

KYRGYZSTAN

A tarnished human rights record

INTRODUCTION

The Kyrgyz Republic, commonly known as Kyrgyzstan, is one of the newly-independent states of the former Soviet Union¹. It is in eastern Central Asia, bordering China, and has a population of just under 4.5 million.

Under the leadership of Askar Akayev, who has been President of Kyrgyzstan since 1990, the country has enjoyed a reputation for having the most democratic political processes and the most open society of all the former Soviet Central Asian republics. However, Amnesty International has monitored human rights violations in Kyrgyzstan - principally the death penalty - consistently since the country gained independence. Within the past two years the organization has become increasingly concerned by evidence of a worsening record of respect for human rights.

In March 1996 Amnesty International wrote to President Akayev to raise a number of matters relating to the observance of international human rights standards in Kyrgyzstan which are of continuing concern to the organization. This followed his re-election to the office of President of the Kyrgyz Republic in December 1995, and a national referendum in February 1996 on constitutional changes which greatly increased his powers as President. Amnesty International stated to President Akayev the hope that his new administration would give priority to making full respect of fundamental human rights a reality in Kyrgyzstan.

This report is based on the March 1996 letter to the President. At the time of writing, in May 1996, no reply to that letter has been received from the President or from any other Kyrgyzstani official.

¹ Kyrgyzstan declared independence from the Soviet Union on 31 August 1991, shortly after the failed coup d'état in Moscow against Soviet President Mikhail Gorbachev. That independence was recognized internationally following the demise of the Soviet Union in late December 1991. Kyrgyzstan was admitted to the Conference on Security and Co-operation in Europe (CSCE), later restyled the Organization for Security and Co-operation in Europe (OSCE), at the end of January 1992, and to the United Nations on 2 March.

AMNESTY INTERNATIONAL'S CONCERNS

Violations of freedom of expression: prosecutions for insulting the President

Amnesty International welcomed Kyrgyzstan's accession at the beginning of 1995 to the International Covenant on Civil and Political Rights (ICCPR). This provides guarantees for many of the basic rights which Amnesty International seeks to protect and defend worldwide. It guarantees the right to life, the rights to freedom of thought, conscience and religion, freedom of expression, freedom from being subjected to arbitrary arrest, torture or ill-treatment, and the right to a fair trial, among other rights.

In this context Amnesty International has stated to President Akayev its concerns about recent cases in Kyrgyzstan where people have been subject to criminal prosecution for defamation of state officials. In particular Amnesty International is concerned about the case of **Kubanychbek Apas**, who was arrested on 15 November 1995 by officers from the October District Department of Internal Affairs in Bishkek, the capital, reportedly on a warrant issued by the Procurator General of the Kyrgyz Republic. Kubanychbek Apas was charged with "defamation in printed form" and "insult" under Articles 128 part 2 and 129 of the Criminal Code of the Kyrgyz Republic in connection with statements he had made about the President of the Kyrgyz Republic in newspaper articles and radio interviews between May and November 1995. Although he was released from custody after two days, the charges against him are still outstanding.

Earlier in 1995 two female journalists on the newspaper *Res Publika* underwent criminal prosecution on charges of defaming the President. The charges against **Zamira Sadykova**, the newspaper's editor, and **Tamara Slashcheva**, deputy editor, arose from an editorial in *Res Publika* in March 1995 entitled "Give a home to a homeless man!", in which it was alleged that President Akayev had property and bank accounts abroad. The Lenin District Court in Bishkek found them guilty on 11 July 1995. The court handed down suspended sentences of 18 months' imprisonment to Zamira Sadykova and one year's imprisonment to Tamara Slashcheva. The court also barred the two from working as journalists for 18 months.

Article 19 of the ICCPR, which protects the right to freedom of expression, acknowledges that the exercise of that right "carries with it special responsibilities" and may therefore be subject to certain restrictions provided by law to respect the rights or reputations or others. Amnesty International recognizes that all persons who believe themselves to have been the victims of defamation have a right to seek redress through the courts. However, it is widely recognized that public officials should expect to be subjected to a greater degree of public criticism than other individuals, and that the degree of restriction permitted to protect an individual's reputation should be more limited in the case of a public official than a private person. Amnesty International believes that public officials or authorities who consider themselves defamed should be able to seek redress through civil laws in order to protect their reputation. Criminal legislation should not be used in such a way as to stifle criticism of public officials, or to intimidate those who voice legitimate concerns about the actions or practices of public officials.

For this reason, should Kubanychbek Apas be imprisoned under Article 128 part 2 or 129 of the Criminal Code of the Kyrgyz Republic, Amnesty International would adopt him as a

prisoner of conscience and would call for his immediate and unconditional release. Had Zamira Sadykova and Tamara Slashcheva been given custodial prison sentences, they would have been regarded by Amnesty International as prisoners of conscience.

Furthermore, in this context Amnesty International requested from President Akayev further information about the charges against **Topchubek Turgunaliyev** and **Dzhumagazy Usupov**, who were arrested in Issyk-Kul Region on 22 December 1995. They were charged with “defamation in printed form” (Article 128 part 2 of the Criminal Code), “insult in written form” (Article 129) and “premeditated inflaming of national discord or hatred, committed by a group of people” (Article 68 part 3), in connection with their alleged possession and distribution during the presidential election campaign of leaflets critical of President Akayev (Topchubek Turgunaliyev, the Deputy Chairman of the *Erkin Kyrgyzstan* political party, and Dzhumagazy Usupov, the Chairman of the *Ashar* society, were involved in organizing the campaign of one of the rival candidates to President Akayev in the presidential election which took place on 24 December). As well as having concerns about the legitimacy of bringing criminal charges of defamation and insult in this case, Amnesty International was concerned that information from unofficial sources cast doubt on the legitimacy of the allegation of inflaming national discord or hatred. Specifically, it was highly questionable whether comments allegedly made to the effect that President Akayev was of Kazak, rather than Kyrgyz, ancestry had been made with the aim of inciting ethnic hatred.

Topchubek Turgunaliyev and Dzhumagazy Usupov were detained pending trial in the town of Karakol. They were prisoners of conscience.

Topchubek Turgunaliyev and Dzhumagazy Usupov were tried on 17-29 April 1996 in the Issyk-Kul Regional Court, found guilty, and given one-year suspended prison sentences. They were released immediately.

Since Amnesty International’s letter to President Akayev in March 1996, a further similar such case has arisen. **Rysbek Omurzakov**, a journalist with the *Res Publika* newspaper, was arrested on 12 April in Bishkek on the orders of the procurator of Naryn Region. At the time of writing he was reported to be in pre-trial detention in Naryn town, charged with “defamation combined with an accusation of commission of a crime against the state or other grave crime” (Article 128 part 3). Unofficial sources report that the charge is connected with the alleged distribution by Rysbek Omurzakov of leaflets critical of the President, and that the case is linked to that of Topchubek Turgunaliyev and Dzhumagazy Usupov. Amnesty International regards Rysbek Omurzakov as a prisoner of conscience and is calling for his immediate and unconditional release.

Also in respect of the ICCPR, Amnesty International is urging the authorities in Kyrgyzstan to consider, as a matter of priority, ratification of the first Optional Protocol to the Covenant. In force since 1976, it allows the Human Rights Committee, composed of 18 experts, to consider at closed meetings communications submitted by individuals from concerned states who claim that their rights, as provided by the Covenant, have been violated. Such submissions are admissible if all domestic remedies have been exhausted.

The death penalty

Amnesty International is also calling on authorities in Kyrgyzstan to consider, as a matter of priority, ratification of the Second Optional Protocol to the ICCPR. Adopted by a resolution of the United Nations General Assembly in December 1989, the Second Optional Protocol is the first international treaty of worldwide scope aimed at abolition of the death penalty.

In 1992, shortly after Kyrgyzstan became independent, a delegation from Amnesty International visited Bishkek and had the opportunity to discuss the death penalty and other issues with officials in the government and judiciary. The delegation heard positive statements from many officials about the desirability of abolishing the death penalty in Kyrgyzstan. The subsequent news that clemency had been granted to a number of people under sentence of death whose cases had been raised by Amnesty International encouraged hopes of a serious commitment to abolition of the death penalty in Kyrgyzstan.

These hopes were misplaced, and Amnesty International has been disturbed by reports of much wider use of the death penalty in the past two years. Authorities in Kyrgyzstan appear to take the view that use of the death penalty is necessary to fight crime effectively. Arguments about its deterrent effect are frequently put forward as a justification for retaining the death penalty, but Amnesty International rejects them. Scientific studies have consistently failed to find convincing evidence that the death penalty deters crime more effectively than other punishments. A survey of research findings on the relation between the death penalty and homicide rates, conducted for the United Nations in 1988, concluded that:

"This research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment. Such proof is unlikely to be forthcoming. The evidence as a whole still gives no positive support to the deterrent hypothesis".

Similarly, the South African Constitutional Court, whose judges were appointed by President Nelson Mandela, in a ruling in June 1995 (State v. MaKwanyane and Mchunu, case No. CCT/3/94), expressly rejected the contention that the death penalty was an effective specific deterrent.

Amnesty International also maintains that the wrong message is given when a government itself violates human rights in the process of seeking to enforce law and order. Executing people to punish serious violent crime only serves to perpetuate a cycle of violence.

The death penalty in Kyrgyzstan

Kyrgyzstan retains the death penalty for 15 peacetime and two wartime offences.

As crime rates have increased in recent years, Kyrgyzstan has increased its use of the death penalty. Justice Ministry officials made available to Amnesty International in April 1992 statistics for the number of death sentences passed and carried out between 1987 and 1991. These showed that on average eight death sentences had been passed annually between 1987 and 1990, and that all of these had been carried out. In 1991 the number of death sentences rose sharply to 21. Statistics for the number of death sentences passed annually since then have not been made available.

In February 1993 the head of the Department for Citizenship and Clemency Questions at the President's Office informed Amnesty International that three death sentences passed in 1991 had recently been commuted to 20 years' imprisonment. A fourth death sentence was commuted in October 1993. Amnesty International had taken up these cases (as it does all death penalty cases brought to its attention), and unofficial sources in Kyrgyzstan reported that the organization's campaign had made a decisive contribution to their positive resolution. At least one execution was carried out in 1993, however. In 1994 three cases brought to Amnesty International's attention ended in commutation, but in a fourth the death sentence was carried out (see the section on ill-treatment, below). In 1995 at least 30 people were executed, including one man, 21-year-old *Vasily Skvortsov*, whose case Amnesty International had taken up by calling for commutation of his death sentence.

The most recent case of a death row prisoner to come to the attention of Amnesty International concerned *Lyubov Sirotkina*, a woman born in 1970. She had been sentenced to death in January 1996 for the murder of her seven-year-old stepson, who starved to death in her care while her husband was in prison. Initially, Lyubov Sirotkina had been charged under Article 124 of the Criminal Code with "leaving in danger", but after an investigation the procurator's office had substituted a charge under Article 94 ("premeditated, aggravated murder") and the case was referred to Bishkek City Court, which on 17 January 1996 found Lyubov Sirotkina guilty of "premeditated murder, committed from motives of self-interest and with particular cruelty". Lyubov Sirotkina is reported to have acknowledged partial guilt. On 19 March the Supreme Court upheld an appeal against the death sentence, and substituted a sentence of 15 years' imprisonment.

President Akayev announced on 27 December 1995 that a national program for combating crime was being developed. Amnesty International is calling on authorities in Kyrgyzstan to do the following as part of this program:

- Create an official commission on the death penalty. The experience in other countries has shown that where it is difficult to proceed immediately to a decision on abolition, creating a commission of inquiry may be a useful way of obtaining the facts on which a decision can be based. An official commission can serve to remove the issue of the death penalty from the political and emotional climate which so often surrounds it. The findings of a commission can provide officials, legislators and the public with an objective body of information to guide decisions on the issue.
- Pending the outcome of the work of an official commission on the death penalty, impose a moratorium on executions.

It is Amnesty International's hope that the people of Kyrgyzstan and their leaders will decide that a commitment to human rights and to finding genuine solutions to crime will be furthered by an end to the death penalty, and that Kyrgyzstan will join the majority of countries in the world which are now abolitionist in law or practice. In addition, the United Nations Security Council, when it established the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda, expressly ruled out the death penalty for the gravest of all crimes: genocide, other crimes against humanity, and serious violations of humanitarian law.

Torture and ill-treatment

Finally, Amnesty International is urging the authorities in Kyrgyzstan to ratify the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Convention, in force since 1987, obliges States Parties to take measures to prevent torture within their jurisdiction and to make torture a criminally punishable offence. The Convention also provides for universal jurisdiction over alleged torturers. Members of the Committee against Torture, elected by States Parties, monitor the implementation of the Convention's provisions.

Torture and ill-treatment in police custody

In 1994 Amnesty International had occasion to raise with President Akayev a number of cases where people in the custody of law enforcement officials alleged that they had been tortured or ill-treated during interrogations. Among the cases raised were those of **Valery Fyodorov**, **Vitaly Rakitin** and **Dmitry Frolov**, all minors, who had been detained by police in Bishkek in March 1994 on suspicion of threatening the life of a police officer, and **Daniil Murzak**, **Albert Girfanov**, **Sandzhar Tutashev** and **Vladimir Metchikov**, all minors, who had been detained by police in Dzhalal-Abad, also in March 1994. It was alleged that while in custody all of these young men were beaten by police officers, and Vitaly Rakitin claimed that he had been tortured by having a gas mask placed over his face with the air supply shut off.

Amnesty International understands that abuses by police officers were officially admitted in these cases, and that officers involved were dismissed and were subject to criminal investigation. The organization is calling on authorities in Kyrgyzstan to provide copies of the reports of the investigations into the allegations in the cases listed above, and to inform Amnesty International as to whether police officers were brought to justice.

Amnesty International is also seeking from authorities in Kyrgyzstan information about whether any investigation was carried out into the allegations of torture in the other case raised by the organization with the President in 1994, that of **Andrey Arazov**, **Sultan Karibzhanov**, **Rustam Karibzhanov** and **Nurkan Ospanov**. These men were arrested in February 1993 and were convicted of murder in February 1994 by Chuy Regional Court. Andrey Arazov and Sultan Karibzhanov were sentenced to death, and Rustam Karibzhanov and Nurkan Ospanov to prison terms of, respectively, five and 10 years. Andrey Arazov subsequently had his death sentence commuted to 20 years' imprisonment, but the death sentence passed on Sultan Karibzhanov was carried out in October 1994.

Punishments by "elders' courts" and unofficial militias

Allegations have recently been brought to the attention of Amnesty International concerning activities authorized by so-called "elders' (*aksakal*) courts", which were set up following a call reportedly made by President Akayev at a congress of elders in January 1995 for "the formation of a wide network of autonomous and active civil institutions, independent of state and political structures". That congress reportedly adopted a provisional statute regulating the activities of *aksakal* courts, whereby they were given responsibility for examining cases of administrative violations; property, family and other disputes; and minor crimes passed to them by state procurators. The President is reported to have signed a decree approving this statute on 25 January 1995.

Such courts do not satisfy the requirements of Article 14(1) of the ICCPR, which guarantees all persons the right "to a fair and public hearing by a competent, independent and impartial tribunal established by law".

Furthermore, Amnesty International is concerned about allegations that extra-legal militias operating under the authority of *aksakal* courts have subjected people to illegal detention and ill-treatment and have administered punishments handed down by *aksakal* courts, including whipping and stoning. Sources in Kyrgyzstan claim that the activities of these militias, known as *choro*, are known to regular law enforcement bodies but that little effort has been made to curb their activities or to investigate complaints made by their alleged victims. According to information received by Amnesty International, on the authorization of *aksakal* courts an illegal place of detention known as a *zindan* has been established in many villages in Kyrgyzstan; *zindany* have been specifically identified in the villages of Jany-Pakhta in Chuy Region and Sheker and Beyshek in Talas Region. People detained in these *zindany* are alleged to have suffered ill-treatment at the hands of members of the *choro*, and people sentenced by the *aksakal* courts have suffered corporal and even capital punishments administered by the *choro* and other members of the community. The Kyrgyz-American Bureau on Human Rights and Rule of Law, a non-governmental organization, has cited the case of **Turaly Kerimkulov**, who on 6 June 1995 was allegedly tied to a post and stoned to death by fellow residents of the village of Bakair, Talas Region, after the village *aksakal* court had pronounced him guilty of extortion. Reportedly, no one has been brought to justice for the killing of Turaly Kerimkulov.

It is the responsibility of recognized law enforcement agencies to exert the necessary control to ensure that human rights abuses committed by members of the civilian population are not tolerated. Amnesty International calls on the authorities in Kyrgyzstan to take immediate and effective steps to ensure an end to punishments such as stoning and flogging, which are forms of torture or cruel, inhuman or degrading punishment and are prohibited by international law, as well as illegal detention and the ill-treatment of people so detained. Those responsible for such violations should be brought to justice, and adequate compensation should be provided to victims.