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# 'Justice only in heaven'-- the death penalty in Uzbekistan

## Introduction

*"Uzbekistan's criminal policy on the application of the death penalty is fully in keeping with world processes and consistently reflects the principle of humanism embedded in the Constitution of Uzbekistan and the traditions of our people that have at all times treated a human being and his life as the greatest treasure given by the Almighty."*

**President Islam Karimov addressing Parliament, 29 August 2001**

*"They find justice only in heaven."*

**The mother of a prisoner on death row in Uzbekistan, June 2003**

These opposing views on the death penalty in Uzbekistan testify to the gulf between the government and the many critics of its criminal justice system. Numerous testimonies -- from prisoners under sentence of death, their relatives and lawyers, and local human rights defenders -- confirm the findings of human rights experts that Uzbekistan is failing to meet its obligations under international human rights law.

Scores of people are executed every year after unfair trials. Many of them were tortured. 'Confessions' extracted under torture are routinely used as evidence in trials. Corruption is an integral part of the investigation, trial and appeal in such cases. The clemency process and the executions themselves are shrouded in secrecy, compounding the punishment inflicted not only on prisoners but on their families.

Such abuses are not confined to cases involving the death penalty but have their roots in the lack of independence of the judiciary and the government's failure to address other causes of human rights violations. This current report focuses on the death penalty to highlight some of the worst and most fatal consequences of Uzbekistan's flawed criminal justice system.

Executions take place in secret and family members and friends are denied the chance to say goodbye to the prisoner. In many cases family members do not know for months, sometimes even years, whether their relative is alive or has been executed. They are not informed where their loved one is buried and therefore do not even have a location over which to grieve. Many search for years in the hope of finding the grave. The United Nations (UN) Special Rapporteur on torture has described their treatment as "*malicious and amounting to cruel and inhuman treatment*".<sup>1</sup>

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<sup>1</sup> Report of the UN Special Rapporteur on torture, Theo van Boven, following his mission to Uzbekistan in November and December 2002: E/CN.4/2003/68/Add.2, para. 65, 3 February 2003,



The parents of Allanzar Kurbanov, who was sentenced to death in August 2001, hope their son is still alive. *"We want to find out the truth. We are getting contradictory signs from the authorities, but nothing definite. We'll not give up to find out what happened,"* told Allanzar Kurbanov's father Amnesty International delegates. © AI

Relatives of suspects in capital cases have also been targeted by officials. They have been taken hostage to secure the arrest of the accused, tortured, beaten, or threatened with rape. Corrupt practices by officials have resulted in many being dismissed from their jobs, losing all their property or being bankrupted.

Since Uzbekistan emerged as a sovereign state following the collapse of the Soviet Union (USSR) in 1991, the government has responded to some of the concerns about the death penalty raised by local human rights activists and the international community. At least 11<sup>2</sup> death sentences have been reversed in cases that have been raised by local activists and the international community in the past three years and the authorities of Uzbekistan have announced an intention to abolish the death penalty by stages. Since 1994 the number of capital offences under the Criminal Code has been reduced from 13 to four. In 1995 the government ratified the Optional Protocol

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website:

<http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/29d0f1eaf87cf3eac1256ce9005a0170?OpenDocument>

<sup>2</sup> Nine of these cases had been raised by the (UN) Human Rights Committee. By the time of writing, Amnesty International was aware of a total of 19 death sentences reversed in Uzbekistan since 1999.

to the International Covenant on Civil and Political Rights (ICCPR), allowing individuals in Uzbekistan to bring complaints about human rights violations to the (UN) Human Rights Committee, the expert body that monitors states parties' implementation of the ICCPR. Men under 18 or over 60 at the time when the crime was committed are exempt from the death penalty by law, as are women.

However, the authorities have failed to acknowledge the fundamental nature of the problems surrounding the death penalty. They have not shown sufficient political will to systematically reform domestic law and institutions and to bring them in line with the country's obligations under international human rights standards.

In addition, the government has shown contempt for its voluntarily made legally binding commitments as a party to the Optional Protocol to the ICCPR, proceeding with the executions of at least nine men while their cases were still under consideration by the (UN) Human Rights Committee.<sup>3</sup> By failing to consistently adhere to its commitments, Uzbekistan has deprived death row prisoners and those entitled to act on their behalf of this crucial mechanism to seek international redress for human rights violations which occur in Uzbekistan's gravely flawed criminal justice system. The UN Special Rapporteur on torture raised his own serious concern in February 2003 "*at what appears to be a lack of appropriate consideration of, and action in relation to, requests [by the (UN) Human Rights Committee] on behalf of individuals at risk of torture or even of execution, or who have been victims of acts of torture*".<sup>4</sup>

Statistics on the use of the death penalty have been kept secret, despite requests by the (UN) Human Rights Committee, the UN Special Rapporteur on torture and the (UN) Committee against Torture, the expert body that monitors state parties implementation of their obligations under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). Uzbekistan has also ignored its commitment to exchange information "*on the question of the abolition of the death penalty*"<sup>5</sup> as a member state of the Organization for Security and Co-operation in Europe (OSCE).

Other states have also failed to uphold their obligations to protect the people of Uzbekistan under international law. States have forcibly returned people to

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<sup>3</sup> The following cases are known to Amnesty International: **Maksim Strakhov** (executed 20 May 2002), **Nigmatullo Fayzullayev** (executed April 2002), **Refat Tulyaganov** (executed January 2002), **Zholdaysbay Kobeysinov** (executed November 2002), **Oralbay Keunimazhev** (executed November 2002), **Ilkhom Babazhanov** (executed 7 May 2003), **Maksud Ismailov** (executed 7 May 2003), **Azamat Uteyev** (executed 7 May 2003), **Muzaffar Mirzayev** (executed 5 June 2003).

<sup>4</sup> Special Rapporteur on torture report 2003 (see footnote 1), para. 36.

<sup>5</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, para. 17.7, website: <http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>

Uzbekistan in spite of clear evidence that they were at risk of serious human rights violations. Kazakhstan, Kyrgyzstan, the Russian Federation, Tajikistan and Turkmenistan have been involved in returning people who were sentenced to death on their return to Uzbekistan after unfair trials, often accompanied by credible allegations of torture.

It is high time that the authorities of Uzbekistan introduce fundamental reforms with regard to their policy on the death penalty. Among the recommendations made throughout and at the end of this report, Amnesty International urges the government of Uzbekistan to take immediate steps towards abolition of the death penalty and to promptly declare a moratorium on death sentences and executions. In addition, the government should commute all pending death sentences.

This report is based on extensive research on the issue, including through contact with families, non-governmental organizations, lawyers, and meetings with government officials during visits to Uzbekistan by Amnesty International delegates in July 2002 and June 2003.

### ***The death penalty: a human rights violation***

Amnesty International opposes the death penalty worldwide in all cases without exception. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It is the ultimate cruel, inhuman and degrading punishment.

As long as the death penalty is maintained, the risk of executing the innocent can never be eliminated.<sup>6</sup>

As an organization concerned with the victims of human rights abuses, Amnesty International does not seek to belittle the suffering of the families of murder victims. A flawed justice system, however, serves them as ill as it does those passing through it.

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<sup>6</sup> In the United States 107 prisoners have been released from death row since 1973 after evidence emerged of their innocence of the crimes for which they were sentenced to death. Some had come close to execution after spending many years under sentence of death. Recurring features in their cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence, or confessions; and inadequate defence representation. Other US prisoners have gone to their deaths despite serious doubts over their guilt. The then Governor of the US state of Illinois, George Ryan, declared a moratorium on executions in January 2000. His decision followed the exoneration of the 13<sup>th</sup> death row prisoner found to have been wrongfully convicted in the state since the USA resumed executions in 1977. During the same period, 12 other Illinois prisoners had been executed. In January 2003 Governor Ryan pardoned four death row prisoners and commuted all 167 other death sentences in Illinois.

In addition, the finality and cruelty inherent in the death penalty make it an inappropriate and unacceptable response to violent crime. Studies have consistently failed to find convincing evidence that it deters crime more effectively than other punishments.

The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988 and updated in 2002, concluded that *“it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment.”* The fact that no clear evidence exists to show that the death penalty has a unique deterrent effect points to the futility and danger of relying on the deterrence hypothesis as a basis for public policy on the death penalty.<sup>7</sup>

### ***Defying the worldwide trend towards abolition***

Uzbekistan is defying the worldwide trend towards abolition of the death penalty. Over half the countries in the world have now abolished it in law or practice. In the past decade more than three countries a year on average have abolished it for all crimes. At present there are 112 countries which are abolitionist in law or practice and 83 countries which retain and use the death penalty.

In 1977 the UN General Assembly recognized the *“desirability of abolishing this punishment [the death penalty]”*.<sup>8</sup> In 2003 the UN Commission on Human Rights reiterated its call on state parties to the ICCPR that are not yet party to the Second Optional Protocol to the Covenant, which aims at abolition of the death penalty, to consider signing or ratifying the Protocol.<sup>9</sup> In addition, the Commission called on states that retain the death penalty to *“abolish the death penalty completely and, in the meantime, to establish a moratorium on executions”*.

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<sup>7</sup> Recent crime figures from abolitionist countries fail to show that abolition has harmful effects on crime rates. In Canada, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then it has declined further. In 2001, 25 years after abolition, the homicide rate was 1.78 per 100,000 population, 42 per cent lower than in 1975. Refer to Amnesty International, *Facts and Figures on the Death Penalty*, para. 7 (AI Index: ACT 50/002/2001), website:

<http://web2.amnesty.org/library/Index/engACT500022001?OpenDocument&of=THEMES%5CDEATH+PENALTY?OpenDocument&of=THEMES%5CDEATH+PENALTY>

<sup>8</sup> UN General Assembly resolution 32/61, 8 December 1977, website: <http://www.un.org/documents/ga/res/32/ares32.htm>

<sup>9</sup> Commission on Human Rights resolution 2003/67, 24 April 2003, para. 2, website: <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/cc0e2a6d48fbc470c1256d24003274d6?OpenDocument>

As a member of the OSCE, Uzbekistan has committed itself to keep the question of abolition under consideration.

Member states of the European Union (EU) resolved in their 1998 policy paper on the death penalty to “*work towards universal abolition of the death penalty*”<sup>10</sup> in their relations with third countries. The EU has issued a series of demarches on behalf of individuals on death row in Uzbekistan, urging the authorities not to execute them. Uzbekistan concluded a Partnership and Co-operation agreement with the EU in 1999 under which the two sides have obliged themselves to “*endeavour to cooperate on matters pertaining to the ... protection and promotion of human rights.*”<sup>11</sup>

## Scope, scale and trends

*“The death penalty will be applied for premeditated murder in aggravated circumstances. Our position on this issue is absolutely clear: since human life is an exceptional value given by God, premeditated murder in aggravated circumstances can be and should be punishable by death.”*

**President Islam Karimov addressing Parliament, 29 August 2001**

The Human Rights Ombudsperson of Uzbekistan, Sayora Rashidova, informed Amnesty International in 1998 that the government was following a policy of abolishing the death penalty by stages. Government officials have stated that this trend is manifested in the gradual reduction in the number of capital crimes and by the exemptions from the death penalty of men aged under 18 or over 60 and of women.

## Capital offences

At independence in 1991 Uzbekistan inherited the USSR Criminal Code that had been in force for three decades. At that time over 30 articles of the Code provided for the death penalty. When Uzbekistan adopted the Criminal Code of Uzbekistan in 1994, 13 offences were made punishable by death.<sup>12</sup> In 1998 the *Oliy Majlis* (Parliament)

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<sup>10</sup> Guidelines EU policy towards third countries on the death penalty, General Affairs Council, Luxemburg, 29 June 1998. Section I. ii, website:

[http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm)

<sup>11</sup> Partnership and Co-operation Agreement (PCA) between the EU and Uzbekistan., Article 4, website: [http://europa.eu.int/comm/external\\_relations/ceeca/pca/pca\\_uzbekistan.pdf](http://europa.eu.int/comm/external_relations/ceeca/pca/pca_uzbekistan.pdf)

<sup>12</sup> These were: “Premeditated murder with aggravating circumstances” (Article 97, part 2 of the Criminal Code); “Rape” (Article 118, part 4); “Gratification of unnatural sexual desires by force” (Article 119, part 4); “Aggression” (Article 151, part 2); “Breach of the laws and customs of war” (Article 152); “Genocide” (Article 153); “Terrorism” (Article 155, part 3); “Treason” (Article 157, part 1); “Attempts on the life of the President of Uzbekistan” (Article 158, part 1); “Espionage” (Article 160, part 1); “Organization of a criminal association” (Article 242, part 1); “Smuggling” (Article 246, part 2); and “Unlawful sale of narcotics or psychotropic substances” (Article 272, part 5).



amended the Code to reduce the number of capital crimes to eight.<sup>13</sup> On 29 August 2001 parliamentary amendments further reduced the number to four: “premeditated, aggravated murder”, “aggression”<sup>14</sup>, “genocide” and “terrorism”.

### **Undisclosed statistics**

Senior officials told Amnesty International delegates in Uzbekistan in June 2003 that the number of persons sentenced to death had significantly declined since 2001. Dr Akmal Saidov, head of the governmental National Human Rights Centre, told Amnesty International in June 2003 that the number of death sentences had decreased by 24 to 30 per cent in the past five years. Abdugafor Salikhov, director of administration at the General Procuracy (public prosecutions office), gave a figure of 44 per cent. However, neither these nor any other officials interviewed by Amnesty International were willing to provide figures on the number of prisoners sentenced to death or executed, stating that statistics on the death penalty were secret. It is therefore impossible to verify their statements about a reduction in death sentences or to study the impact of the reduced number of capital offences on the number of death sentences.

Several non-governmental sources in Uzbekistan believe that the reduction in the number of capital offences has had no impact on the actual number of death sentences as, according to them, virtually all death verdicts in Uzbekistan were handed down under Article 97, part 2, “premeditated, aggravated murder”. Dr Akmal Saidov told Amnesty International in 2003 that all death sentences in the past five years had been handed down under Article 97, part 2, thereby indirectly confirming the statements of non-governmental organizations as mentioned above at least since 1998. Tamara Chikunova, chair of the non-governmental organization Mothers against the Death Penalty and Torture, described the reduction of articles carrying the death penalty as only a “gesture” and “pure window-dressing.”

Unofficial calculations about the numbers on death row suggest that hundreds may be awaiting execution every year. Polina Braunerg, a lawyer who has worked on many death penalty cases in Tashkent region, estimates that at least 78 prisoners were sentenced to death in Uzbekistan in 2002. Mothers against the Death Penalty and Torture has supported the families of dozens of death row prisoners, and estimates that about 200 death sentences are handed down each year. Nozima Kamalova,

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<sup>13</sup> The following crimes remained punishable by death: “Premeditated murder with aggravating circumstances”, “Rape”, “Aggression”, “Genocide”, “Terrorism”, “Treason”, “Espionage”, “Unlawful sale of narcotics or psychotropic substances”.

<sup>14</sup> Part 2 of the Article on “aggression” (Article 151 of the Criminal Code) stipulates that the “initiating or waging of an aggressive war” is punishable by 15 to 20 years’ imprisonment or by death.

director of the Legal Aid Society in Tashkent, which defends prisoners facing capital charges, believes that the true figure could be as high as 400 every year.

Amnesty International has documented the cases of at least 49 prisoners sentenced to death in 1999; 27 in 2000; 32 in 2001; 32 in 2002; and at least 14 in the first seven months of 2003. These figures are based on information published in local and international news media, and on documentation provided by lawyers, human rights activists and families. However, the domestic media cover only a fraction of all cases, and it is very likely that most death row prisoners and their families do not have access to individuals or organizations that will record, disseminate information about or take action on their case. In addition, many families deliberately do not engage lawyers who would mount a defence that might be considered too challenging by the authorities or who would approach international organizations, fearing repercussions from the authorities (see the chapter "Corruption" and "Punished for speaking out").

United Nations bodies such as the Human Rights Committee, the Committee against Torture and the Special Rapporteur on torture have raised serious concern about Uzbekistan's failure to provide comprehensive statistics on the death penalty. In April 2001 the (UN) Human Rights Committee deplored "*the State party's refusal to reveal the number of persons who have been executed or condemned to death, and the grounds for their conviction*" and urged Uzbekistan to "*provide such information as soon as possible.*"<sup>15</sup> To Amnesty International's knowledge, the authorities of Uzbekistan have to date failed to respond adequately to similar requests by these UN bodies and the OSCE.<sup>16</sup>

### ***Unconstitutional secrecy***

In the library of the Ministry of Justice in Tashkent, most references under the "death penalty" section in the catalogue are marked "classified information" although there is no legal basis under Uzbek domestic law for keeping secret, for example, statistical data on the application of the death penalty, and official pardons or acts of clemency. The death penalty is not included in the Law on the Protection of State Secrets. The Law mentions the existence of a Regulation on the determination of the secrecy level of information as well as a List of classified information in the Republic of

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<sup>15</sup> Concluding observations of the Human Rights Committee: Uzbekistan. CCPR/CO/71/UZB, Section C, 6, 26 April 2001, website: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.UZB.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument);

<sup>16</sup> As a participating state of the OSCE Uzbekistan has committed itself to making public information about its use of the death penalty, in accordance with para. 17.8 of the 1990 Copenhagen Document (see footnote 5).

Uzbekistan. However, these documents are not publicly accessible. Under the Constitution, legislation comes into force only after it has been officially published.<sup>17</sup>

Relatives, lawyers, human rights organizations and others are kept in the dark about numerous other issues surrounding death penalty cases because of gaps in legislation, vague formulations in legal texts, the lack of smooth coordination between various government agencies involved in a case, and flaws in the implementation of laws. Later sections of this report look at the absence of clear and publicly accessible sentencing guidelines for the courts; the lack of transparency about the status of interventions by the (UN) Human Rights Committee on behalf of individuals sentenced to death; the secrecy surrounding the work of the Clemency Commission; and the frequent failure of the authorities to inform families swiftly that their relative has been executed.

### ***Exemptions from the death penalty***

International standards require that people with mental disabilities (i.e. mental health disorders or developmental disabilities) are exempted from the death penalty. This includes people who have become insane since being sentenced to death. The UN Economic and Social Council has resolved that states retaining the death penalty must “[eliminate] the death penalty for persons suffering from mental retardation or extremely limited mental competence, whether at the stage of sentence or execution.”<sup>18</sup> In its April 2003 resolution the UN Commission on Human Rights reiterated its conviction that those countries that retain the death penalty must “not...impose the death penalty on a person suffering from any form of mental disorder or to execute any such person”.<sup>19</sup>

In Uzbekistan men aged under 18 or over 60 at the time of the offence and women are exempt from the death penalty, according to Article 51 of the Criminal Code. The Article does not make additional provisions for people with mental disabilities. However, the Criminal Code does provide a number of safeguards:

- Article 18 stipulates that a person who at the time of the offence was not responsible for their actions because of a chronic psychiatric disorder, a temporarily confused state of mind, “*weak-mindedness*” or other mental illness is not held to be criminally responsible.
- Article 67 stipulates that a person suffering from a mental illness before sentence is passed that renders them incapable of recognizing the significance

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<sup>17</sup> Article 83 of the Constitution of Uzbekistan.

<sup>18</sup> UN Economic and Social Council resolution 1989/64, 24 May 1989.

<sup>19</sup> Commission on Human Rights resolution 2003/67, para. 4 (g) (see footnote 9).

of their actions or unable to control their mind is exempt from criminal responsibility.

- According to Article 75, a person who becomes mentally ill after conviction is exempt from serving the sentence.

In all these cases, the court may require compulsory medical treatment. According to contemporary medical ethical opinion, treating a prisoner solely to allow for him to be executed is unethical since it effectively means a doctor is contributing to the execution process.<sup>20</sup>

The Commentary to the Criminal-Execution Code of Uzbekistan, published in 2000, provides further information about the effect of Article 75 of the Criminal Code on death penalty cases:

*“If doubt arises over the mental state of a convict, he is subject to inspection by a committee of specialist doctors, and a report will be drawn up. If the convict is found to be in a state of mental disorder that deprives him of the ability to clearly understand everyday events, then the carrying out of the sentence is suspended... On the basis of the conclusions of the medical commission, the court considers the possibility of freeing the convict from punishment ... while simultaneously prescribing forcible medical treatment ... In the case of recovery the punishment will be carried out.”<sup>21</sup>*

There are strong indications that allegations of mental disabilities in capital cases have been ignored by the authorities in several cases or that medical examinations were flawed, in violation of domestic as well as international safeguards.<sup>22</sup> The lack of official information or statistics about the death penalty prevents independent scrutiny of courts' adherence to the law in this as in other aspects of the death penalty.

### **Hurdles to abolition**

Several government officials told Amnesty International delegates that they were personally in favour of abolition but believed public opinion was not yet ready for such a step. However, an informed public opinion is shaped by education and moral leadership and Amnesty International believes that governments should lead public opinion in matters of human rights and criminal policy. The decision to abolish the death penalty has to be taken by government and legislators. It can be taken even

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<sup>20</sup> Refer to: World Psychiatric Association, Declaration on the Participation of Psychiatrists in the death penalty, 1989, website: <http://www.wpanet.org/generalinfo/ethic7.html>; restated in the Declaration of Madrid, 1996, website: <http://www.wpanet.org/generalinfo/ethic1.html>

<sup>21</sup> Commentary to the Criminal-Execution Code, Article 140, para. 2 and 3.

<sup>22</sup> For case examples, see chapter “Exemptions ignored” below.

though the majority of the public favour the death penalty, which indeed has historically almost always been the case. Yet when the death penalty is abolished there has often been little public outcry, and it almost always remains abolished. Amnesty International believes that frequently the reasons for a seemingly strong public support for the death penalty can be complex and lacking in factual foundation. If the public were fully informed of the reality of the death penalty and how it is applied, many people might be more willing to accept abolition.

Several officials said that the serious financial implications of abolition, for example to provide appropriate detention facilities for prisoners serving life imprisonment, constitute a significant hurdle. Amnesty International believes that the international community must ensure that the death penalty in Uzbekistan is not retained for financial reasons.

Amnesty International would welcome decisive steps by the government of Uzbekistan to move towards full abolition of the death penalty, thereby demonstrating unambiguous commitment to the government's proclaimed policy to abolish the death penalty in stages. Fundamental reforms to end the secrecy currently surrounding the death penalty are urgently needed. The authorities should publish comprehensive statistics on the application of the death penalty and introduce measures to ensure humane treatment of prisoners' families. (See also the chapter "Recommendations" at the back of the report).

## **Scope for judicial error**

The death penalty is carried out in Uzbekistan in defiance of international fair trial standards. The systematic use of torture; the lack of independence of the judiciary; corruption at every stage from investigation to the clemency process; the glaring discrepancies between domestic law, its implementation and Uzbekistan's obligations under international human rights treaties -- all reveal fundamental flaws in the criminal justice system. In these circumstances, use of the death penalty is irresponsible and in violation of the ICCPR, which Uzbekistan ratified on 28 September 1995 (see box below). Any death sentence passed in breach of international human rights standards on torture and fair trial is therefore unlawful and the ultimate violation of the right to life.

Amnesty International has for many years raised concerns about Uzbekistan's failure to bring its legislation fully in line with its obligations under international human rights treaties and to introduce adequate safeguards to protect detainees from human rights violations.

**International Covenant on Civil and Political Rights**

Article 6 on the right to life requires state parties, including Uzbekistan to ensure that :

- no one is arbitrarily deprived of their life;
- sentences of death are imposed only for the most serious crimes;
- all people sentenced to death have the right to seek pardon or commutation of their sentence;
- death sentences are imposed only after a judgment by a competent court and not in a manner that contravenes other provisions of the ICCPR.

Other provisions establish minimum requirements for a fair trial and prohibit torture. Under Article 14, people who face a possible death sentence are entitled to the following minimum rights at trial:

- a public judicial hearing by a competent, independent and impartial court established by law;
- to be presumed innocent until proved guilty;
- to be informed in a language they understand of the charge being brought;
- to have adequate time and facilities to prepare a defence, and with the lawyer of their choice;
- to be tried without undue delay;
- to be present at the trial and to defend themselves, or to have the services of a lawyer of their choice, or, to have the services of an appointed lawyer, free of charge;
- to cross-examine prosecution witnesses and to call witnesses for the defence;
- if necessary, to have use of an interpreter, free of charge;
- not to be forced to testify against themselves or to admit guilt;
- to have the conviction and sentence reviewed by a higher court or judicial authority in accordance with the law;
- to be compensated if convicted as the result of miscarriage of justice;
- not to be tried and punished twice for the same offence.

Other fair trial rights, under Article 9, require that:

- no one may be detained arbitrarily;
- every detainee must immediately be told the reasons for their detention and promptly informed of any charges against them;
- and person charged with a criminal offence must be promptly brought before a judge;
- anyone who is the victim of unlawful arrest is entitled to compensation.

Article 7 states that:

No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment.

Both the (UN) Human Rights Committee and (UN) Committee against Torture have expressed concern about the lack of independence of the judiciary in Uzbekistan.<sup>23</sup> The (UN) Committee against Torture has also criticized the “*insufficient level of independence and effectiveness of the procuracy*”.<sup>24</sup> The UN Special Rapporteur on torture stated in his February 2003 report that he believed the “*combination of a lack of respect for the principle of presumption of innocence..., the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies... to be conducive to the use of illegal methods of investigation.*” He questioned a statement by Aminzhon Ishmetov, then Acting Chairman of the Supreme Court, that no one had ever been wrongly executed in Uzbekistan.

Other officials have expressed a belief in the impossibility of judicial error in death penalty cases in Uzbekistan. Abdugafor Salikhov, from the General Procuracy, told Amnesty International delegates in June 2003 that he was convinced that “*no innocent person has ever been executed in Uzbekistan.*”

The Supreme Court itself appears to have acknowledged the possibility of judicial error in cases of murder, including the capital offence of “premeditated, aggravated murder”. In December 1996 the Plenum of the Supreme Court pointed out shortcomings in court decisions on murder cases, for example “*superficial analyses of the circumstances of the case and of the information describing the character of the guilty person, and also mistakes in the qualification of the crime committed as well as in establishing the [appropriate] punishment for it.*”<sup>25</sup> It stated that courts “*do not always establish [correctly] the role and nature of the activity of each of the defendants and in several cases, without grounds, identified as those who carried out a murder a person who did not immediately participate in depriving the victim of his or her life, as well as persons who did not intend to kill the victim and who did not know about the existence of such an intention among the other participants of the crime.*”

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<sup>23</sup> Human Rights Committee 2001, Section C, 14 (see footnote 15) and Committee against Torture, Concluding observations/Comments, CAT/C/CR/28/7, Section D, 5.e, 6 June 2002, website: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.7.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.7.En?Opendocument)

<sup>24</sup> Committee against Torture 2002, Section D, 5.c (see footnote 23).

<sup>25</sup> Supreme Court Decision No. 40, 20 December 1996, “On court practice on cases of premeditated murder”.

### **Ignoring the (UN) Human Rights Committee**

In September 1995 Uzbekistan ratified the Optional Protocol to the ICCPR and thereby recognized the competence of the (UN) Human Rights Committee to consider communications from individuals subject to Uzbekistan's jurisdiction who claim to be victims of violations of rights set out in the Covenant.

Amnesty International welcomes the reversal to prison terms of at least nine death sentences where the (UN) Human Rights Committee intervened.<sup>26</sup> However, the organization is concerned that at least nine death row prisoners have been executed while the cases were still under consideration by the Committee.<sup>27</sup> By failing to consistently adhere to its commitments as a party to the Optional Protocol, Uzbekistan deprives its citizens of this crucial mechanism to seek redress in cases where a death row prisoner has allegedly fallen victim to the flaws of Uzbekistan's criminal justice system.

In his February 2003 report the UN Special Rapporteur on torture criticized the authorities for their failure to act appropriately on interventions by the (UN) Human Rights Committee. When it came to light that a number of executions had recently been carried out, Bertrand Ramcharan, the acting UN High Commissioner for Human Rights, on 4 July 2003 publicly urged the authorities of Uzbekistan "*not to carry out the execution of detainees who have appealed their convictions to the United Nations Human Rights Committee.*"<sup>28</sup> He noted in addition that he had underlined the importance of respecting interventions from the (UN) Human Rights Committee during a visit to Uzbekistan in March 2003. In a July 2003 press release the (UN) Human Rights Committee reminded the authorities of Uzbekistan that "*it amounts to a grave breach of the Optional Protocol to execute an individual whose case is pending before the Committee.*"<sup>29</sup>

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<sup>26</sup> Amnesty International knows of the following cases: **Arsen Arutyunyan** (commuted 2000), **Danis Sirazhev** (commuted: 2000), **Vazgen Arutyunyants** (commuted December 2001), **Armen Garushyants** (commuted December 2001), **Nikolay Ganiyev** (commuted 14 February 2002), **Aleksander Kornetov** (commuted 1 March 2002), **Valery Agabekov** (commuted 23 April 2002), **Andrey Annenkov** (commuted 23 April 2002), **Ilkhomzhon Karimov** (commuted February or March 2003).

<sup>27</sup> See footnote 3.

<sup>28</sup> Website:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/21E7FAC9F81C9DDEC1256D5C002DC8DE?opendocument>

<sup>29</sup> Website:

<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/7EBCBAB79D4AB848C1256D6D005470F9?opendocument>



In meetings with Amnesty International delegates in Uzbekistan in June 2003, government officials indicated disregard for the supremacy of international law over domestic law despite the government of Uzbekistan's commitment to uphold a number of major international human rights treaties. On 8 July 2003, when asked at a press conference in Tashkent about the status of interventions by the (UN) Human Rights Committee on behalf of individuals in Uzbekistan facing the death penalty, Foreign Minister Sadyk Safayev was reported as saying: "*The United Nations can't impose a moratorium. We have to be clear in our evaluations so that everything is done in accordance with domestic legislation.*"<sup>30</sup>

In the Preamble to the Constitution adopted on 8 December 1992, Uzbekistan recognizes "*the priority of generally accepted norms of international law.*" However, the Constitution neither specifies the status of Uzbekistan's obligations under international human rights treaties and their relationship with domestic law, nor details how the principle set out in the Preamble should be reflected in court rulings.

Amnesty International is concerned that no government agency appears to coordinate government response to (UN) Human Rights Committee interventions or to have sufficient powers to ensure adherence to the requirements of the Committee's interventions. Yakubjon Ergashev, head of the department on international organizations at the Ministry of Foreign Affairs, told Amnesty International delegates that the Ministry passes on (UN) Human Rights Committee interventions to the relevant agencies and coordinates replies, but that it could not ensure compliance. "*We are not in a position to ensure or convince the law enforcement bodies that a case should be postponed,*" he said. "*What we can do is we can let them know that this is an application from an international body and this is the procedure. The final decision, however, is taken by the Supreme Court or the Ministry of the Interior.*" However, when asked about the status of interventions from the (UN) Human Rights Committee, Dr Akmal Saidov, the head of the National Human Rights Centre, a governmental agency, said that the final decision on executions was made by the head of state.

According to the UN Special Rapporteur on torture, it became clear from his discussion with the Acting Chairperson of the Supreme Court during the Rapporteur's visit to Uzbekistan in November and December 2002, that "*requests for interim measures issued by the Human Rights Committee, a large number of which concern death sentences based on confessions allegedly extracted under torture, had not been brought to the attention of this organ of the judiciary, which reviews all death penalty cases.*" Abdugafor Salikhov from the General Procuracy told Amnesty International in June 2003 that his office had never received any interventions from the (UN)

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<sup>30</sup> AFP, 8 July 2003.

Human Rights Committee. Mikhail Gurevich, head of staff at the Main Administration for the Execution of Punishments of the Ministry of the Interior, told Amnesty International delegates in the same month that his office had been approached by the Foreign Ministry to provide information on a number of death penalty cases in connection with a (UN) Human Rights Committee intervention for the first time about a month earlier. Judges of the Supreme Court that Amnesty International met around the same time were apparently not aware of the procedure.

#### **How the UN Human Rights Committee works**

The Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR). Its 18 independent expert members of "high moral character and recognized competence in the field of human rights" are nominated by the states party to the ICCPR.

The Committee examines reports submitted to it periodically by states party to the ICCPR on measures they have adopted to give effect to the rights in the Covenant. After a public dialogue with representatives of the state in question, the Committee may recommend appropriate action. Once a year the Committee submits a global report on its work to the UN General Assembly.

An Optional Protocol to the ICCPR entered into force together with the ICCPR in 1976. This allows the Committee to consider complaints from individuals who believe that rights protected by the ICCPR are being violated, provided that the state in question is party to the Optional Protocol and the individual has exhausted all domestic remedies.

If a complaint is admissible, the Committee asks the state concerned for "written explanations or clarifications" within six months. In the case of individual complaints involving a death sentence, the Committee usually asks the state to stay the execution pending its examination of the case.

The Committee considers the complaint in private meetings, then makes public its views and findings, including any remedy that should be provided. A summary of its activities under the Optional Protocol is included in its Annual Report to the UN General Assembly. The website of the UN Human Rights Committee can be found at [www.unhchr.ch](http://www.unhchr.ch).

### **Arbitrary detention and torture**

According to Article 9 (1) of the ICCPR, an individual may only be deprived of his or her liberty on grounds and according to procedures established by law. These procedures must conform not only to domestic law, but also to international standards.

Many prisoners under sentence of death whose cases have been brought to Amnesty International's attention are alleged to have been victims of fabrication of evidence by the police and wrongly convicted on the basis of such evidence. One lawyer told Amnesty International: "*When a corpse is found, then the police in that*

area are expected to promptly find the murderer. If they cannot solve the crime, it [the case] gets fabricated during the police investigation". In its concluding observations issued in June 2002, the (UN) Committee against Torture expressed concern at "the continued use of the criterion of 'solved crimes' as a basis for promotion of law enforcement personnel."<sup>31</sup> The Committee believed that this and the fact that numerous convictions are based on confessions "creates conditions that promote the use of torture and ill-treatment."<sup>32</sup>

There is no mechanism in Uzbekistan's domestic law to challenge the legality of a detention, as required by Article 9 (4) of the ICCPR. The lack of such mechanism confers excessive power on law enforcement agencies and leaves the process of arrest open to widespread abuse, such as discrimination, prejudice and corruption. As a result, detainees are deprived of a right widely recognized to be an important safeguard against torture and other human rights abuses.

### **Incommunicado detention**

Detainees are in many cases denied the additional right of contact with the outside world after their arrest. In Uzbekistan procurators and investigators have discretionary powers to allow or deny access to a detainee. The (UN) Committee against Torture raised concern at the "lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to independent counsel, a doctor or medical examiner and family members"<sup>33</sup> and urged the authorities of Uzbekistan to "[a]dopt measures to permit detainees access to a lawyer, a doctor and family members from the time they are taken into custody and ensure that doctors will be provided at the request of detained persons without the need to obtain the permission of prison officials."<sup>34</sup> Detainees are often held incommunicado for several days, and sometimes even weeks, following their arrest, when the risk of torture or ill-treatment is the greatest.<sup>35</sup>

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<sup>31</sup> Committee against Torture 2002, Section D, 5.h (see footnote 23).

<sup>32</sup> Committee against Torture 2002, Section D, 5.h (see footnote 23).

<sup>33</sup> Committee against Torture 2002, Section D, 5.b (see footnote 23). Also refer to the report of the Special Rapporteur (see footnote 1), para. 66.

<sup>34</sup> Committee against Torture 2002, Section D, 6.f (see footnote 23). See also Human Rights Committee 2001, Section C, 7 (see footnote 15).

<sup>35</sup> For detailed analyses of the discrepancies between domestic law and practice and international safeguards against torture and ill-treatment, see the February 2003 report of the UN Special Rapporteur on torture (see footnote 1) and the report *And it was hell all over again...* by Human Rights Watch at: <http://www.hrw.org/reports/2000/uzbek>

### A mother threatened

When **Aleksander Kornetov** was detained in January 2001, his family was informed that he was at Chilanazar district police station in Tashkent only four days after his detention. His mother immediately went to see him. As soon as she arrived at the police station, she saw the investigator slapping her son in the face and hitting his head, she later reported. When the investigator saw her, she continued, he said that if she wanted to see her son alive she should go away.



Aleksander Kornetov's mother reported she saw the investigator hitting her son and slapping him in his face.  
© Private

Most suspects accused of capital offences are reportedly denied full rights to access to and effective assistance of counsel and to prepare a defence. In many cases, especially those involving accusations of "religious extremism", detainees have been denied their right to a lawyer of their own choice (see chapter "Political trials"). In these cases and when families could not afford to engage a lawyer themselves, state-appointed lawyers have usually not mounted a strong defence. In many cases, lawyers have been refused regular access to accused persons held in pre-trial detention and law enforcement officials have granted access only after the suspect has signed a 'confession'. In the case of Maksim Strakhov, arrested in October 2000, his lawyer was reportedly frequently denied access to him in pre-trial detention. His mother told Amnesty International: "*When the lawyer was given permission to see Maksim, they were never able to speak in private, but a guard was always present.*" He was executed in May 2002, after being convicted of "premeditated, aggravated murder".

## Torture

*“The abolition of the death penalty would be a positive step towards respect for the prohibition of torture and other forms of ill-treatment.”*

**Theo van Boven, UN Special Rapporteur on torture, in his February 2003 report following his visit to Uzbekistan in 2002<sup>36</sup>**

Uzbekistan's ratification of both the ICCPR and the Convention against Torture obligates it to ensure that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

In countless reports, prisoners, their relatives, lawyers, human rights monitors, international human rights organizations and diplomats have alleged that defendants in capital cases have been tortured. Many individuals in Uzbekistan have taken a great personal risk by recording and disseminating such information. As confidential meetings between detainees and family members or lawyers are virtually non-existent, detainees have been in a particularly vulnerable position when they nevertheless dared to talk about their treatment in detention or when they tried to smuggle a letter to their relatives past the prison censor.

Torture may take place before charges have been brought or during pre-trial detention, often aimed at forcing the detainee to sign a 'confession'. Such practice opens the door to unreliable 'confessions', which are relied upon as a basis of conviction, and can subsequently lead to judicial error. Death row prisoners reportedly continue to be tortured and ill-treated after trial.

Following his visit to Uzbekistan in November and December 2002, the UN Special Rapporteur on torture concluded that *“torture or similar ill-treatment is systematic”* in Uzbekistan and *“appear[s] to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others”*. In his February 2003 report, he noted that *“the abolition of the death penalty would be a positive step towards respect for the prohibition of torture and other forms of ill-treatment.”* He recommended that the authorities *“[introduce] a moratorium...on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment.”*

When President Karimov was asked by the president of the European Bank for Reconstruction and Development (EBRD) to condemn torture in his speech to the bank's annual meeting in Tashkent at the beginning of May 2003, he reportedly promised to do so. However, he failed to live up to his promise and reportedly

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<sup>36</sup> Special Rapporteur on Torture report 2003, para. 65 (see footnote 1).

pointedly refused to listen to the speech of the EBRD president when he mentioned the bank's concerns about human rights violations in Uzbekistan.

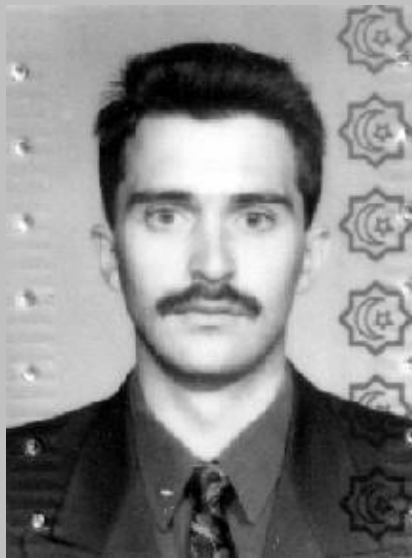
In a meeting with Amnesty International delegates in June 2003 a senior official at the General Procuracy categorically denied the use of torture in Uzbekistan. "Torture -- that is connected with the inquisition or with fascism. We do not have that here," he said.

Amnesty International believes that in a climate in which the authorities do not even acknowledge, let alone decisively counteract, the systematic nature of torture in the country, the retention of capital punishment is particularly hazardous.

### **Tashkent Regional Police accused**

In a letter smuggled out of prison **Dmitry Chikunov** described his ill-treatment at Tashkent Regional Police headquarters after his arrest on 17 April 1999 in connection with a murder investigation.

*"[B]efore we reached the [police station], one of the [officers]...trapped my head in the car door and kicked me repeatedly in the stomach... [H]e punched and elbowed me, using all his strength... [At the police station officers] handcuffed my hands behind my back. All of them then held me by the shoulders and legs and started to swing me up and down, finally throwing me up at the ceiling... I landed on the ground on my back, and don't remember what happened next because of the pain. I couldn't speak -- as though I was paralyzed. They did it four times... [T]hey tied my hands behind my back and put a gas mask over my head. Then the interrogator squeezed the breathing tube tight and shouted: 'Now confess that you are a murderer'...Then they hurled me to the floor and someone sat on my neck, another on my arms and another on my back, shouting: 'Now we're going to shove this [stone] prick up your arse, take a photo and send it to prison with you. They love guys like you in there!' Then the one sitting on my back leaped up and jumped with both feet as hard as he could on*



Dmitry Chikunov reported that he was severely tortured to force him to 'confess'. He was executed in secret in July 2000. © Private

*my spine. I was winded from the pain and couldn't breathe, and then they...started beating my legs and feet with their truncheons."*

He reported that officers threatened to rape him and his mother unless he 'confessed', and staged a mock execution at the scene of the crime after dark, threatening to shoot him until he finally agreed to sign a confession statement.

He was subsequently convicted on charges of involvement in the murder of two men and sentenced to death on 11 November 1999 by Tashkent Regional Court. The Supreme Court turned down the appeal against his death sentence on 24 January 2000, and he was executed in secret on 10 July 2000.

Police at Khazarapsky district police station in the region of Khorezm reportedly tortured **Allanazar Kurbanov** following his detention at the beginning of March 2001. Family members and his lawyer maintained that he and his co-defendant, **Yusupbay Sultanov**, were forced to 'confess' to the murder of six members of the Abdullayev family by torture and psychological pressure. Allanazar Kurbanov was reportedly handcuffed, had a bag put over his head, was kicked and had his fingers burned. He wrote in a letter smuggled to his relatives: "[A senior police officer] shouted I should kiss the ground and then he hit me several times on my neck. I was lying on my stomach and nearly lost consciousness because of the terrible pain, but I repeated that I did not kill anybody. Then he ordered the other policemen to force me to confess within three days." The two men were convicted of murder by Khorezm Regional Court and sentenced to death on 11 August 2001.

In many cases detainees need medical treatment as a result of the torture and ill-treatment. However, requests to see a doctor or to go to hospital are nearly always turned down by the authorities.

### **Untreated injuries**

A 26-year-old welder, **Valery Agabekov**, was reportedly denied medical treatment after he and his brother-in-law **Andrey Annenkov** were tortured at a police station in the town of Akhangaran in Tashkent region in February 2001. Valery Agabekov later wrote:

*“They broke my jaw. I am not able to eat properly now... They were trying to rape me. I was handcuffed, attached to the radiator... They started to hit my head against the radiator. Then they placed a plastic bag over my head and the investigator shouted: ‘Either you confess now or you will die before your trial’. I could not breathe and blood was running down my hands. Several times I lost consciousness. I kept repeating, ‘I am innocent’. When I asked them to call a doctor, the investigator said that the only person they would call for me was the grave digger... They broke one of [Andrey Annenkov’s] ribs and knocked out a tooth. We both had blood in our urine following the beatings.”*



Valery Agabekov reported torture and rape threats in pre-trial detention. © Private

Both men were convicted by Tashkent Regional Court of robbing and killing two women, and were sentenced to death on 18 September 2001. On 23 April 2002 the Supreme Court commuted their death sentences to sentences of 12 years' imprisonment. There was considerable international pressure about the case.

As a party to the UN Convention against Torture, Uzbekistan is obligated to conduct prompt and independent investigations into all allegations of torture (Article 12). However, no such investigations are known to have been opened into allegations of torture or ill-treatment of pre-trial detainees facing the death penalty. Amnesty International has brought dozens of such cases to the attention of the officials in Uzbekistan, but the responsible authorities -- procurators, courts at all levels and the parliamentary ombudsman -- have apparently persistently failed to launch prompt, thorough and independent investigations. The authorities have usually sent a standard reply, categorically denying the use of force, failing to detail what steps were taken in reaching this conclusion and what evidence it was based on.



### Ombudsperson fails to thoroughly investigate

The Human Rights Ombudsperson of Uzbekistan, Sayora Rashidova, told Amnesty International in a letter of 13 August 2001 that **Maksim Strakhov** and **Nigmatullo Fayzullayev** had been detained and interrogated “*without the use...of unlawful methods*”. However, she did not say how she had come to this conclusion. Amnesty International had received reports that the two men had been severely beaten by police officers for more than three days following their arrest in 2000. Later reports suggested that they were not subsequently visited or questioned by officials including the Ombudsperson investigating their allegations of torture and ill-treatment by the police.<sup>38</sup>



Maksim Strakhov alleged he was tortured in detention. He was executed in secret in May 2002.  
© Private

The Convention against Torture also obliges Uzbekistan to ensure that ‘confessions’ elicited by torture or ill-treatment are not admitted as evidence in court except as evidence against a person accused of torture (Article 15). Judges in Uzbekistan typically respond to defendants’ or lawyers’ complaints of torture by requesting medical documentation as evidence. However, procurators and investigators, with discretionary powers to grant medical practitioners access to pre-trial detainees, usually ignore requests made by detainees or their representatives in this regard. In December 2002, at the end of his visit to Uzbekistan, the UN Special Rapporteur on torture stated that “*many confessions obtained through torture and other illegal means were ... used as evidence in trials, [including] in trials that are leading to the death penalty or to very severe punishment.*”<sup>37</sup>

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<sup>37</sup> Reuters, 6 December 2002.

### Forced confession in incommunicado detention

In one prominent political case, several of the defendants alleged they were tortured while in incommunicado detention. One of them, **Iskandar Khudoberganov**, was detained in Tajikistan and handed over to Uzbek law enforcement officers on 5 February 2002 on suspicion of involvement in bomb explosions in Tashkent in February 1999. On 12 February 2002 he was reportedly transferred from the Ministry of Internal Affairs to the headquarters of the National Security Service in Tashkent. His family was notified of his detention by a state-appointed lawyer only on 18 March 2002, and was allowed to visit him for the first time on 5 April. He reported in a letter smuggled to his family that he had been tortured and given drugs against his will:



Death row prisoner Iskandar Khudoberganov alleged torture: *"If I had not signed the confession in the end, I would not be alive anymore."* © Private

*"They tortured me to force me to 'confess' to all the charges they have come up with. If I had not signed the 'confession' in the end, I would not be alive anymore. Everything inside me feels smashed... In the basement of the Interior Ministry...they tied my hands from behind, hit me with truncheons and chairs and kicked me in the kidneys. They hit my head against the wall until it was bleeding. They did not let me sleep... they did not give me food, to force me to confess. They said: 'Think of your relatives, your mother, your wife, your sister; think of their honour. We will bring them here and rape them in front of your eyes.' Only then I gave in and signed what they wanted me to sign... I hoped for a fair trial and because of that endured all sufferings and torture."*

Iskandar Khudoberganov and five co-defendants were brought to trial in August 2002 in Tashkent City Court on charges of "attempting to overthrow the constitutional order" and "setting up an illegal group". Iskandar Khudoberganov was additionally charged with the capital offences of "premeditated, aggravated murder" and "terrorism", accused of receiving military training in Chechnya in the Russian Federation and Tajikistan aimed at overthrowing the Uzbek government. He and co-defendants **Bekzod Kasymbekov** and **Nosirkhon Khakimov** told the

court that they had been tortured and ill-treated. Iskandar Khudoberganov said that guards tore up several written complaints, including of torture, that he tried to lodge in pre-trial detention. One prosecution witness, **Farkhad Kadyrkulov**, retracted in court a statement made earlier to the police on the grounds that he had been put under pressure to make false statements. The judge reportedly dismissed all allegations of torture and ill-treatment, accusing the defendants of “*making up*” the allegations to “*get away from criminal responsibility*”.

The six accused were convicted on 28 November 2002, primarily on the basis of statements reportedly extracted under torture. Iskandar Khudoberganov was sentenced to death and his five co-defendants received prison terms of between six and 16 years. Appeals against the sentences were turned down on 28 January 2003 by the Presidium of Tashkent City Court. The Collegium of judges of the Supreme Court and the Presidium, one of the highest organs of the Supreme Court, later also turned down appeals against the death sentence. The (UN) Human Rights Committee urged the Uzbek authorities to put the execution on hold while they considered the case, and the UN Special Rapporteur on torture also raised the case during his visit to Uzbekistan.

### ***Unfair trials***

Death sentences have been passed after trials and appeal processes that fail to meet international standards for fair trial, including in cases with a political element.

### ***Lack of sentencing guidelines***

One fundamental problem that opens the door to judicial error is the lack of sentencing criteria in cases involving the death penalty in Uzbekistan. Capital punishment in Uzbekistan is not mandatory but is applied at the discretion of the courts.

The crime of murder is ordinarily punishable by imprisonment, for instance. However, if committed in conjunction with any of 17 aggravating circumstances listed in the Criminal Code (Article 97, part 2), it may be punished either by imprisonment of between 15 and 20 years or by the death penalty. According to the Supreme Court, “*for carrying out premeditated murder with aggravating circumstances, the law permits [the death penalty] but does not require that its application be compulsory.*”<sup>38</sup>

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<sup>38</sup> Supreme Court decision No. 40, 1996 (see footnote 25).

Yet, to Amnesty International's knowledge, no guidance for courts to help them reach a decision as to whether a person should be sentenced to imprisonment or to death are publicly available. Amnesty International was unable to find any official commentaries to the Criminal Code specifying the basis for court decisions. When asked by Amnesty International delegates whether any such criteria existed, officials usually cited the aggravating circumstances listed in the Criminal Code, but did not indicate how courts decided which would lead to a death sentence as opposed to imprisonment. No verdicts in death penalty cases obtained by Amnesty International explain in detail why the defendant was sentenced to death rather than to a long prison term.

The courts have been given significant leeway in deciding matters of life and death, and in practice there is therefore an element of arbitrariness in the justice administered by different courts, in different regions, under different presiding judges. Several lawyers and human rights activists told Amnesty International that they believed the following courts were most likely to hand down death sentences: Tashkent Regional Court, Tashkent City Court, Samarkand City Court and the Supreme Court of the Autonomous Region of Karakalpakstan. At a meeting with Amnesty International delegates in June 2003, Supreme Court judges refused to disclose information about sentencing patterns in the different regions of Uzbekistan.

Amnesty International was particularly disturbed by a comment made at a meeting with Amnesty International delegates in June 2003 by Alisher Mukhammedov, head of the international law department of the General Procuracy, that appeared to justify the arbitrary nature of the death verdict: *"It is also important to take into account public opinion. There are cases where the public demands the death penalty for a murderer."*

## Political trials

*“Such people should be shot in the head. If necessary, I'll shoot them myself.”*

**President Karimov, addressing Parliament in May 1998 about threats to the country's stability posed by “Islamic extremism”.<sup>39</sup>**

*“I'm prepared to rip off the heads of 200 people, to sacrifice their lives, in order to save peace and calm in the republic. If my child chose such a path, I myself would rip off his head.”*

**President Karimov, April 1999, in reaction to acts of violence in March initially regarded as criminal offences but later declared to have been committed by Islamists.<sup>40</sup>**

The death penalty has played an important role in the clampdown on “religious extremism” in Uzbekistan. The authorities have, for years, regarded “Islamist fundamentalism” as the key threat to the country's security. Since 1998 at least 38 -- and possibly many more -- death sentences have been passed on political prisoners<sup>41</sup>, who were accused of having committed capital crimes and labelled “religious extremists”. Concern has been voiced that the defendants' right to be presumed innocent until guilt is proved beyond a reasonable doubt has been violated.

## Executions after unfair political trials

In late 1997 several police officers and regional officials were brutally killed in the Namangan region, in the Ferghana valley. The murders sparked a wave of mass detentions and arrests. Law enforcement officials reportedly tortured and ill-treated people suspected of associating with independent Islamist congregations or being followers of independent imams (Muslim leaders). One man was sentenced to death

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<sup>39</sup> BBC monitoring report of Uzbek Radio second program, 1 May 1998.

<sup>40</sup> Agence France-Presse, 2 April 1999.

<sup>41</sup> Amnesty International regards as “prisoners of conscience” all those who are imprisoned, detained or otherwise physically restricted by reason of peacefully exercising their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status. Amnesty International works towards the unconditional and immediate release of prisoners of conscience. Amnesty International uses the term “political prisoner” to refer to people deprived of their liberty in cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Amnesty International works to ensure that all political prisoners receive a fair trial in accordance with international standards, and Amnesty International opposes the use of torture and cruel, inhuman or degrading treatment in all cases - both criminal and political - without reservation.

and dozens to long-terms of imprisonment following trials that fell far short of international standards.

**Talib Mamadzhanov** confessed to the murders at trial, describing them as an instrument of Islamist justice. He was convicted and sentenced to death by the Supreme Court of Uzbekistan in July 1998; he was reportedly the first person to be sentenced to death on accusations including “religious extremism” in Uzbekistan. According to independent trial monitors, he and his seven co-defendants, who were sentenced to long prison terms, showed clear signs of torture and ill-treatment while in court. Talib Mamadzhanov appeared to be ill and lost consciousness on one occasion. During one hearing he was unable to sit or stand, reportedly as a result of torture, and was lying down while making his statement to the court. Several of the accused told the court they had been ill-treated by police officers. **Nosir Yusupov**, who received a 10-year prison sentence, was reportedly suffocated by having a plastic bag put over his head and was tortured with electric shocks. **Isroil Parpiboyev**, who was sentenced to nine years’ imprisonment, said that he was tortured with electric shocks, had cold water poured over him and was left naked in the prison yard in the cold of winter. He alleged that a bottle was forced into his anus and that vodka was poured onto his wounds. No action was taken by the court to investigate the allegations of torture or whether statements had been made under duress.

While Amnesty International recognizes the responsibility of the government to bring those responsible for such crimes to justice, the authorities must also ensure that the rights of all suspects and accused are respected and protected. Senior government officials, including the President, have made statements that undermined the right of all persons charged with a crime to be presumed innocent -- a key element of a fair trial -- where defendants have been labelled “religious extremists.” In April 1999, for example, in reaction to acts of violence in March initially regarded as criminal offences and later declared to have been committed by Islamists, President Karimov stated publicly: *“I’m prepared to rip off the heads of 200 people, to sacrifice their lives, in order to save peace and calm in the republic. If my child chose such a path, I myself would rip off his head.”*

On 16 February 1999 six bombs detonated in Tashkent, killing over a dozen bystanders and injuring more than a hundred. The Uzbek authorities described the bombings as an assassination attempt on President Karimov. They blamed them on violent foreign-trained groups intent on establishing an Islamist state in Uzbekistan who, according to the authorities, were operating in concert with Muhammad Salih, the exiled leader of the banned secular opposition party *Erk* (Freedom).

Amnesty International was concerned that the authorities of Uzbekistan were using the investigation into the bombings as a pretext to further clamp down on perceived sources of opposition to President Karimov and to intensify the campaign against "Wahhabism".<sup>42</sup> Hundreds of supposed conspirators and their families, including members of independent Islamist congregations and supporters of banned opposition parties and movements, including the Islamist *Hizb-ut-Tahrir*, were arbitrarily detained.

A series of trials of alleged conspirators was marred by numerous violations of fair trial standards; at least 19 prisoners were sentenced to death.

Death sentences are also reported to have been handed down on people charged with supporting the banned Islamic Movement of Uzbekistan (IMU)<sup>43</sup> and/or alleged "terrorist" acts with an "Islamist fundamentalist" background. These trials were also accompanied by reports of serious violations of international standards.

Death sentences were handed down against two men in their absence. **Takhir Yuldash** and **Juma Namangani**, leaders of the IMU were convicted by the Supreme Court on 17 November 2002 on charges including "terrorism" and "treason" in connection with causing the death of 73 people in armed incursions and the February 1999 bombings. Six co-defendants, also tried in their absence, included *Erk* leader Muhammad Salih, sentenced to 15 years' imprisonment for "terrorism" and other crimes. International observers said that the prosecution failed to provide sufficient evidence, relying on the testimony of convicted prisoners. It is reported that the accused were not represented by lawyers of their own choice and the state-appointed lawyers put up only a token defence.

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<sup>42</sup> "Wahhabism" is an orthodox form of Islam practiced in Saudi Arabia. The governments of Uzbekistan and other countries of the former Soviet Union use the term "Wahhabi" as a blanket, pejorative term to describe radical opposition Islamist groups which they regard as a threat to national security and stability.

<sup>43</sup> The IMU reportedly operates military training camps outside Uzbekistan with the aim of overthrowing the government and establishing an Islamist state. In August 1999 fighters associated with the IMU took several hostages in neighbouring Kyrgyzstan, including four Japanese nationals, and declared a *jihad* (holy war) on Uzbekistan. After two months of a military standoff the hostages were released and the IMU withdrew from Kyrgyz territory. In August 2000 there were armed clashes when Uzbek armed forces successfully resisted the entry into southeastern Uzbekistan of armed IMU units from neighbouring Afghanistan, Tajikistan and Kyrgyzstan.

The ICCPR sets out as one of the safeguards for a fair trial that the defendant is tried in his presence.<sup>44</sup> The trial in which Takhir Yuldash and Juma Namangani were sentenced to death appears to violate this provision. According to the (UN) Human Rights Committee, it may be permissible to try a person *in absentia* only in exceptional circumstances. However, in such circumstances, extra vigilance is required and “[w]hen exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all the more necessary”.

The lack of impartiality of the judiciary and the limited role of the defence were particularly apparent in the case of **Iskandar Khudoberganov** and five others (see “Torture” chapter above). A diplomat who monitored the trial told Amnesty International: “*It was so blatant. They didn’t even try to pretend the trial was fair.*” Iskandar Khudoberganov’s lawyers did not have access to their client for about seven weeks when his trial was adjourned in September 2002 for psychiatric examinations. Iskandar Khudoberganov’s sister Dilobar Khudoberganova said in October 2002: “*You can hardly see the difference between the procurator and the judge. The judge makes accusations and he shouts at the defendants. Once he announced the next hearing would be at 2 o’clock the next day, but then they already started in the morning. So no lawyers, independent observers or family members of the accused were there.*” Dilobar Khudoberganova told Amnesty International on 15 November 2002: “*The court has not even heard his case in full. There are still witnesses that have to be questioned. The lives of the defendants depend on this trial and these two women [the lay assessors<sup>45</sup>] are completely uninterested. They just sit there and sleep.*” The judge reportedly said to Iskandar Khudoberganov during a hearing: “*Come on, do not deny it. Confess and you will feel better.*” One of the two lay assessors reportedly told his lawyer: “*Your efforts are useless. It is clear he is guilty and he will surely be sentenced to death.*”

Amnesty International has documented 19 cases since 1999 in which death sentences were overturned. In all these cases, the accused had been convicted of ordinary criminal offences. Such reversals of death sentences are welcome. No death sentences in cases involving “religious extremism”, however, are known to have been commuted. This is particularly disturbing as human rights organizations have documented glaring violations of international fair trial standards, including credible allegations of torture and ill-treatment in many cases that culminated in a guilty verdict and the imposition of the death penalty.

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<sup>44</sup> Article 14 (3) (d) of the ICCPR.

<sup>45</sup> The trial is presided over by the judge. It is part of the court proceedings that two people known as lay assessors attend and inform the judge of their opinion about the case.



### **Clampdown on dissent in Uzbekistan-- a brief overview**

Uzbekistan became independent from the Soviet Union in 1991. The period from 1992 to 1995 was characterized by a serious clampdown on political dissent. In 1996 there was evidence of improvement in the treatment of opposition political activists, with a large number of imprisoned activists benefiting from amnesties. Nevertheless, some political activists remained in detention. At the same time official conduct towards religious activists harshened considerably. "Independent" Muslims increasingly faced harassment, including short-term arbitrary arrests, interference with worship and religious teaching, beatings and in some of the most serious cases, leaders of independent Islamist congregations were punished with long periods of imprisonment on apparently fabricated charges, or even "disappeared".

Several murders of police officers in the Namangan region in December 1997 sparked another wave of mass detentions of members of independent Islamist congregations or followers of independent imams (Islamist leaders) and their relatives, often accompanied by allegations of torture and ill-treatment. Many were sentenced to long-terms of imprisonment in unfair trials.

The February 1999 bomb explosions in Tashkent triggered another wave of mass arrests. This time the list of those reported to have been arrested, ill-treated and tortured included suspected supporters of the banned secular opposition parties and movements *Erk* and *Birlik*, as well as alleged supporters of banned Islamist opposition parties and movements, such as *Hizb-ut-Tahrir*, and members of their families, as well as independent human rights monitors.

The clampdown on suspected sympathizers with banned Islamist opposition parties intensified following armed incursions by fighters of the banned Islamic Movement of Uzbekistan in 1999 and 2000.

Thousands of political prisoners remain in prison at the time of writing. International human rights standards have routinely been violated in these cases, including by torturing and ill-treating detainees. Most are believed to be held in particularly harsh prison conditions and several have died, reportedly as a result of torture in prison.

### **Exemptions ignored**

Amnesty International learnt of several cases where indications of mental disabilities in capital cases were ignored by the authorities in contravention of domestic law and international standards (see chapter "Exemptions from the death penalty" above).

The authorities have reportedly ignored clear signs of the mental disturbance of a prisoner on death row. **Abror Isayev** was sentenced to death by Tashkent Regional Court on 23 December 2002 after being convicted of killing two people in May 2002. He had gone to the police of his own accord in May 2002 as a potential witness, but was reportedly detained and beaten for a week to make him 'confess' to the crime. He consistently maintained his innocence. His co-defendant **Nodirbek Karimov**, who admitted involvement in the killing, was sentenced to death and two further co-defendants were sentenced to 12 and 20 years' imprisonment respectively. Nodirbek Karimov alleged that he had been subjected to ill-treatment in pre-trial detention.

There were strong indications that Abror Isayev became mentally disturbed while on death row. When his mother visited him in Tashkent prison on 3 April 2003, he was reportedly extremely pale and shivering.

*“Abror was completely beside himself. He whispered to me that the prison guards had told him right before the visit that they were taking him to be shot... When I visited him again in May I knocked at the glass screen between us and dangled a thread in front of his eyes, but his eyes did not follow. I said ‘It is mama’, but he did not recognize me. He was humming and had his eyes fixed on the ceiling.”*

Guards told her that Abror Isayev had not spoken to anyone for two weeks. When she urged a prison doctor to treat him, he reportedly said that her son was just pretending. Following complaints to the authorities, Abror Isayev’s mother received a reply from Erkin Kamilov, the director of Tashkent prison, where death row prisoners are held. He wrote:



Umsunoy Isayeva reported that her son Abror Isayev is mentally disturbed and does not recognize her anymore when she visits him on death row. ©AI

*“At the moment he does not speak, he whistles all the time and wants to explain something by doing so. [However], he understands the questions being asked of him.”* In June 2003 a Ministry of Interior official wrote to the family: *“Your son receives medical treatment and his state of health is satisfactory.”* On 1 July she found that her son could hardly move and thought that his mental health had deteriorated: *“He cried like a baby and wanted to be hugged and sit on my lap. I tried to sing lullabies to him to calm him down.”* Several senior officials were present, who did not introduce themselves, she said. *“I think they were supposed to assess Abror’s state of health, but instead they stood around, making fun of him.”*

In February 2003 the (UN) Human Rights Committee urged the authorities of Uzbekistan to stay the two executions while the case was under consideration by the Committee.

In some cases, where medical examinations were carried out, there were reports that the Security Services were involved in producing the examination report.

### **Security Service reportedly predetermines examination results**

In the case of **Iskandar Khudoberganov** and five others (see "Torture" chapter above), the trial was suspended in September 2002 to conduct a psychiatric examination of Iskandar Khudoberganov and **Bekzod Kasymbekov** at Tashkent Psychiatric Hospital No. 1. On 19 November the court declared that they were of sound mind at the time of the crime, that they were not psychologically unstable and in good health. However, unofficial sources said that the National Security Service had predetermined the conclusion of the examination and that doctors had no say in the matter. They also reported that Iskandar Khudoberganov was very weak, psychologically unstable and showing signs of developing schizophrenia.

### **The rush to execution**

In many instances, particularly after political trials against alleged "religious extremists", people have been executed shortly after they were sentenced to death. The Economic and Social Council of the UN adopted a resolution in July 1996 on safeguards guaranteeing protection of rights of those facing the death penalty. Among other things this resolution urges states to allow adequate time between sentence and execution for the completion of appeals, as well as petitions for clemency.<sup>46</sup> The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has recommended a period of at least six months before a death sentence imposed by a court of first instance can be carried out.<sup>47</sup>

In domestic law the length of time between a death sentence and its execution is not regulated. According to the Commentary to the Criminal-Execution Code, "*from the moment of its [the death sentence] coming into force until the execution, not infrequently a long period of time passes that can amount to several years.*"<sup>48</sup> General Procuracy and Supreme Court officials told Amnesty International representatives in June 2003 that in some cases executions were not carried out for two years, but failed to disclose the minimum period between sentencing and execution.

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<sup>46</sup> UN Economic and Social Council resolution 1996/15, para. 5, website:

<http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm>

<sup>47</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions: E/CN.4/1996/4, para. 553, website:

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/a336708c800eee648025668d003255a4?OpenDocument#more2>

<sup>48</sup> Commentary to the Criminal-Execution Code, Article 136, para. 4.

### **Execution within less than two months of sentencing**

**Sobir Soibbayev**, a father of five, was executed on 1 October 1999, less than two months after he had been sentenced to death by Tashkent Regional Court on 5 August. He had been convicted on charges of “premeditated, aggravated murder”, “terrorism” and “attempt to overthrow the constitutional order of Uzbekistan” in connection with the February 1999 bombings in Tashkent. It is likely that five of his co-defendants, also sentenced to death, were executed the same day. His family did not receive the death certificate, informing them of the execution, until 21 December. He was reportedly represented by a state-appointed lawyer. *“The lawyer did not inform us when the trial would be held. We would have wanted to go, of course. And after the trial the lawyer demanded a lot of money from us to pay him for giving us the text of the verdict,”* one family member told Amnesty International.

### **The failings of the clemency process**

*“The Clemency Commission is completely unapproachable and far from objective. When Evgeny Gugin’s mother and Iskandar Khudoberganov’s sister went to the walk-in reception of a senior official in the department for clemency in the presidential administration on 26 June 2003, to appeal for their death sentences to be commuted, they were told: ‘What do you want from us? Who will carry the punishment for those who were murdered?’ To Iskandar’s sister he added, ‘Don’t forget your brother is a terrorist.”*

**Tamara Chikunova, director of Mothers against the Death Penalty and Torture**

The President has the constitutional authority to amnesty or pardon people convicted by courts in Uzbekistan.<sup>49</sup> However, Amnesty International was unable to obtain information on any case where a death sentence was commuted by the President.

Under a 1997 Regulation, death row prisoners have the right to appeal to the President for clemency within seven days after the verdict has come into legal force.<sup>50</sup> The Regulation in addition stipulates that, whether or not a death row prisoner has appealed for clemency to the President, the execution is suspended until clemency has been considered.

A Commission on Questions of Clemency (Clemency Commission) makes a preliminary assessment of every death sentence and, according to the Commentary to the Criminal-Execution Code, has consultative status, submitting its recommendation to the President.<sup>51</sup> The work of the Commission is shrouded in secrecy. For example,

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<sup>49</sup> Constitution of Uzbekistan (Article 93, para. 20).

<sup>50</sup> Regulation “On the procedure of the implementation of a pardon in the Republic of Uzbekistan”, 11 September 1997. Also see Article 138 of the Criminal-Execution Code.

<sup>51</sup> Article 139, para. 4.

the law does not require that family members or lawyers are informed when the Commission convenes and considers their case, and many families told Amnesty International that they had never been informed of its decision, let alone of the reasons not to grant clemency. Amnesty International repeatedly expressed its wish to meet a representative of the Commission before and during its visit in June 2003, to learn more about the Commission's work, but this request was not granted.

The identities of many of the Commission's members are kept secret. Under the Regulation, its members include the Minister of Justice, the deputy head of the National Security Services, the Deputy Chairman of the Federation of Trade Unions of Uzbekistan, parliamentarians and representatives of public organizations.<sup>52</sup> Amnesty International is concerned that officials who are not independent of government or who were involved in the prosecution and judgment of the case appear to play a crucial role in the work of the Clemency Commission. The Supreme Court and the General Procuracy, for example, are asked to present their conclusions on each case to the Commission and their recommendations on whether clemency should be granted. The Commission's conclusions on the cases it reviews require the signature of all its members and of the Procurator General, the Chair of the Supreme Court and the Minister of the Interior.

Amnesty International is concerned that the decision about clemency is made arbitrarily. There appear to be no clear criteria, in a publicly accessible format that would form the basis for the decision. Statistics about the Commission's decisions in death penalty cases are not made public.

With regard to "grave" and "particularly grave" crimes, the Regulation stipulates that, if pardon is not granted, a further petition may be submitted to the Clemency Commission after one year. According to the Criminal Code of Uzbekistan (Article 15, part 3), "premeditated, aggravated murder" that is punishable by death belongs to the category of "particularly grave" crimes. However, lawyers and family members have told Amnesty International that death row prisoners are not in practice allowed to submit further petitions and that the execution is not suspended once clemency has been turned down.

Amnesty International believes that a purely civilian Clemency Commission should be established. It should operate transparently, allow public scrutiny and engage with the media and the public. It should apprise prisoners and their lawyers of the information it receives about their cases, and give them the opportunity to challenge such information and make their own presentations. If the Commission recommends against clemency, it should inform the prisoner and his family of the

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<sup>52</sup> No truly independent non-governmental organizations appear to be part of the Clemency Commission.

reasons for its recommendation and ensure that each prisoner has reasonable time and facilities to present a further petition to the President before he takes his decision.

### **Corruption**

All the flaws in the criminal justice system and the human rights violations described above take place in a climate of pervasive corruption. Corruption undermines the fairness of trials and the rule of law, increases the likelihood of arbitrary verdicts and deprives people of their human rights. It is believed to play an important role in virtually all death penalty cases in Uzbekistan.

Details of all cases cited in this section are known to Amnesty International but are withheld in some cases at the request of the families, who fear reprisals.

#### **'I don't need a house, I need my son'**

The family of one death row prisoner sold everything they could in the hope of saving his life -- his mother's sewing machine, the fridge, even the family home -- to meet the demands of several officials. When the judge demanded more money and the family were unable to sell their last possession, their relatives' home in a village, their offer of the house itself was refused by the judge, who demanded cash. Shortly afterwards their imprisoned relative was sentenced to death.

In a resolution adopted in 1997, the UN General Assembly expressed concern at the "seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political developments."<sup>53</sup> The anti-corruption organization Transparency International has found that Uzbekistan and the other countries of the Commonwealth of Independent States (CIS) "are united by the systemic nature of their corruption, a legacy of the Soviet era."<sup>54</sup> In its 2003 country strategy on Uzbekistan the EBRD noted that the "judiciary is weak and...does not contribute to fighting pervasive corruption."<sup>55</sup>

As a participating state of the OSCE, Uzbekistan has pledged to "strengthen [its] efforts to combat corruption and the conditions that foster it, and to promote a positive framework for good government practices and public integrity."<sup>56</sup>

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<sup>53</sup> General Assembly resolution 51/59, 28 January 1997, website:

<http://www.un.org/ga/documents/gares51/gar51-59.htm>

<sup>54</sup> Transparency International, Global corruption report 2003, regional report on the CIS, p.1, website:

<http://www.globalcorruptionreport.org/download.shtml>

<sup>55</sup> European Bank for Reconstruction and Development, strategy on Uzbekistan, website:

<http://www.ebrd.com/country/country/uzbe/index.htm>

<sup>56</sup> Istanbul Document, 19 November 1999, para. 33, website: <http://www.osce.org/docs/english/1990-1999/summits/istan99e.pdf>

However, the families of prisoners facing the death penalty have in many cases reported being asked for large bribes to save their relative's life, and lawyers working on death penalty cases have confirmed that the corruption surrounding these cases is notorious. Corruption confronts them at every stage, as one experienced lawyer described: "*Families have to bribe their way all the way through. First the investigator wants money. Then the family has to bribe the judge of the first trial. If that works, they will have to make sure the sentence will not be overturned upon appeal. Everybody involved in the case wants to get his due.*" Such corruption is not confined to death penalty cases. It plays a crucial role in eroding the independence of the judiciary in general. However, in death penalty cases its impact can be, literally, fatal.

#### **A father driven to suicide**

Following his arrest on 9 July 1999 on suspicion of robbery and murder, **Vazgen Arutyunyants** -- who maintained his innocence -- was reported to have been severely beaten by police in the Yakkasaraysk district, Tashkent, in an attempt to extract a 'confession'. When his father came to see him shortly afterwards, Vazgen Arutyunyants was said to have been severely bruised, unable to stand up, with blood in his urine and pain in his head and kidneys. A key official in his case reportedly told his father to pay US\$60,000 within three days to ensure that his son would not be charged with a capital offence. Unable to raise such a sum, **Vladimir Arutyunyants** committed suicide in October 1999. He left a note saying that he could not live any longer in the knowledge that he was unable to pay enough money to save his son's life.

On 31 May 2000 Vazgen Arutyunyants and his co-defendant **Armen Garushyants** were sentenced to death by the Military Court of Uzbekistan, accused of "premeditated, aggravated murder" and robbery. The (UN) Human Rights Committee intervened in the case on 27 April 2001, and local and international human rights groups campaigned for the commutation of their sentences. In December 2001 the death sentences of the two men were commuted to long-term imprisonment by the Presidium of the Supreme Court of Uzbekistan.

In some cases, death sentences have reportedly been overturned as a result of bribes paid to key officials, including the judge and the procurator. The size of the bribe apparently depends on the seriousness of the charge, so bribes in death penalty cases are usually particularly high. The economic and social position of the family can therefore be key to the outcome of such a case. Despite payment of large sums,

however, prisoners are sometimes sentenced to death nevertheless. In one case, the defendant's parents reportedly bribed the investigator and the judge and their son was sentenced to 20 years' imprisonment, but the case was reopened after the victim's relatives complained and he was sentenced to death. Several families have reportedly been bankrupted as a result of the corrupt practices of officials involved in death penalty cases and were not always able to save their relative's life.

Corruption has undermined the independence of the judiciary to such an extent that relatives of prisoners facing the death penalty in many cases put more trust in the effectiveness of bribery than in making complaints to the authorities about violations of due process. They do not employ a lawyer who would mount a vigorous defence or seek the assistance of human rights organizations in case such approaches are counterproductive. They fear complaining about corruption as the fate of their relative depends on the officials who demanded the bribes.

#### **Nadezhda Agabekova's 'revenge'**

Before her son Valery was sentenced to death, a key official in his case reportedly suggested that **Nadezhda Agabekova** pay a large bribe so that her son would not be sentenced to death. The family was unable to find the required sum. **Valery Agabekov** was sentenced to death by Tashkent Regional Court in September 2001 for "premeditated, aggravated murder". However, following local and international protest, the death sentence was commuted to 12 years' imprisonment in April 2002 by the Collegium of the Supreme Court. After the commutation, the same official reminded Nadezhda Agabekova that she had promised to pay him US\$1000 if her son escaped execution. Nadezhda Agabekova became so angry that she went to his office and spat in his face.

Nadezhda Agabekova died in April 2003 of heart failure. Tamara Chikunova of Mothers against the Death Penalty and Torture told Amnesty International: "*She saved her son's life, but the long struggle for his life was too much for her heart.*" (Photo: Nadezhda Agabekova; © AI)





While the trial is ongoing relatives often have to pay bribes just to visit or to pass food to their relatives in custody. The mother of one prisoner facing the death sentence said:

*“When the trial is on, they do not feed the defendants. The guards generally pass on food only for money and in order to talk to my son for two to three minutes I had to pay 5,000 Uzbek som [approx. US\$5]... The constant humiliation is unbearable. For every little thing they want money and they do not treat you like a human being. Once I asked them to pass on a slice of birthday cake to my son. I gave them the money they requested, but my son told me later that he never received it.”*

## Conditions on death row

### ***Tashkent prison***

All death row prisoners are believed to be executed in Tashkent prison. Executions are carried out by way of shooting. Prisoners sent from other regions of Uzbekistan reportedly often spend only a few days or hours in the prison in Tashkent before execution. Apparently, others, sentenced to death by courts in the Tashkent region or in regions of Uzbekistan that do not have post-trial detention facilities for death row prisoners, usually spend several months in Tashkent prison before they are executed.

Nurbobo

Rakhimov, a senior official of the Main Administration for the Execution of Punishments, told Amnesty International in June 2003 that cells built in the Soviet era measure 4m<sup>2</sup> and those built later 6m<sup>2</sup>. He said that death row prisoners were usually kept in a cell of their own but, if they wished, could share a cell



Tashkent prison where death row prisoners are kept before execution.  
© AI

with another death row prisoner.<sup>57</sup> Unofficial sources suggest that death row prisoners are not given a choice and that cells are usually occupied by two people. There were reports that after the trials in connection with the 1999 bombings, five or six prisoners had to share one cell at times.

Due to the lack of independent inspections of the prison that could inform the public about prison conditions, it is difficult to establish the facts about conditions on death row. According to lawyers, anti-death penalty activists and relatives of death row prisoners, there are two wooden bunks in each cell that can be lowered for sleeping; there is a pan or a hole under one of the bunks that serves as a toilet, and a pipe with drinking water. Nurbobo Rakhimov said that the cells were in the semi-basement and had windows just below the ceiling. Unofficial sources told Amnesty International that the cells had no natural light and were located in the basement. According to one lawyer, dim artificial light, not bright enough for reading, was on all the time. Several sources reported that the air in the cells was stagnant and the ventilation system not working. Several relatives alleged that there was no heating in the cells. Nurbobo Rakhimov claimed the cells were heated in winter.

Nurbobo Rakhimov said that death row prisoners were taken out to the general prison yard every day to walk for 30 minutes. According to the Commentary to the Criminal-Execution Code, prisoners from one cell are taken outside together but separately from other death row prisoners.<sup>58</sup> Several relatives interviewed by Amnesty International laughed at the idea that death row prisoners were taken outside for exercise. One unofficial source said that prisoners were very infrequently allowed to walk outside for approximately 10 minutes.

The prisoners receive food three times per day. According to the Commentary to the Criminal-Execution Code, the food is passed through a window into the cell.<sup>59</sup> The food is said to be of very low quality, and families are not allowed to deliver food to death row prisoners. Monthly parcels from families may contain only cigarettes. Families can transfer 2,500 Uzbek som (approximately US\$2.5) every month to the prisoner's account, which enables him to buy goods inside the prison. Prisoners reportedly have to buy soap, a tooth brush and other toiletries from this monthly allowance so that usually only very little remains to buy food. Death row prisoners do not work.<sup>60</sup>

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<sup>57</sup> According to Article 136, para. 5 of the Criminal-Execution Code, there are "no more than two people" in a death row cell.

<sup>58</sup> Commentary to the Criminal-Execution Code, Article 136, para. 7.

<sup>59</sup> Commentary to the Criminal-Execution Code, Article 136, para. 5.

<sup>60</sup> Commentary to the Criminal-Execution Code, Article 136, para. 11.

### **International standards on prison conditions**

The (UN) Human Rights Committee has expressed concern about the prison conditions on death row in Uzbekistan.<sup>61</sup> The Committee raised “[*particular concern*] at information about the extremely poor living conditions of detainees on death row, including the small size of cells and the lack of proper food and exercise.” It urged the authorities of Uzbekistan to “*improve the situation of death row inmates in order to bring their conditions into line with the requirements of article 10, paragraph 1, of the [ICCPR].*” According to Article 10, “*All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.*” The following standards set out in more detail the conditions that Uzbekistan is required to uphold on death row as well as in other detention facilities:

- UN Standard Minimum Rules for the Treatment of Prisoners;
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;<sup>62</sup>
- UN Basic Principles for the Treatment of Prisoners.<sup>63</sup>

### **Contact with families and lawyers**

Families, lawyers and independent observers do not have access to the death row premises of Tashkent prison where prisoners are kept before they are executed. Any visits that are allowed take place in special meeting rooms away from the cells. The contact of death row prisoners with the outside world is extremely limited and strictly monitored. Prisoners are unable to openly tell visitors about their treatment and prison conditions. A guard is always present in the room during family visits. Families' fears that their relative is suffering ill-treatment and harsh conditions in addition to the torture of anticipating execution are increased by such secrecy. The organization Mothers against the Death Penalty and Torture has alleged that death row prisoners are beaten once a day by prison guards using long wooden hammers and rubber batons. In addition, several death row prisoners have managed to whisper to their families that if they complain about their treatment they will be beaten following the visit.

Senior officials from the Main Administration for the Execution of Punishments told Amnesty International that, during meetings between a prisoner and his lawyer, a prison guard would stand in the corridor within view but out of

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<sup>61</sup> Human Rights Committee 2001, Section C, 10 (see footnote 15).

<sup>62</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm)

<sup>63</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp35.htm](http://www.unhchr.ch/html/menu3/b/h_comp35.htm)

hearing.<sup>64</sup> Such practice would be in line with international standards, in particular the Standard Minimum Rules for the Treatment of Prisoners.<sup>65</sup> However, every lawyer interviewed by Amnesty International who had visited clients on death row said that guards were always present and could easily overhear the conversation. Visitors are separated from the prisoner by glass and they are not allowed physical contact.

The wife of **Mukhammed Abdullayev** was only once permitted to briefly visit him in Tashkent prison in August 1999. He was sentenced to death by the Tashkent Regional Court on 5 August 1999 after conviction in an unfair trial on charges including “premeditated, aggravated murder”, “terrorism” and “attempting to overthrow the constitutional order of Uzbekistan”. A relative told Amnesty International that he was in very bad health, thin and with burns on his chest. Mukhammed Abdullayev asked the prison guard if he could hold his child born since his arrest, but his wish was refused. Mukhammed Abdullayev was executed on 4 October 1999.

Correspondence between relatives and prisoners is opened and read by prison officials, and information that would reflect negatively on the authorities is not passed on. In some cases families correspond with their relatives on death row regularly by making sure they do not mention issues that would not pass the censor. Iskandar Khudoberganov’s family said that he had told them during a visit that he had written every week, but that they had received only two letters in six months from him and that none of their letters had reached him.

### ***Freedom of religion***

Under the Criminal-Execution Code, death row prisoners are entitled to a visit by a minister of religion.<sup>66</sup> Before execution, the law stipulates prisoners may carry out the religious rites of their faith with the assistance of such a minister.<sup>67</sup>

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<sup>64</sup> According to Article 137, para. 3 of the Commentary to the Criminal-Execution Code, “*The meeting between the convicted person and the lawyer has to be organized in a way that the officials of the administration of the execution of punishments are able to see them, but cannot hear them.*”

<sup>65</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm)

<sup>66</sup> Criminal-Execution Code (Article 137). The Criminal-Execution Code came into force on 1 October 1997.

<sup>67</sup> Criminal-Execution Code (Article 12).

Nurbobo Rakhimov told Amnesty International that there were religious books in the prison library including the Koran and the Bible that prisoners could borrow. He added: *“But they cannot keep these books forever in the cell as others also have the right to borrow them.”* Several death row prisoners have told their relatives that they have tried to receive religious literature such as the Koran or the Bible from the library to no avail and that their request to speak to a priest or religious adviser of their faith was not granted. Lawyers and families interviewed by Amnesty International said that it was impossible to pass on religious literature through the prison administration and that they had never heard of any prisoner being visited by a minister of religion. When Iskandar Khudoberganov’s family asked a senior prison official to pass on the Koran to Iskandar Khudoberganov, he reportedly replied: *“Are you joking? After all that is a political thing.”*

It causes many families particular anguish when they learn that their relatives on death row are denied the right to exercise their freedom of religion. Tamara Chikunova told Amnesty International: *“I felt so helpless that I was not able to give my son the Bible when I knew how much he needed it.”*

### **Constant fear on death row**

Bullet, I pray you not to rush  
I know that you are coming to pierce the back of my head  
and turn me into lifeless flesh.  
Rest at the end of the barrel  
you will have enough time to get drunk on my blood.  
I lived today until noon  
a couple more days will be a victory.  
So young we are, and so much evil we have done  
what a waste of a life that disappeared in the fog.  
Impatiently I wait for sleep to come,  
the chance to dream of our house, the flowers on the windowsill.  
Mother, you will stay in sorrow  
and pray to the angels for help.

**A translation of a poem by Nikolay Ganiyev, a prisoner sentenced to death in March 2001, whose sentence was commuted to long-term imprisonment on 14 February 2002.**

There is no publicly available information on what happens to death row prisoners if their clemency petition is rejected. No information is available -- even to their relatives -- about how the prisoner receives this information and the uncertainty about whether and how their loved-ones on death row have been informed about the execution increases the suffering of families.

Reports from several independent sources indicate that death row prisoners live in constant fear that they could be executed at any time. A lawyer who has worked on many death penalty cases told Amnesty International that death row prisoners are often unsettled and frightened when they are taken for a meeting with their lawyer or family because they are frequently not told that they have a visitor and fear that they are being taken for execution.

When Abror Isayev's mother visited her son in Tashkent prison on 3 April 2003, he was extremely disturbed and reportedly said that he had been told he was being led to his execution. His mother reported that when she saw him, "*He had a fresh red mark on his neck and I understand he wanted to strangle himself.*"

Several death row prisoners have told their families that their cell mate had been led out of the cell without advance notice that he was to be executed.

Even in cases where death sentences have been commuted, prisoners have not been informed immediately but have been left to wonder whether they are being taken to execution. Marat Rakhmanov's sister told Amnesty International: "*They took him [Marat Rakhmanov] out of prison and did not tell him anything. He thought he was being taken to be shot. Only once he arrived in the colony in Namangan, the other prisoners told him where he was and he understood that he might have been granted clemency.*" His death sentence was commuted to 15 years' imprisonment by a ruling of the Presidium of the Supreme Court of Uzbekistan in April 2001.

Nikolay Ganiyev only learned of the commutation of his sentence immediately before he was taken to the railway station on 22 February 2002. His mother told Amnesty International: "*They led him out of his prison cell, took him to the bath, shaved him. Only then did they read out the document informing him of the commutation.*"

## **Punishing the family**

Families suffer cruel, inhuman and degrading treatment from the deliberate secrecy and lack of transparency surrounding vital information about their relatives facing the death sentence.

Relatives of people accused of capital crimes have also been deliberately targeted by the authorities solely because of their relationship with the accused person. They have been tortured, beaten, threatened with rape, held hostage and dismissed from their jobs -- in criminal as well as political cases. Family members and human rights defenders take enormous risks in the struggle for the lives of death row prisoners.

## **Suffering by secrecy**

*"I have been trying to talk to the authorities, to appeal for clemency for my son. But they close their doors in front of me. They did not let me or the lawyer speak at the trial. They build up a big wall around themselves so that no one can reach them."*

**The mother of Nikolay Ganiyev, sentenced to death in March 2001. The sentence was commuted to long-term imprisonment by the Collegium of the Supreme Court on 14 February 2002.**

The state refuses to tell families when their loved one is to be executed and they are not granted a final chance to say goodbye. They do not know how their relative on death row is informed about his execution. After the execution the state refuses to reveal where his body is buried. While he is still alive the family's anxiety is heightened by the secrecy surrounding the conditions and allegations about harsh treatment on death row.

The secrecy surrounding the death penalty and the general lack of transparency of the criminal justice system inevitably lead to immense suffering. In his February 2003 report on Uzbekistan, the UN Special Rapporteur on torture stated that the *"complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish over the fate of their loved one(s)."*<sup>68</sup>

In 2003 the (UN) Human Rights Committee made an important ruling about the secrecy in death penalty cases surrounding the date of execution, the place of burial and returning the body to the family when considering two death penalty cases from Belarus submitted under the individual complaint procedure. The Committee concluded that the secrecy surrounding these issues:

*"[has] the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress...[and that the] authorities' initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son's grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant [prohibiting torture or cruel, inhuman or degrading treatment or punishment]."*<sup>69</sup>

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<sup>68</sup> 2003 Special Rapporteur on torture report, para. 65 (see footnote 1).

<sup>69</sup> UN Human Rights Committee, 77<sup>th</sup> Session, Bondarenko vs. Belarus (CCPR/C/77/D886/1999, 11 March 2003) and Lyashkevich vs. Belarus (CCPR/C/77/D887/1999, 24 April 2003). The two men had already been executed before the Human Rights Committee sent communications to the authorities of Belarus on 28 October 1999, website:

[www.unhcr.ch/hurricane/hurricane.nsf/0/483D3D81FE87CBFAC1256D25002E0708?opendocument](http://www.unhcr.ch/hurricane/hurricane.nsf/0/483D3D81FE87CBFAC1256D25002E0708?opendocument)

The authorities in Uzbekistan have taken no action in response to the recommendation of the UN Special Rapporteur on torture that the “*relatives of persons sentenced to death should be treated in a humane manner with a view to avoiding their unnecessary suffering due to the secrecy and uncertainty surrounding capital cases.*”

Representatives of the Supreme Court, the General Procuracy, the Foreign Ministry, the National Human Rights Centre, the Main Administration for the Execution of Punishments and the Ombudsperson asked by Amnesty International delegates in Uzbekistan in 2002 and 2003 to explain the secrecy failed to give a clear answer. Most said it was not within their remit to explain why these issues were kept secret and that they were merely carrying out the law. Representatives of the governmental National Human Rights Centre said that these issues remained from Soviet times and were probably included in the Criminal-Execution Code because “*nobody felt strongly about them.*”

### **'He could be executed at any time'**

One of the worst experiences of relatives of death row prisoners in Uzbekistan is the constant fear that their relative could be executed at any time.

Amnesty International has documented many cases in which the Main Administration for the Execution of Punishments gave official permission for the next monthly visit, only for the family to arrive at the prison to be told that their relative was already dead.

Even when the execution has already been carried out, family members are often not told the truth. In many cases, prison guards told the relatives to return another day although -- as it turned out later -- the prisoner had already been executed. One lawyer told Amnesty International of cases in which prison guards still accepted parcels for prisoners although they were already dead.

The law requires the Ministry of the Interior, which is responsible for carrying out the execution, to inform the court that passed the sentence within three days of execution. It is the responsibility of the court to notify the close relatives.<sup>70</sup> Upon request, family members are entitled to receive a death certificate.<sup>71</sup> However, no publicly accessible legal document sets a time limit within which families have to be approached by the court and there is no time frame for death certificates to be issued.

#### **Left to find out for themselves**

**Tamara Chikunova** had official permission, obtained from the Main Administration for the Execution of Punishments several weeks before, to visit her son **Dmitry**

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<sup>70</sup> Criminal-Execution Code (Article 140).

<sup>71</sup> Commentary to the Criminal-Execution Code, Article 140, para. 7.



**Chikunov** at Tashkent prison on 11 July 2000. The prison guards told her she could not see him but should come back the next day. When she returned on 12 July they told her he had been executed on 10 July. Since she had not been informed officially, she visited various authorities to ask for confirmation in writing. On 31 July she went to the Tashkent Regional Court, which had passed the death sentence in November 1999. It soon became clear that the chairman of the court, which had convicted her son, was not prepared to receive her. She told Amnesty International: *"His colleagues said he was not there, but I am not blind. I saw him walk into his office. I said that I would sit in front of his office and would only leave if they stated in writing what happened to my son. The chairman could not leave his office all day because I was sitting there."* At six o'clock in the evening a clerk gave her a letter confirming that her son had been executed.

**Shura Tulyaganova**, the mother of 21-year-old **Refat Tulyaganov**, had also obtained official permission to see her son in Tashkent prison on 24 January 2002.



Shura Tulyaganova showing some of the letters she wrote to the Uzbek authorities to urge them not to execute her son. © AI

However, prison personnel told her she could not visit him as the prisoners were bathing that day and she should come back the next day. When she returned the next day prison guards told her that he had been executed. *"I went and complained to various authorities for three weeks. Eventually I was handed the death certificate on 12 February,"* said Shura Tulyaganova. According to the death certificate, Refat Tulyaganov died on 18 January, six days before his mother had come to visit him. The (UN) Human Rights Committee had urged the authorities not to carry out this execution while the case was under consideration by the Committee. Allegations that Refat Tulyaganov had been severely beaten in detention had not been the subject of thorough and impartial investigation by the authorities in Uzbekistan.

Amnesty International has documented many cases in which relatives were not informed of the execution for weeks or longer. Many families have reported not being given a death certificate for months, or never receiving one despite persistent attempts. The family of **Allanazar Kurbanov** and **Yusupbay Sultanov**, for example, allege they have still not been given a death certificate, although they are almost sure that their relatives were executed in March 2002.

### ***The secret grave***

Article 140 of the Criminal-Execution Code states that the body of an executed prisoner is not given to the family after execution and that the place of burial is not disclosed.

Like hundreds of other relatives of death row prisoners in Uzbekistan, Tamara Chikunova has never been told where her son was buried following his execution in July 2000. She has since visited many former cemeteries in and around Tashkent, as there is a widespread belief that death row prisoners are buried there. *“It is one of the worst things for me, that I do not know where Dmitry is buried. If I knew I would at least have a place where I can go with my grief and where I can talk to him.”* She put up a grave stone with a picture of her son next to the grave of her father on a cemetery in Tashkent and symbolically buried a small heap of earth that a Russian Orthodox priest had blessed for her.



Tamara Chikunova does not know where her son Dmitry is buried. Symbolically, she put up a grave stone for him on a cemetery in Tashkent next to the grave of his grandfather. © AI

Some lawyers, human rights activists and relatives of death row prisoners believe that the bodies of executed prisoners are not returned to relatives and the location of the site of burial is not disclosed to prevent relatives finding marks of torture on the men's bodies. Polina Braunerg, who has worked on many cases involving the death penalty as a lawyer, suggested that families were not allowed to organize burials or funerals and were not informed where the grave is as this would "only cause unnecessary hassle for the authorities. People could stage demonstrations, become hysterical demand to bury the corpse themselves. It is easier for them to do it this way."

Such secrecy and lack of transparency provide fertile ground for the circulation of rumours -- for example, that a relative was not executed and is still alive. The impossibility of verifying the rumours gives families no protection from their potentially devastating psychological impact. Such rumours and their consequences can therefore be seen as an extension of the cruel, inhuman and degrading treatment of families by the authorities.

Some families have heard rumours that their sons are still alive and have been looking for them for years. A death certificate indicating that his son was executed in September 2001, but shortly afterwards heard rumours that his son was still alive. He has since been looking for his son, not knowing how to verify the information but hoping that the rumour may be

#### Confiscation of memories

"I only have one photo left of my son," Shura Tulyaganova told Amnesty International delegates visiting her in June 2003. Her son Refat Tulyaganov was executed in January 2002. When the police were looking for Refat Tulyaganov in 2001, suspecting him of having stabbed to death a young man and attempting to kill two of the man's friends during a fight outside a nightclub, they conducted a search of the family's flat. "They didn't just ask me for one photo for the police search, but they went through all the family albums and tore out all the pictures of Refat. There was only one photo that they didn't find and that is one of the most precious things that I possess now."

During a search of the flat of the Khudoberganov family the police also confiscated all photographs they could find. None of the photos were ever returned to the family. The police overlooked only one photograph -- that from Iskandar Khudoberganov's student's pass.

Such police practice is not confined to cases involving the death penalty, but many other families whose relatives have been wanted by the police had a similar experience. In death penalty cases this practice can understandably be particularly harsh on the family and friends and is yet another example of the casual cruelty that relatives are subjected to.



This is the only photo of Refat Tulyaganov that his mother possesses. All others were confiscated in a police search. © Private

true. Other relatives have heard rumours, from supposedly reliable sources, that some prisoners sentenced to death have been kept secretly on death row in Tashkent prison for years, or are kept alive and used for particularly dangerous and clandestine work, or are held in isolated parts of the country and will reappear after several years.

As long as executions remain shrouded in secrecy, bodies are not returned to families for burial and the locations of graves are not disclosed, families do not know which information to trust and cannot distinguish truth from rumour. The secrecy surrounding the death penalty therefore plays a major part in heightening relatives' anguish and uncertainty over their loved one for the rest of their lives.

### **Relatives targeted**

In dozens of cases over several years, relatives have been held hostage by the police or in other ways put under pressure to disclose a suspect's whereabouts or as a means of persuading suspects to hand themselves in to the police, to sign a 'confession' or to incriminate others. Detained suspects have often been threatened with harm to their families. Such pressure appears to have played a crucial role in obtaining the evidence that has led to convictions and death sentences in numerous cases.

The practice of targeting family members is not confined to death penalty cases, but has been extensively used in the clampdown on dissent in which thousands of political prisoners have been imprisoned. President Karimov has explicitly endorsed the punishment of the relatives of "Islamist fundamentalists". On 2 April 1999, he was reported as saying publicly that 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.<sup>72</sup>

#### **A father dies in prison**

In early 1999 officers of the Khorezm Internal Affairs Department repeatedly questioned **Azimboy Khodzhayev** and his wife about the whereabouts of their sons, suspected of links with "religious extremist" groups and of being trained in "terrorism" abroad.

On 4 April 1999, Azimboy Khodzhayev was arrested, according to unofficial sources because he would not say where his sons were. He was sentenced to eight years' imprisonment by Khorezm Regional Court on 11 June following conviction on reportedly fabricated charges of "illegal possession of narcotics." On 13 July his body

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<sup>72</sup> AFP, 2 April 1999.

was returned to his family from Yaslik prison colony that is known for particularly harsh conditions and to which he had been transferred following the trial. The family received a death certificate giving the date of his death as 2 July. However, the police did not allow the family to view the body and reportedly carried out the ritual washing of the body before the funeral themselves. It was widely feared that Azimboy Khodzhayev had been beaten to death. One of his sons, 25-year-old **Polvonnazar Khodzhayev**, was arrested in the Russian Federation and forcibly returned to Uzbekistan on 7 April 2000. He was sentenced to death after being convicted of murder, robbery and "terrorism" in an unfair trial only five weeks later, on 14 May. (See chapter "Destination death row" below.)

#### **Wife and baby allegedly ill-treated**

**Allanazar Kurbanov** and his co-defendant **Yusupbay Sultanov** were sentenced to death by Khorezm Regional Court on 11 August 2001 after conviction for "premeditated, aggravated murder". They were alleged to have been tortured in pre-trial detention, and police were also said to have put pressure on Allanazar Kurbanov's family to persuade him to sign a 'confession'. His wife said that she was summoned to the police station where officers allegedly beat and threatened to rape her in an office next door to where her husband was held so that he was within hearing. Officers reportedly held their four-month-old son upside down by one of his legs and poured cold water over his face. This treatment of his family reportedly forced Allanazar Kurbanov to give up maintaining his innocence.



Police officers reportedly held Allanazar Kurbanov's baby Chairula upside down by one of his legs and poured cold water over his face to force Allanazar Kurbanov to 'confess' to a murder. © Private

### **Beatings, threats and unemployment**

*“From the day we learned that the police were looking for Iskandar, the life of our whole family was turned upside down,”* said his sister, **Dilobar Khudoberganova**. Police seeking **Iskandar Khudoberganov** (see “Torture” chapter above) in February 1999 detained his father and brother several times in an attempt to force the family to disclose his whereabouts. On one occasion officers reportedly beat them so severely in the basement of the National Security Service headquarters in Tashkent that they required hospital treatment, his father **Erkin Khudoberganov** after a heart attack. In August 1999 his father, brother and wife Fazilat were summoned to the offices of the Tashkent City Police where they were forced to watch two of Iskandar Khudoberganov’s co-defendants, **Bekzod Kasymbekov** and **Nosirkhon Khakimov**, being beaten by police officers. The police threatened that they would do the same to his brother, Sanzhar. **Fazilat Khudoberganova** told Amnesty International: *“Bekzod’s body was full of blood. I was pregnant then and fell unconscious when I saw this.”*

In August 1999 the police reportedly put pressure on her to get a divorce and leave the Khudoberganov family house, and threatened her with criminal action if she did not bribe them. A police officer from Sabir-Rakhimovsky District in Tashkent even stayed at the family home for 10 days. Erkin Khudoberganov, a senior journalist with a state-run broadcasting station, was demoted. **Sanzhar Khudoberganov** was dismissed from his job as a captain of the Ministry of the Interior where he had worked for ten years. He and Dilobar Khudoberganova are still unable to find employment in state-run institutions.

The stress of constant visits by heavily armed police officers has had a detrimental effect on the health of the children, three of them showing signs of developmental disorders. Iskandar Khudoberganov’s **five-year-old son Mukhammadtokhir** has symptoms of a nervous disease and Sanzhar Khudoberganov’s **son Sarvar** developed a stammer.

### **Detention, rape threats and humiliation**

At the beginning of January 1999 police detained the brothers **Oybek and Uygun Ruzmetov** after a series of police searches in the town of Urgench in western Uzbekistan. The search was reportedly conducted without a warrant and there were allegations that police planted cartridges in Oybek Ruzmetov’s room in the course of the police search.

Their father **Sobir Ruzmetov** was detained at around the same time, allegedly to force him to disclose the whereabouts of his third son, **Maksud**, and to put pressure on Oybek and Uygun Ruzmetov to 'confess'. When his wife, **Darmon Sultanova**, went to Urgench City police station to pass food and clothing to her husband and sons, police officers reportedly forced her to undress, humiliated her in front of other detainees, handcuffed and detained her in a dark room for 24 hours without water. She said that when she saw her son Uygun, he showed signs of beatings. Police officers reportedly stayed at the family's house for several weeks.

Father and sons were reportedly tortured and ill-treated in detention to force them to sign 'confessions' and were threatened that unless they signed, police would rape their wives. Sobir Ruzmetov was reportedly taken on a stretcher to Khozorap district court, where in late May 1999 he was convicted on charges of illegal possession of drugs and ammunition and sentenced to five years' imprisonment. He was reportedly released under an amnesty in 2002, but is said to be mentally disturbed as a result of his treatment in detention.

Oybek and Uygun Ruzmetov together with five co-defendants were sentenced to death by Tashkent Regional Court on 29 July 1999 following an unfair trial. They were convicted of planning to blow up a water reservoir, "attempting to overthrow the constitutional order" to set up an Islamist state, "organizing illegal armed groups", "premeditated, aggravated murder", and "robbery". Three other defendants received sentences of 18 to 20 years' imprisonment. There were unconfirmed reports that one defendant, **Shikhnozor Yakubov**, died as a result of beatings in prison in October 1999. No investigation into this reported death is known to have taken place.

### ***Punished for speaking out***

Amnesty International has received information about cases where human rights defenders and family members struggling to save the life of death row prisoners faced harassment and intimidation; some were demoted or dismissed from their jobs. In one case, the mother of a death row prisoner had to justify to her employer in writing why she approached international organizations, including the UN. There were allegations that her subsequent demotion from a senior managerial post was connected to her activities in defence of her son.

**Tamara Chikunova** has faced harassment and intimidation when defending the rights of her son Dmitry Chikunov, for example by approaching the international community with information about his treatment in detention, including serious allegations of torture (see chapter on "Torture" above), as well as in her capacity as director of the human rights organization Mothers against the Death Penalty and Torture. The authorities have exerted psychological pressure on her relatives to force Tamara Chikunova to give up her human rights work. Police repeatedly visited her 76-year-old mother who is confined to her bed and warned her that "*things would end up very bad for her daughter*" if she did not "*shut up*". Tamara Chikunova reported that she frequently received anonymous phone calls at night that she believes are intended to induce fear in order to silence her. She and other members of Mothers against the Death Penalty and Torture were reportedly threatened by officers of the Security Services following contributions by the organization at the EBRD meeting in May 2003. They were told, for example, that their group was "*blacklisted*" and that the Security Services were awaiting orders to "*eliminate*" the organisation. Tamara Chikunova and **Dilobar Khudoberganova**, a young member

of the organisation and the sister of death row prisoner Iskander Khudoberganov, also received death threats. Recently, Amnesty International was particularly concerned that the authorities were attempting to discredit and intimidate Tamara Chikunova. In recent weeks, armed police have come to her flat up to three times a week, to "*check her documents*". Once they stated they wanted to check whether she had weapons at home. At one point she was accused by police officers of running a brothel, and in August 2003 a senior officer of Khamzinsky regional police came to Tamara Chikunova's flat and told her she was suspected of sympathizing with Islamist extremists.



Tamara Chikunova set up the group Mothers against the Death Penalty and Torture after her son Dmitry (see photo on the wall) was executed. © AI



Dilobar Khudoberganova © AI



## Destination death row

A number of countries have forcibly deported suspects to Uzbekistan who were later sentenced to death, often following unfair trials accompanied by torture allegations.

Kazakhstan facilitated the forcible return of **Kozimbek Zakirov** to the Uzbekistan authorities after his arrest in the Kazakh town of Taldy-Kurgan on 5 March 1999. He was sentenced to death by the Supreme Court of Uzbekistan after an unfair trial on 28 June 1999.

Kyrgyzstan forcibly deported **Zakirzhon Khasanov, Mukhamad Abdurakhmanov and Talatbek Nuraliyev** after the Special Services of Kyrgyzstan reportedly detained them in the Kyrgyz capital, Bishkek, on 4, 5, and 16 March 1999 respectively. In Uzbekistan, they were sentenced to death by the Supreme Court after an unfair trial on 28 June 1999. **Begaly Sultanov** was believed to have been detained in Bishkek on 14 March 1999 and forcibly deported. He too was sentenced to death in Uzbekistan, on 28 July 1999, after an unfair trial by the Supreme Court. **Isok Toshpayev** was reportedly detained in Noukentsky region in Kyrgyzstan on 9 October 1999, forcibly deported to Uzbekistan and sentenced to death by Tashkent Regional Court on 9 February 2000.

### Deported to a death sentence

Twenty-five year-old **Polzonnazar Khodzhayev** was detained by police officers at the railway station of the town of Samara in the Russian Federation during a police check of his documents at the beginning of April 2000. On 7 April he was handed over to Uzbekistani law enforcement officers. The Russian authorities were aware that he was at risk of being sentenced to death back in Uzbekistan. The Russian newspaper *Nezavisimaya gazeta* (Independent newspaper) reported on 8 April 2000: “*Now the fate of the expert of the explosive business...is in the hands of the organs of justice of Uzbekistan. In his motherland the terrorist can expect a harsh sentence -- the death penalty.*”

On 14 May 2000, Polvonnazar Khodzhayev was sentenced to death by the Tashkent Regional Court on charges of attempting to overthrow the constitutional order of Uzbekistan to create an Islamist state. He and his 13 co-defendants were accused of a series of murders and robberies in the Tashkent Region in 1999 and early 2000, and of being trained in “terrorist” camps abroad. His co-defendants received prison terms ranging from 14 to 24 years. According to Human Rights Watch, the trial did not meet international fair trial standards and the defendants were not allowed to choose their lawyers. Polvonnazar Khodzhayev was allegedly beaten in the detention facilities of the National Security Service and after his transfer to the City police

department. He was reportedly given electric shocks and beaten on his head and legs. He is believed to have been executed.

Tajikistan detained and facilitated the forcible return of **Iskandar Khudoberganov** to Uzbekistan (see chapter "Torture" above). In Turkmenistan, **Bakhrom Abdullayev** and **Zokhidzhon Dekhkanov** are believed to have been arrested by the Special Services of Turkmenistan on 19 October 1998 and handed over to Uzbekistan in January 1999. The two men were sentenced to death by the Supreme Court after an unfair trial on 28 June 1999.

Amnesty International calls on governments to ensure that nobody is forcibly returned to Uzbekistan who would be at risk of being sentenced to death and other serious human rights violations.

At the time of the deportations, all the countries named above apart from Turkmenistan were parties to the UN Convention against Torture.<sup>73</sup> This legally binding treaty prohibits returning a person to a state "where there are substantial grounds for believing that he would be in danger of being subjected to torture". State parties are also obliged to take into account information about the "existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights." By forcibly returning Polvonnazar Khodzhayev to Uzbekistan, the Russian Federation also violated its commitments under the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which the country ratified in May 1998 on entering the Council of Europe. Under these Conventions the Russian Federation is obliged not to deport anybody who would be at risk of serious human rights violations if deported, including being tortured or sentenced to death.

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<sup>73</sup> Turkmenistan acceded to the Convention against Torture in June 1999.

## **Recommendations**

### **1) Recommendations to the government of Uzbekistan**

- Amnesty International urges the authorities of Uzbekistan to take immediate steps towards abolition by promptly imposing a moratorium on all death sentences and executions and commuting all pending death sentences to terms of imprisonment. Thereafter Uzbekistan should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights;
- the authorities should implement without delay the recommendations made by the UN Special Rapporteur on torture in his February 2003 report as well as the recommendations made by the (UN) Human Rights Committee and the (UN) Committee against Torture.
- the authorities should take leadership in preparing public opinion for the abolition of the death penalty and publish all procedures relating to the death penalty and statistics which would help inform a serious public debate.

### **Transparency and humanity:**

- Ensure that relatives are not targeted because of their family relationship with a person charged with a criminal offence punishable by death;
- Investigate all allegations of torture and ill-treatment, intimidation and harassment of family members and bring those found responsible to justice in fair trials;
- Take all appropriate measures to end the cruel, inhuman and degrading treatment of relatives of death row prisoners;
- Ensure that relatives of a prisoner under sentence of death are kept fully informed about every stage in the proceedings. They should be informed of the prisoner's exact whereabouts at all times and be given advance notice of any transfer. They should be fully informed about the progress of the person's appeal and petition for clemency, reports presented to the Clemency Commission and the reasoning behind any decision to support or reject the petition. In the event of an unsuccessful appeal and/or clemency petition, relatives must be informed of when the execution will take place, to give adequate time to say goodbye in appropriate surroundings and to know when the execution has been carried out. They should be allowed to collect the prisoner's body and personal effects, and to bury the body. Relatives must be

afforded the opportunity to regularly meet the prisoner at all stages after the death sentence has been passed;

- Ensure that the relatives of all prisoners already executed in Uzbekistan and who wish to know the date and place of the execution as well as the place of burial are given this information without delay; in addition, enable them to collect the prisoner's remains and any remaining personal effects. Arrange for reburial at home, if requested;
- Publish all directives and legislation relevant to the application of the death penalty;
- End the secrecy surrounding statistics on the application of the death penalty and make publicly accessible the number of death sentences passed and carried out every year, giving full information on the names of the accused. Such practice would be in line with Uzbekistan's commitments under Paragraph 17.8 of the 1990 Copenhagen Document as a participating state of the OSCE, as well as with requests by the (UN) Human Rights Committee, the (UN) Committee against Torture and the UN Special Rapporteur on torture;
- Make public information about the Clemency Commission, its composition, functions and how it organizes its work. Make public the number of cases it has considered, the criteria it has used and those it has recommended for pardon since it was established, giving full information on the names and cases of the people involved.

#### **Ensuring fair trial:**

- Introduce a clear and reliable procedure to ensure that requests for a stay of execution by the (UN) Human Rights Committee are immediately conveyed to all law enforcement bodies and the personnel immediately involved in executions. Ensure compliance with such requests;
- Ensure that mentally ill people are not sentenced to death and executed and introduce safeguards to ensure that allegations of mental disability are investigated promptly and impartially;
- Publish promptly objective sentencing criteria that courts should use in deciding whether or not to impose a death sentence;
- Ensure that the independence of the judiciary is not undermined by corruption. Investigate thoroughly and impartially all allegations of illegal corrupt practices that come to your attention and bring those responsible to justice;

- Ensure domestic law and practice is in line with international human rights standards and Uzbekistan's obligations under the international treaties to which it is party, in particular Articles 6, 7, 9 and 14 of the International Covenant on Civil and Political Rights. These obligations include:
  - to ensure and respect judicial supervision of arrest and continuing detention;
  - the right to trial within a reasonable time or release;
  - the presumption of innocence;
  - the right of all detainees to access to a lawyer without delay following detention and during all questioning;
  - public trial before a competent, independent and impartial court;
  - the right of all persons charged with a criminal offence not to incriminate themselves or testify against themselves;
  - adequate time and facilities to prepare a defence.
- Reconstitute the Clemency Commission on an independent basis. The Commission should work according to transparent criteria, and should engage with the media and public on ways to humanize the penal system. Ensure that all prisoners under sentence of death are fully apprised of the information about them being put to the Commission and to the President, have an opportunity to challenge this information and to make their own presentations. When the Commission recommends that clemency should not be granted, it should inform the condemned person and their lawyer of its reasons, ensuring that they have reasonable time and facilities to challenge the grounds of refusal before the President in advance of his decision on clemency;
- Establish a commission of authoritative independent experts to examine all allegations of torture. Ensure that their working methods include receiving testimony from unofficial as well as official sources. Ensure that reports of the commission's working methods, the scope of its investigations and its findings in each case are published without delay. Ensure that prosecutions are initiated against anyone reasonably suspected of responsibility for torture or ill-treatment, and that they are brought to justice through proceedings that meet international standards of fairness and do not impose the death penalty;
- Ensure reparation -- including compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition -- to individuals who have been subjected to torture, or to their surviving relatives;

- Should the commission confirm that torture has taken place, it should prepare a blueprint for reforms that would eradicate the practice in future. These should ensure respect for rights protected under international treaties -- such as the International Covenant on Civil and Political Rights and the UN Convention against Torture -- as well as non-treaty standards, such as the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Body of Principles for the Protection of All Persons under Any Form of Detention.

## **2) Recommendations to the authorities of Kazakstan, Kyrgyzstan, the Russian Federation, Tajikistan and Turkmenistan**

- The authorities of the Russian Federation should immediately revise their extradition practices in relation to Uzbekistan, in line with their treaty obligations under Article 3 of the European Convention on Human Rights. These forbid the extradition of prisoners to any country where they may face a death sentence, unless there are firm and convincing assurances that the death penalty will not be applied;
- The authorities of Kazakstan, Kyrgyzstan, Tajikistan and Turkmenistan should immediately revise their extradition practices towards Uzbekistan, in line with their treaty obligations under the UN Convention against Torture. According to Article 3, State parties are obliged to refrain from returning a person to a state “*where there are substantial grounds for believing that he would be in danger of being subjected to torture*”, and State parties are required to take into account information about the “*existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*”

## **3) Recommendations to the international community**

- Urge the authorities of Uzbekistan to implement the recommendations outlined in Section 1;
- Urge the authorities of Kazakstan, Kyrgyzstan, the Russian Federation, Tajikistan and Turkmenistan to comply with the recommendations in Section 2;
- Ensure that in Uzbekistan the death penalty is not retained for financial reasons.