

# **TAJIKISTAN: DEADLY SECRETS**

**The death penalty in law and practice**

**Amnesty International**

[Back cover text]

Official secrecy surrounds the death penalty in Tajikistan. The picture that Amnesty International has been able to build is incomplete, yet alarming. With random and relentless cruelty, prisoners are executed in secret after unfair trials, with no warning to their families.

According to the evidence gathered by Amnesty International, none of the prisoners sentenced to death in Tajikistan received a fair trial. Most, if not all, were tortured. Several different prisoners have given detailed accounts naming the same investigator, but no action has apparently been taken to investigate the truth of these allegations. Testimony extracted under torture has been admitted as evidence and used to condemn prisoners to death.

Relatives of death row prisoners are subjected to a form of mental cruelty. They are kept in a state of complete uncertainty about the fate of the person they love and are deprived of all rights once the prisoner has been executed.

Amnesty International believes that the secrecy surrounding all aspects of the death penalty, the cruel and random way in which it is applied and the failures of the criminal justice system mean that Tajikistan is violating internationally guaranteed human rights. It calls on the Tajik authorities to commute death sentences, to place a moratorium on executions, and to abide by Tajikistan's international human rights obligations.

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- works for fair and prompt trials for all political prisoners;
- opposes without reservation the death penalty, torture and other cruel, inhuman or degrading treatment or punishment;
- campaigns for an end to political killings and “disappearances”;
- calls on governments to refrain from unlawful killings in armed conflict;
- calls on armed political groups to end abuses such as the detention of prisoners of conscience, hostage-taking, torture and unlawful killings;
- opposes abuses by non-state actors where the state has failed to fulfil its obligations to provide effective protection;
- campaigns for perpetrators of human rights abuses to be brought to justice;
- seeks to assist asylum-seekers who are at risk of being returned to a country where they might suffer serious abuses of their human rights;
- opposes certain grave abuses of economic, social and cultural rights.

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- cooperate with other non-governmental organizations, the United Nations and regional intergovernmental organizations;
- ensure control of international military, security and police relations, to prevent human rights abuses;
- organize human rights education and awareness raising programs.

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## TAJKISTAN: DEADLY SECRETS

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Amnesty International Publications

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# CONTENTS

## Introduction

1. Political context: the Soviet legacy and civil war
  - The civil war
  - The period after the peace agreement
  - Tajikistan's changing international profile
2. Legal context: entrenched secrecy
  - Tajikistan's international obligations
    - The (UN) Human Rights Committee
    - International standards
  - The death penalty in Tajikistan's domestic law and practice
    - Laws on the death penalty
    - Executions
    - Pardons
3. Inadequate investigations and unfair trials
  - Tajikistan's international treaty obligations
  - Laws governing trials and investigations in Tajikistan
  - The right to appeal
  - Judicial control of arrests
  - Access to a lawyer
  - Torture
  - Denial of a fair hearing
4. Relentless, cruel and arbitrary: the death penalty in practice
  - Dilfuza Numonova
  - Abduali Kurbanov
  - The Nazriev brothers
  - Gaybullojon Saidov and Andrey Rebrikov
  - Saidamir Karimov
  - Bakhriddin Sangov
  - Rahmatullo Tashripov
5. 'Torn between hope and despair': the plight of relatives
  - International standards
  - Tajik law and practice
  - Davlatbi Nazrieva, the wife of Dovud Nazriev
  - Mairam Soatova, the mother of Husein Golimov
6. Recommendations for action
  - Recommendations to the government of Tajikistan
  - Recommendation to the Russian Federation authorities

## Appendix 1. AI's 12-Point Program for the Prevention of Torture by Agents of the State

## Endnotes

[photo caption]  
Map of Tajikistan

Courtesy of Parry-Castañeda Library Map Collection  
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## Introduction

Secret executions after unfair trials take place every year in Tajikistan. Many of those sentenced to death claim they were tortured. The families of death row prisoners are given so little information that they often do not know whether their loved one is alive or dead. Since Tajikistan has continued the Soviet tradition of treating the death penalty as a state secret, it is impossible to determine the true extent of the problem, but Amnesty International learned of 74 death sentences in 2001, and five executions. In the first six months of 2002 Amnesty International learned of 29 people who had been sentenced to death.

Many people convicted of capital offences allege that they were tortured before being charged. Several different prisoners have given detailed accounts citing the name of the same investigator from the Interior Ministry's Sixth Directorate. No action has apparently been taken to investigate the truth of these allegations. Amnesty International knows of no instance in which a Tajik court has suspended a case while torture allegations were sent for investigation, nor of any case in which evidence extracted under torture has been discounted. On the contrary, confessions reportedly elicited through torture have been used to convict numerous prisoners who have been sentenced to death.

International human rights treaties state that the death penalty may only be imposed after a judgment by a court whose procedures meet minimum international standards of fair trial. Trial proceedings in Tajikistan fall far short of these standards. For example, defendants have been denied access to lawyers, senior state officials have publicly proclaimed defendants guilty before the start of their trial, courts have ignored torture allegations and have refused to allow the accused to make a closing statement. In some cases the trials of people facing the death penalty have been held in secret.

The incomplete picture of the death penalty in Tajikistan that Amnesty International has been able to build in the face of official secrecy is one that is relentlessly cruel and arbitrary.

Relatives of prisoners on death row in Tajikistan are subjected to a form of mental cruelty. They are kept in a state of complete uncertainty about the fate of the person they love, often discovering that clemency has been refused only when the prisoner has been removed without warning to the place of execution. They have no right to see the condemned person to say goodbye before the execution and are deprived of all rights once the prisoner has been executed – such as the possibility of collecting the prisoner's personal belongings, or the body for reburial. They are not even told where the grave lies. Amnesty International believes that this may amount to cruel, inhuman or degrading treatment as prohibited under international law.

[photo caption]

Dovud Nazriev, who was sentenced to death in Dushanbe in May 2001 and executed in secret, along with his brother, Sherali, in June 2002, while the Human Rights Committee was still considering their case. © Private

[end caption]

The secrecy surrounding all aspects of the death penalty, the cruel and random way in which it is applied and the failures of the criminal justice system mean that Tajikistan is violating internationally guaranteed human rights. In all the cases on which Amnesty International has information, trial proceedings violated international human rights treaties to which Tajikistan is party, particularly those guaranteeing a fair trial and freedom from torture.

Furthermore, the Tajik authorities do not always apply in practice their own Codes of Criminal Procedure and Criminal Execution, inadequate as these are.

At least four people have been executed although the (UN) Human Rights Committee – the expert body that monitors the International Covenant on Civil and Political Rights (ICCPR) – had requested a stay of execution. Tajikistan has ratified the ICCPR and is legally bound by its provisions. It has also agreed to allow the Human Rights Committee to hear complaints from individuals in Tajikistan, yet it has blatantly undermined this procedure by executing people while the Human Rights Committee was examining their cases.

Amnesty International opposes the death penalty in all circumstances, on the grounds that it violates the right to life and constitutes the ultimate cruel, inhuman and degrading punishment. This report is a contribution to a worldwide effort by human rights activists to press the Tajik authorities to commute death sentences and place a moratorium on executions. Amnesty International supporters and others will campaign against the secrecy surrounding the death penalty in Tajikistan and will call for torture allegations to be promptly and impartially investigated. These efforts are aimed at helping individual prisoners facing the death penalty and their relatives, as well as lending support to Tajik non-governmental organizations and state officials sympathetic to the arguments for abolition of the death penalty.

## 1. Political context: the Soviet legacy and civil war

Tajikistan became independent from the USSR in September 1991 then rapidly descended into a five-year civil war. The warring sides signed a peace agreement in 1997, but progress towards achieving stability has been slow.

The 1997 peace agreement<sup>1</sup> attempted to reconcile the warring parties and build institutions which they would share in future. It provided for a National Reconciliation Commission, composed of equal numbers of government and opposition representatives,<sup>2</sup> and a power-sharing agreement under which the main opposition group would receive 25 per cent of ministerial posts in the government. The agreement also provided for an exchange of prisoners and an amnesty.

According to the amnesty,<sup>3</sup> prisoners convicted of violent crimes during the conflict were allowed to request a review of their case. This extended to prisoners on death row, many of whose cases were reviewed by the presidential Clemency Commission<sup>4</sup> and their death sentences subsequently commuted to imprisonment. For some months a de facto moratorium on the death penalty appears to have operated in the wake of this agreement. The moratorium ended in November 1998 when the Prime Minister's younger brother Abdulkhafiz Abdullayev was executed, convicted of having plotted to assassinate President Rakhmonov. Since then the authorities have arrested scores of former opponents on criminal charges and they have been sentenced to death. In cases on which Amnesty International has received detailed information, prisoners appear to have been convicted without adequate proof of the charges against them. The death penalty has also been used extensively in cases with no visible political dimension.

Official secrecy has made it extremely difficult to obtain information on individual death sentences. Amnesty International learned of 15 people sentenced to death by courts and two executions in 1999, but believed the true figure was higher. In 2000, 18 death sentences were reported. In 2001 the figure of known death sentences rose to 74, with five executions. In the first six months of 2002 Amnesty International learned of 29 people who had been sentenced to death, nine of them known formerly to be members of the opposition.

### The civil war

1990 saw the beginnings of a multi-party political system in Soviet Tajikistan. A Democratic Party was formed, followed by an Islamic Revival Party, and in December 1990 multi-party politics was legalized. In 1991, however, this process ground to a halt when Rakhmon Nabiev, the man who formerly led the Soviet Tajik Communist Party, was elected the first President of independent Tajikistan amid allegations of massive fraud. His election polarized society and sparked a conflict that by June 1992 had spiralled out of control.

The war was fought mainly between pro-government supporters and a so-called United Tajik Opposition (UTO). The pro-government forces consisted of former communist officials whose power base was in the districts of Kulab and Khujand, and ethnic Uzbeks living in Tajikistan. The UTO was an alliance of democrats, Tajik nationalists, and some Islamists, and was strongest in the mountainous east of the country.

There were roughly three stages to the war. Two attempts to resolve the situation through political means failed in 1992 because of the weakness of the government's position. In May, for example, President Nabiev agreed to form a coalition "Government of National Reconciliation" (GNR) and to give one third of his ministerial posts to the opposition, but his

own supporters rejected this solution. A cease-fire was then agreed in July by more than 80 government and opposition figures, but it had no effect on the people fighting. Bloodshed continued and in August, after 100 armed opposition supporters stormed the Presidential palace in Dushanbe, President Nabiev resigned. He was replaced by the current President, Imomali Rakhmonov, in December 1992.

His arrival signalled a new and uncompromising phase in the war. Within weeks he had formed a government made up of communists, had banned opposition parties and newspapers, and had revoked GNR legislation. He speedily recaptured the capital, Dushanbe, and made punitive forays into the east and south of the country where the alliance of Democratic and Islamist forces was based. In a report called *Hidden terror*, political killings, “disappearances” and torture since December 1992,<sup>5</sup> Amnesty International expressed concern that government forces had committed gross violations of human rights in southern Tajikistan. Around one million people are believed to have fled abroad to escape the conflict or to have been killed in the course of this fighting, and infrastructure costing US\$ 7 billion is said to have been destroyed. In 1993 the new State Prosecutor – the Procurator General – announced that he had opened criminal proceedings against opposition leaders, most of whom were by then living in exile in Iran, Afghanistan and Moscow. Many were sentenced to death in absentia.

[photo caption]

Tajikistan is 90 per cent mountainous, with barely 10 per cent of its land cultivable. In recent years prolonged drought has hampered the recovery of the economy, which has suffered seriously from the dismantling of the Soviet trading system and years of civil war. © AI

[end caption]

Between 1993 and 1997 the civil war entered a third phase, as Tajikistan’s neighbours and the broader international community attempted to find ways of resolving the roots of the conflict. Efforts at international mediation between 1993 and 1995 met with limited success, however. The Russian Federation Foreign Ministry brokered a series of negotiations in Moscow and Tehran to enable the parties to agree an agenda for future discussion. This would include talks about a cease-fire; the return of refugees and internally displaced people; the legalization of opposition parties and a power-sharing agreement for Tajikistan – these last two being the priority of the UTO negotiators. Cease-fire violations continued during this period and only intensified after opposition forces were excluded from Presidential and parliamentary elections in 1994.

It was the victories of the radical Islamist Taleban forces in neighbouring Afghanistan from 1995 onwards that convinced both sides to negotiate peace in earnest, and two years later the peace agreement was concluded. In 1995 President Rakhmonov also suspended the death sentences that had been passed on opposition members in 1993.

## **The period after the peace agreement**

1999 saw significant cooperation between the two sides and paved the way for a constitutional referendum in September, presidential elections in November, and parliamentary elections in the spring of 2000.

At ministerial level posts were shared – at least nominally – in accordance with the peace agreement, but there was little or no sharing of power at lower levels. By 2001 assassinations of high-ranking politicians reflected the tensions between and within the parties to the 1997 agreement. In February 2000 there was an alleged attempt to assassinate the Mayor of Dushanbe. In April three unidentified killers shot dead the former Deputy Minister of Internal Affairs, Habib Sanginov, with two bodyguards and his driver in Dushanbe. In July

a foreign policy adviser to the President was shot dead at his home in the city, and in September the Minister of Culture was also shot dead by unidentified gunmen in Dushanbe. As a neighbour of Afghanistan that is traditionally opposed to the Taleban, Tajikistan's international standing has risen dramatically since September 2001, as has the personal standing of President Rakhmonov. There are signs that he may be using the so-called international "war against terrorism" as a pretext for settling scores with former civil war opponents. Tajikistan's very flawed legal system and its traditionally widespread recourse to the death penalty make this an alarming proposition.

Scores of former opposition fighters have been arrested in connection with acts of political violence and are being investigated on charges that are potentially punishable by death. At the time of preparing this report, around 90 people were in detention in northern Tajikistan on suspicion of supporting an invasion attempt by the opposition warlord Makhmud Khudoyberdiyev in 1998. Approximately another 80 have been arrested on suspicion of supporting Abduljalil Khomidov, an influential politician in Khujand alleged to have conspired to install Makhmud Khudoyberdiyev in power. At a press conference in June 2002, President Rakhmonov implied that more political arrests might follow when he alleged that "terrorists" had infiltrated law enforcement agencies in the north and south of the country.

## **Tajikistan's changing international profile**

Tajikistan is 90 per cent mountainous and has a population of around six million people. It was the poorest republic of the USSR, dependent on cotton growing for its income and with barely 10 per cent of its land cultivable. Since 1991 its economy has suffered seriously from the dismantling of the Soviet trading system, the civil war from 1992 to 1997 and then the collapse in 1998 of the rouble in the Russian Federation, its main trading partner. Four years of drought have further hampered its efforts to recover. Increasingly, young Tajik men have moved to the Russian Federation to do labouring work and send back money to support their relatives.

Since it gained international strategic significance as part of the so-called "war against terrorism", Tajikistan has started to benefit from increased financial support from foreign institutions and governments. The USA, the European Union, development banks in Asia and Europe, and individual foreign governments have all increased their investments in Tajikistan. In 2002 they promised the equivalent of US\$ 322 million in foreign aid to Tajikistan, compared with the US\$ 51 million donated during the whole of 2001.

With the increase in its international contacts, Tajikistan has also taken some steps in the field of human rights. These have largely been in the context of co-operation with the UN and the Organization for Security and Co-operation in Europe (OSCE), both of which have missions in Dushanbe. Since 2001, three round tables on the death penalty have taken place in Dushanbe and Khujand with the participation of government officials, the OSCE, and the non-governmental Soros Foundation in Tajikistan. They concluded with recommendations to review existing practices and explore the introduction of a moratorium on death sentences and executions. Over the past year newspapers have also published several articles on the death penalty by human rights lawyers and retired judges.<sup>8</sup> To date their calls for a moratorium, however, have been quickly countered by press statements from serving judges and prosecutors, arguing that Tajikistan is not yet ready to take this step.

June 2002 saw the first meeting of an inter-departmental governmental Human Rights Commission in Tajikistan to examine the state's reporting commitments to UN treaty bodies, with priority being given to the ICCPR and the Convention for the Elimination of All Forms of Discrimination against Women. This commission will presumably have responsibility to determine a clear procedure for the Tajik authorities to respond in future to requests from the

Human Rights Committee, including requests concerning prisoners on death row. Until now Tajikistan's response has been completely inadequate, resulting in the execution of four prisoners – Gaybullojon Saidov and Andrey Rebrikov and the brothers Dovud and Sherali Nazriev – while their cases were still under examination by the Committee.

By the end of 2002 Tajikistan should also report to the UN Secretary-General on its use of the death penalty and observance of international safeguards in doing so, and also the reforms it has made in law and practice in this area. This reporting is an element of Resolution 2002/77 of the UN Commission on Human Rights, adopted in April 2002. Proposed by the European Union and voted for by the Russian Federation and 24 other states, it also calls on states that retain the death penalty to establish a moratorium on executions; to make available to the public information on the imposition of the death penalty; and to ensure that all legal proceedings conform to minimum guarantees for a fair trial.

## 2. Legal context: entrenched secrecy

### Tajikistan's international obligations

Tajikistan ratified the UN's International Covenant on Civil and Political Rights (ICCPR) after the end of its civil war in January 1999. Under Article 6 of this treaty, the authorities are obliged to ensure, amongst other things:

- that no one in Tajikistan or subject to its jurisdiction is arbitrarily deprived of their life;
- that sentences of death are imposed only for the most serious crimes;
- that all people sentenced to death have the right to seek pardon or commutation of their sentence;
- that death sentences are imposed only after a judgment by a competent court and not in a manner that contravenes other provisions of the treaty.<sup>9</sup>

The most relevant "other provisions of the treaty" are those that establish minimum requirements for a fair trial and prohibit torture, namely Articles 9, 14 and 7 of the ICCPR. From the case materials and legal documentation which are available to Amnesty International, it would seem that Tajikistan's conduct of capital trials more often violates these provisions than not. Chapter Three examines in more detail the way that the Tajik authorities have investigated and tried cases punishable by death.

In 1999 Tajikistan also ratified the Optional Protocol to the ICCPR which grants the Human Rights Committee competence to consider complaints from individuals who believe that their rights under the ICCPR have been violated.

Tajikistan has not ratified the Second Optional Protocol to the ICCPR, which would oblige it to abolish the death penalty for all crimes in times of peace and war.

As a member of the OSCE, Tajikistan has also committed itself to making public information about its use of the death penalty, in accordance with the 1990 Copenhagen Document.<sup>10</sup>

[box]

### The (UN) Human Rights Committee

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 Human Rights Committee can be found at [www.unhchr.ch](http://www.unhchr.ch)  
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Tajikistan ratified the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Convention against Torture) in 1995. The Tajik Constitution contains a strong prohibition against torture,<sup>11</sup> which is echoed in the Criminal Execution Code adopted in 2001, Article 10 of which prohibits “torture and other cruel, inhuman and degrading treatment”. An extremely disturbing thread running through the reports of death penalty cases reaching Amnesty International is that suspects, including all the individuals named above, claim they were tortured before being charged.

Tajikistan has a poor record of respecting its obligations and commitments under international human rights treaties on the death penalty. Part of the mandate of the current UN Mission in Dushanbe – known by its acronym in English as UNTOP – is to train Tajik officials in how to meet the country's international human rights obligations.

Although Tajikistan has agreed to allow the Human Rights Committee to hear complaints from individuals, the Tajik authorities have placed restrictions on access to the Human Rights Committee for prisoners on death row, as well as soldiers undergoing punishment in disciplinary cells. According to the Criminal Execution Code adopted in August 2001,<sup>12</sup> death row prisoners cannot send communications directly to international organizations, but must route them via the prison administration, where they risk being opened or destroyed. There is no known case in which the Human Rights Committee has considered an application from a prisoner imprisoned on death row in Tajikistan.

In at least five cases, however, Tajik human rights lawyers have submitted complaints to the Human Rights Committee on behalf of people sentenced to death. In one case, the death sentence passed on Dilfuza Numonova for allegedly murdering her lover was commuted to 15 years’ imprisonment on 25 July 2000, reportedly following the involvement of the Human Rights Committee. Amnesty International wrote to President Rakhmonov welcoming this commutation.

In another prominent case from the same year, however, Gaybullojon Saidov and his co-defendant Andrey Rebrikov were executed while the Human Rights Committee was examining Gaybullojon Saidov’s case. The prisoners were executed even though the Committee had notified the Tajik authorities that they were considering the case and had requested a stay of execution. Gaybullojon Saidov was one of more than 90 people arrested in connection with an invasion of the north of Tajikistan launched from Uzbekistan in 1998.

In the course of preparing this report, Amnesty International learned of the execution on 21 June 2002 of the brothers Dovud and Sherali Nazriev, whose death sentences the Human Rights Committee took up for consideration in January 2002. On 10 January 2002 the Human Rights Committee had asked the Tajik authorities to provide the Committee with further information on their cases and to freeze the sentences for six months until 10 July 2002.

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International standards

The following international treaties and non-treaty standards are among those relevant to the death penalty in Tajikistan:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture)
- General comment on Article 6 of the International Covenant on Civil and Political Rights
- UN Economic and Social Council resolution 1984/50
- UN Economic and Social Council resolution 1989/64
- UN Economic and Social Council resolution 1996/15
- UN General Assembly resolution 32/61 of 8 December 1977
- UN Commission of Human Rights resolution 1998/8
- Second Optional Protocol to the International Covenant on Civil and Political Rights
- 1990 Copenhagen Document of the OSCE Paragraph 17.8
- UN Commission on Human Rights Resolution 2002/77 of April 2002

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The response of the Tajik government to this request was deeply confused, and confusing. President Rakhmonov is reported to have sent the cases of the two brothers for further investigation in May 2002, although the procedural basis for this is not clear to Amnesty International. On 25 June 2002, when Dovud Nazriev's wife went to visit him in the prison in Dushanbe, she discovered that he had been transferred five days earlier to Qurgantoppa, where most known executions have been carried out.

In response to international expressions of concern about this case, government representatives denied receiving requests from the Human Rights Committee or said that the order for execution had been signed after the six-month stay on execution requested by the Committee had expired on 10 July 2002. One Tajik Foreign Ministry official, however, reportedly confirmed receiving the Human Rights Committee's request, but said he had been "under no obligation" to pass it on.

Both the ICCPR and the Convention against Torture place the Tajik authorities under an obligation to investigate all allegations of torture and to ensure that confessions elicited by such means are not admitted as evidence in court.<sup>13</sup> Nevertheless, Amnesty International knows of no instance in which a Tajik court has suspended a case while torture allegations were sent for investigation, nor any in which a person suspected of being responsible for torture has stood trial. Several suspects have described their alleged torture in detail, citing the name of one and the same investigator from the Interior Ministry's Sixth Directorate as the person responsible. This official is therefore easily identifiable, but, to date, the information available to Amnesty International suggests that the authorities have made no attempt to investigate his conduct with a view either to clearing his name, or punishing him. Chapter Three looks in more detail at the way the Tajik authorities have typically investigated and tried capital cases.

## **The death penalty in Tajikistan's domestic law and practice**

Tajikistan's international human rights treaty obligations form an integral part of its domestic law, according to the 1994 Constitution of the Republic of Tajikistan.<sup>14</sup> In cases where they diverge from national laws, international treaty obligations are supposed to take precedence.

Life is an inalienable right, according to Article 5 of the Constitution and one which is guaranteed by the government, according to Article 18. The same article, however, goes on: "It may be taken away only by the verdict of a court for an exceptionally serious crime".<sup>15</sup> Article 18 could be seen as outlawing extrajudicial executions (those that take place without any trial) while endorsing the judicial death penalty. In a conversation with an Amnesty International researcher in Dushanbe in May 2002, the Chair of a Bar Association of Tajikistan interpreted Article 18 as establishing a constitutional obligation to execute. Given his position as one of the country's leading defence lawyers, this interpretation was dispiriting. Amnesty International regrets that the courts have chosen to resort to the death penalty without any reference to Tajikistan's international treaty obligations, the most immediately relevant being Article 6(2) of the ICCPR, which requires that a death sentence be preceded by a fair trial.

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Laws on the death penalty

The death penalty in Tajikistan is regulated by the following published laws:

- The 1994 Constitution of the Republic of Tajikistan proclaims the right to life. Article 18 states that no one may be deprived of their life except by a court-imposed sentence for an especially grave crime.
- The death penalty is not mandatory. The 15 offences that may be punished by death are listed in Article 59 of the Tajik Criminal Code, adopted in 1998. Article 59 prohibits the imposition of a death sentence on anyone who was under 18 years of age at the time of the offence and on pregnant women.
- The 2001 Tajik Criminal Execution Code explains how all prisoners are to serve their sentences. Chapter 22 describes how prisoners on death row can petition the President for clemency, and their rights to correspondence, visits and so on while they await the outcome.

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; where execution takes place; where the body is disposed of and what happens to the prisoner's personal effects. Amnesty International does not know if the prisoner is given warning of the execution.

All these aspects of the death penalty are secret and apparently listed in an unpublished supplement to the 1994 Law on Official Secrets. In day-to-day conduct of the death penalty secrecy is maintained through a system of unpublished administrative instructions issued to Ministries, prisons and media outlets. The secrecy prevails despite the legitimate interest of prisoners and their relatives in having this information, and successive recommendations by authoritative international bodies such as the UN Commission on Human Rights and the OSCE that information of this type should be publicly available.

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The Criminal Code adopted in 1998 devotes Article 59 to an exhaustive list of 15 capital crimes,<sup>16</sup> including some which do not involve violence, such as the cultivation of illegal substances and drug dealing. The Deputy Head of the Presidential Administration's Legal Commission told an Amnesty International researcher in Dushanbe in June 2002 that proposals are now under discussion to amend the Criminal Code. It is proposed to reduce the number of capital crimes to five.

She also said that the proposals would exempt all women from the death penalty as well as juveniles who were under 18 at the time of the crime and men over the age of 65.

At present, only pregnant women are exempt from the death penalty, and juveniles who were under 18 years of age at the time of the crime. Once a pregnant woman has had her

baby and nurtured it for three years, she can still be executed, according to the Code of Criminal Procedure adopted in 1961, which is still in force and has not been amended on this point. Amnesty International has not been able to ascertain if this provision has ever actually been applied. Dilfuza Numonova, whose death sentence was commuted to imprisonment, was pregnant at the time of her arrest in 1999. She claims that she was forced to have an abortion after her trial so that her appeal against her death sentence would be disallowed. (For details of cases of individual prisoners, see Chapter Four.)

Amnesty International would welcome the introduction of broader categories of people who could never be sentenced to death, as a step towards abolition. It fears, however, that the reduction in law in the number of capital crimes would not necessarily reduce the number of death sentences and executions. Most known death sentences in Tajikistan have been passed after conviction for one or more of five crimes.<sup>17</sup> In 2001, for instance, 80 per cent of the known 74 death sentences were passed for aggravated murder. In 2000 the percentage was similar. Tajik criminal defence lawyers have told Amnesty International that they know of no one sentenced to death for crimes such as “biocide”, “genocide”, “waging an aggressive war” or “maliciously violating the laws of international humanitarian aid” since they became offences in 1998.

The death penalty in Tajikistan is not a mandatory punishment. In each case it is applied at the discretion of the courts, which ordinarily are presided over by one professional judge and two lay “people’s assessors”. 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.<sup>18</sup>

The crime of murder is ordinarily punishable by imprisonment, for instance, but if it is committed in conjunction with any of 16 aggravating circumstances listed in Article 104 (2) of the Criminal Code it may be punished either by imprisonment or the death penalty. Astonishingly, the Supreme Court of Tajikistan has published no guidance for local courts to help them reach their decisions and Amnesty International was unable to find any official commentaries to the Criminal Code explaining how its articles are to be applied.

For judges and prisoners alike, the death penalty in Tajikistan appears to be an arbitrary process. The Criminal Code states that the death penalty is an “exceptional measure”, but practice shows it is not exceptional, by any means. In June 2002 an Amnesty International staff member asked Tajik legal scholars and government officials in Dushanbe to explain the criteria used for applying the death penalty. They gave confusing answers. Some said that the courts resort to the death penalty for repeat offenders, or for criminals who have killed more than one victim, in line with unpublished instructions that date back to the Soviet era. Yet Amnesty International knows of first offenders sentenced to death, sometimes when they were scarcely 20 years old, like the students Mustofokul Boymurodov and Sadridin Fatkhuddinov. They were convicted in July 2001 of causing explosions in the Korean-run Grace Sonmin church in Dushanbe. Amnesty International also knows of people convicted of multiple murders who were sentenced to terms of imprisonment, while Dilfuza Numonova (see above) was sentenced to death in 2000 for the alleged murder of one person.

Close analysis of sentencing patterns in capital cases in Tajikistan is not possible, unfortunately, because the authorities regard the death penalty as a state secret and information about it is nowhere available in a publicly accessible form, despite Tajikistan's commitment as a member of the OSCE to make information of this type public. The information that is available, however, suggests that there are regional inconsistencies in sentencing. Between 1998 and 2002, for instance, Amnesty International learned of no death sentences passed in Khorug, the capital of the eastern Badakhshan Autonomous Republic.

During the same period at least 11 were reported from Khujand, capital of Soghd Region in the north.

[photo caption]

Mustofokul Boymurodov, who was a first-time offender when sentenced to death in July 2001 at the age of 20. © private

[end caption]

The highest number of reported death sentences over this period was passed by two chambers of the Supreme Court of Tajikistan in Dushanbe – the Chamber on Criminal Cases and the Chamber on Military Crimes. These hear cases involving exceptionally grave crimes as courts of first instance. In 2001 their sentencing habits were so harsh that on three occasions the State Prosecutor – the Procurator General – protested at the death sentences they had passed and urged the presidium of the Supreme Court to overturn them. Its protests succeeded.

## Executions

Prisoners in Tajikistan are executed by shooting. As soon as a prisoner has been shot, the law requires the director of the prison to inform the Ministry of Internal Affairs, which in turn informs the court which passed the sentence that its penalty has been carried out. It is then the responsibility of the court to notify the prisoner's local records office – known as ZAGS from its Russian initials – and, simultaneously, the prisoner's family. This procedure is set down in the 2001 Criminal Execution Code.<sup>19</sup> According to Amnesty International's information, however, officials do not always follow it.

On some occasions families have been kept completely in the dark, and learned of the execution only by consulting the local ZAGS themselves. This was the experience of Mairam Soatova, whose son Husein Golimov was executed on 15 November 2001. Notification was sent to his local ZAGS on 10 December 2001 but his mother received word from the court only in February 2002. In several cases reported to Amnesty International, international organizations based in Dushanbe have received notification of an execution before the prisoner's relatives. The gratuitous suffering inflicted on the relatives of death row prisoners is dealt with in greater detail in Chapter Five.

The facts of each execution remain shrouded in secrecy. No one knows, for instance, where executions take place. In the Soviet era, Tajiks under sentence of death were sent for execution in Tashkent prison in neighbouring Uzbekistan. Now, many members of the public believe that executions are carried out in Qurgantoppa prison in Khatlon region, south of Dushanbe. An Amnesty International staff member was also told by non-governmental sources that prisoners sentenced to death in the south of Tajikistan are executed in Dushanbe Investigative Isolation Prison. Tajik officials have refused to confirm or deny these theories.

[photo caption]

People queuing to visit Dushanbe Investigative Isolation Prison, where many prisoners on death row are held. © AI

[end caption]

Relatives are allowed to ask the Interior Ministry for monthly visits of two hours with the prisoner on death row, but they receive no warning of when the prisoner will be transferred from death row to be executed, nor when the execution has been scheduled to happen. They therefore have no opportunity to say goodbye to the person they love or to prepare themselves for loss.

In this respect the Criminal Execution Code and the behaviour of the prison authorities run contrary to international human rights standards. The Body of Principles for the Treatment of All Persons under Any Form of Detention or Imprisonment<sup>20</sup> and the Standard Minimum Rules for the Treatment of Prisoners<sup>21</sup> require prisons to ensure that prisoners can notify their families at once of transfers to other institutions.

Sometimes prison officials have actually deceived relatives on this score. In December 2001, for instance, the prison authorities at Dushanbe Investigative Isolation Prison accepted a care package from Husein Golimov's mother weeks after he had actually been transferred to another place and shot. Families have no right to be with the prisoner during their last hours, or even to collect the prisoner's body afterwards for burial. Amnesty International has not been able to discover how much notice of execution is given to the prisoners themselves. It is clear from the experience of relatives, however, that prisoners are given no opportunity to settle their affairs, or see their families. Tajik law also gives them no means of seeking a last-minute reprieve.

## **Pardons**

Once all appeals have failed and a sentence has come into legal force, all prisoners – including those under sentence of death – have the right within seven days to petition the President for clemency. Should a prisoner refuse to do so, the director of the death row prison and the State Prosecutor are obliged to petition on the prisoner's behalf.

In death penalty cases, a stay is put on execution until the President has taken a decision on the petition. This is a welcome innovation introduced by the 2001 Criminal Execution Code. Previously prisoners could be executed before the outcome of their petition was known, according to legislation inherited from the Soviet era.<sup>22</sup> The President must decide on clemency within four months. If he decides to grant clemency, the death sentence is commuted to a prison term of up to 25 years.

An official Commission on Questions of Clemency and Citizenship (Clemency Commission) helps the President reach his decision, by reviewing incoming petitions, inviting opinions from law enforcement personnel close to the prisoner, and making recommendations on the outcome. There is no list of the criteria they use in making their recommendations. In June 2002 an Amnesty International staff member in Dushanbe met no one outside government circles who knew who sat on this Commission or what work it does, confirming that the clemency procedure in Tajikistan – like the system of executions – is far from transparent.

The 1997 Presidential Decree that established the Commission is archived at the Department for Systematising Legislative Information within the Ministry of Justice. Reportedly 12 people serve on the Commission, one from academic circles and 11 from government ministries and the Presidential Administration. All the agencies that might have been involved in the original prosecution of the prisoner's case are represented, including the Security Minister; the Minister of Internal Affairs; the Procurator General; the Chair of the Supreme Court and the Minister of Justice. Unsurprisingly, the number of prisoners recommended for pardon each year is very low.

Of 74 known death sentences passed in 2001, Amnesty International learned of only two commutations. Between January and June 2002 it has learned of three. When asked for details of the first clemency decision, a Commission member<sup>23</sup> replied: "We are not yet ready to give open answers to open questions". A copy of the Presidential Act granting clemency to this prisoner was not available in the Department for Systematising Legislative

Information of the Ministry of Justice. Acts of clemency and pardon are officially regarded as state secrets.

The working methods of the Clemency Commission would seem to be out of step with Tajikistan's own penal legislation. The 2001 Criminal Execution Code makes welcome provision for non-governmental groups to be involved in prison activities and in the re-education of prisoners.<sup>24</sup> The decree on the Clemency Commission also allows it to invite non-governmental representatives onto its panel, although it has never done so. Amnesty International believes that a purely civilian Clemency Commission should be introduced, working according to transparent rules, before public scrutiny, and engaging with the media and the public on how to humanize the criminal justice system in Tajikistan. It should apprise prisoners and their lawyers of the information that has been submitted to it about their cases, and give them the opportunity to challenge it and make their own presentations. If the Commission recommends against clemency, it should give the reasons why and ensure that each prisoner has reasonable time and facilities to present a challenge to the President before he takes his decision.

The profound secrecy enveloping the death penalty and the clemency procedure contradicts Tajikistan's own Constitution. Laws come into force only once they have been officially published, according to Article 10. The register of subjects deemed officially secret, however, has never been published, and is not even attached to the 1994 Law on State Secrets that refers to it. In terms of Tajik domestic law, therefore, there is no legal basis for keeping secret either acts of pardon and clemency, or the dates and sites of executions. The web of unpublished administrative instructions that maintains this secrecy – within different government ministries, prisons and media outlets – also runs counter to the Tajik Constitution. By its commitment to the standards of the UN and the OSCE on capital punishment, Tajikistan is called upon to place all information of this type in the public domain. Amnesty International believes it should do so immediately.

### **3. Inadequate investigations and unfair trials**

#### **Tajikistan's international treaty obligations**

A death sentence may legally be passed only by a court after a fair trial, according to Article 6 of the International Covenant on Civil and Political Rights (ICCPR).<sup>25</sup> Any death sentence that results from an unfair trial is therefore illegal and constitutes the ultimate violation of human rights: taking away the right to life.

This chapter examines ways in which the conduct of capital trials in Tajikistan is alien to internationally accepted standards for a fair trial.

People who face the possibility of a death sentence are entitled to expect the following minimum rights at their trial, according to Article 14 of the ICCPR:

- A public judicial hearing by a competent, independent and impartial court set up on the basis of the law;
- To be presumed innocent until proved guilty;
- To have equal rights with the prosecution, and in particular:
  - to be informed in a language they understand of the charge being brought;
  - to have adequate time and facilities to prepare a defence 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. If there is no lawyer, to have the services of an appointed lawyer, free of charge if necessary;
  - 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 a judicial error;
- Not to be tried and punished twice for the same offence.

The ICCPR lists other fair trial rights. According to Article 9:

- No one may be detained arbitrarily;
- Each person arrested must immediately be told the reasons for their detention and charged without delay;
- A court must immediately review the grounds for each person's detention and order the person's release if the grounds are found to be insufficient. Remand in custody should be an exception, not a rule;
- Anyone who is the victim of unlawful arrest is entitled to compensation.

Article 7 of the ICCPR says that:

- No one should be subjected to torture or cruel, inhuman or degrading treatment or punishment.<sup>26</sup>

#### **Laws governing trials and investigations in Tajikistan**

The rules for prosecuting criminal cases in Tajikistan are laid down in the Code of Criminal Procedure that was adopted in Soviet Tajikistan in August 1961 – more than 40 years ago, when the Soviet system of law and governance was at its height. Even before the USSR

disintegrated in 1991, some legal commentators in Moscow were deeply critical of its criminal procedure and what they called its “accusatorial bias”. Since then criminal procedure in the nine former Soviet republics that have joined the Council of Europe has been undergoing radical revision.

In Tajikistan, however, it has remained largely unchanged until now. Earlier this year the Presidential Administration set up a working group to revise the Code of Criminal Procedure and present a new draft to parliament in autumn 2002. In July 2002 it announced that the prison system is to be transferred from the control of the Interior Ministry to the Ministry of Justice. Amnesty International welcomes the fact that the agency responsible for investigating many detainees’ cases will no longer control their conditions of detention. Police precincts, however, will remain under the authority of the Interior Ministry.

## **The right to appeal**

One reform has been introduced, which enhances the right to appeal in some cases. The Tajik Constitutional Court ruled on 16 October 2001 that existing legislation was “incompatible with Article 14 of the ICCPR” and the Tajik Constitution. The ruling concerned rights of appeal in civil cases, but has since been applied in criminal cases. It increases the rights of appeal for some people answering capital charges, but has not led to any death sentences being overturned or commuted in practice.

Before the Constitutional Court made its ruling, judgments of the Tajik Supreme Court were not open to appeal. This was to protect the stability of its rulings as a court of second instance. In some very few cases stipulated by law, however, the Supreme Court – then and now – also acts as a court of first instance for crimes that are “exceptionally grave”, many of which might involve a death sentence. The paradoxical situation arose that crimes with the harshest penalties sometimes carried no right of appeal, depending on where they were tried.

This procedural flaw presumably accounts for several very speedy executions that came to Amnesty International’s attention between 1998 and 2001. They included:

- Bakhrom Sodirov who was sentenced to death in October 1998 and executed barely three months later in January 1999. The brother of warlord Rezvon Sodirov, he had been arrested for kidnapping members of the UN Observer Mission to Tajikistan (UNMOT) in Dushanbe in the mid-1990s and his case was heard by the Supreme Court. The fate of his co-defendant, Kiroatsho Nosyrov, is not known.
- Abdulkhafiz Abdullayev, who was sentenced to death in March 1998 and executed in November 1998 while his clemency petition was pending. The brother of the former Prime Minister, he led the National Revival Bloc in northern Tajikistan and was accused of attempting to assassinate President Rakhmonov. His case was heard by the Supreme Court. The fate of the five men sentenced to death with him is not known.
- Sherali Mirzoyev and Kosym Babayev, who were sentenced to death without right of appeal by the Supreme Court in June 1999, may also number among those summarily executed. Amnesty International has no record that they received clemency, but does not know the date of their execution. Politicians from southern Tajikistan, they were accused of supporting the coup attempt by warlord Makhmud Khudoyberdiyev in 1997.

Since the Constitutional Court's ruling, “exceptionally grave crimes” are now heard at first instance either by the Supreme Court's Criminal Cases Chamber, or its Chamber for Military Cases. People sentenced to death in these chambers have the right to appeal against their conviction and sentence to the Presidium of the Supreme Court.

Amnesty International welcomes the fact that the Constitutional Court based its ruling on Tajikistan's obligations under the ICCPR. It trusts that future rulings – not least on the death penalty – will move Tajikistan closer to meeting its international treaty obligations. However, the increased rights of appeal have not resulted in a reduction in the number of death sentences. The Supreme Court has commuted only three death sentences at second instance to Amnesty International's knowledge and each of these followed a protest from the Procurator General, not an appeal from the convicted person. It has acquitted no one.<sup>27</sup>

Whether or not a person was sentenced to death by a chamber of the Supreme Court, the appeals procedure has limited value because of the fundamental inequality between the defence and the prosecution in Tajik law. Article 329 of the Code of Criminal Procedure gives people convicted of a criminal offence the right to appeal against their conviction – but their request to appeal may be turned down by the higher court. The state prosecution service, however, has an obligation to protest against judgments which it considers to be “illegal”. Since it is simultaneously charged with “supervising legality”, its protests carry inordinate weight with the higher court and must be heard.

Critics of Soviet criminal procedure from within the former USSR have described the “protest” as the mechanism whereby prosecutors get the result they want in the end. Not surprisingly, extremely few defendants – whatever the charges on which they were convicted – are acquitted under these procedural rules.

Complaints to the Human Rights Committee also count as “appeals to a higher judicial authority” within the terms of Article 14 of the ICCPR. Chapter Two points out that the Tajik authorities prohibit prisoners on death row from sending communications to the Committee directly. Chapter Four describes the cases of four prisoners who were executed while their cases were being examined by the Committee.

Effective means of appeal are very limited for people sentenced to death in Tajikistan.

## **Judicial control of arrests**

The group working on the new draft Code of Criminal Procedure is reported to be discussing the possibility of introducing judicial control over arrests, in line with Article 9 of the ICCPR. The idea has met with such opposition that it may not be adopted, according to the professor of criminal procedure who put it forward.

Tajikistan's current procedure for arrest and detention is alien to the standards set out in Article 9(3) of the ICCPR. No independent body scrutinizes the reasons for a person's detention prior to his or her trial. The state prosecution service receives the detainee's case file from the arresting police officer, and it is the prosecutor's duty to confirm the decision to detain the suspect, or to order their release. There is no presumption of liberty under Tajik law and Amnesty International has not learned of any detainees released by a decision of the prosecutor at this stage.

The prosecutor's endorsement of the detention should take place within 10 days of the person's being detained. Except in cases involving child suspects, the prosecutor has no obligation to set eyes on the detainee throughout the endorsement procedure or to ask them questions face-to-face. This loophole in the procedure deprives the person being detained of one of the first safeguards against being ill-treated, during the very period when ill-treatment can be most likely.

The State Prosecutor can subsequently prolong the detainee's detention as long as the investigation requires, without any recourse to a court, for up to 15 months, and longer in

circumstances that are not specified. Should the person in detention have complaints about their treatment, it is again the state prosecution service that handles them because the procuracy is responsible for ensuring that “legality is respected” in places of detention.

From the moment they are arrested until the time they are tried, perhaps more than a year later, suspects in Tajikistan are at the sole disposal of the agencies investigating their case. Chapter Four describes the physical abuse that this has allowed in cases that Amnesty International believes to be typical. As well as suffering physical brutality, none of the people involved was informed of their rights on arrest, or promptly charged and tried, in violation of Article 9(1) and (2) of the ICCPR.

The only people released from detention to Amnesty International's knowledge are those whose arrest was never sent for procuracy endorsement in the first place – contrary even to the inadequate procedural rules outlined above. Makhmadnain Karimov from Pyanj, for instance, was arrested in April 2001, but his file appears never to have been sent to the procuracy by the police officers who arrested him. There is reportedly no record of his 27-day detention. He is the father of Saidamir Karimov who was later sentenced to death, and he claims that he was repeatedly beaten in an effort to make him incriminate his son (see Chapter Four).

[photo caption]

Makhmadnain Karimov says that he was repeatedly beaten during 27 days in detention in an effort to make him incriminate his son, Saidamir Karimov. Two of his other sons were also detained and allegedly beaten. Saidamir Karimov was sentenced to death, reportedly after being tortured to confess. His father has petitioned the President for clemency. © Private  
[end caption]

In other cases police have kept people in detention but have delayed transmitting their case file to the prosecutor for endorsement. Prisoners have later alleged they were tortured during this period. The brothers Dovud and Sherali Nazriev, for instance, were held in police custody for two months in 2001 before their file was transmitted to the state prosecution service. During these months their family was unable to locate them and Dovud Nazriev claimed he was beaten by masked men. The Nazriev brothers were executed on 21 June 2002 while their complaints were pending before the Human Rights Committee (see Chapter Four).

## **Access to a lawyer**

Detainees charged with a criminal offence should be given adequate time and facilities to prepare their defence, with the defence lawyer of their choosing, according to Article 14(3) of the ICCPR. The Safeguards Guaranteeing the Protection of the Rights of People Sentenced to Death place special emphasis on their right to have legal assistance at all stages of the proceedings (Paragraph 5).

People detained in Tajikistan have the right to legal assistance within 24 hours of their arrest, according to Article 49 of the Code of Criminal Procedure. In Tajik legal terms “arrest” means the stage at which the prosecution has completed its investigation and has formally presented charges. In the cases documented in Chapter Four, there has been a delay in bringing charges of up to four months after the person was first detained, during which time they were without access to a lawyer. Torture allegations have arisen most frequently from this stage of the investigation proceedings.

A member of the working group now revising the Code of Criminal Procedure, however, told Amnesty International in June 2002 that there are currently no plans to give

people suspected of crimes earlier access to a defence lawyer, or to bring this provision into line with internationally accepted norms.

Once hired, the rights of the detainee's defence lawyer are largely passive. Article 48 entitles them to "familiarize themselves with the prosecution case files" and according to Article 53 they can put questions that must be noted in the records, but the case investigator "can refuse to answer them".

In cases where detainees cannot afford to hire a defence lawyer of their choosing, a defence lawyer may be appointed for them, according to Article 49. Astonishingly, the decision is taken and the appointment is made not by the court or by a professional legal aid body attached to it, but by the official investigating the offence. Amnesty International is concerned that this practice may be open to abuse, or the appearance of abuse. As the officials prosecuting cases aim to win cases, they may have little incentive to appoint effective and experienced defence lawyers.

Although people working in Bar Associations in Tajikistan have denied it, numerous observers and legal specialists have shared their view with Amnesty International that some defence lawyers have a professional "understanding" with investigators: in exchange for receiving cases they will mount a limited defence. It is alleged that some of these lawyers have defended cases with political overtones. Amnesty International is not in a position to confirm or deny this view. The lopsided rules of Tajik criminal procedure, however, do nothing to prevent such an abuse from arising.

## Torture

The torture of people in custody is prohibited by Article 7 of the ICCPR. Testimony extracted under torture is inadmissible as evidence in court, according to Article 15 of the Convention against Torture.<sup>28</sup> In every case on which detail is available to Amnesty International, people detained on capital charges say that they were tortured by investigators of the Sixth Directorate of the Interior Ministry in Dushanbe. Allegations have included torture by ferocious beating; rape with a truncheon, penis or other objects; and electrocution of the ears, fingers, toes and anus. The torture is said to have taken place when people were in police custody in so-called Temporary Detention Premises, known as PVS from the Russian initials. Torture has also been reported by pre-trial detainees held in Dushanbe Investigative Isolation Prison – known as the Dushanbe SIZO<sup>29</sup> from its Russian name. Some people are alleged to have been tortured in both places of detention. (See, for example, the case of Bakhridin Sangov in Chapter Four.)

In each of these cases, people allege that while they were held in detention they were subjected to a crescendo of ill-treatment until they agreed to sign a prepared written statement and then were formally charged. Once that stage was reached, the brutality to which they were subjected appears to have subsided, but did not always stop. Dovud Nazriev, for instance, claimed that he was forcibly injected with a tranquillizing substance before his trial in May 2001 and beaten after it.

[end caption]

The checkpoint at the SIZO, or Investigative Isolation Prison, in Dushanbe, where relatives wait to be admitted on visits. Many prisoners on capital charges have been held here, and some are credibly reported to have been tortured. © AI

[end caption]

Most prisoners affected have complained at their trials about their treatment, but no court to Amnesty International's knowledge has ordered an investigation into their torture

allegations, nor ordered testimony that the accused said they had given under torture to be excluded from the record. Capital trials have been adjourned on many grounds in Tajikistan, but they have never been suspended to allow the court to test the truth of an accused person's torture allegations.

In several cases detainees identified investigators who had ill-treated them by name. Some names recur. The Tajik authorities have made no effort to investigate the investigators cited, either to clear their names, or to punish them for what they have done. Their clear obligation to do so is laid down in Articles 5, 6, 7 and 13 of the Convention against Torture.

International trial observers present while allegations of torture have been made in court have sometimes tried to initiate independent investigations of the torture claims. Representatives of the OSCE Permanent Mission in Dushanbe, and the UNTOP Mission, for instance, have repeatedly requested the Procurator General, General Bobojon Bobojonov, to investigate allegations by defendants that they were tortured before trial. The procuracy is the body officially responsible for ensuring that the law is respected in penal institutions and it should respond to allegations that people have been tortured by law enforcement officials. From the responses which Amnesty International has seen, the Procurator General has delegated responsibility for the investigation to the level of the procurators and investigators being complained about. These officials have concluded that the complaints were unfounded.

In one prominent case described in Chapter Four of this report, the court is said to have dismissed Saidamir Karimov's claim of torture because he had "not submitted it in advance, in writing, through the procuracy". Saidamir Karimov was sentenced to death in March 2002 and claimed he had been tortured in detention with beatings and electric shocks to the anus, genitals, fingers, nose and ears. One man who did complain from his cell in writing to the procurator – three times – was his co-defendant Said Rizvonzoda. He said in court that he had received no reply to his complaints.

Most of the torture allegations reaching Amnesty International concern people detained in the capital, Dushanbe, although they had been arrested in various places, including some quite far from the city. Regrettably, the same depth of information is not available from other areas of Tajikistan. Because of the continued risk of being taken hostage, foreigners face difficulties in travelling extensively outside Dushanbe, and the local population mostly cannot take the time needed to assert their rights because of their struggle to earn a living. Amnesty International does not exclude the possibility that people detained in other regional centres of Tajikistan might have similar complaints about their treatment in detention. Internationally guaranteed rights that safeguard against torture and ill-treatment are simply missing from the Tajik system of administering justice.

## **Denial of a fair hearing**

People charged with a criminal offence are entitled to be presumed innocent, until the case against them has been proved in open court through fair proceedings, according to Article 14 (1) and (2) of the ICCPR.

A presumption of guilt is the striking feature of the letters and public statements made by Tajik officials about people awaiting trial on capital charges. In case documents seen by Amnesty International, procurators have dismissed prisoners' complaints about their treatment in detention as an attempt to deflect attention from their "guilt". Before their trials have taken place prosecutors have described named defendants as "guilty beyond doubt" in television interviews broadcast throughout the country and in radio programs broadcast throughout Central Asia. Chapter Four gives examples of such cases.

Amnesty International is concerned that the right to a public hearing may have been illegally curtailed in certain political cases involving death sentences. Relatives and other members of the public were removed from the court room, for example, during the reading of the judgment in the case of Dovud and Sherali Nazriev in May 2001. The state-run television company then filmed the proceedings, but it is not known if the whole judgment was later broadcast, or made public in any other medium.

The case of Rahmatullo Tashripov and his 18 co-defendants was held completely behind closed doors after the day it opened in January 2002. It was transferred from the premises of the Supreme Court to Dushanbe Central Prison, on the grounds that the defendants posed a high risk of escape. Possibly the Tajik authorities had legitimate grounds to restrict access to the court: Article 14(1) of the ICCPR allows access for the press and public to be restricted when considerations of “morality, public order and state security in a democratic society” are at stake. However, since the authorities made no attempt to justify their decision to restrict access in the terms of Article 14, it is impossible to know. Virtually nothing is known about the case against these 19 people – alleged to be opponents of the President – and the conduct of proceedings against them. The secrecy of their trial compounds Amnesty International’s concerns about the death sentence passed in Rahmatullo Tashripov’s case, which is described in Chapter Four.

Given the lack of respect for internationally guaranteed fair trial rights inherent in the Tajik criminal justice system, the risk that innocent people will be sentenced to death is enormously high. A member of the President’s Clemency Commission conceded this in a conversation with an Amnesty International staff member in Dushanbe in June 2002. He went on to say, however, that “Even mistakes have their value”.

Amnesty International is concerned by the Tajik authorities’ failure to recognize that the imposition of the death penalty after an unfair trial is illegal and violates human rights treaty obligations which Tajikistan has undertaken to respect.

## **4. Relentless, cruel and arbitrary: the death penalty in practice**

Because of official secrecy laws, it is difficult to obtain current or detailed information about people sentenced to death in Tajikistan. Through relatives and media reports on certain prominent political cases, Amnesty International has been able to gather some contemporary information. Further material on older cases has been garnered from ministry archives and other sources.

Amnesty International knows of 133 people who have been arrested on capital charges, convicted and sentenced to death since 1998, but believes the true figure is higher. Fifteen of these people are known to have been executed and seven pardoned. Amnesty International does not yet know the fate of the others but, as their requests for clemency were turned down, it fears that in all probability they are now dead.

The picture that Amnesty International has assembled of the death penalty and the way it is applied in Tajikistan is relentlessly cruel and arbitrary. In all the cases on which it has information, the proceedings violated internationally guaranteed human rights, particularly the right to a fair trial and to freedom from torture.

Furthermore, the Tajik authorities do not always apply in practice their own Codes of Criminal Procedure and Criminal Execution, inadequate as these are. The following sample of cases illustrates situations which Amnesty International believes may be typical for people arrested on capital charges in Tajikistan.

### **Dilfuza Numonova**

Twenty-one-year-old Dilfuza Numonova was expecting a baby when she was arrested on 16 November 1999 on suspicion of having shot her lover, Kamil Kurbanov. She was charged with “aggravated murder” and “illegal possession of weapons” under Articles 104(2) and 195 of the Tajik Criminal Code. “Aggravated murder” can be punished by imprisonment or death. On 18 January 2000, Dushanbe City Court convicted Dilfuza Numonova and imposed a death sentence.

Pregnant women are exempt from the death penalty according to Article 59(2) of the Tajik Criminal Code. Accordingly, her pregnancy was legal ground for her to appeal against her death sentence. She claims that after her trial she was forced to have an abortion in prison in late January 2000. On 14 March 2000 the Tajik Supreme Court upheld the death sentence against her. She submitted a petition to President Rakhmonov for clemency.

Amnesty International launched a worldwide appeal on behalf of Dilfuza Numonova. In early April 2000 Ambassador Gérard Stoudman, the Director of the Office for Democratic Institutions and Human Rights of the OSCE, also wrote to President Rakhmonov asking for a review of the sentence passed on her.

[photo caption]

Dilfuza Numonova claims she was forced to have an abortion in prison in order to prevent her appealing against her death sentence on the grounds of being pregnant. Although her sentence was upheld by the Tajik Supreme Court, it was subsequently commuted to 15 years’ imprisonment. © Private

[end caption]

On 25 July 2000 the Presidium of the Tajik Supreme Court reviewed the judgment against Dilfuza Numonova and commuted her death sentence to 15 years' imprisonment. She is serving this sentence in a prison for women in Khujand, 200 kilometres north of Dushanbe. Dilfuza Numonova has no previous criminal convictions and has always denied killing Kamil Kurbanov. She claims that she "confessed" to the murder after being beaten by her investigators. Unofficial sources report that her health has deteriorated significantly in prison.

## **Abduali Kurbanov**

Abduali Kurbanov was tried in a language he did not understand and sentenced to death for "aggravated murder" by a court in Dushanbe on 1 March 2002.

The investigation and trial of Abduali Kurbanov – a Russian-speaker – was conducted in Tajik. Although the court appointed an interpreter for the hearing, he allegedly did not take part in it. Abduali Kurbanov has said that he did not understand the indictment against him, or other legal documents of the pre-trial phase. Because he could not read the court's judgment against him, he was also effectively deprived of the right of appeal. His mother, Sarafmo Kurbanova, has complained to the Human Rights Committee that he was sentenced to death without a fair trial.

Abduali Kurbanov is 42 years old and was brought up in Soviet Tajikistan. His education was conducted in Russian. As an adult he is said to have spent some years in the Southern Caucasus region and then in the Russian Federation. Although ethnically a Tajik, Abduali Kurbanov therefore has only a rudimentary grasp of the Tajik language.

He was arrested on 5 May 2001 when he went to a police precinct in Dushanbe to volunteer evidence as a witness to the murder of three people in the city the previous week. Abduali Kurbanov was himself taken into custody and held for six days without charge or contact with his relatives or a lawyer. On 12 May 2001 he was formally charged with "swindling" under Article 247(2) of the Criminal Code, convicted and sentenced to imprisonment. Amnesty International does not know the grounds for this charge against him.

Abduali Kurbanov alleges that immediately after his conviction, he was put under intense pressure to sign a statement confessing to the three murders he had witnessed. He claims that he was kicked, suffocated, beaten with truncheons and subjected to electric shocks by investigators from the Interior Ministry. His mother says that she saw evidence of this brutality on her visits to him in Dushanbe Central Investigative Isolation Prison between May and July: scars appeared on his neck and head, and some of his ribs were broken. On 30 July 2001, two fresh charges were added to the previous indictment against him: "aggravated murder" and "illegal harbouring of weapons" under Articles 104(2) and 195 of the Criminal Code.

The Kurbanov family appointed a lawyer to defend Abduali Kurbanov, but they claim that the conduct of the case was biased against him. Investigators excluded the defence lawyer, for example, from on-site examination of evidence at the scene of the murders and were present at all his meetings with his client. At the trial the court reportedly rejected all the petitions raised by the defence.

After Abduali Kurbanov had visited the police precinct and disappeared without trace on 5 May 2001, his mother sent a letter to the Deputy Procurator General on 7 May complaining he had been illegally detained. Ten days later he responded by transferring her complaint to the municipal procuracy office in Dushanbe's Central District. From there it was transferred to the Department of Internal Affairs of Central District – which was responsible

for Abduali Kurbanov's detention and the investigation of his case. She received no reply to her letter.

## **The Nazriev brothers**

In the course of preparing this report Amnesty International learned that the two Nazriev brothers were executed on 21 June 2002, while their case was still pending before the Human Rights Committee.<sup>30</sup>

The brothers Dovud and Sherali Nazriev were sentenced to death on 11 May 2001 by the Military Board of the Tajik Supreme Court in Dushanbe. On 10 January 2002 the Human Rights Committee took up their cases and asked the Tajik authorities for a six-month stay of execution – i.e. until 10 July 2002 – to allow the Committee time to consider their cases.

When Dovud Nazriev's wife went to visit him in Dushanbe Investigative Isolation Prison on 25 June 2002, however, she learned that he and his brother had been transferred five days previously to a prison in Qurgantoppa, where many prisoners are known to have been executed. She had received no warning of his transfer from the prison authorities, and her husband had no way of informing her, because the Criminal Execution Code does not make this provision for death row prisoners. Unofficial sources reported that an order for Dovud Nazriev's execution was signed on 26 June 2002.

The Human Rights Committee and the Ambassador of the OSCE Permanent Mission in Dushanbe contacted the Tajik authorities for immediate clarification of the two brothers' situation. On 25 July the European Union (EU) reiterated the OSCE's appeal to the Tajik authorities not to execute Dovud and Sherali Nazriev, noting that the case remained under consideration by the Human Rights Committee. The EU statement said that the Central and Eastern European countries associated with the EU, as well as Cyprus, Malta and Turkey, aligned themselves with it.

To date the Tajik authorities have failed to give a coherent account of what has taken place. In early July, officials within the Presidential Administration reportedly denied having received any communication from the Human Rights Committee requesting a stay on the brothers' execution. A representative of the Tajik Foreign Ministry, on the other hand, is said to have confirmed to the Committee that he had received its communication but to have added that he was "under no obligation to transmit it further". Some days later government officials reportedly told the OSCE that they had "no information at their disposal" about the Nazrievs' fate, even though these two men were in the custody of the Tajik state. In late July officials suggested to the OSCE that the two brothers had been executed, but only after the six months' stay had expired on 10 July 2002. The Tajik authorities have produced no documentary evidence of this version of events.

Throughout this time the families of Dovud and Sherali Nazriev received no information about them whatsoever, since they learned by chance on 25 June of their transfer to Qurgantoppa.

The Nazriev brothers were associated with a highly political case in Dushanbe. They were arrested on suspicion of attempting to assassinate the Mayor of Dushanbe, Makhmadsaid Ubaydullayev, on 16 February 2000, after a bomb exploded in the car that he was travelling in with the Deputy Security Minister. The Deputy Security Minister, who was allegedly not the target of the attack, was killed. Makhmadsaid Ubaydullayev suffered minor injuries. The Nazrievs were not charged with the murder of the Deputy Security Minister.

Both brothers consistently denied any involvement with the incident. On 16 February 2000, the day it took place, Dovud Nazriev said that he and his two children were at home in bed suffering from flu. His doctor, who had earlier provided evidence to this effect, claims that he withdrew it after he was put under pressure by investigators of the Interior Ministry's Sixth Directorate.

There are serious concerns about the fairness of the Nazrievs' trial. Sherali Nazriev is reported to have been granted access to a defence lawyer only one week after the trial started. Dovud Nazriev was not allowed to make a final statement. Dovud Nazriev's wife has told Amnesty International that when she visited the brothers after the trial, her husband had cuts and bruises on his arm and chest, reportedly the result of beatings he had suffered before the trial. Sherali Nazriev reportedly had bruises on his legs and cuts on his back. The public and the Nazrievs' family were excluded from the reading of the sentence, but the state television company was allowed in and later broadcast extracts on TV.

Immediately after their arrest, the Nazrievs had been detained by militia in Temporary Detention Premises (PVS) for two months without the approval of a procurator, in contravention of the Tajik Code of Criminal Procedure. During this time Dovud Nazriev has said he was beaten by masked men. His wife was given permission to see him for the first time only four months after he had been arrested.

Dovud and Sherali Nazriev fought in the opposition UTO forces during the civil war of 1992 to 1997. They were based in the mountainous east of Tajikistan and returned to Dushanbe only in 1998, when Dovud began work as a bodyguard to the Minister of Oil and Gas, a member of the opposition who received a ministerial post under the power-sharing agreement that ended the civil war.

### **Gaybullojon Saidov and Andrey Rebrikov**

On 4 April 2001 Gaybullojon Saidov and his co-defendant Andrey Rebrikov were executed less than three months after the Human Rights Committee had requested a six-month stay on their executions. Like the Nazrievs, both men had been arrested in connection with a high profile case. They were accused of having supported the opposition figure Makhmud Khudoyberdiyev in an attempt to seize power in northern Tajikistan in November 1998. The Military Board of the Tajik Supreme Court sentenced them to death on 24 December 1999. Like Sherali Nazriev, Gaybullojon Saidov had limited access to defence counsel and claimed he was made to confess under torture. He is reported to have been beaten so badly that he could not stand up because of the swelling in his feet.

### **Saidamir Karimov**

Saidamir Karimov was sentenced to death in Dushanbe on 27 March 2002 and had his appeal rejected on 29 May 2002. His father, Makhmadnain Karimov, immediately petitioned President Rakhmonov to grant him clemency.

Saidamir Karimov was one of seven people charged with murdering the former deputy Interior Minister, Habib Sanginov, on 11 April 2001. Six were convicted solely on the testimony of one man, Kiemmidin Mirzoyev, who later retracted his evidence in court. According to an international observer who was monitoring the trial, Kiemmidin Mirzoyev announced at the hearing on the afternoon of 26 February 2002: "I say officially that I slandered every one of the accused, because I was forced to". Kiemmidin Mirzoyev claimed that he had been raped with a truncheon and other objects, and had had his toes and fingers electrocuted. The court discounted Kiemmidin Mirzoyev's claim, reportedly on the grounds

that it had not been submitted on paper through the procuracy, the body that supervises prison conditions.

Saidamir Karimov consistently denied any involvement in the murder and was supported by 13 witnesses from his village in Pyanj, who said he had been at home all the time from 7 to 19 April 2001, helping his mother water her land. On 20 April he had left for a job in Moscow where he was arrested by Russian Federation police and extradited to Tajikistan on 14 May 2001.

Three of his co-defendants were relatives from the same district on the Afghan border: his cousin, Said Rizvonzoda, and the brothers Nazar and Abdulmajid Davlatov. All of them denied the charges against them and were sentenced to death.

A total of seven people from Pyanj were rounded up on 20 April 2001 in connection with the murder, according to Saidamir Karimov's father, Makhmadnain Karimov. He himself was put in Temporary Detention Premises (PVS) for 27 days in Dushanbe and says he was beaten several times by investigators. When he asked for a letter to explain his absence to his employers he was refused. He believes that no record of his detention exists. Two of his other sons were taken off a bus, detained, and also allegedly beaten. When Saidamir Karimov was brought from Moscow, he was told that his mother would be detained too if he did not agree to sign a prepared statement. He signed it.

Saidamir Karimov and his relatives claimed in court that they had been tortured in detention, with beatings and electric shocks to the anus, genitals, fingers, nose and ears. One of his relatives, Said Rizvonzoda, wrote three complaints to the procuracy from his cell about his treatment, but received no response. The court did not suspend proceedings to allow for these allegations to be investigated.

Saidamir Karimov and his relatives were accused of carrying out the murder, on the instructions of Kiemmidin Mirzoyev, with weapons supplied by a former UTO commander working in the government under the power-sharing agreement that ended the civil war. The two people allegedly behind the murder plot received terms of imprisonment as demanded by the prosecution, while Saidamir Karimov and the three others were sentenced to death. In a televised speech days before the trial, the chief State Prosecutor described each of the accused as "guilty beyond doubt", violating the presumption of innocence guaranteed to all those facing a criminal charge. He also accused the murder victim himself of drug-dealing, provoking protests from his family.

## **Bakhriddin Sangov**

Bakhriddin Sangov has been detained in the Dushanbe Investigative Isolation Prison since July 2001. Throughout his detention alarming reports have reached the outside world about his treatment.

He was arrested from his bed and taken for questioning at a police station. He was later transferred to the prison, where he remained for nearly two months before being formally charged on 16 September 2001 and given access to a defence lawyer for the first time.

In the initial days of his detention in the Railway District police precinct Bakhriddin Sangov claims that he was savagely beaten by two officers whom he has identified by name. He alleges that the same men then used the wires of a military field telephone to apply electric shocks to his body, traces of which were still visible on his wrists more than 10 weeks later, according to his sister. While he lay semi-conscious on the floor, Bakhriddin Sangov claims

that the two police officers removed his trousers and discussed raping him. One then inserted a truncheon into his anus. Bakhriddin Sangov says he has been in pain ever since.

In prison he has been under investigation by the Interior Ministry's Sixth Directorate. His alleged torture is said to have continued at the hands of an investigator who is identifiable by name and has been cited in similar cases of brutality reported to Amnesty International. Amongst other things, Bakhriddin Sangov claims that 30 electric shocks were administered under his finger nails until he signed the charge sheet.

Bakhriddin Sangov now awaits trial on charges that carry the death penalty as a possible sentence: "banditry" and "avenging a public figure with terrorist acts". He is accused of causing a series of politically motivated explosions in public buildings throughout the city in 1999, including Dushanbe's Ballet and Opera House, and in its main shopping centre. According to his relatives, he left the country for Moscow in 1992 when civil war broke out and returned only in July 1999 when his father died in Dushanbe, and a peace process had been established in the country.

Amnesty International knows that from September 2001 onwards, relatives and international observers wrote at least five complaints to the authorities about Bakhriddin Sangov's alleged torture. They were addressed to the Interior Ministry, who investigated his case, and to the procuracy, which is responsible for making sure that laws are observed in prison and elsewhere.

Amnesty International has a copy of the reply the Dushanbe Procurator wrote on 5 October – before Bakhriddin Sangov had appeared before any court to answer the charges against him. It says: "B. N. Sangov completely confessed his guilt. His guilt is entirely proved by the materials of the criminal case". It continues: "No illegal methods were used when he was in detention, and in the view of the officers cited [in the complaint], Mr Sangov is making these allegations as a way of evading criminal responsibility". The other replies were briefer and also concluded that the complaints were ungrounded.

On 20 June 2002 the Tajik Interior Minister was reported as saying at an international press conference in Dushanbe that "torture is rare" in Tajikistan, and punished hard wherever it is found to have occurred. A highly placed Tajik defence lawyer at the conference publicly disagreed and urged the government to remove detention facilities from the control of the Interior Ministry and the procuracy, the agencies that are responsible for investigating crimes. International news agencies reported that responsibility for the prison service was transferred from the Interior Ministry to the Ministry of Justice in July 2002. In principle Amnesty International welcomes the transfer of places of detention from the control of agencies responsible for investigating crimes.

## **Rahmatullo Tashripov**

Almost nothing is known about the conduct of proceedings in the case of Rahmatullo Tashripov, who was sentenced to death in Dushanbe on 12 June 2002. His trial was held behind closed doors, not in a courtroom, but in the Investigative Isolation Prison where he was detained before trial. Amnesty International is seeking further information about all aspects of his case.

Two avenues are open to Rahmatullo Tashripov now. As his case was heard by a chamber of the Tajik Supreme Court, he has the right to appeal against his sentence before the Supreme Court presidium. Should this prove unsuccessful, he may petition President Rakhmonov to grant clemency and commute his death sentence to imprisonment. He should learn the outcome of any clemency petition within four months of submitting it.

There is also a third possibility. The State Prosecutor – known as the Procurator General – might contest the severity of the sentence that has been passed on him and call for it to be reduced to imprisonment. In 2001 there were reportedly three such cases and, in each, the procuracy succeeded in having death sentences passed by the Supreme Court reduced to terms of imprisonment. This option, however, is outside the control of Rahmatullo Tashripov and his lawyer. It can be exercised solely at the discretion of the procuracy.

[photo caption]

Street scene near the Tajik Supreme Court in Dushanbe where the case against Rahmatullo Tashripov opened. © AI

[end caption]

Paradoxically, in view of the secrecy surrounding him, Rahmatullo Tashripov is part of a political case of national significance in Tajikistan. It involves no fewer than 19 prominent co-defendants and includes the former head of Soghd region in northern Tajikistan and member of the national parliament, Abdujalil Homidov. Rahmatullo Tashripov is the only one who was sentenced to death.

The trial opened in the building of the Tajik Supreme Court on 31 January 2002, but was transferred on 7 February to the prison premises – in the words of the trial judge “because of the risk that the defendants would escape”. On 12 February 2002 the Head of the OSCE Mission in Tajikistan wrote to the Chair of the Supreme Court, pointing out that even in prison surroundings, court sessions can be held in public<sup>31</sup> and asking for the opportunity to send observers. His request was not granted.

The lead figures in the case were found guilty of accumulating weapons illegally and planning to overthrow President Rakhmonov’s government, according to a long report in the crime program “Iztirob” (“Anxiety”) that was broadcast on the state-run TV channel on 17 June 2002. The part that Rahmatullo Tashripov was accused of playing in the alleged plot remains unclear. “Iztirob” said in passing only that he had been convicted of “brutal acts”.

## 5. ‘Torn between hope and despair’: the plight of relatives

### International standards

International standards set down provisions that are vitally important to the relatives of prisoners on death row. Prisoners’ relatives are entitled to certain basic information. If the prisoner falls ill, or is transferred somewhere else, the prison authorities should immediately notify them, according to Article 44(1) of the Standard Minimum Rules for the Treatment of Prisoners.<sup>32</sup> Prisoners themselves should also have the right to notify their families, under Article 44(3).

Between sentencing and execution, relatives are entitled to visit the prisoner on a regular basis, to bring them personal items, and to exchange letters. These provisions are set down in all the main international standards concerning the conditions of prisoners.<sup>33</sup>

Article 43 of the Standard Minimum Rules for the Treatment of Prisoners makes specific provision for prisoners’ belongings. When prisoners begin their sentence, these are to be listed in an inventory, counter-signed by the prisoner, and stored safely until being returned on the prisoner’s release. In the event of loss or damage to their property, prisoners are to be compensated by the prison. Should the prisoner die in imprisonment, relatives are entitled to receive the prisoner’s personal belongings, intact.

Critical to both the prisoner and relatives is the provision that the death sentence “shall not be carried out pending any appeal or other recourse procedure or proceeding relating to pardon or commutation of the sentence”. This is set down in Article 8 of the Safeguards Guaranteeing the Protection of the Rights of those Facing the Death Penalty.<sup>34</sup>

In practice, equally important is Resolution 1996/15 of the UN Economic and Social Council,<sup>35</sup> which calls for “officials involved in decisions to carry out an execution [to be] fully informed of the status of appeals or petitions for clemency of the prisoner in question”. Prisoners’ complaints to international treaty bodies like the Human Rights Committee are to be included among these “appeals”.

### Tajik law and practice

In two respects Tajik law stepped closer to international standards in 2001 when the new Criminal Execution Code was adopted. Article 216 states that “execution of a sentence shall be suspended” until the President of Tajikistan has made a decision on the prisoner’s petition for clemency. Article 221 states that relatives have a right to be notified of the prisoner’s execution. Under the previous legislation, there was no guarantee that execution would be stayed until the outcome of the clemency petition was known, and when it took place, the family had no right to be notified of the death.

The 2001 Criminal Execution Code does not say how soon after execution the prisoners’ relatives should receive notification, but only that the information should be sent to them at the same time that it is sent to the local municipal records office (ZAGS). It is the responsibility of the court that confirmed the death sentence to send it. In practice, judging from case material available to Amnesty International, the notification process often involves relatives in an excruciating wait until the letter arrives, and a desperate hunt for information from other sources until it does. In the two cases described below, Davlatbi Nazrieva and Mairam Soatova waited for word for nearly two months after they first discovered they had

lost contact with their loved one, during which time they had no way of knowing if the prisoner was dead or alive.

Article 215 of the Criminal Execution Code appears to give relatives of prisoners on death row the main rights recommended in international standards for the period leading up to execution. Relatives can, for example, receive unlimited quantities of letters from the prisoner on death row; send unlimited quantities of mail, parcels and packages; and apply to have monthly meetings lasting for up to two hours, before the prisoner is taken away for execution. Amnesty International understands that these monthly visits are normally granted.

However, two other features of Tajik penal law significantly undercut the provisions of Article 215. In practice, there is no possibility of relatives being with their loved one to say goodbye immediately before execution – or even of their knowing that execution is imminent. One problem arises from the clemency procedure. According to Article 217 of the Criminal Execution Code, the President of Tajikistan decides on whether or not to grant clemency within four months of receiving the prisoner's petition. His decision is then transmitted to the director of the prison and the court that confirmed the death sentence. No copy is given to the prisoner or to the prisoner's family or lawyer, but preparations start to be made for the prisoner's transfer to the site of execution. Contrary to international standards, prison authorities in Tajikistan are under no requirement to inform relatives that they have transferred a prisoner, and prisoners have neither the right nor the possibility of doing this themselves.

Because Tajikistan's clemency procedure is so opaque, relatives never know if they are seeing the prisoner for the last time. Their first indication that the petition has failed is when they come to the prison for a regular visit and find the prisoner gone. There is a high probability that by the time they make this discovery, the prisoner is already dead. The clemency procedure is the last hope for prisoners and their relatives, but despite its importance to them they have little possibility of influencing it. Because neither the relatives nor the prisoner are entitled to have a copy of the clemency decision, they do not know the reasons why clemency was refused. Nor do they know what kind of material was given to the President and his Clemency Commission – by prison staff, justice officials and other character witnesses – to inform the final decision. Tajik law contains no provision for prisoners or their lawyers to challenge a clemency decision once it has been taken, or for them to request a last-minute reprieve from execution.

Article 221 of the Tajik Criminal Execution Code says explicitly that "The body [of an executed prisoner] shall not be given out for burial, and the burial place shall not be disclosed". There are no published directives about what should be done with the prisoner's personal belongings once he or she has been executed, but in Amnesty International's experience they have never been given to the family. It is not known if they are destroyed or possibly taken by prison staff. It is hard to understand why the prison does not make available to relatives the prisoner's belongings and body, in the way that they would if death had been from natural causes. Paragraph 9 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty states that "Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering". In Tajikistan the maximum possible suffering would seem to be inflicted on the relatives of the people condemned to death. Amnesty International believes that they are subjected to a form of mental cruelty that may amount to cruel, inhuman and degrading treatment prohibited under international law.

The most alarming aspect of the death penalty for the relatives of prisoners on death row in Tajikistan is that they cannot be sure that execution will be stayed until all pending procedures have been completed. The case of Abdulkhafiz Abdullayev, the former Prime Minister's brother, who led the national Revival Bloc in the northern city of Khujand, is a vivid example of a summary execution. In May 1999 his family received official notification

that he had been executed five months earlier – something that they had already been led to suspect through diplomatic sources. A copy of the decision on clemency, however, showed that when he was shot, his petition for clemency was still under consideration. It was rejected only in December 1998, one month after he had been executed. Amnesty International has not learned of similar instances since 1999, but information about individual death penalty cases in Tajikistan is so patchy it is not possible to conclude that they have not taken place.

The Human Rights Committee database shows that, as of July 2002, it was considering six individual complaints from Tajikistan. Four prisoners on death row are known to have been executed while their complaints to the Human Rights Committee were still pending, most recently the brothers Dovud and Sherali Nazriev on 21 June 2002. In 2001 this was the fate of Gaybullojon Saidov and his co-defendant Andrey Rebrikov. The government of Tajikistan recognized the competence of the Human Rights Committee to consider complaints from individuals under its jurisdiction from 1999 onwards, when it became a party to the (first) Optional Protocol to the International Covenant on Civil and Political Rights. It is not clear why it has since not complied with the Committee's requests.

One possible explanation could be malfunctions within the government. The officials most closely concerned with carrying out executions – the Clemency Commission, court and prison administration – may not have been aware of the prisoners' outstanding complaints before the Human Rights Committee or understood their significance. The confused reaction of the Tajik authorities to concerns about the Nazriev brothers expressed by the UN, the OSCE and the EU in July 2002 tends to support this theory. Assuming that the Tajik authorities have not deliberately chosen to reject the UN's authority in these cases, it would appear that they lack a clear and effective mechanism for responding to its requests. One should be set up as a matter of priority.

### **Davlatbi Nazrieva, the wife of Dovud Nazriev**

Davlatbi Nazrieva was seven months' pregnant with their third child when her husband, Dovud, was sentenced to death in May 2001. The child is now more than one year old and will never see his father. In the intervening months while her husband was in prison, Davlatbi Nazrieva worked full-time in a bakery several miles from home in order to support the family. Each month she set aside money to buy her husband a gift of flour or oil to take on her two-hour visit with him in Dushanbe Investigative Isolation Prison.

[photo caption]

Davlatbi Nazrieva, the wife of Dovud Nazriev. The authorities did not notify her that her husband had been shot until several weeks after the execution had taken place. © AI  
[end caption]

Davlatbi Nazrieva, who is 28 years old, told an Amnesty International researcher that she had been torn between hope and despair for her husband since the start of 2002. Her husband's appeal had been rejected in November 2001 but he had submitted a petition to President Rakhmonov for clemency in January 2002 and they expected a decision by June. Davlatbi Nazrieva herself sent details of her husband's case to the Human Rights Committee, which on 10 January 2002 had requested the Tajik authorities to place a six-month stay on the execution of Dovud Nazriev and his brother Sherali Nazriev, while it investigated the complaint further.

During a visit on 7 May, Dovud Nazriev gave his wife a home-made photograph frame that he had stitched with coloured threads around a small picture of himself with his family. Davlatbi Nazrieva showed the frame to the Amnesty International researcher and said that Dovud had promised her another one on her next visit. But that was the last gift she ever

received from her husband. When she went to the prison on 25 June, she was told that Dovud Nazriev and his brother had been transferred to a prison in Qurgantoppa, south of Dushanbe, five days previously. The prison authorities had given her no notice of the transfer and she had not been able to say goodbye to her husband.

Qurgantoppa is the site of many known executions. Although she understood that a stay was supposed to have been placed on her husband's execution until at least 10 July 2002, following a request from the Human Rights Committee, Davlatbi Nazrieva was shocked to learn through unofficial channels that an order for her husband's execution had been signed on 26 June.

Over the next five weeks, the cases of Dovud Nazriev and his brother Sherali Nazriev were taken up by international bodies such as the UN, the OSCE and the EU. All of them expressed concern that Tajikistan may have executed the Nazriev brothers while their cases were pending before the Human Rights Committee.

Representatives of the Presidential Administration and the Tajik Foreign Ministry responded to these bodies, albeit in conflicting ways. The Presidential Administration claimed in early July that it "had no information at its disposal" about the Nazriev brothers: two prisoners in the custody of the Tajik state. Neither the government nor the prison authorities sent any word to Davlatbi Nazrieva herself. Five weeks after she had failed to find him in Dushanbe prison, she did not know where her husband was or whether he was dead or alive.

In the first week of August the Tajik Supreme Court officially notified her that Dovud Nazriev had been executed on 21 June 2002, the day after he had left Dushanbe prison. Amnesty International believes that Sherali Nazriev is also dead.

The trial of Dovud and Sherali Nazriev fell far below the standards required by the ICCPR, regarded internationally as essential to the conduct of any capital trial.<sup>36</sup> For four months after their arrest, before they were formally charged, they were held incommunicado, without access to lawyers, doctors or relatives. There was no record of them throughout this time either in police detention or in prison.<sup>37</sup>

When Davlatbi Nazrieva finally saw her husband in Dushanbe Investigative Isolation Prison, he showed her the signs that he had been brutally treated in order to make him sign the confession on the charge sheet. She said he had cuts on his chest and deep bruising on his back and left leg. The investigators in charge of his case were reportedly from the Interior Ministry's Sixth Directorate.

Davlatbi Nazrieva is convinced that her husband was innocent of attempting to assassinate the Mayor of Dushanbe, because on the day of the attempt – 16 February 2000 – she says she was nursing him and her two children at home with influenza.

### **Mairam Soatova, the mother of Husein Golimov**

Husein Golimov was one of the 11 children of Mairam Soatova. During the civil war, she reports, he served as an ordinary soldier in the pro-government forces from 1992 to 1993. He was arrested in circumstances that are not clear to Amnesty International and on 24 October 2000 was sentenced to death by Dushanbe City Court on a number of charges, including "aggravated murder".

Mairam Soatova visited him regularly in Dushanbe Investigative Isolation Prison, and brought him expensive medicine in December 2001 when the prison authorities told her that he was too ill to see her. On 21 January 2002 she received her next permit from the Interior

Ministry to visit him, but when she reached the prison, officials told her he had been transferred to Qurgantoppa. She travelled to the prison in Qurgantoppa but was told by the prison authorities that her son was not there. On her return to Dushanbe she approached each of the institutions who should by law have received notification if he had been executed: Dushanbe City Court and the Municipal Records Offices in the Central and Oktyabrsky Districts of Dushanbe. She was told they had no news of his death.

[photo caption]

Outside Dushanbe City Court, where Husein Golimov was sentenced to death. © AI

[end caption]

The OSCE mission based in Dushanbe also made inquiries about Husein Golimov's fate. When they approached officials from the City Court, they were promptly told that he had been executed on 15 November 2001. When the OSCE mission asked for this news to be transmitted in writing to his mother, Mairam Soatova, the court replied that this information could not be given to relatives, because it was an "official secret". In the face of OSCE protests, the court agreed to inform Mairam Soatova verbally that her son had been executed on 15 November 2001.

The Ministry of Justice later justified the position that Dushanbe City Court had taken. Amnesty International has a copy of a letter it wrote concerning Husein Golimov's case, explaining that until 31 December 2001 the old, Soviet, Criminal Execution Code applied which did not foresee any access to information for prisoners' families. As Husein Golimov had been shot on 15 November 2001, news of his execution was covered by this information black-out.

In December 2001 Mairam Soatova had handed over expensive medicines for her son when he was already dead. Staff in the Dushanbe Investigative Isolation Prison were presumably fully aware when they accepted the medicine that he had been transferred from their charge several weeks earlier, but they did not tell her. Husein Golimov was himself a widower, and his mother is now raising his five children.

## 6. Recommendations for action

### Recommendations to the government of Tajikistan

1. Place an immediate stay on all executions and impose a moratorium on any further death sentences.
2. Commute the sentences of all prisoners currently on death row to terms of imprisonment.
3. Article 18 of the Tajik Constitution states that “No one may be deprived of life except by a court verdict for an exceptionally serious crime”. This article should be amended, to delete the provision of the death penalty in any circumstances.
4. Launch an immediate review of the 1998 Criminal Code of the Republic of Tajikistan, with a view to removing death as a possible punishment for any crime. As part of this review, publish objective sentencing criteria which courts should use in the meantime in deciding whether or not to impose a death sentence.
5. Publish in a readily accessible source the number of death sentences passed and carried out to date since the current Criminal Code came into force in 1998, giving full information on the names and cases of the people involved. Until the death penalty is completely abolished, make public all information about its use on a yearly basis, in line with Paragraph 17.8 of the 1990 Copenhagen document with which Tajikistan is committed to comply as a member of the OSCE.
6. Ensure that the relatives of each person executed since 1998 are informed without further delay of exactly where and when the execution took place. Enable them to collect any remaining personal effects and the prisoner’s remains. Arrange for reburial at home, if requested.
7. 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 plans to transfer him or her. They should be fully informed about the progress of the prisoner’s appeal and petition for clemency, reports presented to the Clemency Commission (Commission on Questions of Clemency and Citizenship) and the reasoning behind any decision to support or reject the petition. In the event of an unsuccessful petition, relatives have the right to know when the execution will take place, to say goodbye in private surroundings and to know when the execution has been carried out. They should be allowed to collect the prisoner’s personal effects and body, and to bury the body. Relatives have the right to regular and frequent private meetings with the prisoner at all stages after the death sentence has been passed.
8. 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 whom it has recommended for pardon since 1998, giving full information on the names and cases of the people involved.
9. Reconstitute the Clemency Commission with an exclusively civilian membership. The Commission should work according to transparent criteria, and should engage with the media and Tajik 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.

10. Publish all information relevant to the application of the death penalty which is currently classified in the List of Subjects Officially Deemed to be State Secrets.
11. Mandate the inter-departmental Human Rights Commission to prepare a strategy and a timetable for Tajikistan's ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which obliges states parties to ensure that no one within their jurisdiction is executed and to take all necessary measures to abolish the death penalty.
12. Provide a comprehensive report to the UN Secretary-General and relevant UN bodies by December 2002 on the use of the death penalty in Tajikistan and the steps taken to fulfil the provisions of UN Resolution 2002/77 on the question of the death penalty.
13. Establish a commission of authoritative independent experts to examine all allegations of torture made by prisoners charged with a capital offence. Ensure that the mandate of such a commission includes the duty to investigate allegations made about members of the Sixth Directorate of the Interior Ministry, and 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.
14. 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.
15. 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 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – as well as non-treaty standards, such as the Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention. A 12-point program against torture, drawn up by Amnesty International and synthesizing these principles, is attached (see Appendix 1).
16. Organize training based on the Standard Minimum Rules for the Treatment of Prisoners for all Ministry of Justice staff engaged in the administration of the penal justice system, and for procurators responsible for supervising legality in places of detention.  

All law enforcement officials should be versed in their obligations under the international human rights treaties that Tajikistan has ratified. A comprehensive training program should be developed and implemented to ensure that this is so.
17. Ensure amendment without delay of the Code of Criminal Procedure to bring it in line with international human rights standards and Tajikistan's obligations under the international treaties to which it is party, in particular Articles 7, 9 and 14 of the International Covenant on Civil and Political Rights. These obligations include:
  - judicial scrutiny of arrest and continuing detention;
  - the right to trial within a reasonable time or release;
  - the presumption of innocence;
  - access to a lawyer from the moment of detention;
  - public trial before an independent and impartial court;
  - the right of prisoners not to incriminate themselves or testify against themselves;
  - adequate time and facilities to prepare a defence;
  - reversal of the burden of proof in cases where detaining authorities are alleged to have brutalized a prisoner.
18. Ensure that all people, including those deprived of their liberty, have direct access to the Human Rights Committee and may communicate with the Committee

confidentially. To this end, repeal Article 19(3) of the 2001 Criminal Execution Code, which restricts this right for certain categories of prisoner.

Introduce a clear and reliable procedure whereby requests for a stay of execution made by the (UN) Human Rights Committee are immediately conveyed to all law enforcement bodies, and to the personnel immediately involved in executions. Ensure that such requests are complied with.

### **Recommendation to the Russian Federation authorities**

1. The Russian authorities should immediately revise their extradition practices towards Tajikistan, 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.

## **Appendix 1.**

### **Amnesty International's 12-Point Program for the Prevention of Torture by Agents of the State**

Torture is a fundamental violation of human rights, condemned by the international community as an offence to human dignity and prohibited in all circumstances under international law.

Yet torture persists, daily and across the globe. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

Amnesty International calls on all governments to implement the following 12-Point Program for the Prevention of Torture by Agents of the State. It invites concerned individuals and organizations to ensure that they do so. Amnesty International believes that the implementation of these measures is a positive indication of a government's commitment to end torture and to work for its eradication worldwide.

#### **1. Condemn torture**

The highest authorities of every country should demonstrate their total opposition to torture. They should condemn torture unreservedly whenever it occurs. They should make clear to all members of the police, military and other security forces that torture will never be tolerated.

#### **2. Ensure access to prisoners**

Torture often takes place while prisoners are held incommunicado – unable to contact people outside who could help them or find out what is happening to them. The practice of incommunicado detention should be ended. Governments should ensure that all prisoners are brought before an independent judicial authority without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter.

#### **3. No secret detention**

In some countries torture takes place in secret locations, often after the victims are made to “disappear”. Governments should ensure that prisoners are held only in officially recognized places of detention and that accurate information about their arrest and whereabouts is made available immediately to relatives, lawyers and the courts. Effective judicial remedies should be available to enable relatives and lawyers to find out immediately where a prisoner is held and under what authority and to ensure the prisoner's safety.

#### **4. Provide safeguards during detention and interrogation**

All prisoners should be immediately informed of their rights. These include the right to lodge complaints about their treatment and to have a judge rule without delay on the lawfulness of their detention. Judges should investigate any evidence of torture and order release if the detention is unlawful. A lawyer should be present during interrogations. Governments should ensure that conditions of detention conform to international standards for the treatment of

prisoners and take into account the needs of members of particularly vulnerable groups. The authorities responsible for detention should be separate from those in charge of interrogation. There should be regular, independent, unannounced and unrestricted visits of inspection to all places of detention.

## **5. Prohibit torture in law**

Governments should adopt laws for the prohibition and prevention of torture incorporating the main elements of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and other relevant international standards. All judicial and administrative corporal punishments should be abolished. The prohibition of torture and the essential safeguards for its prevention must not be suspended under any circumstances, including states of war or other public emergency.

## **6. Investigate**

All complaints and reports of torture should be promptly, impartially and effectively investigated by a body independent of the alleged perpetrators. The methods and findings of such investigations should be made public. Officials suspected of committing torture should be suspended from active duty during the investigation. Complainants, witnesses and others at risk should be protected from intimidation and reprisals.

## **7. Prosecute**

Those responsible for torture must be brought to justice. This principle should apply wherever alleged torturers happen to be, whatever their nationality or position, regardless of where the crime was committed and the nationality of the victims, and no matter how much time has elapsed since the commission of the crime. Governments must exercise universal jurisdiction over alleged torturers or extradite them, and cooperate with each other in such criminal proceedings. Trials must be fair. An order from a superior officer must never be accepted as a justification for torture.

## **8. No use of statements extracted under torture**

Governments should ensure that statements and other evidence obtained through torture may not be invoked in any proceedings, except against a person accused of torture.

## **9. Provide effective training**

It should be made clear during the training of all officials involved in the custody, interrogation or medical care of prisoners that torture is a criminal act. Officials should be instructed that they have the right and duty to refuse to obey any order to torture.

## **10. Provide reparation**

Victims of torture and their dependants should be entitled to obtain prompt reparation from the state including restitution, fair and adequate financial compensation and appropriate medical care and rehabilitation.

## **11. Ratify international treaties**

All governments should ratify without reservations international treaties containing safeguards against torture, including the UN Convention against Torture with declarations providing for individual and inter-state complaints. Governments should comply with the recommendations of international bodies and experts on the prevention of torture.

## **12. Exercise international responsibility**

Governments should use all available channels to intercede with the governments of countries where torture is reported. They should ensure that transfers of training and equipment for military, security or police use do not facilitate torture. Governments must not forcibly return a person to a country where he or she risks being tortured.

This 12-Point Program was adopted by Amnesty International in October 2000 as a program of measures to prevent the torture and ill-treatment of people who are in governmental custody or otherwise in the hands of agents of the state. Amnesty International holds governments to their international obligations to prevent and punish torture, whether committed by agents of the state or by other individuals. Amnesty International also opposes torture by armed political groups.

## Endnotes

- 1 The peace agreement was called “The General Agreement on the Establishment of Peace and National Accord in Tajikistan”, signed on 27 June 1997. It was brokered by the UN between the Government of the Republic of Tajikistan and the main opposition bloc, the United Tajik Opposition (UTO).
- 2 The National Revival Bloc – an opposition group which had tried to forge a third force in Tajik politics since its formation in 1996 – was excluded from the commission, but was involved in the power-sharing agreement.
- 3 Article 7 of the Commission on National Reconciliation’s Charter sets down the terms of the amnesty. Convictions of people who took part in the conflict were to be annulled and erased from the record. Criminal cases under way against people who took part in the conflict were to be discontinued, and no charges were to be brought in future against such people.  
The amnesty worked simply for people who were on the side of government forces, according to eye-witnesses of the process. Lists of their names, prepared by district military committees and field commanders, were submitted to the National Reconciliation Commission for amnesty as a group. The diverse members of the opposition experienced more problems. Lists of their names had to be compiled and submitted for amnesty by the leaders of the main opposition grouping, the UTO, headquartered in the “Vakhsh” Hotel in Dushanbe.
- 4 Commission on Questions of Clemency and Citizenship.
- 5 AI Index: EUR 60/004/1993.
- 6 These included efforts by the UN which set up an Observer Mission (UNMOT) in Dushanbe; a base of the UN High Commissioner for Refugees, set up to handle the problems of displaced people and refugees; the Conference for Security and Co-operation in Europe which established a Permanent Mission in the capital in December 1993; a Collective Peace-Keeping Force of the Commonwealth of Independent States, officially designated in October that year; and the Conference of the Islamic Organisation, that offered to mediate between Tajikistan and Afghanistan in the wake of a cross-border attack.
- 7 It appeared that the government feared the conflict in Afghanistan might spill over onto Tajik territory. The UTO forces reportedly feared that they might lose useful military bases in the north of Afghanistan.
- 8 These have included an article by a former Supreme Court judge in Business and Politics on 2 May 2002 called “Cruelty Cannot Root Out Evil”, and an interview with the League of Women Lawyers on Iranian Radio from Mashhad and in the Asia-Plus News Agency from Dushanbe on 25 August 2002.
- 9 In 1993 the UN Special Rapporteur on extrajudicial, summary or arbitrary executions wrote: “The UN General Assembly has referred to Article 6 as forming part of the ‘minimum standard of legal safeguard’ for the protection of the right to life in a number of resolutions concerning summary or arbitrary executions, most recently in paragraph 12 of Resolution 45/162 of 18 December 1990 and the Special Rapporteur considers that Article 6 has become a rule of customary international law” (see footnote: UN Doc. E.CN.4/1993/46, para. 678).
- 10 Paragraph 17.8 of the 1990 Copenhagen Document.
- 11 Article 18 states: “No one may be subjected to torture or cruel and inhuman treatment. Forced medical and scientific experiments on people are prohibited”.
- 12 Article 19(3).
- 13 Article 7 of the ICCPR prohibits torture and Article 14(3) says that suspects cannot be forced to testify against themselves. The Convention Against Torture says that the use

of torture can never be justified (Article 2) and that evidence elicited by its means is inadmissible in court, except in the trial of someone accused of torture (Article 15).

14 Article 10 of the Constitution of Tajikistan states in paragraph 3 that: “International legal acts recognised by Tajikistan constitute an integral part of the republic’s legal system. In cases of discrepancy between the laws of the republic and recognised international legal acts, international legal acts are applied”.

15 The singular of the word “crime” – not “crimes” – is used in both the Russian and Tajik versions of the Constitution.

16 The crimes that may be punished by death are: murder (Article 104[2]); rape (Article 138[3]); terrorism (Article 179[4]); hostage-taking (Article 181[3]); hijacking an aircraft, boat or train (Article 184[3]); banditry (Article 186 [1] and [3]); illegal dealing in narcotics (Article 200[3]); growing of illegal substances (Article 204[3]); highway robbery or piracy (Article 249[4]); forcible seizure of power (Article 306); attempt on the life of a public figure (Article 310); aggressive war (Article 395[2]); genocide (Article 398); biocide (Article 399); and malicious violation of the norms of humanitarian aid during armed conflict (Article 403[2]).

17 These are: aggravated murder; banditry; highway robbery or piracy; attempt on the life of a public figure; and terrorism.

18 Arbitrariness in the taking of life violates international law. Article 6 of the ICCPR says that “No one shall be arbitrarily deprived of his life”. The Human Rights Committee has explained that “arbitrariness” does not simply mean “against the law”, but includes elements of inappropriateness, injustice and lack of predictability. UN Doc CCPR/C/39/D/305/1988, 15 August 1999.

19 Article 221.

20 Article 16.

21 Article 44(3).

22 This was the experience of the then Prime Minister’s brother, Abdulkhafiz Abdullayev, who was sentenced to death for allegedly conspiring to assassinate President Rakhmonov. He was executed in November 1998, one month before the outcome of his clemency petition had been decided. His petition was rejected.

23 She is Gulchekhra Sharipova, the Head of the Department for Constitutional Guarantees and Human Rights in the Presidential Administration.

24 Articles 11 and 150 of the Code respectively.

25 This is also the fifth of nine Safeguards Guaranteeing the Rights of People Sentenced to Death adopted by ECOSOC in 1984. These safeguards place special emphasis on the right to have adequate legal assistance at all stages of the proceedings.

26 This is not an exhaustive list of international standards on the rights of people being investigated or tried on criminal charges. Others are included in the Standard Minimum Rules for the Treatment of Prisoners; The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and the Basic Principles for the Treatment of Prisoners. Separate references will be made in the text when relevant.

27 Taken in context, this is not surprising. Members of the Tajik Bar Association told an Amnesty International staff member in June 2002 that they had achieved only two acquittals throughout their entire career and these were for petty offences. They knew of no acquittals for crimes that can incur the death penalty.

28 Article 15 states that each state party to the Convention Against Torture must ensure that statements shown to have been made under torture are inadmissible as evidence in criminal trials, except in cases where they are used against people accused of having tortured as proof that the statement was made.

29 The full Russian term is Sledstvenny izolyator.

30 Since Tajikistan ratified the ICCPR in 1999, the Tajik authorities have been bound to ensure that anyone in their territory, or subject to their jurisdiction, should have effective redress under national law, if they believe that rights protected under the covenant have been violated. As a party to the (first) Optional Protocol to the ICCPR,

Tajikistan has also recognized the right of any person who has exhausted all domestic remedies to submit a communication to the Human Rights Committee for its consideration.

- 31 According to Article 14(1) of the ICCPR everyone charged with a criminal offence has the right to have their case tried in public unless – exceptionally – this would damage the interests of morality, public order, state security, or the privacy of the parties.
- 32 Adopted in 1977.
- 33 These include the Convention Against Torture; the Body of Principles for the Protection of All Persons under any form of Detention or Imprisonment; the Standard Minimum Rules for the Treatment of Prisoners; the Safeguards Guaranteeing the Protection of the Rights of Those facing the Death Penalty.
- 34 Adopted by the UN Economic and Social Council on 25 May 1984.
- 35 Adopted on 23 July 1996.
- 36 Paragraph 9 of the Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty.
- 37 The ICCPR guarantees all detainees the right to have the grounds for their detention promptly reviewed by a court; the right to know promptly any criminal charge against them; the right to have access to a lawyer, and the right to adequate facilities to prepare a defence.