³⁷

International legal instruments recognised by Tajikistan are an integral part of the country's legal system. In the event of divergence between domestic law and recognised international legal instruments, the latter's provisions shall prevail."¹³⁸

Tajikistan is party to most international human rights instruments.

Tajikistan acceded to the International Covenant on Civil and Political Rights (ICCPR) on 13 November 1998 and to the First Optional Protocol to the ICCPR on 4 January 1999, however has not signed the Second Optional Protocol to the ICCPR. Tajikistan acceded to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 11 January 1995, but not the Optional Protocol to CAT (OPCAT). It also acceded to the Convention on the Rights of the Child on 26 October 1993. It is a state party to the Rome Statute of the International Criminal Court.

In 2007, Tajikistan voted in favour of the UN GA resolution 62/149 "On a moratorium on the death penalty." The moratorium resolution was reaffirmed in 2008 by UN GA resolution 63/168 and again in 2010 by UN GA resolution 65/206. The Tajik Republic voted in favour of both these subsequent resolutions.

IV. Legal framework: the death penalty in Tajikistan

Death penalty applicable crimes

In accordance with the Criminal Code of the Republic of Tajikistan, the death penalty can be applied for five crimes:

1. Murder with aggravating circumstances: Article 104(2).
2. Acts of terrorism that result in death: Article 179(3).
3. Rape of a minor (under 14 years of age) not resulting in death: Article 138(3).
4. Genocide: Article 398.
5. Biocide: Article 399.

The Constitution of the Republic of Tajikistan makes the death penalty a discretionary offence.

Prohibited categories

In 2003 the Republic of Tajikistan prohibited women and juveniles from being executed.¹³⁹ Previously the only prohibition on the application of the death penalty was for pregnant women and the mentally ill.

Persons who could not account for their actions due to "weak-mindedness" are not subject to criminal liability.¹⁴⁰ A death sentence cannot be executed against a convict who, after sentencing, evidences a mental illness depriving him of the ability to understand his actions or control them. Chronic mental illness, temporary derangement or other state of mental illness are grounds precluding criminal liability.¹⁴¹

¹³⁷ Articles 3 and 4 of the Constitution of the Tajik Republic.

¹³⁸ Ibid, Article 10.

¹³⁹ Law No. 45 "On Amendments to the Criminal Code of the Republic of Tajikistan" 1 August 2003, which amended article 59(2) of the Criminal Code of the Tajik Republic.

¹⁴⁰ Article 24 of the Criminal Code of the Tajik Republic.

¹⁴¹ Article 222 of the Criminal Executive Code of the Tajik Republic; Article 24 of the Criminal Code of the Tajik Republic.

V. Legal framework: alternative sanctions to the death penalty in Tajikistan

Length of life imprisonment

Under Law No. 86 of the Republic of Tajikistan of 1 March 2005 “On Amendments and Additions to the Criminal Code”, life imprisonment was introduced into the Criminal Code as an additional form of punishment.¹⁴² The Criminal Code provides that “a sentence of life imprisonment shall be pronounced only as an alternative to the death penalty for the commission of especially serious offences.”¹⁴³ This means that the alternative to the death penalty in Tajikistan is life imprisonment (whole life without the possibility of parole).¹⁴⁴

Life sentence applicable crimes

A life sentence can be applied to the five crimes that also warrant a death sentence, as set out in the Criminal Code of the Republic of Tajikistan:

1. Murder with aggravating circumstances: Article 104(2).
2. Acts of terrorism that result in death: Article 179(3).
3. Rape of a minor (under 14 years of age) not resulting in death: Article 138(3).
4. Genocide: Article 398.
5. Biocide: Article 399.

Prohibited categories

This law stipulates that life imprisonment will not be handed down for women, persons who committed a crime while under the age of 18, men who are 63

years of age by the time of sentencing,¹⁴⁵ and those who suffer from a mental disorder.¹⁴⁶

VI. Application of the death penalty/life imprisonment: fair trial procedures

Presumption of innocence

The presumption of innocence is legally guaranteed under Article 20 of the Constitution and in Article 15 of the Criminal Procedure Code: “No one shall be guilty of a crime before entry into force of court verdict”. However, the extremely low acquittals suggest that this legal guarantee is not often enjoyed in practice. Nearly all defendants are found guilty. In Sughd Province, for example, there was only one acquittal out of 1,650 court verdicts during 2010.¹⁴⁷

Trial by jury

Trials are presided over by a judge; there is no system of trial by jury in Tajikistan.

The right to adequate legal assistance

Article 22 of the Criminal Procedure Code guarantees the right of all persons to a legal defence at all stages of the criminal proceedings. According to civil society, however, there are numerous obstacles preventing access of detainees to their lawyers.¹⁴⁸

The defence has a right to review all evidence collected by the prosecution, confront and question witnesses, and present evidence and testimony at trial. No groups are barred from testifying, and, in principle, all testimony receives equal consideration. In practice, the defence are often denied access to

¹⁴² Article 58(1) of the Criminal Code of the Tajik Republic.

¹⁴³ Ibid, Article 59.

¹⁴⁴ Ibid, Article 59(3).

¹⁴⁵ Ibid, Article 58(1).

¹⁴⁶ Article 222 of the Criminal Executive Code of the Tajik Republic; Article 24 of the Criminal Code of the Tajik Republic.

¹⁴⁷ 2010 Human Rights Reports: Tajikistan, US Department of State Bureau of Democracy Human Rights and Labor, 2010 Country Reports on Human Rights, 8 April 2011.

¹⁴⁸ Summary of stakeholders information on Universal Periodic Review: Tajikistan, A/HRC/WG.6/12/TJK/3, 22 July 2011, para. 26.

witnesses at the pre-trial stage and courts generally give prosecutorial testimony more weight than the testimony of the defence.¹⁴⁹

There is no mechanism for providing free legal assistance to those who need it in Tajikistan. As a result indigent defendants are not able to effectively use mechanisms of legal protection to defend their rights.

These problems are compounded by the vulnerable position of the legal profession in Tajikistan. There is no independent self-governed bar association to defend the common interests of the profession, or protect its members or work together to solve problems. The legal profession remains decentralised, fragmented and fairly weakly structured, especially vis-à-vis the office of the prosecutor who continues to be in control of proceedings.

The UN Human Rights Committee have also expressed its concern about a number of relevant areas, including widespread reports of the obstruction of detainees' access to a lawyer; and the lack of equality of arms between the suspect/accused or defence counsel and the prosecution both during a criminal investigation and in court, in particular that a prosecutor, rather than a judge, remained responsible for authorising arrests.¹⁵⁰

Independence of the judiciary

The independence of the judiciary is legally guaranteed by the Constitution of the Republic of Tajikistan. Article 5 of the Constitutional Act on the Courts of Tajikistan of 23 July 2001 states: "In the performance of their duties, judges shall be independent and shall be subject only to the Constitution and the law."

However, there have been numerous and serious allegations that the judiciary is not independent or effective. Various UN bodies, including the UN Human Rights Committee, the UN Committee against Torture,

and the Special Rapporteur on the independence of judges and lawyers have raised concerns that the judiciary is under the control of the executive branch of government including the President's office and the Prosecutor's Office. The amount of their powers has been criticised, including their role in oversight and control over the work of the judiciary. This includes influencing the selection and appointment procedures for judges, and having a supervisory function over the courts, which is a direct interference with the work of the judiciary.¹⁵¹

According to civil society, the Council of Justice, which is involved in the process of appointment, qualification and decisions on disciplinary measures against judges, is part of the executive branch of government, and pressure has been exerted through forced resignation and the transfer of judges to less desired, remote geographical areas.

The Special Rapporteur on the independence of judges and lawyers has raised concerns that the lack of appropriate training on international standards governing the independence of the judiciary for all legal professions also needs to be overcome.¹⁵²

Corruption appears to be an impediment to the effective functions of the judiciary. The Special Rapporteur has also expressed concern that judges have been accused by the Prosecutor's office of taking bribes following acquittals or when sentences issued did not concur with the sentence sought for by the prosecutor. In July 2005, a law on corruption was adopted to fight this problem. However, despite allegations of corruption against prosecutors, it was the Prosecutor's Office that was tasked to lead on the implementation of this new law rather than an independent institution. There is concern that the competence of the Prosecutor's office to counter corruption will increase the imbalance between the parties in the judicial proceedings and the inferior position of the judge vis-à-vis the prosecutor. The fight against corruption should be entrusted to an impartial organ without infringing upon the independence of the judiciary.

149 US Dept of State 2010 Human Rights Reports: Tajikistan, supra n. 147, 8 April 2011.

150 Concluding observations of the Human Rights Committee, Tajikistan, CCPR/CO/84/TJK, 18 July 2005, paras. 10, 11, 12, 15, 16, 17, 18 and 19.

151 Summary of stakeholders information, supra n. 148, para. 35; Conclusions and recommendations of the Committee against Torture: Tajikistan, CAT/C/TJK/CO/1, 7 December 2006, para. 10; Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy: Mission to Tajikistan, E/CN.4/2006/52/Add.4, paras. 85, 86, and 87.

152 Special Rapporteur on the independence of judges and lawyers mission to Tajikistan, supra n. 151, para 87.

In the context of corruption, the low salaries of judges are another important factor. Many interlocutors drew the Special Rapporteur's attention to the fact that corruption and bribery is not a phenomenon limited to the judiciary, but significantly affects the government, the police, the prosecution, and other legal professions.¹⁵³

The UN Human Rights Committee has also expressed its concern about the lack of independence of the judiciary, as reflected in the process of appointment and dismissal of judges, as well as in their economic status; and reports of several convictions *in absentia*, notwithstanding the prohibition by law of trials *in absentia*.¹⁵⁴

Open hearings

Trials in Tajikistan are public, except in cases involving national security. NGOs report that they are generally permitted to monitor trials, but incidents were reported where they were denied access to hearings without reasoning.

Language of the court

Court proceedings can be conducted in the official language (Tajik) or in Russian.¹⁵⁵ Participants in criminal proceedings who do not speak the language of the proceedings, have a right to make a statement, testify, submit petitions, familiarise themselves with the case materials and use the services of an interpreter. In practice, the right to an interpreter is not always observed.

Admission of evidence

Under the Criminal Procedure Code of the Republic of Tajikistan, evidence obtained during through the use of force, coercion, infliction of suffering, inhuman treatment or other illegal means is invalid and may not serve as a basis for a charge.¹⁵⁶

According to local civil society and Amnesty International, allegations of torture made before, during or after trial are not investigated effectively due to a lack of an independent, transparent and prompt investigation. Often victims, relatives or lawyers do not file complaints of torture for fear of repercussions. Prosecutors often rely on 'evidence' extracted under duress, and such evidence is often accepted by judges as proof. In most cases where there have been allegations of torture, the judge either does not acknowledge it, or reacts by summoning the alleged perpetrators and dismissing the defendant's allegation based on their denial of any wrongdoings.¹⁵⁷

The UN Committee against Torture has raised concerns that there is a failure of judges in Tajikistan to dismiss or return cases for further investigation in instances where confessions were obtained as a result of alleged torture.¹⁵⁸ There is a failure by courts to directly invoke the UN Convention against Torture in proceedings as well as a failure to train judges on its direct applicability.

In the case of *Dunayev v. Tajikistan*, the UN Human Rights Committee found that Tajikistan had violated Article 7 (prohibition against torture or other ill-treatment). Vyacheslav Dunayev, a Russian national imprisoned in Tajikistan, alleged that he had been repeatedly tortured while in detention and the state had done nothing to investigate those allegations. The Committee requested either a retrial with guarantees enshrined under Article 14 of the ICCPR or Mr. Dunayev's release from prison.¹⁵⁹

¹⁵³ Special Rapporteur on the independence of judges and lawyers mission to Tajikistan, *supra* n. 151, para 80.

¹⁵⁴ Concluding observations of the Human Rights Committee, *supra* n. 150, paras. 10, 11, 12, 15, 16, 17, 18 and 19.

¹⁵⁵ Article 18 of the Criminal Procedural Code of the Tajik Republic.

¹⁵⁶ National Report to the UN Human Rights Council, A/HRC/WG.6/12/TJK/1, 19 July 2011, para. 92.

¹⁵⁷ Summary of stakeholders information, *supra* n. 148, paras. 37 and 38.

¹⁵⁸ Conclusions and recommendations of the Committee against Torture, *supra* n. 151, para. 12.

¹⁵⁹ UN Human Rights Committee, Communication No. 1195/2003, CCPR/C/95/D/1195/2003, 6 April 2009.

The admissibility of evidence obtained under torture is compounded by the fact that Tajikistan does not have a legal definition of torture. As state officials do not record the number of torture allegations it is impossible to evaluate the scale of the problem. A presidential decree issued in 2009 established a working group to review and amend the Criminal Code, including the drafting of a legal definition of torture in accordance with the UN Convention against Torture.¹⁶⁰

Right to appeal

Articles 356–357 of the Criminal Procedure Code guarantees the right to appeal a decision to a higher court. Articles 364–385 of the Criminal Procedure Code set out the procedure for the appeal process.

Appeals from the court of first instance must be filed within ten days from the date of proclamation of the verdict. Cases on appeal are considered by a board of three judges either at the Court of Appeal, held at the court in the Gorno-Badakhshan Autonomous Region, or at the Regional Court and Court of Dushanbe. Decisions can be further appealed to the Supreme Court of the Republic of Tajikistan. It is very rare for the Supreme Court to make revisions to or overturn earlier verdicts issued by lower courts.

Parties have to be notified about the place and time of the proceedings in the appeal court, and may make a request to be present at the hearing. However, the absence of the appellate does not negate the proceedings.

Right to seek pardon or commutation of the sentence

The Constitution gives the President authority to grant clemency.¹⁶¹ The cases of all individuals sentenced to death are automatically considered by the Clemency Commission¹⁶² regardless of whether the person sentenced to death has submitted an appeal for clemency.¹⁶³ Sentences are not executed until a decision on clemency has been issued. The Clemency Commission meets at least four times a year. All death sentences imposed prior to the moratorium have been commuted.¹⁶⁴

A petition for pardon can also be made by those sentenced to life imprisonment. A petition can be filed by the convict, their family, a community organisation, or by the administration of the correctional institution.

Practice shows that the Clemency Commission takes into account the behaviour of the convict while serving their sentence, as well as the nature and severity of the offence. Documents must therefore be submitted to the Commission to demonstrate the behaviour of the convict and his attitude towards rehabilitation.

Official statistics on the outcome of clemency petitions are not available. However, according to unofficial statistics compiled from media reports and information received from non-governmental organisations, during the period 1999 to 2004, 23 people sentenced to death were pardoned by the President and given life sentences.¹⁶⁵ This included two cases between January and April 2004 (11 petitions for pardon were rejected in the same period);¹⁶⁶ and four cases in 2002 (at least 16 appeals for clemency were rejected in that year).¹⁶⁷

160 National report to the UN Human Rights Committee, supra n. 156, para. 90.

161 Article 69(27) of the Constitution of the Tajik Republic, and Article 83 of the Criminal Code of the Tajik Republic.

162 The Clemency Commission was established by Presidential Decree No. 721, 8 May 1997.

163 Article 216 of the Penal Enforcement Code of the Tajik Republic.

164 Initial Report of Tajikistan submitted under Article 40 of the ICCPR, UN Doc. CCPR/C/TJK/2004/1, 11 April 2005.

165 Ibid, para. 79.

166 Intervention made by the Deputy of General Prosecutor of the Republic of Tajikistan at the international conference "Monitoring of the death penalty: Experience, Problems and Prospects", 11–12 June 2004 in Dushanbe, hosted by the NGO "League of Women Lawyers".

167 See OSCE Background Paper 2004, supra n. 36, p. 35; and Respect for the right to life in the aspect of the death penalty in Tajikistan, Bureau of Human Rights and Rule of Law, Dushanbe, 2004.

VII: Implementation of the death penalty: method of execution

From 1991, when Tajikistan gained its independence, to 2004, when the moratorium on executions was established, the death penalty was executed by shooting.¹⁶⁸ The Criminal Execution Code provided that executions were not carried out in public,¹⁶⁹ and those present at the execution included the prosecutor, the head of the penal institution, and a doctor.¹⁷⁰

Relatives were only notified of the execution after it had taken place, and the date of the execution was not disclosed. The body was not returned to the family, and the place of burial not disclosed.¹⁷¹ Executions were effectively carried out in secret. The UN Human Rights Committee concluded that these practices amount to a violation of Article 7 of the ICCPR (prohibition of torture or other ill-treatment) with respect to the family and relatives of the executed persons. The Committee also concluded that these practices had the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental stress.¹⁷²

VIII. Application of the death penalty: statistics

Tajikistan does not publish official statistics on the number of persons sentenced to death or the number of executions.

According to unofficial information and research, the last execution took place in April 2004: four men – Rachabmurod Chumayev, Umed Idiyev, Akbar Radzhabov and Mukharam Fatkhulloyev – were reportedly executed shortly before the President's speech in April 2004 announcing his intention to halt executions.¹⁷³

The UN Human Rights Committee recalled that in at least two cases, Tajikistan executed prisoners although their cases were pending before the Committee under the Optional Protocol to the ICCPR and requests for interim measures for protection had been addressed to the state party. The Committee concluded that the disregard of the Committee's requests for interim measures constituted a grave breach of Tajikistan's obligations under the ICCPR and its Optional Protocol.¹⁷⁴

According to unofficial sources, the total number of those sentenced to death between January 1989 and July 2004 is at least 180 people. In 2001 there were approximately 68–74 death sentences.¹⁷⁵ In 2002 it has been estimated between 25 and 50 death sentences,¹⁷⁶ and at least 28 people were executed.¹⁷⁷ In 2003, 34 death sentences were issued¹⁷⁸ (between

168 Article 219(2) of the Criminal Execution Code of the Tajik Republic.

169 Ibid, Article 219(2).

170 Ibid, Article 220.

171 Ibid, Article 22; and Law "On the list of information considered state secrets" 5 October 2002.

172 Concluding observations of the Human Rights Committee, supra n. 150, para. 9; UN Human Rights Committee, Communication number 1044/2002, CCPR/C/86/D/1044/2002, 26 April 2006, para. 9; UN Human Rights Committee, Communication number 985/2001, CCPR/C/85/D/985/2001, 16 November 2005, paras. 6.7 and 7.

173 ICDP report on mission to Tajikistan, supra n. 135, p. 2.

174 Concluding observations of the Human Rights Committee, supra n. 150, para. 8.

175 The Bureau of Human Rights and Rule of Law estimated 68 death sentences in 2001 (Respect for right to life in the aspect of the death penalty in Tajikistan, supra n. 167). At an international conference on 20–21 December 2001 in Dushanbe, the Head of the Corrective Labor Institutions from the Ministry of the Interior, Mr Ziyoyev, said that in less than a year 74 people had been sentenced to death in Tajikistan. Ziyoyev also said that among those sentenced to death were three women, Tajikistan first time announced the official data on the number of death sentences, Nikolai Mitrokhin. <<http://www2.memo.ru/d/598.html>>.

176 According to statistics released by the Supreme Court, Tajikistan put 25 people to death in 2002. The Bureau of Human Rights and Rule of Law estimated 31 death sentences in 2002 (Respect for right to life in the aspect of the death penalty in Tajikistan, supra n. 167). According to Amnesty International there were at least 50 death sentences in 2002. However, Amnesty International believes that this number could be much higher (Concerns in Europe and Central Asia: July to December 2002, Amnesty International, <<http://195.234.175.160/en/library/asset/EUR01/002/2003/en/c900885a-d725-11dd-b0cc-1f0860013475/eur010022003ru.html>>).

177 Concerns in Europe and Central Asia: July to December 2002, Amnesty International.

178 Bureau of Human Rights and Rule of Law estimated 34 death sentences in 2003 (Respect for right to life in the aspect of the death penalty in Tajikistan, supra n. 167).

June 2003 and June 2004 at least 15 death sentences¹⁷⁹, and two executions were reported in the media, but the actual numbers could be higher.

In 2004 a study was undertaken to analyse 26 death penalty trials: in 19 cases defendants were charged with aggravated murder; and 7 cases were for rape. Death sentences were issued in 4 of those cases, and imprisonment for varying periods from 6 months to 20 years was handed down in the other 21 cases.¹⁸⁰

Official statistics on the number of people benefiting from the moratorium are not provided, however it is believed that approximately 50–60 individuals had their death sentences commuted in 2004.

IX. Application of life imprisonment: statistics

As of 25 November 2011, the number of persons sentenced to life imprisonment in Tajikistan is 52. This figure is growing at an alarming rate. In 2010, for example, only 3 people were sentenced to life imprisonment, in 2011, that number rose to 17.

X. Implementation of death sentence/life imprisonment: prison regime and conditions of imprisonment

Location of death row and life sentenced prisoners

Prior to the moratorium, persons sentenced to death were detained in solitary confinement in a special detention facility under heavy security to ensure its isolation.¹⁸¹

Those subjected to the moratorium are currently detained in pre-trial detention facilities.¹⁸² Tajikistan does not have any specialised institutions to accommodate those prisoners.¹⁸³

Prison regime

Article 133 of the Criminal Execution Code provides that those sentenced to life imprisonment must serve their sentence in penal colonies under special treatment. This requires that they are confined under strict isolation in a cell-type room. In exception cases, a cell may contain two prisoners.

The special regime can be downgraded to a more lenient regime, after the prisoner has served at least half of the term of his sentence, so long as they have not breached any of the prison rules. In this case, the convicted person will be detained in ordinary cells, and be entitled to receive additional family visits.¹⁸⁴ However, for persons serving a whole life sentence the period of time constituting “half of the term” cannot be established, leaving them ineligible to be transferred to an ordinary regime.

Conditions and treatment of detention

Those serving life imprisonment are eligible for three short-term and two long-term visits per year. Lifers have a right to receive packages and mail without limitation. They are entitled to a two hour walk daily. They can spend money on food and essentials from their personal accounts.

The UN Committee against Torture have raised concerns over the poor conditions of detention, in particular, overcrowding, poor sanitation, staffing shortages and a lack of medical attention for detainees.¹⁸⁵

179 OSCE Background Paper 2004, supra n. 36, p. 33.

180 Respect the right to life in the aspect of the death penalty in Tajikistan, supra n. 167.

181 Article 214 of the Code of Enforcement criminal punishments of the Tajik Republic.

182 OSCE Background Paper 2004, supra n. 36, p. 33.

183 Statement by Mr. Juma Davlatov, State Adviser of the President of Tajikistan on Legal Policy, made at the 2010 OSCE Review Conference, Warsaw, 5 October 2010.

184 Article 134 of the Criminal Execution Code of the Tajik Republic.

185 Conclusions and recommendations of the Committee against Torture, supra n. 151, para. 20.

Conditions for parole

In accordance with the laws of the Republic of Tajikistan, lifers do not have an option to apply for parole unless they have received a pardon to their sentence which may reduce it to a determinate term of years (usually a 25 year term or less).¹⁸⁶

Prison staff and management

The Tajikistani prison service has very limited resources, meaning that prison staff receives low wages, impacting on the quality and quantity of appropriately trained staff.

Monitoring prisons

Tajikistan does not have an official monitoring system in place for its penal system. Although a Human Rights Ombudsman was established in 2008, his competencies are limited to receiving complaints by citizens. He is not entitled to monitor closed institutions.¹⁸⁷

NGO access to detention facilities is extremely limited and the International Committee of the Red Cross (ICRC) have not had access since 2004.¹⁸⁸

Tajikistan has not ratified the Optional Protocol to CAT, and therefore is not required to establish a National preventive Mechanism (NPM).

XI. Transparency and accountability

Information or statistics on death sentences, executions or life imprisonment has not been published as it is considered a state secret.¹⁸⁹

Information is gathered by civil society from media reports, court judgements, presidential decrees, reports by international bodies, and what can be gathered unofficially.

XII. Current reform processes in the criminal justice system

On 13 April 2011, Tajikistan's parliament adopted amendments to the Penal Enforcement Code to undertake improvements in the conditions of prisoners serving a life sentence. The country's inability to guarantee adequate living conditions for, and treatment of, those convicted of the worst crimes has been a stumbling block in achieving full abolition of the death penalty. The recent amendments to the Penal Enforcement Code aim to relax restrictions on access to supplementary food purchased from the prison shop, and to increase eligibility for short and long visits from relatives and friends. However, as the speaker of the parliament noted following the adoption of these amendments, further intensive work is still needed to bring Tajikistan's prison law and penal practice in line with international standards.

On 23 July 2007, the President issued a Decree, which approved a programme of judicial legal reform. The main goal of the reform process was to strengthen the judiciary and the judicial system, including strengthening the role of the courts in protecting the rights and freedoms of Tajikistani citizens. This included enlarging the number of judges by an additional 50 (increasing the number of judges in Tajikistan to 339). The judicial legal reform programme was renewed on 3 January 2011 to cover the period up to 2013. Included in the new reform framework are plans to draft a law on legal aid, to adopt a code of ethics for the judiciary, improve terms of tenure for judges, implement anti-corruption measures, and increase wages for judges. However, the reform programme does not include provisions to reform the legal profession, or to strengthen its structure.

A state programme to humanise the criminal justice system has also been in place for a number of years. In December 2002, the penal system was transferred from the Ministry of Internal Affairs to the Ministry of Justice. In 2010, construction began on building a treatment ward for convicts suffering from tuberculosis. There are plans to build a new facility

¹⁸⁶ Article 76(7) of the Criminal Code of the Tajik Republic.

¹⁸⁷ Shadow report by NGOs for the Universal Periodic Review: Tajikistan, 2011, p. 3.

¹⁸⁸ Summary of stakeholder information, supra n. 148, para. 40.

¹⁸⁹ Article 9(22), of the Law "On the enumeration of information constituting a state secret", 10 May 2002.

which would be in accordance with international standards for those held serving strict regime (lifers).¹⁹⁰ Planning is also underway to bring the prison conditions, and in particular, the size of cells of correctional institutions into line with international standards.¹⁹¹

XIII. Abolitionist movement in Tajikistan

Although Tajikistan does not have a national coalition against the death penalty, there are a number of community organisations that work to oppose the death penalty and promote international human rights in the criminal justice system. Those organisations include:

- League of Women Lawyers of Tajikistan.
- Perspective +.
- Nota Bene.
- Independent Center for Human Rights.
- Bureau on Human Rights and the Rule of Law in Tajikistan.
- Institute for War and Peace Reporting.

As part of Penal Reform International's work in Tajikistan, a number of key events and initiatives have taken place. In May 2010, in the context of the UN sponsored programme to combat HIV/AIDS and Tuberculosis, PRI carried out training on health and human rights for medical and security staff in the Tajik capital of Dushanbe, and took the opportunity to discuss its concerns about the treatment of life sentenced prisoners with the Human Rights Ombudsman. In December of the same year, PRI, in cooperation with the Office of the Ombudsman, the OSCE and local civil society, hosted a seminar in Dushanbe on international standards and norms for the treatment of prisoners serving life and long sentences and examples of good practices from around the globe. Representatives of the Presidential Administration, Ministry of Justice, Supreme Court, General Prosecutors Office and public monitoring commissions attended the workshop which focused

on current penal reform processes, and developing recommendations for taking these forward.

A regional conference entitled "Partial abolition in Central Asia: how to move the process of death penalty abolition forward" bringing together participants from Kazakhstan, Kyrgyzstan and Tajikistan was convened by PRI in Astana, Kazakhstan on 26 April 2011. Discussions focused on further amendments needed to bring Kazakhstani, Kyrgyzstani and Tajikistani policy, legislation and practice in line with international standards and norms surrounding abolition and life imprisonment. Participants agreed 26 recommendations to take the abolition process forward across the Central Asia region (see Annex III).

A national conference in Tajikistan, convened by the League of Women Lawyers and the government's Working Group on the Death Penalty, with support by the Open Society Institute, was convened on 17–18 May 2011. It provided further opportunity for practical follow-up with civil society and government officials. In particular, 12 recommendations were made by participants including *inter alia* to abolish the death penalty and ratify the Second Optional Protocol to the ICCPR, to humanise the system of life imprisonment, and provide official statistics on the application of the death penalty and those sentenced to life imprisonment.

¹⁹⁰ National report to the UN Human Rights Committee, supra n. 156, para. 103.

¹⁹¹ Ibid, para. 104.

XIV. Recommendations for the Republic of Tajikistan

1. Fully abolish in law the death penalty by eliminating it as a form of punishment from the five articles in the Criminal Code as a first step, and subsequently from Article 18 of the Constitution. Tajikistan should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights.
2. Draft and adopt a strategy to reform the penal system with a clear vision that makes specific reference to reforming the system of life imprisonment which is consistent with international human rights standards and norms. Organise a public discussion on the strategy, with participation for all interested parts of civil society.
3. Abolish the use of whole life sentences. All life sentenced prisoners in Tajikistan should have a realistic right of parole. According to the UN Crime Prevention and Criminal Justice Branch's 1994 report on Life Imprisonment, all prisoners sentenced to life imprisonment should have their suitability for release reviewed after serving between 8 to 12 years of incarceration.
4. Ensure that parole and release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
5. Humanise the system of punishment by reducing the number of crimes for which life imprisonment may be prescribed (currently five) and limit these cases to only the most serious crimes.
6. Reform the system of legal aid in Tajikistan. This should include the possibility of obtaining free legal counsel at all stages of the case: pre-trial, trial, appellate, pardon and parole stage. At the same time, ensure that persons accused of crimes for which the stipulated term of life imprisonment are able to access such legal aid, and that all legal aid lawyers representing a defendant are independent of the state, adequately paid, and have the same rights of investigation and evidence-gathering as prosecution lawyers. Introduce an obligation that all criminal defence lawyers, including those under a legal aid scheme, use all opportunities to defend their clients including participation at all stages of the case, and that their duty is towards the client and not the state. Strengthen the legal profession by creating a centralised independent professional body which protects their interests and regulates training.
7. Uphold the independence and integrity of the judiciary, including ensuring the judges are well trained, paid an appropriate salary for their position and have security of tenure.
8. Consider establishing and implement trial by jury into Tajikistan.
9. Adopt a legal definition of torture based on the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Attach appropriate criminal sanctions to ensure accountability.
10. Establish an effective mechanism of investigating reports of torture and/or inhuman or degrading treatment or punishment, and ensure that any evidence obtained through torture, inhuman or degrading treatment or punishment, such as confession evidence, is not admissible in a court of law, except against a person accused of torture as evidence that the statement was made (Article 15 CAT).
11. Ratify the Optional Protocol to the Convention against Torture and establish a National Preventative Mechanism, which is independent, competent to monitor all places where people are deprived of their liberty and effectively operative in terms of its budget and resources.
12. Amend the Criminal Execution Code so that it is in accordance with the UN Standards Minimum Rules for the Treatment of Prisoners, and other international human rights standards and norms.
13. Reform the penitentiary system of Tajikistan so that the automatic allocation of life sentenced prisoners to high security regimes is not based by virtue of their sentence. Implement a case-by-case assessment of each individual prisoner's dangerousness (towards prison staff, other prisoners and any other members of society they may come in contact with) as a way of evaluating

what type of prison regime they should be placed under. The case-by-case assessments of each prisoner should be undertaken by an independent special commission under the prison system, and include various practitioners such as doctors and psychologists.

14. Introduce a system of progressive transfer of prisoners from high security, to medium security, to open prisons, depending on their behaviour and genuine dangerousness to staff and other prisoners, with the aim of eventual release back into society.
15. Eliminate discriminatory practices and regulations applicable to life sentenced prisoners. This should include prohibiting the requirement that life prisoners wear a special uniform, increasing contact of life prisoners with the outside world, and increasing their opportunity to use funds on their accounts.
16. End the practice of solitary confinement for those serving a life sentence merely by virtue of their sentence. Ensure that all such prisoners are treated humanly. Eliminate the practice of incarceration of life prisoners in inhuman and cruel conditions.
17. Ensure that prison conditions of life sentenced prisoners approximate as closely as possible the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration. This should include the possibility to study, to work, to have contact with the outside world, to receive medical treatment, in particular for prisoners suffering with tuberculosis.
18. Develop and implement medical and non-medical measures to support and rehabilitate those prisoners suffering from mental disorder, specifically those individuals who have been victim to torture or inhuman or degrading treatment or punishment.
19. Improve the pardon procedure and system of early review of life sentences. Ensure that judges who have the responsibility to review pardon applications and are specialised penal judges, with experience of dealing with such cases.
20. Simplify parole procedures, in particular by establishing a system of direct appeal for life sentenced prisoners to apply to a judge following refusal of a parole application by the prison's Special Commission. In circumstances where parole is refused, there should be a system to permit an application of parole to be reconsidered at regular, not too widely spaced intervals.
21. Increase resources for the prison system to improve salary and working conditions for prison staff. Ensure all prison staff is appropriately trained in international human rights standards.
22. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence, and place of sentence. Publish the regulations and orders related to the rights of life sentenced prisoners. Publish historical information on the practice of death penalty including the number of death sentences and executions and characteristics of those executed, and to inform the families of where their loved ones were buried.
23. Co-sponsor and vote in favour of the upcoming fourth UN General Assembly resolution calling for a moratorium on the death penalty scheduled for 2012, and any other relevant resolutions. Make use of bilateral relations to advocate for other states to support the resolution.
24. Encourage further collaboration between government officials and civil society, including journalists, on criminal justice issues, and to uphold the rights of human rights defenders.
25. Encourage relevant international organisations and donor states in a position to do so to promote and support criminal justice reforms within Tajikistan at both the financial and political level.

Comparison of the application and implementation of the death penalty and its alternative sanction in Central Asia

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
Death Penalty			
1. Death penalty status	Retentionist	Abolitionist in law for all crimes	Retentionist
2. Date abolished, if applicable	N/A	25 June 2007	N/A
3. Date of last execution	December 2003	1998	April 2004
4. Date of last death sentence	31 August 2006	2007	2004
5. Death penalty applicable crimes	<ol style="list-style-type: none"> 1. Acts of terrorism which results in death. 2. Especially grave crimes committed during times of war. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Child molestation with grave consequences. 3. Genocide. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Acts of terrorism resulting in death. 3. Rape of minors not resulting in death. 4. Genocide. 5. Biocide.
6. Is the death sentence mandatory?	No	Prior to abolition: No	No
7. Prohibited categories for application of the death penalty	<ul style="list-style-type: none"> • Men under 18 years of age at time crime committed. • Women (despite age, pregnancy). • Men over 65 years of age at time of sentence. • Mentally ill. 	Prior to abolition: <ul style="list-style-type: none"> • Men under 18 years of age at time crime committed. • Women (despite age, pregnancy). • Men over 60 years of age at time of sentence. 	<ul style="list-style-type: none"> • Men under 18 years of age at time crime committed. • Women (despite age, pregnancy). • Mentally ill.
8. Date moratorium implemented and type of moratorium, if applicable	19 December 2003: official moratorium on executions.	8 December 1998: official moratorium on executions. Moratorium updated on an annual basis and extended on 29 December 2005 until abolition in 2007.	15 July 2004: official moratorium on sentencing and executions.
9. If a moratorium is in place, have death row prisoners had their sentences commuted?	On 6 December 2007, all 31 death row convicts had their sentence commuted to whole life imprisonment.	In 2008, all 133 death row convicts had their sentence commuted to life imprisonment.	In 2004, approximately 50–60 death row prisoners had their sentences commuted to life imprisonment.
10. Method of execution	Shooting.	Prior to abolition: shooting.	Shooting.
11. Are relatives informed about the place of burial?	Relatives are informed about the place of burial two years after the execution has taken place.	Relatives were not informed about the place of burial.	Relatives are not informed about the place of burial.

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
12. Death row regime	Solitary confinement in a special detention facility under heavy security. In exceptional cases, a cell can contain no more than two death row prisoners.	N/A	Solitary confinement in a special detention facility under heavy security. In exceptional cases, a cell can contain no more than two death row prisoners.
13. Number of prisoners on death row	None	N/A	None
14. Right to apply for clemency/pardon	The President has the power to issue a pardon or clemency. All death sentences are currently stayed or commuted to whole life.	N/A	The President has the power to issue a pardon or clemency. All death sentences are currently commuted to 25 years imprisonment.
15. Cost of imprisoning one death row inmate for a day/year	N/A	N/A	N/A
16. Number of death sentences in 2010 and 2011	None	N/A	None
17. Number of executions in 2010 and 2011	None	N/A	None
18. Have there been any recent opinion polls on death penalty, and if so, key findings	In 2008, an opinion poll found 66.6 per cent of Kazakhs considered that the death penalty could be imposed in exceptional circumstances, 38.3 per cent considered the death penalty as ineffective and incapable of influencing crime.	None.	A study of public opinion was conducted in Nov-Dec 2010 by the NGO "Note Bene": 61.18 per cent were against the death penalty; 28.98 per cent of respondents supported the death penalty; 39.65 per cent of respondents believed that the death penalty violates human rights; and 58.44 per cent of respondents had never even thought about the death penalty in Tajikistan.
Alternative Sanctions			
19. Alternative sanction to death penalty	Life imprisonment for 25 years for those sentenced after the moratorium (or 30 years for cumulative offences). Whole life imprisonment for the 31 death row prisoners whose sentences were commuted (now 29 prisoners).	Whole life imprisonment (can be substituted by 30 years imprisonment).	Whole life imprisonment.
20. Is there a mandatory life sentence?	No	No	No

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
21. Life imprisonment applicable crimes	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Planning, preparing, starting and implementing an aggressive war. 3. Application of prohibited means and methods of conducting a war. 4. Genocide. 5. Employment of mercenaries. 6. High treason. 7. Attempt on life of First President of Kazakhstan (leader of nation). 8. Attempt on life of President of Kazakhstan. 9. Sabotage. 10. Terrorism. 11. Smuggling. 12. Illegal manufacture, purchase, storage, transportation, sending or sale of narcotic or psychotropic substances. 13. Theft of drugs. 14. Persuading to use drugs. 15. Attempt upon life or person administering justice. 16. Threatening to use violence against staff of prison or prisoner. 17. Insubordination or non-implementation of military order. 18. Resistance to a military superior (in war time). 19. Aggravated violence against a military superior. 20. Desertion in combat situation. 21. Avoiding army service by self-mutilation in combat situation or war time. 22. Violation of rules for being on active duty in army in war time. 23. Abuse of power in army in war time or combat situation. 24. Surrendering or leaving means of war to the enemy. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Child molestation with grave consequences. 3. Genocide. 4. Murder of state or public figure. 5. Murder of an individual administering justice or investigation. 6. Murder of law enforcement or military officer. 	<ol style="list-style-type: none"> 1. Aggravated murder. 2. Acts of terrorism that cause death. 3. Child molestation. 4. Genocide. 5. Biocide.

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
22. Prohibited categories for application of life imprisonment	<ul style="list-style-type: none"> Men under 18 years of age at time crime committed. Women (despite age, pregnancy). Men over 65 years of age at time of sentence. Mentally ill. 	<ul style="list-style-type: none"> Men under 18 years of age at time crime committed. Women (despite age, pregnancy). Men over 60 years of age at time of sentence. Mentally ill. 	<ul style="list-style-type: none"> Men under 18 years of age at time crime committed. Women (despite age, pregnancy). Men over 63 years of age at time of sentence. Mentally ill.
23. Location of life sentenced prisoners	Zhytykary Colony (UK161/3) and Arkalyk colony (UK161/12) both in the Kostanay region. Lifers are isolated from other categories of convicts in the colony under a special regime.	Pre-trial detention centre No. 1 (Bishkek), No. 4 (Naryn), and No. 5(Osh); maximum security prisons Nos. 1, 3, 16, 21, 24, 25, 27, 31, and 47. Lifers are incarcerated in cell-like buildings under a special regime.	There is no specific institution designated for lifers. Prisoners serving life are housed in pre-trial detention facilities and in correctional colonies of special treatment.
24. Number of lifers	95 (all male): 29 whole lifers and 66 serving a 25 years sentence.	257 (all male).	52 (all male).
25. Can lifers apply for a pardon/ clemency?	Persons sentenced to life imprisonment have the right to apply for a pardon by the President; however those serving a whole life imprisonment are not entitled to seek pardon or clemency.	Persons sentenced to life imprisonment have the right to apply for a pardon by the President.	Persons sentenced to life imprisonment have the right to apply for a pardon by the President.
26. Cost of imprisoning one lifer for a year/day	Approximately US\$ 12 per day / US\$ 4,250 per year.	Approximately US\$ 4.50 per day / US\$ 1,645 per year.	This information is not available
27. Number of life sentences issued in 2010 and 2011	Up to 1 April 2011: 3 life sentences. 2010: 11 life sentences.	2011: 26 life sentences. 2010: 22 life sentences.	2011: 17 life sentences. 2010: 3 life sentences.
28. Number of lifers paroled in 2010 and 2011	None	None	None
Fair Trial Standards			
29. Presumption of innocence	Presumption of innocence is legally guaranteed, however, there are criticisms about the weak realisation of this principle in practice.	Presumption of innocence is legally guaranteed, however, there are criticisms about the weak realisation of this principle in practice	Presumption of innocence is legally guaranteed, however, there are criticisms about the weak realisation of this principle in practice
30. Trial by jury	Trial by jury introduced 1 January 2007.	Trial by jury established 2007, but not implemented.	No trial by jury.

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
31. Access to legal aid	Access to legal aid is legally guaranteed. However, there are concerns that the prosecution holds too much power over the defence, which weakens the realisation of this principle in practice.	Access to legal aid is legally guaranteed. However, payment of defence lawyers is alarming low.	No mechanism to provide legal aid.
32. Appeal process	Defendants are legally entitled to appeal and seek review of their cases through the appellate court up to the Supreme Court.	Defendants are legally entitled to appeal and seek review of their cases through the appellate court up to the Supreme Court.	Defendants are legally entitled to appeal and seek review of their cases through the appellate court up to the Supreme Court.
33. Number of successful appeals	This information is not possible to obtain.	This information is not possible to obtain.	This information is not possible to obtain.
Transparency			
34. Government department responsible for publishing official statistics and information on the death penalty/life imprisonment	Committee on Legal Statistics and Special Records of the General Prosecutor's Office of the Republic of Kazakhstan has responsibility for publishing crime rates, but statistics on application of death penalty and life sentences are not officially published.	The government does not provide official data on the death penalty or life imprisonment; it is considered a state secret.	The government does not provide official statistics on the application of the death penalty or life imprisonment.
35. Statistics / information available	Reported crimes.	N/A	Total number of convictions.
36. Date when this information/ statistics was last updated	Collections of the Committee are published quarterly and annually.	N/A	Statistics provided by the Chairman of the Supreme Court are provided at a quarterly press conference.
Civil Society			
37. Key civil society organisations working on abolition/ alternative sanctions	<ul style="list-style-type: none"> • Adil Soz. • Charter for Human Rights. • Committee for Monitoring Reform and Human Rights. • International Fund for Freedom of Speech. • Kazakhstan International Bureau for Human Rights and Rule of Law. • Ray of Hope. • Saugu. • The Taraz Initiative Centre. 	<ul style="list-style-type: none"> • Citizen Against Corruption. • Voice of freedom. 	<ul style="list-style-type: none"> • Bureau on Human Rights and Rule of Law in Tajikistan. • Independent Centre for Human Rights. • Institute for War and Peace Reporting. • League of Women Lawyers of Tajikistan. • Nota Bene. • Perspective +.

	Republic of Kazakhstan	Republic of Kyrgyzstan	Republic of Tajikistan
International and Regional Human Rights Standards			
International Covenant on Civil and Political Rights (ICCPR)	24 January 2006	7 October 1994	13 November 1998
First Optional Protocol ICCPR	20 June 2009	7 October 1994	4 January 1999
Second Optional Protocol ICCPR	Unsigned	6 December 2010	Unsigned
Convention Against Torture (CAT)	26 August 1998	5 September 1997	11 January 1995
Optional Protocol CAT (OPCAT)	22 October 2008	29 December 2008	Unsigned
Convention on the Rights of the Child	12 August 1994	7 October 1994	26 October 1993
International Criminal Court / Rome Treaty	Not a state party	Not a state party	30 November 1998
2007 UN GA moratorium resolution 62/149	Voted in favour	Voted in favour	Voted in favour
2008 UN GA moratorium resolution 63/168	Voted in favour	Voted in favour Co-sponsored resolution	Voted in favour
2010 UN GA moratorium resolution 65/206	Voted in favour	Voted in favour Co-sponsored resolution	Voted in favour

Annex I: Recommendations from Kazakhstan national conference (19 November 2010)

RECOMMENDATIONS

of the participants of the conference on the theme “Life imprisonment in Kazakhstan: challenges for reform”

Astana, 19 November 2010

1. An indeterminate life sentence should be replaced with a determinate term of incarceration. This recommendation is based on an analysis of determinate sentences successfully used in other foreign jurisdictions, and is based on the various psychological and behavioural studies related to the treatment and conditions of incarceration for life prisoners, and the negative effects it has on rehabilitation and reintroduction to society.
2. Parole should be permitted for life and long-term prisoners after 15 years of incarceration. The general conditions of the Kazakhstan parole system must be reformed: prisoners should have a right of direct appeal to the court. Furthermore, in accordance with UN Recommendations of 1994 on *Life Imprisonment*, the Government should provide long-term and life prisoners with a right to appeal parole decisions after a period of 8–14 years of incarceration. In the case of refusal of parole, the prisoner should be entitled to have that decision reviewed on a regular basis.
3. The Criminal Executive Code should be amended to include special reference to life imprisonment. The Criminal Executive Code should be the primary legislation to regulate all orders and conditions and treatment of life imprisonment.
4. The punishment system should be humanised, for example by reducing the length of term of incarceration and the number of life imprisonment applicable crimes. Life imprisonment as a punishment should be deleted in the following articles of the Criminal Code:
 - Article 259(4) (illegal purchase, transportation or storage for sale, manufacturing, processing, shipment or sale of drugs or psychotropic substances, committed to educational organisations).
 - Article 260(4) (theft or extortion of narcotic drugs or psychotropic substances, committed in large-scale).
 - Article 261(4) (inducing person to use narcotic drugs or psychotropic substances, where they caused death by negligence victim or other grave consequences).
 - Article 361(4) (encroachment on the life of an institution employee, providing isolation from society, or his spouse or close relatives in connection with his official activity, and also at the sentencing order to prevent its correct or out of revenge for its cooperation with the administration agencies).
 - Article 367(3–1) (insubordination or other failure of the order, committed in wartime).
 - Article 368(3,4) (resistance to the head or forcing him to violate their duties, committed in a combat situation; resistance to the head or forcing him to violate their duties, committed in wartime).
 - Article 369(3,4) (violent acts against the head, committed in a combat situation; violent acts against the head, committed in wartime).
 - Article 373(3,4) (desertion committed in a combat situation; desertion committed in time of war).
 - Article 374(3,4) (evasion of military service through self-mutilation or otherwise committed in a combat situation; evasion of military service through self-mutilation or otherwise committed in wartime),
 - Article 380(3,4) (abusing authority, excess or inactivity of authorities, committed in wartime).
5. Rules which arbitrarily discriminate lifers must be reviewed and amended. This includes:
 - The rule which prohibits parole for those who received a life sentence as a pardon to the death penalty (Article 70(8) of the Criminal Code). Currently 29 lifers in Zhytykary prison have no right to parole. This situation may be estimated as cruel and degrading punishment.
 - Annex 11 of the Internal Order rules provides the description of a special uniform required to be worn by lifers and death row prisoners. The special uniform may be estimated as a violation of Rule 17 of the UN Standard Minimum Rules on the Treatment of Prisoners.

-
6. Declassify the instructions and orders related to the rights of lifers. For example, the Order of the Minister of Justice on 22 June 2010, registered on 1 July 2010 “About Rules of censorship of correspondence sent and received by prisoners arrested, incarcerated and lifers”.
 7. Consideration should be given to the diversity of personal characteristics and needs of life-sentence and long-term prisoners. Account of their individual needs should be taken into consideration when individual sentence plans are devised and implemented (**individualisation principle**).
The use of high security regimes should be reduced for lifers based on individual evaluations by psychologists and psychiatrists.
Judges should analyse the question of life imprisonment and death penalty carefully. Sentencing guidelines and policies, which reflect international standards, should be implemented, making it obligatory for judges to consider the possibility of other punishments.
 8. Prison life should be arranged so as to approximate as closely as possible the realities of life in the community (**normalisation principle**). This includes:
 - Delete sub-paragraph 8 of paragraph 12–1 from the Rules of Internal Order of prisons which prohibits the prisoners’ use of the bed during daytime.
 - Cancel unreasonable restrictions on outside contact, in particular telephone calls should be permitted to lifers and the number of visits must be increased.
 - Permit lifers the use of TV and DVD.
 - Amend annex 10 of the Rules of Internal Order to let lifers use money (to have a limited amount of money).
 - According to Article 108 of the Criminal Executive Code “Lifers are not embraced by the system of primary and secondary education. They have conditions for self-education if this doesn’t violate the order and conditions of punishment”. Lifers should be provided with conditions for self-education which will help them to receive a certificate of secondary education, and provide possibilities for further (higher) education by distance learning.
 9. Prisoners should be given opportunities to exercise personal responsibility in daily prison life (**responsibility principle**).
 10. A clear distinction should be made between any risks posed by life-sentence and other long-term prisoners to the external community, to themselves, to other prisoners and to those working in or visiting the prison (**security and safety principle**).
 11. Consideration should be given to non-segregation of life-sentence and other long-term prisoners on the sole ground of their sentence (**non-segregation principle**). This includes:
 - Lifers should be incarcerated in different prisons across all regions of Kazakhstan, and not in separate lifer institutes. This will help to solve problem of social integration and prison management.
 - Special section for lifers should be opened in a special hospital for TB prisoners.
 12. Individual planning for the management of the prisoner’s life or long-term sentence should aim at securing progressive movement through the prison system (**progression principle**). For example, in the system of fixed term of 25 years: first five years – high security regime, 10 years – ordinary regime, and last ten years – light regime, with preparation for life after release.
-

Annex II: Recommendations from Kyrgyzstan national conference (20 October 2010)

RECOMMENDATIONS of conference participants on “Life imprisonment in Kyrgyzstan: Problems and Prospects”

Bishkek, 20 October 2010

We, participants of the international conference on “Life imprisonment in Kyrgyzstan: Problems and Prospects”, following a discussion on the reforms to the prison system of the Kyrgyzstan Republic including implementation of the UN Standard Minimum Rules for the Treatment of Prisoners for those serving a life sentence following abolition of the death penalty in Kyrgyzstan in 2007:

Welcome –

- The abolition of the death penalty in Republic of Kyrgyzstan as an important step in the democratisation and humanisation of the criminal policy;
- The decision not to permit life imprisonment for women, those who committed crimes before the age of eighteen years of age, and men who have attained at the time of the offence the age of sixty;
- Adherence of the Republic of Kyrgyzstan to the Second Optional Protocol to the International Covenant on Civil and Political Rights as an important event in the protection of the right to life for Kyrgyzstan;
- Ratification of the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a key component of establishing an independent form of public control of all places of detention in Kyrgyzstan.

Note –

- The inadequate detention conditions for life prisoners which do not reflect the UN Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles for the Treatment of Prisoners and other international obligations which Kyrgyzstan is party to.
- The inadequate access to basic resources for life prisoners. Including equal access to the justice system, competent legal assistance and advocacy, and adequate living conditions, nutrition, health care, residential areas, sanitation and social rehabilitating programmes.
- The lack of adequate security for both prison staff and for prisoners, as well as those who visit prison institutions.
- The need for a special course for the prison service (GSIN) to work with life inmates.
- The need to accelerate reforms of the judiciary, prosecutor and penal system, as well as the further improvement and humanisation of criminal legislation and changes in the repressive penal policy.

Recommend the appropriate public authorities of the Republic of Kyrgyzstan to –

1. Develop and approve the five year “Concept of Legal Policy” plan to improve criminal justice policy so that it clearly reflects a humanised approach of criminal law and procedure.
2. Review all criminal cases of persons sentenced to life imprisonment to ensure the effective implementation of the right to protection.
3. Amend legislation to reduce the possibility of 30 year sentence to a maximum 20 year sentence.

4. Streamline the procedure for clemency, including expanding the list of persons (lawyers, close relatives, community organisations) that have a right to petition for clemency to the President of the Republic of Kyrgyzstan.
 5. Develop and implement legislation which expands the judicial review of the enforcement of a sentence of life imprisonment and the legitimate rights of convicts.
 6. Adopt the Law “On the national prevention mechanism in Kyrgyzstan Republic” to monitor all places of detention.
 7. Improve the system of free legal aid at all stages of the proceedings (from pre-trial to parole), including reforming “duty counsel” to ensure that they work in the interests of their clients.
 8. Develop an effective mechanism to respond to allegations of torture.
 9. Uphold the inadmissibility of evidence obtained through torture.
 10. Bring the norms of the Criminal Code of the Executive in compliance with the UN Standard Minimum Rules for the Treatment of Prisoners and other international human rights standards.
 11. Implement the possibility of appeal on grounds of new or newly discovered facts.
 12. Abolish housing life sentenced prisoners in basements and other cells or prisons which do not meet minimum international standards.
 13. Develop a system of psychological support and rehabilitation for those serving a life sentence.
 14. Abolish the discriminatory practice of segregation of life sentenced prisoners from other groups of prisoners, and encourage re-socialisation among prisoners.
 15. Review of the Criminal Code of the Kyrgyzstan Republic to reduce the number of crimes providing a possible sentence of life imprisonment.
 16. Discontinue the practice of constant movement of prisoners from one correctional facility to another.
-

Annex III: Recommendations from Central Asia regional conference (26 April 2011)

PARTIAL ABOLITION IN CENTRAL ASIA: HOW TO MOVE THE PROCESS OF THE DEATH PENALTY ABOLITION FORWARD

RECOMMENDATIONS of the conference participants

Astana, 26 April 2011

The conference participants make the following recommendations that the state bodies of the Republic of Kazakhstan, the Republic of Kyrgyzstan and the Republic of Tajikistan implement the following measures at their earliest opportunity:

1. Fully abolish in law the death penalty in Kazakhstan and Tajikistan by making relevant reforms to both the constitution and penal code for each state, and sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights. For Kazakhstan, as an interim measure, to introduce a moratorium on death penalty sentencing.
2. Tajikistan to sign and ratify the Optional Protocol to the Convention Against Torture. Kazakhstan, Kyrgyzstan and Tajikistan to establish National Preventive Mechanisms and establish/strengthen the capacity of public control over places of detention.
3. Kazakhstan and Tajikistan to draft and adopt a national action strategy to reform their penal system. In particular, the strategy should make specific reference to implementing reforms to the life imprisonment system which respects international human rights standards and norms. To organise a public discussion of the strategy with the participation of all interested civil society.
4. To implement improvements into the pardon procedure and system of early review of life sentences. Kazakhstan, Kyrgyzstan and Tajikistan should ensure that those judges with the responsibility for parole are specialised penal judges, with experience of dealing with such cases.
5. To reform the system of providing free legal aid in Kazakhstan, Kyrgyzstan and Tajikistan. This should include the provision of legal aid at all stages of the case, including pre-trial, trial, sentencing, appeal and pardon. Ensure that those defendants facing felonies for which life imprisonment is prescribed are able to access such legal aid, and that all legal aid lawyers representing a defendant are independent of the state, well-paid, and have the same rights of investigation and evidence-gathering as prosecution lawyers. Introduce an obligation that all criminal defence lawyers, including those under a legal aid scheme, use all opportunities to defend their clients including participating at all stages of the case.
6. Establish an effective mechanism of investigating reports of torture and/or inhuman or degrading treatment or punishment, and ensure that any evidence obtained through torture, inhuman or degrading treatment or punishment, such as confession evidence, is not admissible in a court of law.
7. Amend the Code for Execution of Punishment in Kazakhstan, Kyrgyzstan and Tajikistan in accordance with the UN Minimal Standards Rules for the Treatment of Prisoners, and other international human rights standards and norms.
8. Widen the list of potential reasons for reviewing a sentence based on newly-discovered evidence.
9. Transfer prisoners currently serving a whole life sentence in Kazakhstan and Kyrgyzstan onto the system of fixed term punishment, with a realistic possibility of release. Ensure that such release procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.
10. Introduce into the Tajikistan Penal Code a new fixed-term life sentence, which has a realistic opportunity for life sentenced prisoners to apply for parole and early release, and subsequently transfer those prisoners currently serving a whole life sentence onto the newly established sentence. Ensure that parole procedures are clearly defined in law, are accessible, meet due process safeguards, and are subject to appeal or review.

11. Shorten the minimum length of term of punishment after which a life sentenced prisoner may apply for parole. According to the UN Crime Prevention and Criminal Justice Branch's 1994 report on Life Imprisonment, all prisoners sentenced to life imprisonment should have their suitability for release reviewed after serving between 8 to 12 years of incarceration.
12. Simplify parole procedures, in particular by establishing a system of direct appeal for life sentenced prisoners to a judge following refusal of a parole application by the prison's Special Commission. In circumstances where parole is refused, there should be a system to permit an application of parole to be reconsidered at regular, not too widely spaced intervals.
13. Humanise the system of punishment by reducing the number of crimes for which life imprisonment may be prescribed and limit these cases to the most serious crimes.
14. Reduce the maximum terms of incarceration for all crimes in the penal codes of Kazakhstan, Kyrgyzstan and Tajikistan.
15. Eliminate discriminatory practices and regulations applicable to life sentenced prisoners. This should include prohibiting the requirement that life prisoners wear a special uniform, increasing contact of life prisoners with the outside world, and increasing their opportunity to use money on their accounts.
16. End the practice of segregation of life sentenced prisoners from the rest of the prison population by virtue of their sentence. Introduce the practice of incarceration of life prisoners in prisons situated near their families.
17. End the practice of solitary confinement for those serving a life sentence merely by virtue of their sentence. Ensure that all such prisoners are treated humanely. Eliminate the practice of incarceration of life prisoners in inhuman and cruel conditions.
18. End the discriminatory practice in Kazakhstan which prohibits parole for those prisoners whose death penalty was replaced by life imprisonment under Article 70(8) of the Kazakhstan Penal Code. All life sentenced prisoners in Kazakhstan should have a realistic right of parole.
19. Provide public access to information and statistics on the national penal system, including the number of sentenced prisoners and their characteristics, length of sentence, place of sentence etc. Declassify the regulations and orders related to the rights of life sentenced prisoners. Publish information on practice of death penalty for use of public.
20. Ensure that prison conditions of life sentenced prisoners approximate as closely as possible the conditions of life outside the prison system, and offer programmes for rehabilitation and reintegration. This should include the possibility to study, to work, to have contact with the outside world, to receive medical treatment, in particular for prisoners suffering with TB.
21. Introduce a system of progressive movement of prisoners from high security, to medium security, to open prisons, depending on their behaviour and genuine dangerousness to staff and other prisoners, with the aim of eventual release back into society.
22. Develop and implement medical and non-medical measures to support and rehabilitate those prisoners suffering from mental disorder, specifically those individuals who have been victim to torture or inhuman or degrading treatment or punishment.
23. Reform the penal system in Kazakhstan, Kyrgyzstan and Tajikistan so that automatic housing of life sentenced prisoners in a high security regime is not based by virtue of their sentence. Implement a case-by-case assessment of each individual prisoner's dangerousness (towards prison staff, other prisoners and any other members of society they may come in contact with) as a way of evaluating what type of prison regime they should be placed under. The case-by-case assessments of each prisoner should be undertaken by an independent special commission under the prison system, and include various practitioners such as doctors and psychologists.
24. Establish a mechanism to implement decisions of the UN Committee on Human Rights at the national level in Kazakhstan, Kyrgyzstan and Tajikistan.

For more information on PRI's work on the abolition of the death penalty and alternative sanctions that respect international human rights standards please contact:

Penal Reform International
60-62 Commercial Street
London
E1 6LT
United Kingdom

www.penalreform.org

© Penal Reform International 2012

ISBN 978-0-9568822-1-9