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## **UZBEKISTAN**

### **Briefing for the United Nations Human Rights Committee**

#### **Introduction**

Amnesty International submits this briefing for consideration by the Human Rights Committee in view of its examination, on 26 and 27 March 2001, of Uzbekistan's initial report on measures taken to implement its obligations under the International Covenant on Civil and Political Rights (ICCPR).

Amnesty International remains concerned that Uzbekistan has failed to implement its treaty obligations fully, despite legislative and judicial reforms aimed at bringing national legislation into line with international standards and numerous, wide-ranging and officially endorsed national initiatives in the fields of human rights education and democratization.

This briefing will summarize the organization's concerns relating to Articles 2, 6, 7, 9, 10 and 14 of the ICCPR. While the briefing does not cover all the failures to fully implement the ICCPR by the Uzbek authorities, in particular Articles 18, 19 and 22, it addresses some of the most serious breaches. Amnesty International believes that underlying the concerns highlighted in this briefing is a failure by the Uzbek authorities to fully guarantee genuine freedom of religion, expression and association as stipulated by the ICCPR.

Since Uzbekistan became independent in 1991, Amnesty International has addressed authorities there on a number of issues relating to the detention or ill-treatment of opposition political figures and human rights activists; torture and ill-treatment of detainees; "disappearances", the death penalty and criminal proceedings which fall short of international fair trial standards. The period from 1992 to 1995 was characterized by a serious clampdown on political dissent in Uzbekistan. Between 1994 and 1996 there was evidence of improvement in the treatment of opposition political activists, with a large number of imprisoned opposition activists benefiting from amnesties. Nevertheless, some political activists remained in detention, and at the same time official conduct towards religious activists harshened considerably. Amnesty International received increasing numbers of reports of harassment of "independent" Muslims, including short-term arbitrary arrests, interference with worship and Islamic teaching, beatings and in some of the most serious cases, leaders of independent Islamic congregations were punished with long periods of imprisonment on apparently fabricated charges, or even "disappeared".

Since December 1997, when several murders of law enforcement officials in the Namangan region sparked a wave of mass detentions and arrests, the organization has received a growing number of reports of ill-treatment and torture by law enforcement officials of people perceived to be members of independent Islamic congregations or followers of independent imams (Islamic leaders). Hundreds of these so-called "Wahhabists" were sentenced to long terms of imprisonment in trials that fell far short of international fair trial standards. In February 1999 hundreds of people, men and women, were

detained following bomb explosions in the capital Tashkent. This time the list of those reported to have been arrested, ill-treated and tortured included suspected supporters of the banned political opposition parties and movements *Erk* and *Birlik*, including their family members and independent human rights monitors, as well as alleged supporters of banned Islamic opposition parties and movements, such as *Hizb-ut-Tahrir*. Death sentences were imposed on some of the people tried in connection with the bombings in unfair trials. Reports indicated that several were executed. Detentions of suspected sympathizers with banned Islamic opposition parties have continued at an alarming rate.

In the majority, if not all, of the cases that have come to the attention of Amnesty International, those detained were denied prompt access to a lawyer of their choice, to their families and to medical assistance. The responsible authorities, from procurators to courts at all levels and the parliamentary ombudsman, persistently failed to launch timely, full and independent investigations into widespread allegations of torture and ill-treatment. According to independent and credible sources, self-incriminating evidence reportedly extracted as a result of torture was routinely admitted as evidence in trial proceedings and served in many of the cases reviewed by Amnesty International as a primary basis for a guilty verdict.

Amnesty International was disturbed by public statements by Uzbek officials, including the President of Uzbekistan, in the wake of both the Namangan murders and the Tashkent bombings, which, if not directly sanctioning the use of violence by state agents against certain sections of the population, could be perceived at the very least to condone the use of unlawful methods such as torture and ill-treatment. In April 1999, for example, President Karimov, portrayed as the guarantor of democracy and human rights, stated publicly that he was prepared to tear off the heads of two hundred people in order to protect Uzbekistan's freedom and stability. Amnesty International is concerned that such statements, together with the authorities' persistent failure to initiate impartial and thorough investigations into allegations of torture and ill-treatment, may create an impression that arbitrary arrest, torture and ill-treatment in general, and in particular of alleged supporters of banned secular political and Islamic opposition parties by law enforcement officials is acceptable and even necessary conduct, and that they can engage in such conduct with impunity.

### **The right to effective remedy (Article 2.3)**

The Uzbek authorities have laid particular stress on an individual's right to complain to the competent authorities about any violation by officials of their constitutional rights, including their right not to be subjected to torture or ill-treatment. Article 44 of the Constitution guarantees everyone the right to complain to a court of any unlawful actions of government authorities. A law on citizens' appeals was adopted in 1995. It states that no one should be subjected to harassment or other unlawful actions because they have lodged a complaint.

Uzbekistan has also instituted the Office of the Parliamentary Ombudsman, one of whose main tasks is to deal with citizens' complaints. In her 1998 Annual Report to the Oliy Majlis (parliament) the Ombudswoman, Sayora Rashidova, admitted that the majority of the complaints her office had received were in relation to unlawful actions by law enforcement officials. The report, however, failed to give any details as to what measures had been taken in the relatively small number of complaints successfully resolved, or whether any suspected perpetrators of torture or cruel, inhuman or degrading treatment had been identified and brought to justice in the course of disciplinary or criminal procedures. In Amnesty International's experience the Ombudswoman's responses to calls by the organization to launch a prompt and impartial investigation into allegations of torture and ill-treatment have been less than satisfactory and have cast doubt on the professed independence of the office of the Ombudswoman. The Ombudswoman's investigations appear to limit themselves to restating the

articles of the criminal code under which a suspect has been charged and to dismissing as unfounded allegations of misconduct by officials acting in the case.

Although the law guarantees everyone the right to lodge a complaint without being subjected to harassment, in Amnesty International's experience, this has not been the case in practice. The organization has received numerous reports of detainees, prisoners, members of their family and lawyers who have been harassed, threatened, intimidated, beaten or ill-treated by law enforcement officials after they exercised their constitutional right to lodge an official complaint. In the majority of cases there are no independent or impartial investigations into complaints about unlawful actions by law enforcement officers; the Ministry of Internal Affairs or the procuracy will redirect complaints to be investigated by the agency which stands accused of perpetrating the violations in the first place. Fear of retribution and the absence of effective safeguards in practice act as a powerful deterrent to people exercising their right to seek effective remedy. Detainees who complain to the procuracy about being ill-treated or tortured in police custody are regularly subjected to further torture until they agree to withdraw their complaint. Law enforcement officials may threaten to harm family members if the detainee does not withdraw his/her complaint or may threaten to kill or maim the detainee or charge him with a capital offence if the family or lawyer pursue their claims. Amnesty International has documented numerous cases in which male detainees were threatened with the rape of their mother, wife, daughter or sister in order to force them to withdraw their complaints.

As a party to the Optional Protocol to the ICCPR Uzbekistan has agreed to respect the right of people under its jurisdiction to submit communications alleging their rights under the ICCPR have been violated for consideration by the Human Rights Committee once they have exhausted domestic remedies. However, Amnesty International has received allegations that, at least in one case, Uzbek authorities have sought to intimidate individuals in order to prevent them exercising this right.

- According to reports Komoliddin Sattarov was arrested in Andijan in February 2000 after police allegedly planted leaflets by a banned Islamic organization in his pockets. During a search of his home police officers confiscated a form addressed to the Human Rights Committee which Komoliddin Sattarov had filled out on behalf of his brother, who had been tortured in pre-trial detention and convicted of religious extremism. According to Human Rights Watch, the Andijan prosecutor's office told Komoliddin Sattarov's father that the confiscated form amounted to the most serious and incriminating evidence against him. During his trial in June 2000 Komoliddin Sattarov retracted his confession which he alleged had been extracted under torture. The presiding judge, however, considered the confession as evidence and upon conviction sentenced him to nine years' imprisonment for religious extremism. In his verdict, the judge referred to the Human Rights Committee forms as "appeals to a global human rights organization" and listed the discovery of these forms together with the Islamic leaflets as material evidence that Komoliddin Sattarov was involved in "anti-state activity". The forms were destroyed after the trial. On appeal his case was sent for retrial. During retrial the forms were ruled inadmissible as incriminating evidence, however, the court upheld the initial conviction and sentenced him to an additional year in prison. A criminal investigation has reportedly been launched into the conduct of the search of his home.

## **The Right to Life (Article 6)**

### **The death penalty**

In 1998 the Oliy Majlis removed the death penalty as a possible punishment for five offences under the criminal code. The penalty remains a possible punishment after conviction for aggravated murder, terrorism and six other crimes. The authorities described the decision to so amend the criminal code as part of a policy of abolishing the death penalty in stages, citing "the international obligations which the Republic of Uzbekistan has taken upon itself in the human rights sphere". There has been no indication since then of additional measures to abolish the death penalty. Rather, Amnesty International learned of at least 57 death sentences and 21 executions in the last two years, but

believes the actual number to be much higher. AI received indications that at least four death sentences were commuted in 2000.

Many of the death sentences were handed down in trials of people charged in connection with the February 1999 bomb explosions in Tashkent and subsequent armed clashes between law enforcement forces and alleged members of the banned Islamic Movement Uzbekistan (IMU). The organization has received reports that international fair trial standards were violated in the course of the proceedings in these and other capital cases; in particular, that people who have been sentenced to death have claimed that they were convicted on the basis of confessions made as a result of torture. In July 2000 the general procuracy confirmed that 19 death sentences handed down in 1999 for alleged involvement in the Tashkent bombings had been carried out.

The organization is concerned that the way in which relatives of prisoners condemned to death are treated by the Uzbek authorities causes unnecessary distress and itself constitutes cruel, inhuman and degrading treatment. The family is not informed of the date of execution and does not have the right to receive the body of the executed man, which is buried in an unmarked grave in an undisclosed location. In scores of cases, the family have not been notified of the death of the prisoner until months after the execution has taken place. In some cases the family may not even receive a death certificate.

The Uzbek authorities have to date failed to publish any statistics on the use of the death penalty. During its review of Uzbekistan's initial report in November 1999, the Committee against Torture requested, but did not receive, such information for the previous two years. Indeed the Committee's final recommendation was that missing or incomplete responses, including those on the death penalty, should be included in Uzbekistan's next report to them which was due in October 2000. However, the Uzbek authorities failed to comply with the Committee's request.

- Dmitry Chikunov was sentenced to death for premeditated, aggravated murder by Tashkent Regional Court on 11 November 1999. In a letter to his mother he described how police ill-treated him while he was in pre-trial detention: "When I came to myself after they had beaten me unconscious, they tied my hands and put a gas-mask over my head. Then the interrogator cut off the air supply and shouted: 'Now, confess that you are a murderer'." Reportedly, police also threatened to rape his mother unless he confessed. AI is not aware of any investigation instigated into the allegations of ill-treatment. His appeal against his death sentence was rejected by the Supreme Court on 24 January and he was executed on 10 July. The news was given to his mother as she went to visit him in Tashkent prison on 12 July. On an earlier visit the day before she was told by the prison guards that she could not see him and should come back the next day.

### **Torture and Cruel, Inhuman or Degrading Treatment or Punishment (Article 7)**

#### **“Disappearances”**

The authorities have consistently denied any official involvement in the “disappearances” of Abduvali Mirzayev, Ramazan Matkarimov and Abdullo Utayev. In December 2000, however, the following new information came to light on the “disappearance” in 1995 of Abduvali Mirzayev, the independent Imam of an Andijan mosque.

- Abduvali Mirzayev was reportedly held in an underground cell of the Ministry of Internal Affairs immediately after his arrest by officers of the National Security Service (SNB) at Tashkent International Airport in August 1995. The main directorate for the fight against organized crime, corruption, racketeering and terrorism (GUBKRT) was allegedly in charge of the investigation, under supervision of the National Security Service (SNB). He was later transferred to the special underground isolation tract of Tashkent prison, where he was reportedly detained from September 1995 to April 1996. Around March 1996 he was said to have been sentenced to a long term of imprisonment in a strict

regime labour colony by the Supreme Court in a closed trial. Following his secret trial officers of the GUBKRT allegedly planted narcotics on Abduvali Mirzayev in order to secure a further charge against him. Abduvali Mirzayev was reportedly tortured in Tashkent prison to force him to confess to fabricated charges. He was not allowed to read the Koran or to pray and was regularly beaten. He allegedly had his head pushed into the toilet bowl, was threatened with rape and had his genitals burned with cigarettes. He was also said to have been beaten on the soles of his feet with a rope and on other parts of his body with rubber sticks by a group of officers while suspended from the ceiling with his arms and legs tied. He was reportedly transferred to a strict regime labour colony in April 1996. Amnesty International submitted this new information to the Working Group on Enforced or Involuntary Disappearances in February 2001.

No developments were reported in the investigation into the fate and whereabouts of Abduvali Mirzayev's assistant, Ramazan Matkarimov, who "disappeared" in 1995, the 1997 "disappearance" of another assistant, Nematjon Parpiev, or the 1992 "disappearance" of Abdullo Utayev, the leader of the banned Islamic Renaissance Party. The Uzbek government provided information to the Working Group on Enforced or Involuntary Disappearances on the cases of Abduvali Mirzayev and Abdullo Utayev, including the details of investigations carried out by the authorities into the subjects' "disappearance". They reported that the search for the persons concerned was continuing and that the families were being kept informed of the findings.<sup>1</sup> Amnesty International is not aware of any investigations having been carried out into the "disappearance" of Nematjon Parpiev.

### **Widespread torture and ill-treatment**

Article 17 of the Code of Criminal Procedure explicitly prohibits the use of torture and obliges judges, procurators, investigators and interrogators to respect a person's honour and dignity at every stage of legal proceedings.<sup>2</sup> Nevertheless, Amnesty International has received countless reports from different sources - former prisoners, relatives of prisoners, defence lawyers, human rights monitors, international human rights organizations, diplomats, copies of court documents - that law enforcement officials continue to routinely violate legal obligations not to subject any person to torture or cruel, inhuman or degrading treatment.

Amnesty International has also received scores of reports that defendants accused of non-political criminal activities have been tortured and ill-treated in detention in order to make them confess.

Amnesty International has been concerned at dozens of reports that women, in particular human rights activists and female relatives of suspected opposition members or supporters, have suffered cruel, inhuman and degrading treatment at the hands of law enforcement officials, including in detention, for the purpose of forcing them to reveal the whereabouts of or to incriminate male relatives.

- The case of Shahzoda Ergasheva, the wife of independent imam Tulkin Ergashev, is typical of scores of cases of ill-treatment of female relatives that have been reported to Amnesty International. Shahzoda Ergasheva was detained on 21 February 1999. She was reportedly first kept overnight in the basement of the Ministry of Internal Affairs and questioned about the whereabouts of her husband. She was then taken to the Yunusobod District Department of Internal Affairs and detained for three days in an underground cell and subjected to more questioning. Following that she was taken to

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<sup>1</sup>Disappearances, Working Group on Enforced or Involuntary: (E/CN.4/1998/43, paras. 391–393)

<sup>2</sup>Article 17, part 2, of the Code of Criminal Procedure: Respect of the honour and dignity of the person. Judges, procurators, investigators and interrogators are obliged to respect the honour and dignity of any person participating in a case. No one shall be subjected to torture, force, or other cruel or degrading treatment. It is prohibited to take actions or decisions which are degrading to the honour and dignity of a person, which lead to a disclosure of the circumstances of their private lives, are harmful to their health or cause unfounded physical and moral suffering.

Tashkent City Department of Internal Affairs and held for another three days allegedly without food. She was finally transferred to the detention centre where female administrative detainees are held. There she was reportedly beaten by other prisoners. Her physical condition deteriorated; she was no longer able to stand up, had spells of dizziness and fainted on several occasions. On 8 March she was released. Several days later she was admitted to Tashkent City hospital where she was under observation in the neurological ward for a month.

### **Inadequate investigations of reports of torture and ill-treatment**

In its ruling on the powers of the judiciary<sup>3</sup> the Plenum of the Supreme Court of Uzbekistan confirmed that, following on from Article 44 of the Constitution of Uzbekistan<sup>4</sup>, courts are competent to examine any complaints about illegal actions carried out by state authorities<sup>5</sup>. It also established that it is the courts' duty to protect the constitutional rights of the individual and that consequently in each case courts are obliged to react to any facts of violation of such rights, especially illegal arrest, the use of threats or of physical or psychological force.<sup>6</sup> The Committee against Torture in its recommendations and conclusions in November 1999 expressed concern at Uzbekistan's failure to actually apply the Plenum of the Supreme Court's decision excluding evidence by torture. It also noted its concern at the particularly large number of complaints of torture or maltreatment and the small number of subsequent convictions.<sup>7</sup>

In practice most courts, at every level, including the Supreme Court itself, have continued to ignore this directive, have failed to investigate, and have admitted as evidence, allegations of torture or of cruel, inhuman or degrading treatment, regardless of whether a complaint has been lodged with them or whether these allegations were made during trial proceedings. In particular, since the waves of detentions and arrests following the events in Namangan in December 1997 and again the bombings in Tashkent in February 1999 and armed incursions by the IMU in 1999 and 2000, Amnesty International has received credible reports that, in hundreds of cases, courts of first instance as well as courts of appeal failed to initiate prompt investigations into allegations that suspected members of the Islamic and the secular political opposition had been routinely tortured or otherwise ill-treated in detention in order to force them to "confess" to membership of an illegal Islamic group or party, such as *Hizb-ut-Tahrir*, or to disclose information about secular and Islamic opposition leaders.

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<sup>3</sup>"On the powers of the judiciary" Ruling No.1 by the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996

<sup>4</sup>Article 44 of the Uzbek Constitution. Judicial defence of his rights and freedoms, the right of appeal to a court against the illegal actions of state agencies, officials, and social organizations shall be guaranteed to each individual.

<sup>5</sup>Point 2 of Ruling No.1 by the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996, "On the powers of the judiciary". Following on from the spirit of Article 44 of the constitution the courts are competent to take decisions on any questions of a legal dispute, including complaints about the illegal actions of state agencies, officials and social organizations.

<sup>6</sup>Point 14 of Ruling No.1 by the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996, "On the powers of the judiciary". Judicial power must be based on "human rights" principles in accordance with which the life, freedom, honour and dignity of a person is of the highest value. Consequently the courts are obliged in each case to guarantee the application of the law and the rights of the citizens and to react to each violation of such. All legal procedures must be strictly observed, including everyone's right to defence. Appropriate appraisal shall be given to each case in which a citizen has been groundlessly held criminally responsible, to each case of unlawful arrest and detention, of the use of threats or of physical or psychological force.

<sup>7</sup>Points 5b and 5d in Conclusions and recommendations of the Committee against Torture: Uzbekistan.19/11/99.CAT/C/23/7.

- In August 1999, for example, the court of first instance failed to stop proceedings and order a prompt and impartial investigation into allegations of torture in the trial of six men affiliated to the banned opposition *Erk* party, two of them brothers of the exiled leader of the party, Muhammad Salih. All six men testified in court and later issued a written statement, that they were systematically tortured and ill-treated in pre-trial detention in order to force them to incriminate Muhammad Salih and to “confess” to fabricated charges. Methods of torture described included, among others, being beaten with rubber truncheons and plastic bottles filled with water, suffocated, tortured with electric shocks, being suspended by the hands tied behind the back, having hands and feet burned, being threatened with rape and death and with the rape of their wives and daughters. One of the accused, writer Mamadali Makhmudov, also testified that he was given injections and made to take unknown substances. Mamadali Makhmudov and one of the co-accused Rashid Bekzhon, a brother of Muhammad Salih, were held incommunicado for almost three months. The other four accused, Muhammad Bekzhon, also a brother of Muhammad Salih, Yusif Ruzimuradov, Kobil Diyarov and Negmat Sharipov, were forcibly returned to Uzbekistan from Ukraine on 18 March 1999<sup>8</sup>. They were held incommunicado until the end of April 1999. After the accused gave testimony the trial judge gave the defence just 40 minutes in which to present their case. The trial was then adjourned for six days after which the verdict was announced. To the best of Amnesty International’s knowledge no investigation into any of these allegations of torture has been launched by the court of first instance or any other competent state body. The Supreme Court upheld the court of first instance’s verdict.

The above case also illustrates how the procuracy fails to comply with its legal obligation to investigate any reasonable claim of torture or cruel, inhuman or degrading treatment. Under the Constitution of Uzbekistan the procuracy is given the responsibility for ensuring the proper application of the law.<sup>9</sup> The procuracy has the right, for example, to file a protest with a court, leading to the judicial review of a sentence, if it feels there are reasonable grounds to believe that proper legal procedures were not followed. Evidence obtained as a result of torture or ill-treatment clearly falls under these criteria, given that the constitution as well as the code of criminal procedure prohibit its use. However, in the majority of cases -- criminal as well as political -- that have come to Amnesty International’s attention, it appears that the procuracy has either failed to lodge a protest or initiate an investigation, or refused to do so.

## **Liberty and Security of Person (Article 9)**

### **Arbitrary arrest**

Article 221 of the Uzbek Code of Criminal Procedure gives law enforcement officials the authority to detain a suspect “if there is information giving grounds for suspicion of involvement in a crime”. There is no provision in the code of criminal procedure for judicial review of detentions. It is the procuracy which sanctions and reviews arrests. Amnesty International is concerned about the absence of provisions in law which require that people be brought promptly before a judge or other judicial authority following a deprivation of their liberty, as required by Article 9(3) of the ICCPR. In addition, there is no mechanism, like Habeas Corpus, provided for within the Uzbek law, by which

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<sup>8</sup>Given the reports of sweeping arrests and widespread beatings and ill-treatment of suspected opposition supporters following the February bombings in Tashkent, Amnesty International was concerned that the men were at risk of torture if returned to Uzbekistan. The organization believes that in forcibly deporting the men without giving them access to legal counsel Ukraine violated its obligations under Article 3 of the Convention on Torture.

<sup>9</sup>Article 118 of the Uzbek Constitution. Supervision over the precise and uniform execution of laws on the territory of the Republic of Uzbekistan shall be effected by the Procurator General of the Republic of Uzbekistan and the procurators subordinate to him.

people can challenge the legality of a deprivation of their liberty, as required by Article 9(4) of the ICCPR. Amnesty International is concerned that the lack of judicial review over decisions by law enforcement officers to deprive people of their liberty confers excessive power to the law enforcement agencies and leaves the process of arrest open to widespread abuse, such as discrimination, prejudice and corruption. As a result of the lack of procedures for judicial review of detention, people who are deprived of their liberty are not only deprived of an opportunity for a review of the legality of their detention, but also of an important safeguard against torture and other human rights abuses (including "disappearances"). Amnesty International has received thousands of reports that law enforcement officers routinely plant evidence, such as drugs, weapons or illegal Islamic literature, on suspects in order to create grounds for detention.

Since 1997 Amnesty International has documented a worrying rise of reports of arbitrary detentions, in particular of individuals suspected by the authorities to be supporters of or sympathizers with Islamic opposition parties. Amnesty International has obtained a list of potential suspects which was issued by the Ministry of Internal Affairs to local neighbourhood committees (mahalas) in 1998. Categories of suspects include individuals who call women and minors to attend Muslim prayer meetings, individuals who attend Muslim prayer in unregistered mosques, individuals who finished school but are unemployed, individuals who have links to so-called "Wahhabists", former so-called "Wahhabist" prisoners and their families, 18-year-old men from so-called "Wahhabist" families who are not doing compulsory military service, individuals who are considered leaders in the local neighbourhood. Particular vigilance is urged with regard to men who are wearing a beard or had in the past worn a beard. Amnesty International is concerned that law enforcement agencies have used such lists to target individuals arbitrarily and that they have planted evidence in order to secure grounds for arrest.

In September 1999 Amnesty International received reports that at least 237 Muslim prisoners allegedly associated with the banned Islamic opposition had been released. The Committee for the Protection of Individual Rights of Uzbekistan stated that "during the arrests of *Hizb-ut-Tahrir* members many of them had drugs and weapons planted on them" and that "charges have been dropped because during the second investigation of the cases the courts did not find corroboration". A further reason reportedly given for the releases was that the Supreme Court allowed appeals against sentence to be brought by *Hizb-ut-Tahrir* members who "asked the government to forgive them". The list of persons released obtained by Amnesty International contained only names and an indication of general geographical areas. There was no indication of whether the individuals named were released from pre-trial detention or after sentencing; of what they had been charged and/or convicted; whether their release was as a result of a court hearing and if so, the mechanism by which such a hearing was obtained; if the charges against them were found to be false, or whether the officials responsible for any illegality had been brought to account for their actions. To this day, Amnesty International has received no official response to the above questions.

### **Access to legal counsel**

One important safeguard against torture is the right to adequate defence guaranteed under Article 26 of the Constitution.<sup>10</sup> The Code of Criminal Procedure establishes the right of a suspect to have access to a lawyer of his/her own choice, and in a ruling the Plenum of the Supreme Court<sup>11</sup> clarified that the

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<sup>10</sup>Article 26, point 1, of the Uzbek Constitution. Each person accused of the commission of a crime shall be considered to be innocent so long as his guilt has not been established by a legal procedure, by means of an open judicial examination in which every opportunity is provided for his defence.

<sup>11</sup>The Plenum of the Supreme Court consists of the Chairman and the Deputy Chairmen, and all judges who are members of the court. There is a quorum when two thirds of the Plenum are present. Voting is by simple majority. The Plenum has a number of distinct tasks, including the hearing of protests against decisions of high-ranking courts and the issuing of general instructions on the basis of the study of court practice and judicial statistics.



defence lawyer is legally entitled to be present at every stage of the investigation and that the suspect is legally entitled to an unlimited number of meetings with their lawyer. The ruling also states that the investigator, the procurator and the court must, in every case, comply with these obligations.<sup>12</sup>

Unfortunately, in practice, suspects are rarely allowed to enjoy their full rights to effective counsel and to prepare a defence. Time and again Amnesty International has received credible reports that suspects were denied access to a lawyer of their choice. Often the lawyers are only given access by law enforcement officials after the suspect has been held in custody for several days and not at the outset of the deprivation of liberty, which is when the risk of torture or ill-treatment is the greatest. In many cases law enforcement officials will only grant access to the lawyer after the suspect has signed a confession. Meetings between lawyers and clients, when they are granted, are generally infrequent, because unlimited access to a client as prescribed by the law is difficult for lawyers to obtain. Defence lawyers are rarely allowed to be present at all stages of the investigation.

- For example, in a 1999 case, almost three years after this ruling by the Plenum of the Supreme Court, five members of the illegal Islamic party *Hizb-ut-Tahrir* alleged in court that they were held incommunicado in underground cells of the National Security Service and the Ministry of Internal Affairs for three months and were denied their constitutional right to have access to a lawyer of their own choice, their families and medical aid. They claimed that during this time they were tortured with a view to forcing them to confess to charges prepared by the procuracy. After three months they were assigned lawyers by the general procuracy. They claimed that these lawyers were following instructions of the procuracy and failed to provide the accused with competent and effective counsel. The defence lawyers reportedly lodged no complaints about the torture suffered by the accused. On 18 August 1999 Tashkent Regional Court sentenced Batyr Khalilov, his brother Farikh Khalilov, Ashrafkhodzha Mashradkhodzhayev, Ubaydullo Rakhmatullayev and Shukhrat Sharafuddinov to prison terms ranging from 16 to 18 years on charges including forming an illegal religious organization, inciting religious hatred and attempting to overthrow the constitutional order. The convictions were based on their “confessions” made following torture.

## **Treatment of Those Deprived of Their Liberty (Article 10)**

### **Pre-trial Detention**

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<sup>12</sup>Ruling No.41 of the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996 On the application of the laws guaranteeing the right to defence

Conditions under which detainees are held pre-trial are reportedly so poor as to amount to cruel, inhuman and degrading treatment. In 1997 the Uzbek authorities admitted that conditions of detention fall far short of the UN basic minimum standards for the treatment of prisoners.<sup>13</sup> No significant changes have been noted since then. Overcrowding is the norm, with at least two inmates to a bunk bed, sleeping in turns. Inadequate sanitation, shortages of food and basic medication exacerbate the risk of disease, such as tuberculosis. Former detainees have described punishment cells as underground “holes”, measuring one square metre with standing room only near the door. The rest of the cell is said to be only one and a half metres in height, allowing the detainee only to crouch or sit. In some punishment cells detainees are reportedly made to stand in cold water. Detainees can spend between five and 15 days in solitary confinement in a punishment cell, they are reportedly only given soup once every two days. Cells are also said to be overrun with vermin. Conditions of pre-trial detention in Tashkent Prison have been described as particularly cruel. As with the conditions on death row, these allegations have been difficult to verify independently given the Uzbek authorities’ refusal in the past to allow access by independent monitors to places where people are deprived of their liberty. Amnesty International welcomes the Uzbek government’s decision to grant access to prisons, detention centres and courts to International Committee of the Red Cross (ICRC) representatives, announced at the second meeting of the European Union/Uzbekistan Cooperation Council on 23 January 2001. The organization remains concerned that such access to the ICRC should be unconditional and unrestricted.

### **Prison camps**

In 1999 the existence of a prison camp located in former Soviet army barracks in the Republic of Karakalpakstan in the desert south-west of the Aral Sea was independently confirmed. The Ministry of Internal Affairs has since then categorized the Yaslik camp as a general regime prison colony - KIN 64/74. However, reports received by Amnesty International indicate that the overwhelming majority of prisoners are reported to be members of independent Islamic congregations convicted for having supported the banned Islamic opposition. Conditions of confinement are alleged to be cruel, inhuman and degrading with prisoners being denied adequate rations of drinking water while doing forced labour. There is concern that it is situated in a chemically or possibly biologically contaminated area. There have been consistent allegations that devout Muslim prisoners are not allowed to read the Koran or to pray in Yaslik, as well as other prison camps. They have reportedly also had their beards forcibly shaved.

### **Death row**

Conditions on death row have been described by former prisoners as particularly cruel. Some cells are reportedly so small that there is no room for a bed, only for a chair. This is allegedly because prisoners sentenced to death spend only a limited time in the cell -- from three days up to a maximum of three months -- before being executed. Such allegations have been very difficult to verify given that the Uzbek authorities generally have not allowed independent monitoring of prisons.<sup>14</sup>

### **Deaths in custody**

Human rights groups reported several cases of deaths in custody - in pre-trial detention or prison camps - all of them as a result of torture or ill-treatment by law enforcement personnel.

Reports from unofficial sources indicate that at least 20, and possibly as many as 38 prisoners, have died in Yaslik prison camp over the last two years as a result of torture and poor conditions.

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<sup>13</sup>National report on human rights for 1997 in relation to the implementation of obligations undertaken by the Republic of Uzbekistan when it joined the Vienna Declaration and Program of Action at the Second World Conference on Human Rights.

<sup>14</sup>According to the 1998 US State Department Report on Human Rights the ICRC had not been granted visiting rights. Only diplomats had occasionally been allowed to visit specific detention facilities.

However, it has been difficult to confirm the exact causes of death independently. Human Rights Watch have documented seven deaths in “post-conviction” prisons from 1998 to 2000 and have reported on eight deaths in pre-trial detention in the same period of time.

- Reportedly, in the first quarter of 1999 officers of the Khorezm Internal Affairs Department had frequently questioned the parents of the Khodzhayev brothers about the whereabouts of their sons, whom the officers suspected of having links with "religious extremist groups" and of being trained in terrorist camps in Tajikistan or Chechnya. The parents affirmed that their sons frequently traveled to Russia for business purposes. On 5 April 1999 the father, Azimboy Khodzhayev, was arrested in his home. According to unofficial sources law enforcement officers said to his wife: "We will arrest your husband instead of your sons." On 11 June 1999 Azimboy Khodzhayev was sentenced to eight years' imprisonment by Khorezm Regional Court under reportedly fabricated charges of "illegal possession of narcotics". Only two weeks after the trial he was said to have died in custody in Yaslik prison camp. The family reportedly received an official death certificate but was not allowed to see his corpse. Amnesty International was concerned that allegedly he died as a result of torture.

## Right to a Fair Trial (Article 14)

### Presumption of innocence

Amnesty International has been disturbed by public statements by Uzbek officials in the wake of both the Namangan murders, the Tashkent bombings and more recently the armed incursions by the IMU, which have criminalized members and presumed members of independent Islamic congregations, their families and political opposition figures. On several occasions the Uzbek authorities, including the President, Interior Minister and Prosecutor General, have called on people involved in “non-traditional” Islamic groups and activities to come forward and “admit their guilt”, threatening those who do not, and their families, with punishment. On 2 April 1999 President Karimov had reportedly said he would issue a decree allowing for the arrest of a suspect’s father if the sons who were involved in "religious extremism" could not be found. "If my child chose such a path, I myself would rip off his head," he was quoted in the press as saying.

Amnesty International is concerned that such statements have led to thousands of arbitrary arrests and have been prejudicial to the outcome of scores of trials of alleged members or supporters of *Hizb-ut-Tahrir*, the IMU, *Erk* and *Birlik*. In November 2000 the Supreme Court sentenced Takhir Yuldash and Juma Namangani, the alleged leaders of the IMU, to death *in absentia* on charges of terrorism and treason and causing the death of 73 people in armed incursions and through the February 1999 bombings in Tashkent. Muhammad Salih, the exiled leader of *Erk*, was sentenced to 15 years' imprisonment on the same charges, also *in absentia*. Although the Uzbek authorities claimed that the trial had been conducted in line with international fair trial standards, international observers stated that the prosecution failed to provide sufficient evidence that the leaders of the IMU and Muhammad Salih were responsible for terrorist acts in Uzbekistan. It relied instead on confessions and the testimony of convicted prisoners. The accused were not represented by a lawyer of their own choice. According to Human Rights Watch, state-organized hate rallies against the three main accused reportedly took place throughout the country during the trial in order to generate popular support for the charges.

- Makhbuba Kasymova, a member of the Independent Human Rights Organization of Uzbekistan (NOPCHU) was sentenced in July 1999 to five years' imprisonment for “concealing a crime” after a grossly unfair three-hour trial described by human rights monitors as a “farce”; she had no prior notice that her trial was taking place and it was conducted without defence witnesses or a lawyer of her own choosing to represent her. Two months before the actual trial, while she was detained for questioning, police officers had escorted her to her local mahala (local neighbourhood council) where some 200 people had reportedly gathered to hold a public meeting to denounce Makhbuba Kasymova. There were claims that the national television news program “Ahborot” showed excerpts of the public meeting

and described her and NOPCHU as supporting terrorism. In August 1999 Tashkent City Court turned down her appeal after a hearing lasting 14 minutes, at which she was not present.

### **Failure to exclude evidence elicited as a result of torture or ill-treatment**

In Ruling No. 41 the Plenum of the Supreme Court of Uzbekistan emphasized that no sentence shall be based on evidence obtained by unlawful means.<sup>15</sup> The court's Ruling No.1, after having reiterated that torture is not permissible, goes on to clarify that no evidence obtained by unlawful means has legal force.<sup>16</sup> Nevertheless, courts, including the Supreme Court, have continued to admit evidence reportedly based on coerced confessions and to convict people and pass sentence mostly based on such evidence. This practice has been of great concern to Amnesty International in cases where the accused were charged with articles of the criminal code carrying a potential death sentence.

- On 28 June 1999 the Supreme Court sentenced six men to death for their part in the February 1999 bombings in the first of a series of trials related to criminal case 6383. Sixteen accused received prison sentences ranging from 10 to 20 years. All 22 accused also had their property confiscated. The men were accused of being members of extremist religious organizations who advocated a jihad (holy war) to overthrow the constitutional order in Uzbekistan and the assassination of President Karimov, charges to which most of the accused reportedly pleaded guilty. There were reports that the accused had been beaten or otherwise ill-treated in pre-trial detention and forced under duress to give false evidence. Human rights monitors expressed concern that fair trial standards, although promised by the authorities, had not been respected. Six of the accused were already in detention at the time of the bombings, some serving long prison sentences for their alleged participation in the 1997 Namangan murders which sparked the wave of arrests of alleged "Wahhabists" in December 1997. The accused were reportedly denied the right to a lawyer of their own choice and there were allegations that the defence lawyers who represented the accused did not represent their clients' interests. According to a trial observer from Human Rights Watch there was no presumption of innocence and the prosecution failed to present any solid evidence against the men.

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<sup>15</sup>Point 2 of Ruling No. 41 of the Plenum of the Supreme Court of 20 December 1996 "On the practice of the application of laws guaranteeing the right to defence" ...A guilty verdict shall not be based on supposition, and not on evidence obtained by unlawful means. Any doubts which cannot be dismissed must be in favour of the suspect, the accused or the convicted person.

<sup>16</sup>Ruling No.1 of the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996, "On the powers of the judiciary" ...to clarify that any evidence obtained through unlawful means shall not have legal force.