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# Belarus and Uzbekistan: the last executioners

## The trend towards abolition in the former Soviet space

### Introduction

Belarus and Uzbekistan are the last executioners in the former Soviet space. Flawed criminal justice systems in both countries provide a fertile ground for judicial error. Amnesty International receives credible allegations of unfair trials, and torture and ill-treatment, often to extract “confessions”, on a regular basis from both countries. Neither death row prisoners nor their relatives are informed of the date of the execution in advance, denying them a last chance to say goodbye. The body of the prisoner is not given to the relatives for burial and they are not informed of the place of burial.

International bodies have repeatedly called on both countries to take significant steps towards abolition of the death penalty, however, so far to no avail. The Parliamentary Assembly of the Council of Europe (PACE) condemned “*in the strongest possible terms the executions in Belarus and deplore[d] the fact that Belarus is currently the only country in Europe where the death penalty is enforced*”.

<sup>1</sup>The United Nations (UN) Special Rapporteur on torture, who conducted a mission to Uzbekistan in late 2002, stated that the “*abolition of the death penalty would be a positive step towards respect for the prohibition of torture and other forms of ill-treatment.*”<sup>2</sup>

Both countries have persistently failed to publish comprehensive statistics about the number of death sentences and executions carried out, in contravention of their commitment as members of the Organization for Security and Co-operation in Europe (OSCE) to “*make available to the public information regarding the use of the death penalty*”.<sup>3</sup> Local human rights activists allege that as many as 200 people are executed in Uzbekistan every year.

Belarus and Uzbekistan have in many instances failed to comply with their obligations as parties to the first Optional Protocol to the International Covenant on Civil and Political Rights (first Optional Protocol). Uzbekistan, for example, has executed at least 14 death row prisoners ignoring requests to stay their executions by the (UN) Human Rights Committee, which oversees compliance with obligations undertaken under the first Optional Protocol.<sup>4</sup> In all these cases complaints had been submitted to the Committee alleging serious human rights violations including torture to force “confessions”.

The authorities of Belarus and Uzbekistan have frequently referred to public opinion as a key argument against introducing a moratorium or abolishing the death

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<sup>1</sup> Recommendation 1441 by the Parliamentary Assembly of the Council of Europe, 26 January 2000, para. 14, i, website: <http://assembly.coe.int/Documents/AdoptedText/TA00/EREC1441.HTM>

<sup>2</sup> Report of the UN Special Rapporteur on torture, Theo van Boven, following his mission to Uzbekistan in November and December 2002, E/CN.4/2003/68/Add.2, para. 65, 3 February 2003, website: <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/29d0f1eaf87cf3eac1256ce9005a0170?OpenDocument>

<sup>3</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 29 June 1990, website: [http://www.osce.org/documents/odihr/2001/01/1764\\_en.pdf](http://www.osce.org/documents/odihr/2001/01/1764_en.pdf)

<sup>4</sup> This figure reflects information received by Amnesty International by 20 August 2004.

penalty. At the same time, however, both governments continue to withhold vital information about the application of the death penalty in their countries, thereby preventing an informed public debate. Moreover, in Uzbekistan anti-death penalty activists have been harassed and intimidated and their freedom of expression has been stifled on many occasions.

While all newly independent states retained the death penalty when the Soviet Union collapsed in December 1991, nine have now abolished it and with Kazakhstan's declaration of a moratorium on executions in December 2003 and Tajikistan's moratorium on death sentences and executions that took effect from April 2004, four countries currently have moratoria in place.

Russia is the only country of all 45 members of the Council of Europe that has still not fulfilled its promise -- to abolish the death penalty -- that it made when joining the organization. And apart from Belarus and Russia, the internationally unrecognized regions of Abkhazia, the Dnestr Moldavian Republic and South Ossetia are currently the only territories in Eastern Europe and the South Caucasus that have not abolished the death penalty.

At least 140 prisoners are believed to be on death row in Kyrgyzstan. While the country has had a moratorium on executions in place since December 1998 it has continued to issue death sentences and many death row prisoners have been waiting years in a state of continued uncertainty as to their ultimate fate, which Amnesty International believes amounts to cruel, inhuman and degrading treatment. Abkhazia, and the Dnestr Moldavian Republic have also continued to pass death sentences.

Amnesty International is concerned that the conditions on death row in the region fall far short of international standards. In Belarus, for example, death row prisoners are not entitled to any exercise in fresh air and electric lighting is on day and night.

Many countries in the region have deported people to countries where they faced the death penalty. Death sentences in these cases were often passed following unfair trials accompanied by torture allegations. The deportations documented by Amnesty International took place in violation of international treaty obligations undertaken by the countries that facilitated the deportations. Russia deported at least two men to Tajikistan and Uzbekistan where both were sentenced to death, in violation of Russia's obligations as a member of the Council of Europe. Kyrgyzstan deported people to executions in China and Uzbekistan only months after Kyrgyzstan had put a moratorium in place citing its commitment to protect human rights.

While highly welcoming the trend towards abolition of the death penalty in the region, Amnesty International remains concerned about continuing reports of extrajudicial killings. In Belarus and Ukraine, for example, the "disappearances" and suspicious deaths of opposition figures and journalists have resulted in international criticism as authorities of both countries have failed to make progress in determining the perpetrators. Since the beginning of the second armed conflict in the Chechen Republic in 1999, Amnesty International has received numerous reports of extrajudicial killings resulting from large-scale or targeted raids by Russian or Chechen armed forces. The perpetrators of such abuses are rarely brought to justice.

Amnesty International has also received credible reports about deaths in custody as a result of torture and ill-treatment from many countries in the region. In

recent years Amnesty International has received dozens of such cases from the Chechen Republic in Russia, and from Turkmenistan and Uzbekistan.

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

Amnesty International opposes the death penalty worldwide in all cases without exception. The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state in the name of justice. It is the ultimate cruel, inhuman and degrading punishment. Like torture, an execution constitutes an extreme physical and mental assault on a person already rendered helpless by government authorities.

As long as the death penalty is maintained, the risk of executing the innocent can never be eliminated.<sup>5</sup> The scope for judicial error is believed to be very high in **Belarus** and **Uzbekistan** whose criminal justice systems are seriously flawed (see chapter "Scope for judicial error").

An important argument of death penalty supporters has been that it is necessary to retain capital punishment to do justice to the victims of serious crime and their families. As an organization concerned with the victims of human rights abuses, Amnesty International does not seek to belittle the suffering of the families of murder victims. A flawed justice system, however, serves them as ill as it does those passing through it. In addition, several non-governmental organizations have challenged the widespread concept that family members of victims of serious crime support the death penalty. Marie Deans, the founder of the US-based organization Murder Victims' Families for Reconciliation (MVFR)<sup>6</sup>, for example, said: *"families need help to cope with their grief and loss, and support to heal their hearts and rebuild their lives. From experience, we know that revenge is not the answer. The answer lies in reducing violence, not causing more death."*<sup>7</sup>

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

The most recent survey of research findings on the relation between the death penalty and homicide rates, conducted for the UN in 1988 and updated in 2002, concluded that *"it is not prudent to accept the hypothesis that capital punishment deters murder to a marginally greater extent than does the threat and application of the supposedly lesser punishment of life imprisonment."* The fact that no clear

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<sup>5</sup> In the United States 113 prisoners have been released from death row since 1973 after evidence emerged of their innocence of the crimes for which they were sentenced to death. Some had come close to execution after spending many years under sentence of death. Recurring features in their cases include prosecutorial or police misconduct; the use of unreliable witness testimony, physical evidence, or confessions; and inadequate defence representation. Other US prisoners have gone to their deaths despite serious doubts over their guilt. The then Governor of the US state of Illinois, George Ryan, declared a moratorium on executions in January 2000. His decision followed the exoneration of the 13<sup>th</sup> death row prisoner found to have been wrongfully convicted in the state since the USA resumed executions in 1977. During the same period, 12 other Illinois prisoners had been executed. In January 2003 Governor Ryan pardoned four death row prisoners and commuted all 167 other death sentences in Illinois.

<sup>6</sup> Marie Deans founded the group in 1976. Her mother-in-law, Penny Deans, had been murdered in 1972 by an escaped convict.

<sup>7</sup> Refer to: <http://www.mvfr.org/index.jsp>

evidence exists to show that the death penalty has a unique deterrent effect points to the futility and danger of relying on the deterrence hypothesis as a basis for public policy on the death penalty.<sup>8</sup>

In its ruling of 11 March 2004 the Constitutional Court of the Republic of **Belarus** stated that the preventative role of the death penalty against serious crime could not be proved. In fact, the Court pointed out, the number of death sentences increased between 1994 and 1998 in Belarus while the number of premeditated, aggravated murders punishable by death also rose. In 2002 and 2003 the number of death sentences went down as did the number of premeditated, aggravated murders that theoretically qualified for the death penalty.

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<sup>8</sup> Recent crime figures from abolitionist countries fail to show that abolition has harmful effects on crime rates. In Canada, the homicide rate per 100,000 population fell from a peak of 3.09 in 1975, the year before the abolition of the death penalty for murder, to 2.41 in 1980, and since then it has declined further. In 2001, 25 years after abolition, the homicide rate was 1.78 per 100,000 population, 42 per cent lower than in 1975. Refer to Amnesty International's document *Facts and Figures on the Death Penalty*, para. 7, AI Index: ACT 50/002/2001, website: <http://web2.amnesty.org/library/Index/engACT500022001?OpenDocument&of=THEMES%5CDEATH+PENALTY?OpenDocument&of=THEMES%5CDEATH+PENALTY>

## The worldwide trend towards abolition

Over half the countries in the world have now abolished the death penalty in law or practice. In the past decade more than three countries a year on average have abolished it for all crimes. At present there are 118 countries which are abolitionist in law or practice and 78 countries which retain and use the death penalty.

The trend towards abolition of the death penalty can also be observed in the former Soviet space. While following the break-up of the Soviet Union all independent republics retained the death penalty,<sup>9</sup> nine have now abolished it and four states have moratoria in place. **Belarus** and **Uzbekistan** are the only countries that still execute death row prisoners. Apart from Belarus and Russia, the four internationally unrecognized regions **Abkhazia**, the **Dnestr Moldavian Republic** and **South Ossetia** are the only territories in Eastern Europe and the South Caucasus that have not abolished the death penalty.

Many local and international human rights groups have consistently campaigned against the death penalty in the region for years.

As member states of the **OSCE** all countries covered in this report have committed themselves to keep the question of abolition under consideration.

In 1977 the **UN General Assembly** recognized the “*desirability of abolishing this punishment [the death penalty]*”.<sup>10</sup> In 2004 the UN Commission on Human Rights reiterated its call on state parties to the International Covenant on Civil and Political Rights (ICCPR) that are not yet party to the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (Second Optional Protocol), to consider signing or ratifying the Protocol.<sup>11</sup> In addition, the Commission called on states that retain the death penalty to “*abolish the death penalty completely and, in the meantime, to establish a moratorium on executions*”.

All countries in the former Soviet Union who are members of the UN and/or the Council of Europe are entitled to become parties to treaties provided by these bodies that stipulate the abolition of the death penalty. So far only five countries from this region – **Azerbaijan, Estonia, Georgia, Lithuania** and **Turkmenistan** – have ratified the **Second Optional Protocol**. By doing so these countries obliged themselves to ensure that no one within their jurisdiction is executed and to “*take all necessary measures to abolish the death penalty within its jurisdiction*”. While Estonia, Georgia, Lithuania and Turkmenistan committed themselves not to carry out executions in times of peace as well as in times of war, Azerbaijan declared after adopting the Second Optional Protocol that “*in exceptional cases ... [Azerbaijan]*

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<sup>9</sup> When the Soviet Union collapsed the following states were created on its territory: Belarus, Moldova, Ukraine, Estonia, Latvia, Lithuania, Armenia, Azerbaijan, Georgia, the Russian Federation, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan.

<sup>10</sup> UN General Assembly resolution 32/61, 8 December 1977, website: <http://www.un.org/documents/ga/res/32/ares32.htm>

<sup>11</sup> Commission on Human Rights resolution 2004/67, 21 April 2004, E/CN.4/2004/L.94, website: <http://193.194.138.190/Huridocda/Huridoca.nsf/TestFrame/cc0e2a6d48fbc470c1256d24003274d6?OpenDocument>

*allows the application of death penalty for the grave crimes, committed during the war or in condition of the threat of war.”<sup>12</sup>*

Abandonment of the death penalty is one of the key membership requirements of the **Council of Europe**. This has been a major incentive for states in the region to abolish capital punishment. **Georgia** and **Azerbaijan** had abolished the death penalty before they became member states in 1997 and 1998 respectively. Most states that had not abolished it before their accession to the organization committed themselves to do so within a timeframe set by PACE.

The only country of all 45 members states that has still not fulfilled its commitment to abolish the death penalty, which it undertook when becoming a member of the Council of Europe, is **Russia**. On 25 January 1996 PACE requested Russia to “*ratify within three years from the time of accession Protocol No. 6 to the European Convention on Human Rights on the abolition of the death penalty in time of peace*”.<sup>13</sup>

All other countries except for **Armenia**, **Latvia** and **Ukraine**, who ratified **Protocol No. 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty** (Protocol No. 6) much later than requested by PACE, complied with PACE’s request regarding the death penalty. Protocol No. 6 provides for the abolition of the death penalty but allows states to retain it in time of war or imminent threat of war.

**Ukraine** committed itself in September 1995 to sign Protocol No. 6 within one year of accession to the Council of Europe “*and to put into place, with immediate effect from the day of accession, a moratorium on executions*”. The country acceded to the Council of Europe on 9 November 1995. However, in November 1996 it came to light that Ukraine had executed more than 100 people in secret in 1996. PACE took a firm stance on Ukraine’s violation of its commitments and declared that “*if further executions take place, the credentials of the Ukrainian parliamentary delegation shall be annulled.*”<sup>14</sup> Ukraine is now fully abolitionist.

**Kazakhstan** applied for observer status at the Council of Europe. In June 2001 PACE resolved to “*only recommend the granting of Observer status with the Organisation as a whole to states which strictly respect a moratorium on executions or have already abolished the death penalty*”.<sup>15</sup> Kazakhstan introduced a moratorium on executions in December 2003.

On 27 April 2004 a “*wide-ranging co-operation agreement*” was signed by Peter Schieder, President of PACE, and Nurtay Abikayev, Speaker of the upper house of parliament of Kazakhstan, aimed at “*promoting parliamentary democracy, the rule of law and respect for human rights in the country*”. In the agreement -- the first of its kind -- the parliament of Kazakhstan pledges, among others, to “*act for and encourage the competent authorities to ... abolish the death penalty*”.

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<sup>12</sup> Refer to [http://www.unhcr.ch/html/menu3/b/treaty19\\_asp.htm](http://www.unhcr.ch/html/menu3/b/treaty19_asp.htm)

<sup>13</sup> PACE Opinion No. 193, 1996, 25 January 1996, website: <http://assembly.coe.int/documents/AdoptedText/ta96/EOPI193.HTM>

<sup>14</sup> PACE Resolution 1145, 1998, 27 January 1998, website: <http://assembly.coe.int/Documents/AdoptedText/ta98/eres1145.htm>.

<sup>15</sup> PACE Resolution 1253, 2001, 25 June 2001, website: <http://assembly.coe.int/Documents/AdoptedText/ta01/eres1253.htm>

The parliament of **Belarus** received Special Guest Status with PACE in September 1992 and Belarus applied for membership in the Council of Europe in March 1993. However, it lost its Special Guest Status in 1997 because of unfair elections in 1996 and the European Union's draft Partnership and Co-operation agreement (PCA) was cancelled around the same time. The Council of Europe has continued to raise individual death penalty cases with the authorities and has repeatedly called on Belarus to fundamentally change its policy on the death penalty. For example, Walter Schwimmer, Secretary General of the Council of Europe, said in a public statement on 8 March 2002: "*Belarus could never hope to be considered for Council of Europe membership as long as it maintains these brutal punishments ... I therefore urgently call on Belarus to move quickly towards a moratorium.*"<sup>16</sup>

In May 2002 **Protocol No. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances** (Protocol No. 13) was opened for signatures and ratifications. This is the only international treaty providing for full abolition of the death penalty without exceptions. Amnesty International welcomes the ratifications of the Protocol by **Estonia, Georgia, Lithuania, and Ukraine**. **Latvia** and **Moldova** both signed the Protocol on 3 May 2002, but have yet to ratify it.

One of the prerequisites to become a member of the **European Union** (EU) is the abolition of the death penalty. **Estonia, Latvia and Lithuania**, who had abolished capital punishment at the end of the 1990s, joined the EU in May 2004. The EU's anti-death penalty stance, however, is also directly relevant to non-members. In their 1998 *Guidelines EU policy towards third countries on the death penalty* EU member states resolved to "*work towards universal abolition of the death penalty*"<sup>17</sup> in the EU's relations with third countries. **Armenia, Azerbaijan, Georgia, Kazakstan, Kyrgyzstan, Moldova, Russia, Ukraine** and **Uzbekistan** have concluded PCAs with the EU. By doing so they committed themselves to "*endeavour to cooperate*" with the EU on matters including respect for and promotion of human rights.

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<sup>16</sup> Website: [http://www.coe.int/T/d/Com/Dossiers/Themen/Todesstrafe/e\\_CP128\(02\).asp](http://www.coe.int/T/d/Com/Dossiers/Themen/Todesstrafe/e_CP128(02).asp)

<sup>17</sup> *Guidelines EU policy towards third countries on the death penalty*, General Affairs Council, Luxemburg, 29 June 1998, Section I. ii, website: [http://europa.eu.int/comm/external\\_relations/human\\_rights/adp/guide\\_en.htm](http://europa.eu.int/comm/external_relations/human_rights/adp/guide_en.htm)

## The death penalty: a problematic heritage from the Soviet Union

After the October Revolution in 1917 and during the life of the Soviet Union three attempts were made to abolish the death penalty. However, every time death penalty supporters gained the upper hand and the death penalty became an integral part of the criminal justice system in the Soviet Union.

On 1 December 1934 the Central Executive Committee and the Council of People's Commissars of the Union of Soviet Socialist Republics (USSR) ruled that the investigation into all cases of "*terrorist organizations*" and "*terrorist acts against Soviet government officials*" should take no longer than ten days; the cases should be heard without participation of the different sides; no appeal hearings or clemency appeals should be allowed; and the execution should be carried out immediately after the death sentence is handed down. This legislation was key in providing a basis for the extensive use of the death penalty against innocent people in politically motivated cases, particularly during Joseph Stalin's rule.

The criminal codes used in the Soviet Union since 1961 contained some 18 peacetime offences carrying a possible death sentence, including some which did not involve the use of violence. Sixteen other offences carried a death sentence as a maximum punishment if committed during a time of war or combat operation. People under 18 at the time the crime was committed and all pregnant women were exempted from the death penalty.

During *Perestroika* the use of the death penalty could for the first time be openly discussed and the possibility of judicial error in death penalty cases was brought home by several alarming examples that were reported in the Soviet press.

For example, in October 1987 *Znamya Yunosti* (Banner of youth) reported the case of Vladimir Toisev, who was wrongly sentenced to death in the Belorussian Soviet Socialist Republic for murdering his wife. His appeal was rejected and he spent 18 months in a cell awaiting execution before a petition for clemency filed by his relatives was granted, and his sentence commuted to 15 years' imprisonment. He served 14 years and eight months before a higher court reviewed his case and acquitted him, four months before he completed his term in 1987. According to the newspaper, the investigators in charge of the case had obtained a "confession" from him during night-time interrogations and had beaten his 15-year-old brother to obtain corroborative evidence. Not long after he was sentenced to death it seems the real culprit was identified by investigators who suppressed his identity in order to conceal what they had done.

The legislation governing the application of the death penalty in **Belarus** today is largely identical with that in force at the time of Vladimir Toisev's trial.

During *Perestroika* new Fundamentals of Criminal Legislation of the USSR and the Union Republics were elaborated and subsequently included in the Criminal Code of the Russian Soviet Federative Socialist Republic. Offences punishable by death were reduced from 18 to six peacetime offences. All women were exempted from the death penalty as were men under 18 at the time the crime was committed, and all men over 65. These changes had not impinged on all of the other republics by

the time the USSR collapsed in December 1991 and the death penalty in these republics continued to be governed by laws adopted in 1961.

The independent republics then started gradually to delete certain offences from the list of capital crimes. However, there were exceptions and several states introduced new offences to the list of capital crimes, for example, “biocide”, “terrorism”, “the use of weapons of mass destruction” and “large-scale drug production and dealing”.

The independent republics also inherited the secrecy surrounding the application of the death penalty from the Soviet system. In 1991 the Ministry of Justice of the USSR published death penalty statistics after they had been withheld for decades. Even during *Perestroika* no official information was available on where executions took place and the execution itself was regulated by instructions only very few people had access to.

Most details about the application of the death penalty in the Soviet Union only emerged after the USSR collapsed. Such information on executions gathered by Amnesty International from various republics of the former Soviet Union paints a grim picture. Upon receiving notification that a prisoner’s petition for pardon had been turned down the prison director would convene a special commission, which consisted of himself, a prosecutor and a doctor. The condemned person would be summoned from the cell, and in the presence of the commission the text of the decree refusing clemency would be read out. The prisoner would then be taken immediately to a cell a short distance away and shot by a single executioner with a revolver.

Neither the prisoner nor his or her relatives were given any advance notice of the date of execution, or an opportunity for a last visit, and the prisoner had barely minutes to come to terms with imminent execution after the clemency refusal had been announced. The prisoner would be removed and buried in secret, with relatives having no right to the return of the body or even to know where their loved one was buried. Still today relatives in **Belarus** and **Uzbekistan** are not informed of the date of the execution in advance and where their relatives are buried.

## The current status of the death penalty in the former Soviet space

This chapter provides an overview of the current status of the death penalty in all countries that emerged from the Soviet Union as well as in the internationally unrecognized regions of Abkhazia, the Dnestr Moldavian Republic, Nagorno-Karabakh and South Ossetia.

A table detailing key international commitments of the governments in the region that are relevant to the death penalty can be found in the appendix (item 1).

### Belarus and Uzbekistan: the last executioners

#### BELARUS

##### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1973
First Optional Protocol to the ICCPR	30/09/1992
Second Optional Protocol to the ICCPR	No
Membership in the Council of Europe	No
Protocol No. 6 to the European Convention	No
Protocol No. 13 to the European Convention	No

Belarus retains the death penalty for a long list of crimes: 12 in peacetime and two in times of war. They are: “unleashing or conducting an aggressive war” (Article 122 part 2 of the Criminal Code of Belarus), “murder of a representative of a foreign state or international organization with the intention to provoke international tension or war” (Art. 124 part 2), “international terrorism” (Art. 126), “genocide” (Art. 127), “crimes against humanity” (Art. 128), “premeditated, aggravated murder” (139 part 2), “terrorism” (Art. 289 part 3), “terrorist acts” (Art. 359), “treason accompanied by murder” (Art. 356 part 2), “conspiracy to seize power” (Art. 357 part 3), “sabotage” (Art. 360 part 2), “murder of a police officer” (Art. 362), “use of weapons of mass destruction” (Art 134), and “murder of a person in violation of the laws and customs of war” (Art. 135 part 3). The death penalty under all these charges is not mandatory but at the discretion of the courts. In Belarus virtually all death sentences have been handed down for “premeditated, aggravated murder”.

According to Article 24 of the Constitution of Belarus, “[e]very person shall have the right to life. The State shall protect the life of the individual against any illegal infringements. Until its abolition, the death sentence may be applied in accordance with the law as an exceptional penalty for especially grave crimes and only in accordance with the verdict of a court of law.”

The Criminal Code of Belarus exempts men aged under 18<sup>18</sup> at the time the crime was committed and over 65<sup>19</sup> when the sentence is pronounced, as well as women<sup>20</sup>. According to the Criminal-Execution Code, the execution of death row prisoners who are diagnosed mentally disturbed is suspended and the court decides

<sup>18</sup> Article 59.2.1 of the Criminal Code.

<sup>19</sup> Article 59.2.3 of the Criminal Code.

<sup>20</sup> Article 59.2.2 of the Criminal Code.

whether the prisoner should undergo forcible medical treatment. If the prisoner recovers the court decides whether he should be executed or his sentence should be replaced by a punishment other than the death penalty.<sup>21</sup>

Death row prisoners are executed by shooting in the investigation-isolation prison in the capital Minsk (SIZO No. 1). Neither relatives nor death row prisoners themselves are informed of the date of the execution in advance. Relatives are sent a death certificate once the execution has been carried out; however, the notification can take several weeks. The body of the executed prisoner is not returned to them for burial and they are not informed of the place of burial.<sup>22</sup> (Refer to the chapter “Secrecy”).

### **Moves towards abolition?**

Belarus reduced the number of offences punishable by death in the 1961 Soviet Criminal Code following its independence from the Soviet Union. For example, on 6 July 1993 parliament abolished the death penalty for four offences which punished economic crimes, and replaced it with a maximum 15-year prison sentence without right of parole. However, Belarus also added new offences to the list of capital crimes. When reviewing the fourth periodic report of the government of Belarus, on the implementation of the ICCPR, in Geneva in October 1997 the (UN) Human Rights Committee deplored that decrees defining new crimes punishable by death, such as the Presidential Decree No. 21 of 21 October 1997 on fighting terrorism, had been enacted.

While Belarus has not published comprehensive statistics on death sentences and executions there is sufficient information in the public domain to establish that the number of death verdicts has decreased since 1999. While from 1991 to 1999 between 20 and 47 people were sentenced to death per year, 13 were sentenced to death in 1999, and between four and seven per year until 2003. According to Colonel Oleg Alkayev, 134 were executed while he was director of SIZO No. 1 in Minsk from December 1996 until May 2001. He reported that only one man was granted clemency by President Alyaksandr Lukashenka during that time.

While only people under 18 at the time the crime was committed and pregnant women were exempt from the death penalty in the first years following Belarus’ independence, a law adopted on 1 March 1994 exempted all women. The Criminal Code that came into force in January 2001 in addition exempted all men over 65 at the time the verdict is pronounced.

On 13 June 2002 the House of Representatives of the National Assembly of Belarus issued a series of recommendations requesting that several government authorities including the Council of Ministers, the Ministry of the Interior and the Supreme Court undertake measures that could further a decision about a change in policy on the death penalty. However, in March 2004 the Constitutional Court of the Republic of Belarus pointed out that the authorities in question had not yet responded adequately to the request.

On 4 November 2003 Belarus’ parliament forwarded a request to the Constitutional Court to assess if the death penalty was in line with the Belarusian

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<sup>21</sup> Article 176 of the Criminal-Execution Code.

<sup>22</sup> Article 175 of the Criminal-Execution Code.

Constitution and international standards. A member of parliament, Andrei Nareiko, had initiated this request stating that the Criminal Code's articles providing for the use of the death penalty appeared to be in conflict with Article 24 of the Constitution, which guarantees every person the right to life and requires the state to protect human life against any unlawful injury (see above). Andrei Nareiko put forward this request on the basis of previous decisions by the Hungarian and Lithuanian Constitutional Courts, who ruled that the death penalty was unconstitutional and not in line with international standards.

On 11 March 2004 the Constitutional Court concluded its assessment of the compliance of death penalty provisions in the Belarusian Criminal Code with the Belarusian Constitution and international standards. The Court found that a number of articles of the current Criminal Code were inconsistent with the Constitution, and that in the current circumstances the abolition of the death penalty, or as a first step, the introduction of a moratorium, could be enacted by the head of state and by parliament. The Constitutional Court added that one of the reasons why the death penalty was retained in Belarus was the 1996 referendum on a number of issues including the death penalty when it was reported that 80.44 per cent of the Belarusian population voted against abolishing the death penalty. The Court pointed out it had to be taken into account that at the time the survey was conducted the Criminal Code only provided for 15 years' imprisonment as the maximum prison sentence. Life imprisonment was introduced in December 1997. In addition, the Court stressed that in many European states the death penalty was abolished despite strong public support for capital punishment. It also stated that the results obtained through the 1996 referendum had no binding character.

Amnesty International calls on the authorities of Belarus to build on this landmark ruling by the Constitutional Court and swiftly move towards abolition by at least introducing a moratorium on sentencing and executions pending a full review of the country's policy on the death penalty.

## UZBEKISTAN

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1995
First Optional Protocol to the ICCPR	28/09/1995
Second Optional Protocol to the ICCPR	<b>No</b>
Partnership and Cooperation agreement with the EU	01/07/1999

Uzbekistan retains the death penalty for two offences: "premeditated, aggravated murder" (Article 97 part 2 of the Criminal Code of Uzbekistan) and "terrorism" (Art. 155 part 3).

The death penalty is not mentioned in the country's Constitution. According to Article 13, "[d]emocracy in the Republic of Uzbekistan shall rest on the principles common to all mankind, according to which the ultimate value is the human being, his life, freedom, honour, dignity and other inalienable rights."

The authorities have consistently failed to disclose comprehensive statistics including figures on the number of death sentences and executions. In September 2001, President Karimov publicly stated that around 100 people were executed in Uzbekistan each year.

Several local human rights groups believe the true figure is around 200 executions per year. Amnesty International has recorded all death sentences and executions that have come to the organization's attention. However, this data is believed to reflect only a fraction of all cases as it is very likely that most death row prisoners and their families do not have access to individuals or organizations that will record, disseminate information about or take action on their case. The figures recorded by Amnesty International since 1999 are: 51 death sentences and 20 executions in 1999; 25 sentences and six executions in 2000; 30 sentences and seven executions in 2001; 51 sentences and 11 executions in 2002; 22 sentences and 27 executions in 2003; and six sentences and 10 executions according to information received by Amnesty International by 20 August 2004.

According to official information, the number of death sentences handed down in Uzbekistan consistently decreased since 1999: the number of death sentences in 2000 was 22.7 per cent less than in 1999; in 2001 it was 21.8 per cent less than in the previous year; in 2002 it was 44.8 per cent less than in 2001; and in 2003 it was 26 per cent less than in 2002. However, in the absence of comprehensive statistics citing, among others, the exact number of death sentences and executions per year, it is impossible to verify the claim that the number of death verdicts has decreased.

Article 50 of the Criminal Code of Uzbekistan exempts men aged under 18 at the time when the crime was committed or over 60 when the verdict is pronounced, as well as all women. Although this Article does not make additional provisions for people with mental disabilities, the Criminal Code does provide a number of safeguards prohibiting the execution of people with mental disabilities. However, mental disabilities have reportedly been ignored in some cases. In others, the security services are alleged to have predetermined the outcome of medical reports requested by the courts. (Refer to the chapter "Case examples").

Death row prisoners are executed by shooting. The authorities have not disclosed the place of execution; however, it is widely believed that death row prisoners are executed in Tashkent prison.

Death row prisoners are not informed of the date of their execution in advance and live in constant fear that they could be executed at any time. (Refer to the chapter "Secrecy").

Relatives are not informed in advance of the date of execution and are not given a final chance to say goodbye. The body of the prisoner is not returned to them for burial and they are not informed of the place of burial.<sup>23</sup> (Refer to the chapter "Secrecy").

### **Moves towards abolition?**

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

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<sup>23</sup> Article 140 of the Criminal-Execution Code.

At independence in 1991 Uzbekistan inherited the USSR Criminal Code that had been in force for three decades which carried the death penalty for more than 30 peacetime and wartimes offences. When Uzbekistan adopted a new Criminal Code in 1994, 13 offences were made punishable by death.<sup>24</sup> In 1998 the *Oliy Majlis* (parliament) amended the Code to reduce the number of capital crimes to eight.<sup>25</sup> On 29 August 2001 parliamentary amendments further reduced the number to four: “premeditated, aggravated murder”, “aggression”<sup>26</sup>, “genocide” and “terrorism”. On 12 December 2004 the *Oliy Majlis* passed a law entitled “Amendments and additions to several legal acts of the Republic of Uzbekistan” reducing the number of articles in the Criminal Code of Uzbekistan punishable by death from four to the following two: “premeditated, aggravated murder” and “terrorism”.

Tamara Chikunova, chair of the local human rights group Mothers against the Death Penalty and Torture, described the reduction of articles carrying the death penalty as only a “gesture” and “pure window-dressing”. It is widely believed that most death verdicts in Uzbekistan have been handed down for “premeditated, aggravated murder”. The refusal of the authorities to publish comprehensive statistics makes it impossible to verify whether the reduction in the number of capital offences has had an impact on the actual number of death sentences.

Amnesty International has welcomed the reversal of at least 12 death sentences in cases that the international community and the (UN) Human Rights Committee had raised with the authorities of Uzbekistan since 2000.<sup>27</sup> However, at the same time Uzbekistan executed at least 14 prisoners despite similar interventions by the (UN) Human Rights Committee and other expressions of international concern.<sup>28</sup>

Takhtapulat Riskiyev, the Ambassador of Uzbekistan to the United Kingdom, informed Amnesty International in a letter of 23 June 2004 that “for the recent period death penalty has not been brought into action at all.” Amnesty International asked the Ambassador for further information on the background of this statement but has

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<sup>24</sup> These were: “Premeditated murder with aggravating circumstances” (Article 97 part 2 of the Criminal Code); “Rape” (Article 118 part 4); “Gratification of unnatural sexual desires by force” (Article 119 part 4); “Aggression” (Article 151 part 2); “Breach of the laws and customs of war” (Article 152); “Genocide” (Article 153); “Terrorism” (Article 155 part 3); “Treason” (Article 157 part 1); “Attempts on the life of the President of Uzbekistan” (Article 158 part 1); “Espionage” (Article 160 part 1); “Organization of a criminal association” (Article 242 part 1); “Smuggling” (Article 246 part 2); and “Unlawful sale of narcotics or psychotropic substances” (Article 272 part 5).

<sup>25</sup> The following crimes remained punishable by death: “Premeditated murder with aggravating circumstances”, “Rape”, “Aggression”, “Genocide”, “Terrorism”, “Treason”, “Espionage”, “Unlawful sale of narcotics or psychotropic substances”.

<sup>26</sup> Part 2 of the Article on “aggression” (Article 151 of the Criminal Code) stipulates that the “initiating or waging of an aggressive war” is punishable by 15 to 20 years’ imprisonment or by death.

<sup>27</sup> This figure reflects information received by Amnesty International by 20 August 2004.

<sup>28</sup> This figure reflects information received by Amnesty International by 20 August 2004.

The cases of those executed despite interventions by the (UN) Human Rights Committee were: **Maksim Strakhov** (executed May 2002), **Nigmatullo Fayzullayev** (executed April 2002), **Refat Tulyaganov** (executed January 2002), **Zholdaysbay Kobeyzinov** (executed November 2002), **Oralbay Keunimazhev** (executed November 2002), **Ilkhom Babazhanov** (executed May 2003), **Maksud Ismailov** (executed May 2003), **Azamat Uteyev** (executed May 2003), **Muzaffar Mirzayev** (executed June 2003), **Otabek Makhmudov** (executed November 2003), **Zhasur Madrakhimov** and **Bakhtiyar Yusupov** (executed March 2004); **Azizbek Karimov** and **Yusuf Zhumayev** (executed August 2004).

not had a reply as of 20 August 2004. However, in July 2004 the authorities of Uzbekistan informed the OSCE Office for Democratic Institutions (ODIHR) that a moratorium on executions is not in place in Uzbekistan and Amnesty International was appalled by recent reports about continuing executions in cases of prisoners on whose behalf the (UN) Human Rights Committee had intervened.<sup>29</sup>

In response to harsh criticism including of Uzbekistan's death penalty policy by the UN Special Rapporteur on torture who visited Uzbekistan in November and December 2002 the authorities of Uzbekistan drew up a Plan of Action that was finalized in 2004. In this Plan Uzbekistan committed itself to a number of measures concerning the death penalty, including to consider the practice of the reversal of death sentences in individual cases in the Plenary of the Supreme Court in 2004, to prepare "*regulations on informing relatives of individuals sentenced to capital punishment in accordance with international norms*", to submit to the *Oliy Majlis* a draft "Law on changes and additions to Criminal-Executive Code" in 2005, and to prepare "*recommendations to ministries and agencies on mandatory implementation of interim measures*" in the second quarter of 2004. Amnesty International urged the authorities to fully implement the Plan of Action.

For more information on the death penalty in Uzbekistan, refer to Amnesty International's report '*Justice only in heaven*' – *the death penalty in Uzbekistan*.<sup>30</sup>

## Moratoria on executions only

### ABKHAZIA (internationally unrecognized region)

In the internationally unrecognized region of Abkhazia,<sup>31</sup> a *de facto* moratorium on executions is believed to be in force. Under the Criminal Code of the Georgian Soviet Socialist Republic, which is still believed to be in use in Abkhazia, the death penalty can be applied to a long list of peacetime and wartime offences including economic crimes. It is not known, however, which amendments to the Code pertaining to the death penalty have been made by the authorities of Abkhazia.

Death sentences have continued to be passed, and to Amnesty International's knowledge, at least 25 death sentences have been handed down since Abkhazia declared independence from Georgia in 1992. Several death row prisoners were believed to have been kept in harsh prison conditions on death row for many years, in a state of continued uncertainty as to their ultimate fate, a situation that amounts to cruel and inhuman treatment.

At least one woman was believed to have been sentenced to death in Abkhazia. She reportedly died of cancer on death row.

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<sup>29</sup> Refer to Amnesty International's press release *Uzbekistan: Two more executions despite UN intervention*, 13 August 2004, AI Index: EUR 62/016/2004.

<sup>30</sup> AI Index: EUR 62/011/2003,

website: <http://web.amnesty.org/library/Index/ENGEUR620112003?open&of=ENG-UZB>

<sup>31</sup> As Abkhazia, the Dnestr Moldavian Republic, Nagorno-Karabakh and South Ossetia are not recognized internationally as independent states the international community regards them as parts of Georgia, Moldova, Azerbaijan and Georgia respectively and as bound by these countries' international obligations. However, the internationally unrecognized regions do not recognize any international obligations undertaken by these countries.

Death row prisoners in Abkhazia are held in the detention facilities of the Ministry of the Interior in the city of Sukhumi (known to the Abkhazians as Sukhum).

## **DNESTR MOLDAVIAN REPUBLIC (internationally unrecognized region)**

A moratorium on executions is believed to have been in force in the internationally unrecognized Dnestr Moldavian Republic since January 1999.<sup>32</sup> The moratorium was enacted by presidential decree no. 263 on 6 July 1999.

In August 2003 Amnesty International expressed its concern to the Minister of Justice of the Dnestr Moldavian Republic about reports that a decision by the Supreme Court on 25 June confirmed the death sentence of Fyodor Negrya. In September the Ministry of Justice confirmed that Fyodor Negrya was sentenced to death, but assured Amnesty International that the moratorium on the execution of the death penalty in the Dnestr Moldavian Republic remained enforced.

## **KAZAKSTAN**

### **International commitments**

International Covenant on Civil and Political Rights (ICCPR)	2 Dec 2003 (signed, not ratified)
First Optional Protocol to the ICCPR	No
Second Optional Protocol to the ICCPR	No
Partnership and Cooperation agreement with the EU	01/07/1999

On 17 December 2003 the President of Kazakhstan signed a decree on a moratorium on executions that came into force on 19 December. The General Procuracy was instructed to review all outstanding death sentences. A draft law introducing life imprisonment as an alternative to the death penalty was approved by the Senate of Kazakhstan on 29 December and entered into legal force on 1 January 2004.

Article 15 part 2 of the Constitution stipulates: *“No one shall have the right to arbitrarily deprive a person of life. The law shall establish the death penalty as an extraordinary measure of punishment for especially grave crimes and grant the sentenced person the right to appeal for pardon.”*

According to official information received by Amnesty International in July 2004, 27 death row prisoners who were affected by the moratorium on executions were currently in Kazak jails. Ten were held in Karaganda prison, seven in Almaty, three in Kashketau, two in Kostanau and Petropavlovsk respectively and one in Atyrau, Astana and Pavlodar respectively.

Amnesty International learnt of one new death sentence that was passed by Akmola regional court after the moratorium came into force. However, the death sentence was overturned by the Supreme Court and replaced with life imprisonment.

The current Criminal Code of Kazakhstan envisages the death penalty for 18 crimes, 10 of them military crimes if committed in time of war. The offences are: “premeditated, aggravated murder” (Article 96 part 2 of the Criminal Code of Kazakhstan), “conduct of an aggressive war” (Art. 156 part 2), “use of prohibited

<sup>32</sup> See footnote 31.

means and methods of conducting war” (Art. 159 part 2), “genocide” (Art. 160), “mercenary participation in armed conflict” (Art. 162 part 4), “treason” (Art. 165), “attempt on the life of the President” (Art. 167), “sabotage” (Art. 171), “terrorism” (Art. 233 part 4), “attempt on the life of a person administering justice or preliminary investigations” (Art. 340), “insubordination or non-observance of orders” (Art. 367 part 3), “opposition to a superior” (Art. 368 part 3), “using violence against a superior” (Art. 369 part 3), “desertion” (Art. 373 part 3), “evasion from military service” (Art. 374 part 3), “violation of vigil duty” (Art. 375 part 3), “abuse of power” (Art. 380 part 3), and “abandoning or surrendering weapons to the enemy” (Art. 383).

All women as well as men under 18 at the time the crime was committed and men over 65 when the verdict is pronounced are exempt from the death penalty.<sup>33</sup> Death sentences can be commuted to 25-years imprisonment or life imprisonment.<sup>34</sup>

According to the Criminal-Execution Code of Kazakstan, relatives have the right to be informed of the place of burial of executed prisoners two years after their execution (Article 167 part 4).<sup>35</sup>

## KYRGYZSTAN

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1994
First Optional Protocol to the ICCPR	07/10/1994
Second Optional Protocol to the ICCPR	No
Partnership and Cooperation agreement with the EU	01/07/1999

On 5 December 1998 President Askar Akayev signed a decree for a two-year moratorium on the carrying out of executions. It came into effect upon publication in the government gazette on 8 December. The decree stated that the moratorium was inspired by *“the principles of humanism, esteem for and observance of the fundamental human rights and freedoms”* and cited in particular the 50<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights. Since the moratorium announced in 1998 expired in 2000 the President has extended the moratorium every year. On 30 December 2003 he decreed that the moratorium be extended until 31 December 2004.

Article 18 part 4 of the Constitution stipulates that *“the death penalty can be applied only in exceptional cases based on the verdict of the court.”*<sup>36</sup>

In January 2002 the National Program on Human Rights for 2002 to 2010 was published by the authorities.<sup>37</sup> According to the Program, *“by the year 2010, once the socio-economic ... political and legal preconditions will have been put in place, the Kyrgyz Republic is faced with deciding the question of abolishing the death penalty on the constitutional level.”*

<sup>33</sup> Article 49 part 3 of the Criminal Code.

<sup>34</sup> Ibid.

<sup>35</sup> Article 167 part 4 of the Criminal-Execution Code.

<sup>36</sup> Article 18 part 4 of the Constitution of the Kyrgyz Republic.

<sup>37</sup> National Program on Human Rights for 2002 to 2010. Refer to the relevant presidential decree of 2 January 2002 on: [http://www.gov.kg/index.php?name=EZCMS&menu=2900&page\\_id=88](http://www.gov.kg/index.php?name=EZCMS&menu=2900&page_id=88)

According to official information, 31 people were sentenced to death between 30 June 2003 and 30 June 2004. At least 140 men were believed to be on death row as of 20 August 2004. These numbers have steadily accumulated since the moratorium on executions came into force in 1998. This means that some of those currently on death row have been in a state of continued uncertainty as to their ultimate fate and in very harsh prison conditions for many years, which amounts to cruel and inhuman treatment.

Three offences are punishable by death in the Criminal Code of the Kyrgyz Republic: “premeditated, aggravated murder” (Article 97), “rape of a juvenile under 14 with particularly serious consequences” (Art. 129 part 4), and “genocide” (Art. 373).

Men under 18 as well as all women are exempt from the death penalty.<sup>38</sup>

Relatives of prisoners executed before the moratorium came into force have not been informed of the place of burial. The Criminal-Execution Code currently in force in Kyrgyzstan still stipulates that “*the corpse is not given out for burial. No information is given out about the place of burial.*”<sup>39</sup>

## Moratoria on death sentences and executions

### RUSSIAN FEDERATION

#### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1973
First Optional Protocol to the ICCPR	01/10/1991
Second Optional Protocol to the ICCPR	<b>No</b>
Membership in the Council of Europe	28/02/1996
Protocol No. 6 to the European Convention	<b>No (only signed, on 16/04/1997)</b>
Protocol No. 13 to the European Convention	<b>No</b>
Partnership and Cooperation agreement with the EU	01/12/1997

When becoming a member of the Council of Europe in 1996 Russia committed itself to abolish the death penalty within three years following its accession to the organization. However, Russia is the only member of the Council of Europe that has still not abolished the death penalty.

In August 1996 the then President Boris Yeltsin put a *de facto* moratorium on executions in place; however, death sentences continued to be handed down. In 1996 life imprisonment was introduced in the Criminal Code for especially grave crimes.

On 2 February 1999 the Constitutional Court of the Russian Federation issued a ruling on handing down death sentences that gave the moratorium a constitutional basis. Article 20 part 2 of the Constitution guarantees the right to trial by jury in cases where the death penalty is a potential sentence: “*Capital punishment may, until its abolition, be instituted by the federal law as exceptional punishment for especially grave crimes against life, with the accused having the right to have his case considered in a law court by jury.*” In its February 1999 ruling the Constitutional

<sup>38</sup> Article 50 part 2 of the Criminal Code.

<sup>39</sup> Article 155 part 5 of the Criminal-Execution Code.

Court prohibited passing death sentences until such time as jury trials would be introduced throughout Russia. At the time of the decision, jury trials were only available in nine of the 89 constituent entities of the Federation.

In June 1999 President Boris Yeltsin issued a decree commuting the sentences of all death row prisoners to either life or 25 years' imprisonment. At that time Russian prisons were holding 716 prisoners awaiting execution.

Jury trials were to be introduced nationwide in January 2003, according to the new 2001 Criminal-Procedure Code, but their introduction in Chechnya has since been delayed until 2007. The introduction of jury trials will remove the bar the Constitutional Court has placed upon the passage of death sentences. When considering Russia's fifth periodic report to the (UN) Human Rights Committee the Committee expressed its concern that "*the current moratorium will automatically end once the jury system has been introduced in all constituent entities of the State party*" and recommended Russia to "*abolish the death penalty de jure before the expiration of the moratorium ... and accede to the Second Optional Protocol.*"<sup>40</sup>

Russia has kept five crimes in the Criminal Code that are punishable by death: "premeditated, aggravated murder" (Article 105 part 2 of the Criminal Code of the Russian Federation), "assassination attempt against a state or public figure" (Art. 277), "attempt on the life of a person administering justice or conducting preliminary investigations" (Art. 295), "attempt on the life of a law enforcement officer" (Art. 317) and "genocide" (Art. 357). However, due to the moratorium on death sentences and executions no death sentences are currently handed down under these articles.

Although the Chechen Republic is part of the Russian Federation, the moratorium was not observed in the period between the two armed conflicts in the Chechen Republic.<sup>41</sup> A new Criminal Code developed by the authorities of the Chechen Republic in 1996 introduced the rules and regulations of the Islamic religious tradition, the Shari'a law, into the republic's judicial practices. Based on this Criminal Code numerous executions were carried out by the authorities of the Chechen Republic between 1996 and 1999. Several executions were broadcast on local television.

### **SOUTH OSSETIA (internationally unrecognized region)**

A *de facto* moratorium on death sentences and executions was believed to be in force in the internationally unrecognized region of South Ossetia.<sup>42</sup> As of 20 August 2004 the Criminal Code of the Russian Federation, which contains five offences that are punishable by death, was used in South Ossetia: "premeditated, aggravated murder", "assassination attempt against a state or public figure", "attempt on the life of a person administering justice or conducting preliminary investigations", "attempt on the life of a law enforcement officer" and "genocide".

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<sup>40</sup> Concluding observations of the Human Rights Committee: Russian Federation, 6 November 2003, Section C 11,

website: <http://www.unhchr.ch/tbs/doc.nsf/0/622c5ddc8c476dc4c1256e0c003c9758?Opendocument>.

<sup>41</sup> A peace agreement in August 1996 had ended the first armed conflict between the Russian Federal forces and the pro-independence Chechen fighters without clarifying the political status of the Chechen Republic.

<sup>42</sup> See footnote 31.

## TAJIKISTAN

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1999
First Optional Protocol to the ICCPR	04/01/1999
Second Optional Protocol to the ICCPR	No
Partnership and Cooperation agreement with the EU	No

At the joint session of both chambers of the Tajik parliament on 30 April 2004 President Imomali Rakhmonov announced that a moratorium would be introduced in Tajikistan in due course. He stated that *“human life should be treated humanely. Man, his rights and freedom are great and inviolable values, and the right to life has a special place among them. In fact, the right to life is natural, and nobody has the right to deprive any other person of this right.”*

On 2 June 2004 the *Majlis Namoyandagon* (lower house of parliament) voted in favour of the new law “on the suspension of the application of the death penalty”. The *Majlisi Milli* (upper house of parliament) endorsed it on 8 July, and it was signed into force by the President on 15 July. The law stipulates the suspension of the handing down of death sentences and the maximum penalty in the Criminal Code was set for 25 years’ imprisonment. It is believed that no death row prisoners have been executed since 30 April. As of 20 August 2004 no legislation was known to have been enacted determining the status of those who were on death row when the moratorium came into force. While the organization learnt that several of those on death row at the time have been pardoned by the President and several other death sentences have been commuted to long prison terms by the courts, no comprehensive information had become available.

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”*.

The Criminal Code of Tajikistan has five Articles carrying the death penalty: “premeditated, aggravated murder” (Article 104 part 2), “rape with aggravating circumstances” (Art. 138 part 3), “terrorism” (Art. 179 part 4), “genocide” (Art. 398), and “biocide” (Art. 399). However, due to the moratorium, nobody is currently sentenced to death under any of these articles.

Relatives of those executed before the moratorium still have no right to know the location of the grave. 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.”*

For more information on the death penalty in Tajikistan, refer to Amnesty International’s report *Tajikistan: Deadly Secrets. The death penalty in law and practice*.<sup>43</sup>

<sup>43</sup> AI Index: EUR 60/008/2003, website: <http://web.amnesty.org/library/Index/ENGEUR600082002?open&of=ENG-TJK>

## Abolitionist in times of peace

### LATVIA

#### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1992
First Optional Protocol to the ICCPR	22/06/1994
Second Optional Protocol to the ICCPR	<b>No</b>
Membership in the Council of Europe	10/02/1995
Protocol No. 6 to the European Convention	07/05/1999
Protocol No. 13 to the European Convention	03/05/2002 (signed only)

In April 1999 a large majority of members of the newly elected *Saeima* (parliament) voted for the ratification of Protocol No. 6 of the ECHR thereby abolishing the death penalty for all peacetime offences with effect from 1 June 1999. When becoming a member of the Council of Europe in 1995 Latvia had committed itself to ratify Protocol No. 6.

The Criminal Code of Latvia still envisages the death penalty for premeditated, aggravated murder, if committed during wartime.

Draft legislation on ratification of the Second Optional Protocol to the ICCPR and of Protocol No. 13 to the ECHR has been submitted to Parliament.

According to official information, then President Guntis Ulmanis examined eight clemency petitions from death row prisoners during his presidency from 7 July 1993 till 7 July 1999; three of them were executed and three were granted clemency and their sentences commuted to life imprisonment. The last execution in Latvia reportedly took place on 26 January 1996.

## Fully abolitionist countries

### ARMENIA

#### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1993
First Optional Protocol to the ICCPR	23/06/1993
Second Optional Protocol to the ICCPR	<b>No</b>
Membership in the Council of Europe	25/01/2001
Protocol No. 6 to the European Convention	29/09/2003
Protocol No. 13 to the European Convention	<b>No</b>
Partnership and Cooperation agreement with the EU	01/07/1999

The abolition of the death penalty was a highly controversial issue in Armenia. When acceding to the Council of Europe in 2001 Armenia committed itself to ratify Protocol No. 6 during the year following its accession.

In 1997 the country had drafted a new Criminal Code envisaging the abolition of the death penalty. However, adoption of the Code was repeatedly postponed and after gunmen stormed parliament in October 1999 shooting dead eight men including the Prime Minister Vazgen Sarkisian, the Speaker of parliament Karen Demirchian,

and the latter's two deputies, there was large public and political support that those responsible should be sentenced to death.

In May 2003 parliament adopted a new Criminal Code banning the death penalty in peacetime but containing an exemption that would allow for the use of the death penalty in the 1999 parliamentary shootings case. This loophole triggered an international outcry.

On 1 August President Robert Kocharian commuted all outstanding death sentences to life in prison by presidential decree. In September parliament voted to abolish the death penalty in all cases in peacetime and to ratify Protocol No. 6 of the ECHR. The current Criminal Code makes no provisions for the death penalty.

In November 2003 deputies voted unanimously to amend the new Criminal Code to deny the right of parole to criminals sentenced to life imprisonment for grave crimes under six articles, including murder and assassination of a state or public figure. It was widely believed that this amendment was intended to ensure that those sentenced to life imprisonment in the October 1999 parliamentary shootings case were never released.

The country's Constitution has not been amended yet to reflect the abolition of the death penalty. Article 17 stipulates that *"Everyone has the right to life. Until such time as it is abolished, the death penalty may be prescribed by law for particular capital crimes, as an exceptional punishment."*

## AZERBAIJAN

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1992
First Optional Protocol to the ICCPR	27/11/2001
Second Optional Protocol to the ICCPR	22/01/1999 ( <b>reservation excluding offences in times of war</b> )
Membership in the Council of Europe	25/01/2001
Protocol No. 6 to the European Convention	15/04/2002
Protocol No. 13 to the European Convention	<b>No</b>
Partnership and Cooperation agreement with the EU	01/07/1999

On 22 January 1998 then President Heydar Aliyev announced his intention to abolish the death penalty. *"I believe that strengthening the struggle against crime in itself will reduce the number of criminal actions. At the same time humanization of our policy of punishment will also create among the people a healthy attitude toward violations and crimes,"* he said.

On 10 February 1998 the Azerbaijani parliament voted overwhelmingly in favour of a bill abolishing the death penalty for all crimes, by 104 votes to three. The relevant law came into force with its publication in the presidential gazette on 21 February. The 128 men on death row at that time had their sentences commuted to terms of imprisonment. The death penalty as a possible sentence has been eliminated from the Criminal Code of Azerbaijan.

*A de facto* moratorium on capital punishment had been in force since June 1993. In 1996 the number of articles in the Criminal Code punishable by death was

reduced from 33 to 12 and the death penalty was abolished for all women and for men over the age of 65.

In January 1998 the President stated that five people had been executed in 1988, six in 1989 and three in 1990. No further death sentences had been carried out until 1993, he said, when eight people were executed. Since 1993 Amnesty International has recorded 144 death sentences that were handed down including one in 1998.

Domestic legislation has not yet been fully brought into line with Azerbaijan's international treaty obligations. For example, Article 27 part 3 of the Constitution still stipulates: "*The death penalty, as the ultimate measure of punishment, until its complete abolition, may be prescribed by law only for especially grave crimes against the state, life and health of a human being.*"

When adopting the Second Optional Protocol Azerbaijan declared that "*in exceptional cases ... [Azerbaijan] allows the application of death penalty for the grave crimes, committed during the war or in condition of the threat of war.*"<sup>44</sup> Amnesty International is calling on Azerbaijan to withdraw its reservation.

## ESTONIA

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1991
First Optional Protocol to the ICCPR	21/10/1991
Second Optional Protocol to the ICCPR	30/01/2004
Membership in the Council of Europe	14/05/1993
Protocol No. 6 to the European Convention	17/04/2002
Protocol No. 13 to the European Convention	25/02/2004

The *Riigikogu* (parliament) abolished the death penalty on 18 March 1998 and voted with 39 in favour and 30 against for the ratification of Protocol No. 6 to the ECHR abolishing the death penalty for all crimes. Following the vote, Foreign Minister Toomas Hendrik Ilves said: "*Estonia has made another important step towards recognising common European values.*"

According to the Estonian Ministry of Foreign Affairs, death sentences had been imposed until the death penalty was fully abolished in 1998. According to the Ministry, the last execution had been carried out in 1991.

## GEORGIA

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1994
First Optional Protocol to the ICCPR	03/05/1994
Second Optional Protocol to the ICCPR	22/03/1999
Membership in the Council of Europe	27/04/1999
Protocol No. 6 to the European Convention	13/04/2000
Protocol No. 13 to the European Convention	22/05/2003
Partnership and Cooperation agreement with the EU	01/07/1999

<sup>44</sup> Refer to [http://www.unhchr.ch/html/menu3/b/treaty19\\_asp.htm](http://www.unhchr.ch/html/menu3/b/treaty19_asp.htm)

On 11 November 1997 the Georgian parliament overwhelmingly approved the abolition of capital punishment, voting 148 to one in favour of a motion proposed by then President Eduard Shevardnadze. Earlier that year, on 25 July, Eduard Shevardnadze had commuted to 20 years' imprisonment the sentences of all 54 death row prisoners. The one man remaining on death row following abolition in November also had his sentence commuted.

Domestic law does not fully reflect the abolition of the death penalty and Georgia's commitments under key human rights treaties. Article 15 part 2 of the Constitution still states that *"until its complete abolition the death penalty can be envisaged by organic law for especially serious crimes against life. Only the Supreme Court has the right to impose this punishment."*

## LITHUANIA

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1991
First Optional Protocol to the ICCPR	20/11/1991
Second Optional Protocol to the ICCPR	27/03/2002
Membership in the Council of Europe	14/05/1993
Protocol No. 6 to the European Convention	08/07/1999
Protocol No. 13 to the European Convention	29/01/2004

On 9 December 1998 the Constitutional Court of Lithuania ruled that the death penalty was unconstitutional. It stated that capital punishment violated the basic human rights to life and protection from cruelty which are enshrined in the country's Constitution.

On 21 December 1998 *Seimas* (parliament) voted for new legislation which replaced the death sentence with life imprisonment. As a result, nine prisoners under sentence of death were given life sentences.

Lithuania abolished the death penalty in June 1999 when parliament voted to ratify Protocol No. 6 by an overwhelming majority.

## MOLDOVA

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1993
First Optional Protocol to the ICCPR	<b>No</b>
Second Optional Protocol to the ICCPR	<b>No</b>
Membership in the Council of Europe	13/07/1995
Protocol No. 6 to the European Convention	12/09/1997
Protocol No. 13 to the European Convention	03/05/2002 <b>(signed only)</b>
Partnership and Cooperation agreement with the EU	01/07/1998

In the current Criminal Code of Moldova there are no provisions for the death penalty.

Following the December 1995 vote by the Moldovan parliament to abolish the death penalty, the death sentences of 19 prisoners were commuted to life imprisonment by presidential decree in February 1996.

Domestic legislation has not been fully brought in line with Moldova's international commitments. For example, the Constitution provides that "*The death penalty shall be abolished. Nobody shall be sentenced to such punishment except for crimes committed in time of war or in the event of imminent danger of war and only in accordance with the law.*"<sup>45</sup>

### **NAGORNO-KARABAKH (internationally unrecognized region)**

The self-proclaimed Nagorno-Karabakh Republic<sup>46</sup>, an enclave with a majority ethnic Armenian population in the west of Azerbaijan, is currently outside the *de facto* control of the authorities of Azerbaijan. Amnesty International understands that the Criminal Code in use there is the Criminal Code of the neighbouring Republic of Armenia which entered into legal force on the territory of Nagorno-Karabakh in August 2003. Article 6 of this Criminal Code abolished the death penalty and replaced it with life imprisonment. The three prisoners who remained on death row had their death sentences commuted to 15 years' imprisonment. As of December 2004 no one had been sentenced to life imprisonment.

A *de facto* moratorium on executions had been in force in Nagorno-Karabakh since 1997.

## **TURKMENISTAN**

### **International commitments**

International Covenant on Civil and Political Rights (ICCPR)	1997
First Optional Protocol to the ICCPR	01/05/1997
Second Optional Protocol to the ICCPR	11/01/2000
Partnership and Cooperation agreement with the EU	May 1998 (signed only)

In January 1999 President Saparmurad Niyazov decreed a moratorium on death sentences and executions. Prior to the moratorium, death sentences had been handed down in Turkmenistan on an extremely large scale. On 14 January 1999 the President publicly announced the commutation of "*all 674 prisoners who were sentenced to capital punishment last year*". There were reports that 90 per cent of the sentences had been imposed for drug-related offences. According to an unofficial source, at least 70 women were affected by the moratorium.

Turkmenistan was the first state in Central Asia to abolish the death penalty. On 27 December 1999, at a joint meeting of the Elder's Congress, the People's Council and the National Revival Movement, President Saparmurad Niyazov decreed the abolition of the death penalty. He stated: "*Although people are committing crimes, nevertheless, they are our holy citizens. Although they are guilty yet at the same time they are our relatives and Turkmen children. Allow me, therefore, to sign a decree on abolishing for ever, from this day, the death penalty in Turkmenistan. Every Turkmen's son, every citizen and every family has the right to live. Life is a holy thing for every person. Let us not take away this life for committing a crime.*"

On 29 December the maximum sentence in Turkmenistan for criminal offences was set as 25 years' imprisonment and Article 20 of the Constitution was amended to the effect that "*in Turkmenistan, everybody has the right to life and the freedom and its realization. Nobody can be deprived of the right to life and this*

<sup>45</sup> Article 24 part 3 of the Constitution of the Republic of Moldova.

<sup>46</sup> See footnote 31.

freedom... The death penalty in Turkmenistan is totally abolished and forever forbidden by the first President of Turkmenistan, the Great Saparmurad Turkmenbashi.” [for translator:

<http://www.turkmenistan.gov.tm/countri/c&konst.html> ]

## UKRAINE

### International commitments

International Covenant on Civil and Political Rights (ICCPR)	1973
First Optional Protocol to the ICCPR	25/07/1991
Second Optional Protocol to the ICCPR	<b>No</b>
Membership in the Council of Europe	09/11/1995
Protocol No. 6 to the European Convention	04/04/2000
Protocol No. 13 to the European Convention	11/03/2003
Partnership and Cooperation agreement with the EU	01/03/1998

When Ukraine became a member of the Council of Europe in 1995 it committed itself to “*sign within one year and ratify within three years from the time of accession Protocol No. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms on the abolition of the death penalty, and to put into place, with immediate effect from the day of accession, a moratorium on executions*”. However, in an appalling move, Ukraine executed more than 100 people in secret in 1996.

On 30 December 1999 the Constitutional Court of Ukraine ruled that the death penalty was unconstitutional and stated that changes should be made to the country’s Criminal Code to reflect this decision. The basis for the decision was that the death penalty violated the right to life and the prohibition against torture and cruel, inhuman and degrading treatment or punishment, which is safeguarded in Ukraine’s Constitution. At the time of the ruling approximately 400 prisoners had reportedly been under sentence of death.

Following the Court’s decision, on 22 February 2000, the *Verkhovna Rada* (parliament) removed the death penalty from the Criminal Code, replacing it with a maximum sentence of life imprisonment. President Leonid Kuchma signed a law abolishing the death penalty with immediate effect on 22 March 2000.

### Scope for judicial error

For countries that retain the death penalty it is particularly crucial that trials in capital cases strictly comply with international human rights law and standards.

**Kazakstan** is the only country in the former Soviet Union that has not ratified the ICCPR. Parties to the ICCPR have obliged themselves to ensure that the death penalty is not imposed “*contrary to the provisions of the present Covenant*” which include, among others, the prohibition of torture and cruel, inhuman or degrading treatment or punishment, the right “*not to be compelled to testify against himself or to confess guilt*”, the prohibition of arbitrary arrest or detention, and the right to a “*fair and public hearing by a competent, independent and impartial tribunal established by law*”.

Amnesty International’s concern about the death penalty is heightened by the fact that there appears to be a large scope for judicial error due to seriously flawed

criminal justice systems in many countries in the region. Tursunbay Bakir-uulu, the Ombudsman of **Kyrgyzstan**, said at the conference "Moratorium on the death penalty: experience, problems and prospects" in Dushanbe in June 2004 that information obtained during his inspections of the death row facilities in Kyrgyzstan showed that "with regard to some [death row prisoners] torture had taken place [and] other [violations] during the pre-trial and trial phase."<sup>47</sup>

The criminal justice systems of the last two executioners in the region – **Belarus** and **Uzbekistan** – have been criticized again and again by local and international organizations, and Amnesty International has documented dozens of cases where trials in capital cases violated provisions set out in the ICCPR. Such violations included unfair trials, the use of torture and ill-treatment to extract "confessions", and rampant corruption undermining the independence of the judiciary. (Refer to "Case examples" below).

### **The first Optional Protocol to the ICCPR: an important international safeguard**

By ratifying the **first Optional Protocol** states recognize the competence of the (UN) Human Rights Committee to consider communications from individuals subject to their jurisdiction who claim to be victims of violations of rights set out in the Covenant. All countries covered in this report are parties to this Protocol, except for **Kazakhstan** and **Moldova**. However, in many countries in the region prisoners are unable to approach the (UN) Human Rights Committee directly but must route any letters via the prison administration, where they risk being opened. The Criminal-Execution Code of **Tajikistan** explicitly denies prisoners the right to approach international organizations directly.

Amnesty International commends all countries that have ratified the first Optional Protocol for having opened this avenue to their citizens to remedy grave human rights violations. For example, following (UN) Human Rights Committee interventions the lives of at least 12 death row prisoners were saved in **Uzbekistan** and of at least 14 in **Tajikistan**. In their applications the complainants had alleged serious violations of the ICCPR including torture to force a "confession" and other violations undermining the fairness of the trial. When reviewing death penalty cases from the region covered in this report the (UN) Human Rights Committee ruled in all cases that violations of the ICCPR had indeed occurred.

Amnesty International is concerned that governments have on many occasions shown disregard for interventions and rulings by the (UN) Human Rights Committee on individual cases. The organization deplored the executions of at least seven death row prisoners in **Tajikistan** and 14 death row prisoners in **Uzbekistan** despite interventions by the (UN) Human Rights Committee on their behalf.

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<sup>47</sup> *The death penalty in the Kyrgyz Republic: Analysis of the situation and perspectives of abolition*, website: <http://www.ombudsman.kg/show.php?page=SK> .

In his February 2003 report the UN Special Rapporteur on torture criticized the authorities of **Uzbekistan** for their failure to take appropriate action after interventions by the (UN) Human Rights Committee. When it came to light that a number of executions had recently been carried out, Bertrand Ramcharan, then acting UN High Commissioner for Human Rights, on 4 July 2003 publicly urged the authorities of Uzbekistan “*not to carry out the execution of detainees who have appealed their convictions to the United Nations Human Rights Committee*”.<sup>48</sup> He noted in addition that he had underlined the importance of respecting interventions

#### How the UN Human Rights Committee works

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

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

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

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

The Committee considers the complaint in private meetings, then makes public its views and findings, including any remedy that should be provided. A summary of its activities under the Optional Protocol is included in its Annual Report to the UN General Assembly. The website of the UN Human Rights Committee can be found at [www.unhchr.ch](http://www.unhchr.ch). Procedures for submitting individual complaints are detailed at <http://www.ohchr.org/english/bodies/petitions/individual.htm>

from the (UN) Human Rights Committee during a visit to Uzbekistan in March 2003. In a July 2003 press release the (UN) Human Rights Committee reminded the authorities of Uzbekistan that “*it amounts to a grave breach of the Optional Protocol to execute an individual whose case is pending before the Committee.*”<sup>49</sup>

Despite these statements, Uzbekistan continued to execute prisoners on whose behalf the Committee had intervened. Amnesty International knows of five such cases since July 2003: **Otabek Makhmudov** was executed on 21 November 2003, eight days after the (UN) Human Rights Committee had requested the authorities of Uzbekistan to stay the execution while the Committee was considering his case; **Zhasur Madrakhimov** and **Bakhtiyar Yusupov** were executed on 4 March 2004 despite an intervention on their behalf by the (UN) Human Rights Committee on 25 February 2004; **Azizbek Karimov** and **Yusuf Zhumayev** were believed to have been executed on 10 August 2004 despite interventions by the (UN) Human Rights Committee on 3 June and 19 July 2004 respectively.

<sup>48</sup> Website:

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

<sup>49</sup> Website:

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

Amnesty International received information about cases in which rulings by the (UN) Human Rights Committee were not implemented by the authorities. Two glaring examples are the Committee's rulings in 2003 on the cases of *Bondarenko vs. Belarus* and *Lyashkevich vs. Belarus*. (Refer to the chapter "Secrecy").

## **Criticism of Belarus' criminal justice system by international bodies**

International bodies including the (UN) Human Rights Committee, the (UN) Committee against Torture, the UN Commission on Human Rights and bodies of the Council of Europe have frequently raised concern about serious flaws in the criminal justice system in Belarus.

In his February 2001 report published following a fact-finding mission to Belarus in June 2000, the Special Rapporteur on the independence of judges and lawyers concluded: "*the administration of justice, together with all its institutions, namely, the judiciary, the prosecutorial service and the legal profession, are undermined and not perceived as separate and independent. The rule of law is therefore thwarted.*" He pointed out that "*the placing of absolute discretion in the President to appoint and remove judges is not consistent with judicial independence*" and that there was "*excessive executive control of the legal profession, particularly by the Ministry of Justice. Such control undermines the core values of an independent legal profession and the Basic Principles on the Role of Lawyers.*" He also stressed that the "*independence and integrity of the procuracy is ... undermined by excessive executive control*".<sup>50</sup>

When considering Belarus' third periodic report to the (UN) Committee against Torture the Committee deplored the "*pattern of failure of officials to conduct prompt, impartial and full investigations into the many allegations of torture reported to the authorities, as well as a failure to prosecute alleged perpetrators*".<sup>51</sup> It also raised concern at the "*continuing use of the death penalty, and the inadequate procedures for appeals*".<sup>52</sup>

## **Criticism of Uzbekistan's criminal justice system by international bodies**

Both the (UN) Human Rights Committee and the (UN) Committee against Torture have expressed concern about the lack of independence of the judiciary in Uzbekistan.<sup>53</sup> The (UN) Committee against Torture has also criticized the "*insufficient*

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<sup>50</sup> E/CN.4/2001/65/Add.1, 8 February 2001, website:

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/\\$FILE/G0111054.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/571f50b9b848e6e8c1256a2300526b5c/$FILE/G0111054.pdf)

<sup>51</sup> Concluding observations of the Committee against Torture: Belarus, 20 November 2000, A/56/44, paras. 40-46, C 45.i, website:

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/f11049ba01a8dcccfc125699e0058906b?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/f11049ba01a8dcccfc125699e0058906b?Opendocument)

<sup>52</sup> Committee against Torture 2000, C 45.g.

<sup>53</sup> Concluding observations of the Human Rights Committee: Uzbekistan, CCPR/CO/71/UZB, Section C. 14, 26 April 2001, website:

[www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.71.UZB.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.71.UZB.En?Opendocument), and Committee against Torture, Concluding observations/Comments, CAT/C/CR/28/7, Section D, 5.e, 6 June 2002, website: [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.7.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.7.En?Opendocument)

level of independence and effectiveness of the procuracy”.<sup>54</sup> The UN Special Rapporteur on torture stated in his February 2003 report that he believed the “combination of a lack of respect for the principle of presumption of innocence ... the discretionary powers of the investigators and procurators with respect to access to detainees by legal counsel and relatives, as well as the lack of independence of the judiciary and allegedly rampant corruption in the judiciary and law enforcement agencies... to be conducive to the use of illegal methods of investigation”. He questioned a statement by Aminzhon Ishmetov, then Acting Chairman of the Supreme Court, that no one had ever been wrongly executed in Uzbekistan.

In his February 2003 report, the Special Rapporteur noted that “the abolition of the death penalty would be a positive step towards respect for the prohibition of torture and other forms of ill-treatment.” He recommended that the authorities “[introduce] a moratorium ... on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment”.

Following his visit to Uzbekistan in November and December 2002, the UN Special Rapporteur on torture concluded that “torture or similar ill-treatment is systematic” in Uzbekistan and “appear[s] to be used indiscriminately against persons charged for activities qualified as serious crimes such as acts against State interests, as well as petty criminals and others”. He also stated that “many confessions obtained through torture and other illegal means were ... used as evidence in trials, [including] in trials that are leading to the death penalty or to very severe punishment.”<sup>55</sup>

In its concluding observations issued in June 2002, the (UN) Committee against Torture expressed concern at “the continued use of the criterion of ‘solved crimes’ as a basis for promotion of law enforcement personnel”.<sup>56</sup> The Committee believed that this and the fact that numerous convictions are based on confessions “creates conditions that promote the use of torture and ill-treatment”.<sup>57</sup> There is no mechanism in Uzbekistan’s domestic law to challenge the legality of a detention, as required by Article 9 (4) of the ICCPR. The lack of such a mechanism confers excessive power on law enforcement agencies and leaves the process of arrest open to widespread abuse, such as discrimination, prejudice and corruption. As a result, detainees are deprived of a right widely recognized to be an important safeguard against torture and other human rights abuses.

The (UN) Committee against Torture raised concern at the “lack of adequate access for persons deprived of liberty, immediately after they are apprehended, to independent counsel, a doctor or medical examiner and family members”<sup>58</sup> and urged the authorities of Uzbekistan to “[a]dopt measures to permit detainees access to a lawyer, a doctor and family members from the time they are taken into custody and ensure that doctors will be provided at the request of detained persons without the need to obtain the permission of prison officials”.<sup>59</sup> Detainees are often held

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<sup>54</sup> Committee against Torture 2002, Section D, 5.c.

<sup>55</sup> Reuters, 6 December 2002.

<sup>56</sup> Committee against Torture 2002, Section D, 5.h.

<sup>57</sup> Ibid.

<sup>58</sup> Committee against Torture 2002, Section D, 5.b. Also refer to the report of the Special Rapporteur on torture, para. 66.

<sup>59</sup> Committee against Torture 2002, Section D, 6.f. See also Human Rights Committee 2001, Section C, 7.

incommunicado for several days, and sometimes even weeks, following their arrest, when the risk of torture or ill-treatment is the greatest.<sup>60</sup>

## Death verdicts in political trials in Uzbekistan

The death penalty has played an important role in the clampdown on “religious extremism” in Uzbekistan. The authorities have, for years, regarded “Islamist fundamentalism” as the key threat to the country’s security. As of 20 August 2004 at least 42 -- and possibly many more -- death sentences have been passed on political prisoners<sup>61</sup>, who were accused of having committed capital crimes and labelled “religious extremists” since 1998. Concern has been voiced that the defendants’ right to be presumed innocent until guilt is proved beyond a reasonable doubt has been violated.

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

In all cases known to Amnesty International where death sentences have been commuted the accused had been convicted of ordinary criminal offences. Such reversals of death sentences are welcome. No death sentences in cases involving “religious extremism”, however, are known to have been commuted. This is particularly disturbing as human rights organizations have documented glaring violations of international fair trial standards, including credible allegations of torture and ill-treatment in many cases that culminated in a guilty verdict and the imposition of the death penalty. (Refer to the case of Iskandar Khudoberganov in the chapter “Case examples”).

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<sup>60</sup> For detailed analyses of the discrepancies between domestic law and practice and international safeguards against torture and ill-treatment, see the February 2003 report of the UN Special Rapporteur on torture and the report *And it was hell all over again...* by Human Rights Watch at: <http://www.hrw.org/reports/2000/uzbek>

<sup>61</sup> Amnesty International regards as “prisoners of conscience” all those who are imprisoned, detained or otherwise physically restricted by reason of peacefully exercising their political, religious or other conscientiously held beliefs or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status. Amnesty International works towards the unconditional and immediate release of prisoners of conscience. Amnesty International uses the term “political prisoner” to refer to people deprived of their liberty in cases with a significant political element, for example criminal offences committed with a political motive or within a clear political context. Amnesty International does not call for the release of all political prisoners within this definition, nor does it call on governments to give political prisoners special conditions. Amnesty International works to ensure that all political prisoners receive a fair trial in accordance with international standards, and Amnesty International opposes the use of torture and cruel, inhuman or degrading treatment in all cases - both criminal and political - without reservation.

Amnesty International knows of several cases of alleged “religious extremists” in Uzbekistan in which executions were carried out within two months after the men were sentenced to death. Such rushed executions violate international human rights standards that require adequate time between sentence and execution for the completion of appeals, as well as petitions for clemency. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions recommended a period of at least six months before a death sentence imposed by a court of first instance can be carried out.<sup>62</sup>

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

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<sup>62</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1996/4, para. 553, website: <http://www.unhchr.ch/Huridocda/Huridoca.nsf/2848af408d01ec0ac1256609004e770b/a336708c800eee648025668d003255a4?OpenDocument#more2>

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

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

Several murders of police officers in the Namangan region in December 1997 sparked another wave of mass detentions of members of independent Islamist congregations or followers of independent imams (Islamist leaders) and their relatives, often accompanied by allegations of torture and ill-treatment. Many were sentenced to long-terms of imprisonment in unfair trials and one man, Tolib Mamadzhanov, was sentenced to death in a trial marred by serious human rights violations.

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

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

A series of explosions and attacks on police checkpoints in Tashkent and the city of Bukhara took place between 28 March and 1 April 2004. The authorities blamed the violence, which left over 40 people dead, on "Islamic extremists" including *Hizb-ut-Tahrir* and a previously unknown Islamist group called *Zhamoat* (cell), which they accused of intending to destabilize the country. On 9 April the General Prosecutor announced that over 700 people had been questioned in connection with the violence and that 54 suspects had been arrested, of whom 45 had been charged with "terrorism", including 15 women. The first trial in this connection opened in the Supreme Court in July.

On 30 July 2004 bombs detonated near the Israeli and the US Embassies as a result of which several people died.

As of 20 August 2004 no verdicts had been pronounced in the 2004 bombings trials. Amnesty International was concerned that a wave of new death sentences could be handed down in the cases connected to the bombings. The investigations into the 2004 bombings have been accompanied by allegations of violations including torture and ill-treatment.

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

## **Case examples**

### **Belarus: The case of Dmitry Yefremenkov**

On 12 March 1999 Dmitry Yefremenkov and his alleged accomplice, Yevgeny Voronezhsky, were sentenced to death and to 22 years' imprisonment respectively in Vitebsk, north-east Belarus, for a murder committed in July 1998.

According to Dmitry Yefremkov's lawyer, his client's "confession" was obtained under considerable duress. He called the validity of the conviction into question and added that he was not given full access to his client during his detention and that when he was allowed to see him, police officials were constantly present making his client too afraid to speak in detail about his ill-treatment. Reportedly, no independent investigation was conducted into the allegations of ill-treatment.

There were reports that the defendants' relatives were not admitted into the courtroom while the victim's relatives attended. Dmitry Yefremkov's lawyer believed the court was influenced by reports in the mass media that called his client and Yevgeny Voronezhsky "*beasts, who have no place in society and should be shot dead*" thereby violating Article 14 (2) of the ICCPR which stipulates the defendants' right to be presumed innocent until proved guilty according to law.

### **Uzbekistan: The case of Aleksey Buryachek**

Aleksey Buryachek, born 1976, was sentenced to death by Tashkent city court in December 2002. He was convicted of the July 2002 murder of a woman and her daughter who was known to Aleksey Buryachek.

Reportedly, he was beaten by police after his detention to force him to "confess" to the murders. It is alleged that when he denied involvement in the murders police beat his girl-friend Lyubov Bogomolova, who was eight months pregnant at the time, in front of his eyes. The police reportedly threatened that they would beat her until she gave birth and then they would strangle the baby in front of his eyes. Reportedly, Aleksey Buryachek signed the "confession" to stop the beatings and intimidation of his girl-friend. Although he reportedly retracted his "confession" in court detailing his allegations of torture and ill-treatment, no investigation was believed to have been conducted into the allegations.

There were allegations that after the trial officials from the office of the procuracy visited Aleksey Buryachek in Tashkent prison offering that if he signed a "confession" to another murder he would be acquitted for the murder he had been sentenced for. The officials reportedly promised that he would not be sentenced to death for the second murder and threatened that if he did not agree to this deal, he would have no chance to have his death sentence overturned. Reportedly, when he understood that the officials would not keep their word, he damaged his eyes in protest in October 2003 and became blind. In July 2004, when Amnesty International spoke to his relatives, they confirmed that he has been blind since then. Reportedly, he was only given medical treatment after persistent protest by his mother. The (UN) Human Rights Committee requested the authorities of Uzbekistan to stay his execution pending the Committee's consideration of his allegations of violations of the ICCPR.

A new criminal case was opened against him accusing him of further crimes and, on 29 December 2003, Tashkent city court again pronounced a death sentence. The appeal board of Tashkent city court endorsed the death verdict in March 2004. Aleksey Buryachek is currently on death row in Tashkent prison.

### **Uzbekistan: The case of political prisoner Iskandar Khudoberganov**

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

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

Iskandar Khudoberganov and five co-defendants were brought to trial in August 2002 in Tashkent city court on charges of “attempting to overthrow the constitutional order” and “setting up an illegal group”. Iskandar Khudoberganov was additionally charged with the capital offences of “premeditated, aggravated murder” and “terrorism”, accused of receiving military training in Chechnya (in Russia) and in Tajikistan aimed at overthrowing the government of Uzbekistan.

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

The six accused were convicted on 28 November 2002. Iskandar Khudoberganov was sentenced to death and the others received prison terms of between six and 16 years. Appeals against the sentences were turned down on 28 January 2003 by the Presidium of Tashkent city court. The Collegium of judges of the Supreme Court and the Presidium, one of the highest organs of the Supreme Court, later also turned down appeals against the death sentence.

In November 2002 the (UN) Human Rights Committee urged the Uzbek authorities to put the execution on hold while the Committee considered the case, and the UN Special Rapporteur on torture also raised the case during his visit to Uzbekistan in November and December 2002. In January 2004 the (UN) Human Rights Committee passed on a letter to Iskandar Khudoberganov’s family that the Committee had received from the Supreme Court. The letter reportedly stated that

Iskandar Khudoberganov would not be executed while his case was under consideration by the Committee.

### **Uzbekistan: The case of Vazgen Arutyunyants**

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

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

The families of prisoners facing the death penalty in Uzbekistan have in many cases reported being asked for large bribes to save their relative's life, and lawyers working on death penalty cases have confirmed that the corruption surrounding these cases is notorious. The size of the bribe apparently depends on the seriousness of the charge, so bribes in death penalty cases are usually particularly high. The economic and social position of the family can therefore be key to the outcome of such a case. Despite payment of large sums, however, prisoners are sometimes sentenced to death nevertheless.

### **Uzbekistan: The case of Abror Isayev**

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

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

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

Guards told her that Abror Isayev had not spoken to anyone for two weeks. When she urged a prison doctor to treat him, he reportedly said that her son was just pretending. Following complaints to the authorities, Abror Isayev's mother received a reply from Erkin Kamilov, the director of Tashkent prison, who wrote: *"At the moment he does not speak, he whistles all the time and wants to explain something by doing so. [However], he understands the questions being asked of him."* In June 2003 a Ministry of Interior official wrote to the family: *"Your son receives medical treatment and his state of health is satisfactory."* On 1 July she found that her son could hardly move and thought that his mental health had deteriorated: *"He cried like a baby and wanted to be hugged and sit on my lap. I tried to sing lullabies to him to calm him down."* Several senior officials were present, who did not introduce themselves, she said. *"I think they were supposed to assess Abror's state of health, but instead they stood around, making fun of him."*

In February 2003 the (UN) Human Rights Committee urged the authorities of Uzbekistan to stay the two executions while the case was under consideration by the Committee. Following persistent international pressure Abror Isayev's and Nodirbek Karimov's death sentences were replaced with long terms of imprisonment in April 2004.

International standards require that people who have become mentally ill are exempted from the death penalty. This includes people who have become mentally ill after being sentenced to death. In its April 2003 resolution the UN Commission on Human Rights reiterated its conviction that those countries that retain the death penalty must *"not...impose the death penalty on a person suffering from any form of mental disorder or to execute any such person"*.<sup>63</sup>

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<sup>63</sup>Commission on Human Rights resolution 2003/67, para. 4g, website: <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/cc0e2a6d48fbc470c1256d24003274d6?Opendocument>

## Secrecy

### Treatment of death row prisoners' relatives: cruel, inhuman and degrading

In **Belarus** as well as in **Uzbekistan** the state refuses to tell families when their loved one is to be executed and they are not granted a final chance to say goodbye. After the execution the state refuses to reveal where his body is buried. While he is still alive the family's anxiety is heightened by the secrecy surrounding the conditions and allegations about harsh treatment on death row. The secrecy surrounding the death penalty and the general lack of transparency of the criminal justice system inevitably lead to immense suffering.

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

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

To honour her son's memory and to work towards a vision where nobody has to suffer what her son and she had to go through Tamara Chikunova founded the human rights organization Mothers against the Death Penalty and Torture. Her organization has worked on dozens of death penalty cases and helped to save the lives of many of them.

In his February 2003 report following a visit to **Uzbekistan**, Theo van Boven, the UN Special Rapporteur on torture, stated that the *"complete secrecy surrounding the date of execution, the absence of any formal notification prior to and after the execution and the refusal to hand over the body for burial are believed to be intentional acts, fully mindful of causing family members turmoil, fear and anguish"*

over the fate of their loved one(s).”<sup>64</sup> He described the treatment of family members as “malicious and amounting to cruel and inhuman treatment”.<sup>65</sup>

In 2003 the (UN) Human Rights Committee made an important ruling about the secrecy in death penalty cases when considering the cases of death row prisoners Anton Bondarenko and Igor Lyashkevich from **Belarus**, submitted under the individual complaint procedure.<sup>66</sup> The Committee concluded that the secrecy surrounding these issues:

*“[has] the effect of intimidating or punishing families by intentionally leaving them in a state of uncertainty and mental distress...[and that the] authorities’ initial failure to notify the author of the scheduled date for the execution of her son, and their subsequent persistent failure to notify her of the location of her son’s grave amounts to inhuman treatment of the author, in violation of article 7 of the Covenant [prohibiting torture or cruel, inhuman or degrading treatment or punishment].”*<sup>67</sup>

In July 1999 Amnesty International was contacted by the mother of **Anton Bondarenko**, whose son was being held under sentence of death. Anton Bondarenko was sentenced to death in **Belarus** in June 1998 for a murder he committed when he was 19 years old. His appeal was rejected and the original death sentence was upheld. His mother informed Amnesty International that she had visited the prison where her son was being held on a daily basis for several weeks to see if her son was still alive. The prison authorities refused to inform her of the date when her son would be executed. Amnesty International appealed urgently to the authorities against the execution of Anton Bondarenko. On 15 July 1999 Amnesty International was informed by a friend of Anton Bondarenko’s mother that the previous day she and his mother had staged a two-person picket outside the building of the Presidential Administration, where the mother had reportedly pleaded for her son’s sentence to be commuted. The two women were arrested by police officers and detained for three hours. Anton Bondarenko was executed on 24 July.

In January 1999 Anton Bondarenko’s lawyer had submitted a complaint to the (UN) Human Rights Committee alleging violations of the ICCPR. However, the Committee was only able to intervene on the case in October 1999 when Anton Bondarenko had already been executed. When issuing its ruling on this case the Committee requested the authorities to inform Anton Bondarenko’s mother of “*the location where her son is buried, and compensation for the anguish suffered. The State party is also under an obligation to prevent similar violations in the future.*” Anton Bondarenko mother still does not know where her son is buried and the Criminal-Execution Code of Belarus has not been amended to comply with the Committee’s ruling.<sup>68</sup>

<sup>64</sup> 2003 Special Rapporteur on torture report, para. 65.

<sup>65</sup> Ibid.

<sup>66</sup> UN Human Rights Committee, 77<sup>th</sup> Session, Bondarenko vs. Belarus (CCPR/C/77/D886/1999, 11 March 2003) and Lyashkevich vs. Belarus (CCPR/C/77/D887/1999, 24 April 2003). Website: [www.unhchr.ch/hurricane/hurricane.nsf/0/483D3D81FE87CBFAC1256D25002E0708?opendocument](http://www.unhchr.ch/hurricane/hurricane.nsf/0/483D3D81FE87CBFAC1256D25002E0708?opendocument)

<sup>67</sup> Ibid.

<sup>68</sup> With regard to the case of Igor Lyashkevich, the (UN) Human Rights Committee made similar requests. His family has also not been informed of the location of his grave.

Colonel Oleg Alkayev,<sup>69</sup> former director of SIZO No. 1 in Minsk and head of the execution squad, told Amnesty International on 30 July 2004: *“The relatives have often tried to find out about the site of burial but [the authorities] have especially disseminated false information. I cannot disclose the location because it is secret. Otherwise, if I give a hint then the mothers and sisters and brothers go out with shovels and start digging and this has to be prevented.”* Colonel Alkayev indicated, however, that death row prisoners were not buried in ordinary cemeteries: *“Historically, even before the Soviet Union, it has always been the case that criminals were not buried in the same cemeteries as the Orthodox. It is believed to be barbarism to bury the one who killed and the one who was killed in the same cemetery.”*

In its Plan of Action, finalized in 2004, **Uzbekistan** committed itself to a number of measures concerning -- among other issues -- the death penalty. For example, it committed itself to prepare *“regulations on informing relatives of individuals sentenced to capital punishment in accordance with international norms”* and to submit to parliament a draft “Law on changes and additions to Criminal-Execution Code” in 2005 in this regard. Amnesty International has repeatedly called on the Uzbek authorities to disclose the location of the graves to relatives who wish to know, however, so far to no avail.

Amnesty International is concerned that in most if not all the countries in the region that do not execute anymore, relatives of death row prisoners -- who had been executed before the country abolished or put a moratorium in place -- have still not been able to find out where their loved ones were buried. In **Kyrgyzstan** and **Tajikistan**, for example, the Criminal-Execution Codes still stipulate that the place of burial is not disclosed.

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

Reports from several independent sources indicate that death row prisoners in **Belarus** and **Uzbekistan** live in constant fear that they could be executed at any time. According to the law in both countries, the execution can be carried out as soon as the President has refused to grant clemency. However, neither the lawyers, nor the relatives nor even the death row prisoners themselves are informed of the date when the question of clemency will be considered or of the outcome.

Polina Braunerg, a lawyer who has worked on many death penalty cases in **Uzbekistan**, told Amnesty International that death row prisoners are often unsettled and frightened when they are taken for a meeting with their lawyer or family because they are frequently not told that they have a visitor and fear that they are being taken for execution.

When Abror Isayev’s mother visited her son in Tashkent prison on 3 April 2003, he was extremely disturbed and reportedly said that he had been told he was

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<sup>69</sup> Colonel Oleg Alkayev left Belarus in 2001 and currently lives in exile in Berlin. He alleges that four opposition figures were shot dead by government officials in extrajudicial executions. He believes that the executions were sanctioned and covered up by President Lukashenka. In 1999 a senior Interior Ministry official reportedly twice asked him to lend him his executioner’s gun *“for training purposes”*. Colonel Oleg Alkayev reported that he later noticed that the “disappearances” of the opposition figures Viktor Gonchar and Yuriy Zakharenko coincided with the dates when the Interior Ministry official borrowed the pistol from him.

being led to his execution. His mother reported that when she saw him, “*he had a fresh red mark on his neck and I understand he wanted to strangle himself.*”

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

As head of SIZO No. 1 in Minsk and head of the execution squad from December 1996 to May 2001, Colonel Alkayev was personally responsible for informing death row prisoners of their execution immediately before they were taken to be shot. He gave the following account of the procedure: “*The death row prisoner is taken to a separate room. The prison director is present, the procurator and a representative of the Interior Ministry... I give the order that his death sentence will be executed. Then the person still doesn't know when it will be carried out. It could be tomorrow. I don't say the time. Then the prisoner is blindfolded and taken to the next room. A man is waiting for him there and the prisoner is shot in the back of his head.*” The executioners belong to a special group that reports to the prisoner director. “*These people receive additional money. They get psychological training enabling them to carry out the order and then go to the zoo with their daughters,*” he added.

Many of those currently on death row in territories with moratoria on executions in place may have been waiting years in a state of continued uncertainty as to their ultimate fate, a situation that Amnesty International believes to amount to cruel, inhuman and degrading treatment. **Kyrgyzstan** as well as the unrecognized regions of **Abkhazia** and the **Dnestr Moldavian Republic** have had moratoria on executions in place for many years. All of them have continued to hand down death sentences and in Kyrgyzstan there are believed to be at least 140 people on death row.

Forty-two prisoners had accumulated on death row by the time Armenia abolished the death penalty in 2003. The country had a moratorium on executions in place since it gained independence in 1991 but death sentences continued to be passed. At its November 2000 session the (UN) Committee against Torture expressed its concern about the situation of death row prisoners in Armenia stating: “*The Committee recommends that, as soon as possible, [Armenia] should ... [abolish] the death penalty, in order to resolve the situation of the many persons who have been sentenced to death and who are being kept in uncertainty amounting to cruel and inhuman treatment in breach of article 16 of the Convention [against Torture]*”.<sup>70</sup>

## Conditions on death row

Due to the lack of independent inspections of death row prisons in **Belarus** and **Uzbekistan** that could inform the public about prison conditions, it is difficult to establish the facts about conditions on death row in these countries. However, on the basis of information available, the conditions fail to meet international human rights standards including the UN Standard Minimum Rules for the Treatment of Prisoners,<sup>71</sup> the UN Body of Principles for the Protection of All Persons under Any

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<sup>70</sup> Concluding observations of the Committee against Torture: Armenia, 17 November 2000, A/56/44, E, 39g.

website: <http://www.unhchr.ch/tbs/doc.nsf/0/3d5565561c045110c12569a7003bb907?OpenDocument>

<sup>71</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp34.htm](http://www.unhchr.ch/html/menu3/b/h_comp34.htm)

Form of Detention or Imprisonment,<sup>72</sup> and the UN Basic Principles for the Treatment of Prisoners.<sup>73</sup> Prison conditions on death row in countries in the region that have a moratorium on executions in place are also believed to fall far short of international standards.

## Belarus

As soon as a defendant is sentenced to death he is transferred to SIZO No. 1 in Minsk. Reportedly, prisoners usually spend at least one year on death row before the execution.

According to Colonel Oleg Alkayev, former director of the SIZO and head of the execution squad, 17 death row cells are located on the lower ground floor. One or two of them are for single occupancy, the others are for two prisoners. According to the former director, the standard size of a cell for two is approximately 12 m<sup>2</sup>. It has two metal beds that are fixed to the floor. There is one small shelf but no table. A toilet is located in one corner; it is not separated from the rest of the cell, thereby not providing for privacy. The windows are secured with several sets of bars. Electric lighting is on around the clock “*so that inmates can be watched all the time*”, said Colonel Alkayev. Reportedly, every 10 days death row prisoners are taken for a bath and their clothes are washed. During visits by lawyers, relatives and religious ministers, prison guards are always present and the prisoner is handcuffed and attached to a chair.

The Russian Orthodox Father Vasily told Amnesty International that he had visited a number of death row prisoners. He is also not informed of the date of the execution and is not allowed to attend the burial.

Dmitry Kharkhal was held on death row in SIZO No. 1 in Minsk for more than one year until his death sentence was replaced with 15 years’ imprisonment in June 2003. (For more details on his case refer to the chapter “Deported to execution”). He alleged that he was frequently beaten on his head, back, stomach and genitals by prison guards who reportedly forced him to say “*thank you very much*” after each of the beatings. His lawyer reported that he was sometimes taken out of the cell and forced to walk crouching to the bath but was then denied permission to take a bath. He reported that he was forbidden to read books and that his personal books -- a copy of the Criminal-Procedural Code of Belarus, a Russian dictionary, an English language book and the Bible -- were taken away from him. He also said that not all of his letters including to his mother and complaints to government authorities were passed on by the prison administration. His allegations of ill-treatment and harsh prison conditions were reportedly not investigated by the authorities.

An unofficial source alleged that prisoners under sentence of death are regularly subjected to ill-treatment by prison staff of SIZO No. 1, including beatings with a wooden hammer.

## Uzbekistan

*“Honestly, they treat us here not like human beings but as if we were cattle or small mosquitoes.”*  
**Excerpt from a letter that death row prisoner Zhasur Madrakhimov managed to smuggle outside**

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<sup>72</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp36.htm](http://www.unhchr.ch/html/menu3/b/h_comp36.htm)

<sup>73</sup> Website: [http://www.unhchr.ch/html/menu3/b/h\\_comp35.htm](http://www.unhchr.ch/html/menu3/b/h_comp35.htm)

**before he was executed on 4 March 2004, eight days after the (UN) Human Rights Committee had urged the authorities to stay his execution.**

Amnesty International received information from several sources alleging that death row prisoners are frequently beaten by prison officials. The prisoners are held in small cells usually occupied by two prisoners, sleeping on wooden bunks. Reportedly, there is a pan or a hole under one of the bunks that serves as a toilet, and a pipe with drinking water. There is little or no natural light. One lawyer reported that cells had dim artificial lighting, on all the time. The air is said to be stagnant and the ventilation system not working. Families disputed official claims that prisoners are allowed 30 minutes' outdoor exercise daily claiming prisoners were not taken outdoors at all. According to death row prisoner Zhasur Madrakhimov, executed in March 2004, death row prisoners are permitted to take a shower for three to four minutes every other week. Food is insufficient and of poor quality, and families are not allowed to deliver food to death row prisoners.

Death row prisoners' contacts with the outside world are limited and monitored. Correspondence is strictly censored. According to domestic law, death row prisoners are allowed visits by a religious minister; however, Amnesty International is aware of only two cases where this right has been granted. During visits by families or lawyers, a guard is always present and within hearing, and prisoners fear repercussions if they talk about their treatment and prison conditions. Visitors are separated from the prisoner by glass and not allowed physical contact.

At its session in 2001 the (UN) Human Rights Committee expressed concern about the prison conditions on death row in Uzbekistan.<sup>74</sup> The Committee raised “[particular concern] at information about the extremely poor living conditions of detainees on death row, including the small size of cells and the lack of proper food and exercise”. It urged the authorities of Uzbekistan to “improve the situation of death row inmates in order to bring their conditions into line with the requirements of article 10, paragraph 1, of the [ICCPR]”. According to Article 10, “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

## Kyrgyzstan

In his report *On the protection of human rights and citizens' rights in the Kyrgyz Republic in 2003* Tursunbay Bakir-uulu, the Ombudsman of Kyrgyzstan, stated that on death row in SIZO No. 5 five to six prisoners were held in cells meant for one or two.<sup>75</sup> He described conditions on death row in SIZO No.1 as even more problematic. According to him, dozens died from illnesses or suicide. “Now they have even been forbidden short visits and the daily 30-minutes' walks,” reported Tursunbay Bakir-uulu. At the conference “Moratorium on the death penalty: experience, problems and prospects” in Dushanbe in June 2004 he stated: “Some of the death row prisoners who have been kept in single cells for a long time have lost the ability to move around unaided.”

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<sup>74</sup> Human Rights Committee 2001, Section C, 10.

<sup>75</sup> The report *On the protection of human rights and citizens' rights in the Kyrgyz Republic in 2003* can be found on: <http://www.ombudsman.kg/show.php?page=doklad>

## International standards on prison conditions

The prison conditions on death row in **Belarus, Uzbekistan** and **Kyrgyzstan** as described above do not meet international standards. For example, with regard to the accommodation of prisoners Rule 10 of the Standard Minimum Rules for Treatment of Prisoners stipulates that “[a]ll accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.” Such requirements include that the “sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner” (Rule 12); that “[e]very prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits” (Rule 21 part 1); and that “[i]nstruments of restraint, such as handcuffs ... shall never be applied as a punishment. ... Such instruments must not be applied for any longer time than is strictly necessary” (Rules 33 and 34). With regard to contact with the outside world, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stresses that “[i]nterviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official” (Principle 18 part 4), and that “[a] detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family” (Principle 19). According to the Standard Minimum Rules, “[a]ccess to a qualified representative of any religion shall not be refused to any prisoner” (Rule 41 part 3).

## Freedom of expression and public opinion

The authorities of **Belarus** and **Uzbekistan** frequently refer to public opinion as a key argument against introducing a moratorium or abolishing the death penalty.

According to the results of a referendum conducted in **Belarus** in 1996, 80.4 per cent of 84 per cent of those who took part in the referendum voted against abolition while only 17.93 were in favour of it. In an opinion poll conducted among 1200 people in **Uzbekistan** by the government-funded organization *Izhtimoiy fikr* (Public Opinion) in 2004, 78.2 per cent were against abolition or a moratorium.

At the same time both governments continue to withhold vital information about the application of the death penalty in their countries, thereby preventing an informed public discussion about the issue.

In December 2003 the authorities of **Uzbekistan** stopped the conference “Death Penalty: Analysis, Tendencies and Realities” organized by the Uzbekistan-based non-governmental group Mothers against the Death Penalty and Torture scheduled to take place in Tashkent on 5 December.<sup>76</sup> The conference was aimed at initiating a public debate about the death penalty and at creating a platform for dialogue with the authorities. The group had invited representatives of the authorities, foreign diplomats, representatives of intergovernmental organizations as well as local and international human rights activists to speak at the conference. In addition, the group found it was almost impossible to get material for the conference printed, including the group’s latest bulletin and Amnesty International’s November 2003 report *‘Justice only in heaven’ – the death penalty in Uzbekistan*. Several printing houses refused, fearing reprisals by the authorities.

Anti-death penalty activists and relatives of death row prisoners struggling for the lives of their loved ones have been harassed and intimidated in **Uzbekistan**.<sup>77</sup>

Amnesty International believes that governments should lead public opinion in matters of human rights and criminal policy. Historically it has almost always been the case that the death penalty has been abolished even though the majority of the public favoured its retention. Yet when the death penalty is abolished there has often been little public outcry, and it almost always remains abolished.

At the same time it is important that human rights issues including the death penalty can be openly discussed and that the authorities disclose information about its application to enable an informed debate.

## Deported to execution

Many governments in the region have facilitated deportations of suspects to countries where they were subsequently sentenced to death, often in unfair trials accompanied by torture allegations.

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<sup>76</sup> See AI Index: EUR 62/020/2004 and refer to Amnesty International’s *Concerns in Europe and Central Asia* entry on Uzbekistan covering July to December 2003, AI Index: EUR 01/001/2004.

<sup>77</sup> For further information refer to Amnesty International’s report *‘Justice only in heaven’-- the death penalty in Uzbekistan*, AI Index: EUR 62/011/2003, p. 50.

For example, **Kyrgyzstan** deported people to face executions in China and Uzbekistan even though it had put a moratorium in place citing its commitment to protect human rights.

Despite its obligations as a member of the Council of Europe and other treaty obligations, **Russia** deported people to countries where they were subsequently sentenced to death.

**Kazakstan, Tajikistan, Turkmenistan, Ukraine** and possibly more countries from the region also facilitated the deportation of people who were sentenced to death upon their return, often in trials marred by serious violations including torture to force “confessions”.

The international legal principle of *non-refoulement* bars all states from returning individuals to a country where their lives are at risk or where they are likely to face torture. This is a binding principle of customary international law which is also laid out in international treaties such as the 1951 Convention relating to the Status of Refugees (Refugee Convention), the 1967 Protocol relating to the Status of Refugees (1967 Protocol), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), and the ECHR.<sup>78</sup> The right not to be subjected to *refoulement* has been elaborated further by UN human rights bodies, including the (UN) Committee against Torture and the (UN) Human Rights Committee, which monitor States’ compliance with the Convention against Torture and the ICCPR respectively.<sup>79</sup>

**Kazakstan, Kyrgyzstan, Tajikistan, Turkmenistan** and **Russia** facilitated such deportations involving the death penalty and torture allegations while they were parties to the 1951 Refugee convention and the 1967 Protocol;<sup>80</sup> all these countries apart from **Turkmenistan** were also parties to the Convention against Torture at the time.<sup>81</sup>

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<sup>78</sup> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment [...]” (Article 7, ICCPR, 1966). “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3, Convention against Torture, 1984; No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (Article 33, 1951 Refugee Convention).

<sup>79</sup> The CAT has reiterated the absolute nature of the protection afforded by Article 3 of the Convention against Torture and has taken the view that “Article 3 applies irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes” (M.B.B. v Sweden, Communication Number 104 (1998), CAT/C/22/D/104/1998) and that “the nature of the activities in which the person engaged is not a relevant consideration in the taking of a decision in accordance with Article 3 of this Convention” (see, for example, *Seid Morten Aemei v Switzerland*, Communication Number 34 (1995), CAT/C/18/D/34/1995). In addition, the (UN) Human Rights Committee has noted that “[s]tates parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement” (Human Rights Committee, General Comment 20, Article 7, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.1 at 30, 1994, website: <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>.)

<sup>80</sup> As of 20 August 2004 Uzbekistan was the only country in the region that had still not acceded to the Refugee Convention and its 1967 Protocol.

<sup>81</sup> Turkmenistan acceded to the Convention against Torture in June 1999, five months after the deportations recorded by Amnesty International.

For a table of ratifications of the Convention against Torture, the Refugee convention and the 1967 Protocol by countries in the region, refer to the appendix (item 2).

## Kazakstan

The authorities of Kazakstan facilitated the forcible return of **Kozimbek Zakirov** to Uzbekistan after his arrest in the Kazak town of Taldy-Kurgan on 5 March 1999. He was sentenced to death by the Supreme Court of Uzbekistan after an unfair trial on 28 June 1999, accused of “religious extremism”. He was reportedly executed seven weeks after the death verdict was pronounced.

Local NGOs who assist ethnic Uighurs from China estimated that Kazakstan may have returned around 20 Uighurs to China in recent years, but the exact number is impossible to determine. The Uighurs were believed to be at risk of being tortured and sentenced to death in China. In view of China’s ongoing security crackdown against so-called “separatists, terrorists and religious extremists” in the Xinjiang Uighur Autonomous Region (XUAR), which borders Kazakstan and Kyrgyzstan, Amnesty International considers that any Uighurs suspected of such activities and forcibly returned to China are at high risk of torture and, in some cases, execution.

For example, **Hemit Memet**, **Kasim Mapir (or Kasim Mahpir)** and **Ilyas Zordun**, three young Uighur asylum-seekers, who had reportedly participated in a demonstration in the city of Gulja (Yining) in the XUAR in February 1997,<sup>82</sup> were forcibly returned to China by the Kazak Ministry of National Security on 11 February 1999. They had been arrested as they tried to cross the border into Kazakstan. It was later reported that two brothers of Hemit Memet, **Saydakhmet Memet** and **Zulfikar (or Zulikar) Memet**, had also been arrested in the XUAR for “assisting terrorists”. They were held in Yengi Hayat prison in Gulja city and Zulfikar Memet was reportedly tortured in detention, including by having his fingernails pulled out. He was reportedly executed in secret in June 2000. Saydakhmet Memet was sentenced to six years in prison.

The fate of Hemit Memet, Kasim Mapir and Ilyas Zordun remained unclear. Some reports suggested that Hemit Memet was sentenced to death in a secret trial in July 1999, and that all three men had been executed in August 1999. Subsequent reports indicated, however, that they did not face trial until March 2001, when they were given suspended death sentences after being convicted of “*dividing the country, illegal storage of firearms, and illegally crossing the border*”. Amnesty International also received unconfirmed reports that they had been tortured in detention in order to force them to “confess”, but further details of their treatment remained unclear.

In another case **Abdukakhar Idris**, a Uighur asylum-seeker reportedly “disappeared” in Almaty, Kazakstan, in April or May 2003. He is believed to have been detained and forcibly returned to China. According to a copy of his testimony,

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<sup>82</sup> The Gulja (Yining) demonstration of 5 February 1997 has officially been described as a “*serious riot during which the terrorists shouted slogans calling for the establishment of an Islamic Kingdom*”. Numerous independent eyewitness reports indicate that the incident was in fact a peaceful demonstration by local people calling for equal treatment for Uighurs which degenerated into violence after security forces fired into the crowd in an attempt to forcibly disperse the protesters. Hundreds were arrested in the aftermath and many were allegedly subjected to torture and ill-treatment, including being hosed down with icy water which caused serious cases of frostbite.

obtained by a local NGO before he went missing, Abdulkakhar Idris, aged 22, is a former tailor and bookkeeper from Kashgar in the southern part of the XUAR. He fled across the border in April 2001 after being detained for investigation for three months in connection with his funding of a sports club which the authorities suspected of being a front for Uighur oppositional activities. Abdulkakhar Idris was detained in the Kazak border town of Panfilov on 19 April 2001 and reportedly sentenced to one year in prison by Panfilov district court on 19 September 2001 for “illegally crossing the border”. He was released early, on 7 March 2002, after which he approached UNHCR for asylum. He then lived in hiding in Almaty, until he went missing around one year later after reportedly being taken from his home by Kazak police. No further information is available about his current whereabouts or legal status.

## Kyrgyzstan

The authorities of Kyrgyzstan forcibly deported at least five Uzbeks to Uzbekistan who were wanted on charges carrying the death penalty. All five were executed after unfair trials in Uzbekistan.

For example, the authorities of Kyrgyzstan forcibly deported **Zakirzhon Khasanov, Mukhamad Abdurakhmanov** and **Talatbek Nuraliyev** -- wanted by the Uzbek authorities on “religious extremism” charges -- after the Special Services of Kyrgyzstan reportedly detained them in the Kyrgyz capital, Bishkek, on 4, 5, and 16 March 1999 respectively. In Uzbekistan, they were sentenced to death by the Supreme Court after an unfair trial on 28 June 1999. All three were executed, reportedly some seven weeks after the trial, on 17 August.

Local NGOs who assist Uighurs from China estimated that Kyrgyzstan may have returned around 50 Uighurs to China in recent years, but the exact number is impossible to determine.

For example, on 31 March 2004, it was reported in the official Chinese media that two men, **Rahmutulla Islayil** and **Arken Yakuf**, both Uighurs from Urumqi, had been executed after being transferred to China from Kyrgyzstan in July 2002.<sup>83</sup> They were reportedly sentenced to death in January 2004 after being convicted of the murder of a Chinese diplomat and his chauffeur in the Kyrgyz capital, Bishkek, in June 2002. Shortly after their arrest in Bishkek, the Kyrgyz Interior Minister reportedly suggested that the crime was not political in nature, but was rather the accidental result of a struggle for power between criminal gangs.<sup>84</sup> However, at the time of their handover to China, it was announced that according to Kyrgyz Foreign Ministry data, the two were “*active members*” of the East Turkestan Liberation Organization (ETLO), a group that had previously been condemned by China as a “*terrorist organization*”.<sup>85</sup>

Official Chinese sources indicate that they were “*officially arrested*” (i.e. charged) in China on 31 October 2002.<sup>86</sup> They were sentenced to death on 12 January 2004 by the Urumqi Intermediate People’s Court.<sup>87</sup> Their appeal to the Xinjiang

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<sup>83</sup> “Murderers of Chinese envoy to Kyrgyzstan executed”, *Xinhua*, 30 March 2004.

<sup>84</sup> *Kyrgyz public educational TV*, 4 July 2002.

<sup>85</sup> ITAR-TASS, *BBC Monitoring*, 9 August 2002.

<sup>86</sup> *Xinhua*, 30 March 2004, op cit.

<sup>87</sup> Ibid.

Regional High People's Court was rejected, and the court issued the execution order on 25 March 2004.<sup>88</sup> No further details have been made public about the nature of the evidence against them or the circumstances of their trial.

At least eight men may currently be in danger of extradition to China and Uzbekistan. If extradited they would be at high risk of torture and execution.

The Uighurs **Bakhramjan Alimov (or Berhamjan)**, **Askar Tohti (or Askar Tokhti)** and **Ali Mahsum (or Ali Mansum)** were sentenced in March 2001 in connection with bomb explosions which killed four people in the city of Osh, Kyrgyzstan in 1998.<sup>89</sup> Bakhramjan Alimov and Askar Tohti were sentenced to death, but were not executed due to a moratorium on executions in Kyrgyzstan. Ali Mahsum received a 25-year prison term. Supporters of the men claimed that they had nothing to do with the bombings, but rather that they had been targeted and prosecuted because of their ethnic origin.

On 31 December 2002 in the Kyrgyz capital, Bishkek, three Uighurs, **Ablimit, Tohti Niyaz** and **Kayser Jalal** were reportedly sentenced to 16, 17 and 25 years in prison respectively for forming an "unlawful East Turkestan organization" and "illegal possession of weapons". Their lawyers reportedly claimed that they were convicted on the basis of fabricated evidence.<sup>90</sup> Amnesty International fears that the formal ratification of an extradition treaty between China and Kyrgyzstan in March 2004 increases the risk that they will be returned to China where they are likely to face torture and execution.

On 19 February 2004 Uzbek nationals **Nodir Karimov (or Asadullo Abdullayev)** and **Ilkhom Izattulayev** were sentenced to death by the Military court of Kyrgyzstan for involvement in violent crimes with a "religious extremist" background. For example, they were reportedly accused of involvement in a bomb attack on the *Dordoye* market in Bishkek, the capital of Kyrgyzstan, on 27 December 2002, and an attack on a bank in the Kyrgyz town of Osh on 8 May 2003, as result of which eight people were reported to have died and dozens were injured. As of July 2004 the two were believed to be in SIZO No.1 in Bishkek. It is not known whether Uzbekistan has requested their extradition but if extradited to Uzbekistan, they would be at risk of torture and execution.

## Russian Federation

On 17 September 1997, 27-year-old Belarusian citizen **Dmitry Kharkhal** was reportedly detained by law enforcement officers of the Republic of Belarus on the territory of the Russian Federation and forcibly returned to Minsk. On 20 March 2002 he was sentenced to death by Minsk city court and the Supreme Court of Belarus turned down his appeal on 30 August 2002. Following further appeals to the Supreme Court his death sentence was replaced with 15 years' imprisonment.

**Polvonnazar Khodzhayev**, aged 25, was detained by police officers at the railway station in the town of Samara in Russia during a police check of his

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<sup>88</sup> Ibid.

<sup>89</sup> They were sentenced together with two others of Turkish and Russian nationality, Ahmet Gyunan and Nazar Chotchayev, who received death sentences in connection with the same case.

<sup>90</sup> See: *Brief Report on the situation with human rights of Uighurs in Kyrgyzstan*, ETIC, 16 February 2002.

documents at the beginning of April 2000. On 7 April he was handed over to Uzbek law enforcement officers. The Russian authorities were aware that he was at risk of being sentenced to death back in Uzbekistan. The Russian newspaper *Nezavisimaya gazeta* (Independent newspaper) reported on 8 April 2000: “*Now the fate of the expert of the explosive business ... is in the hands of the organs of justice of Uzbekistan. In his motherland the terrorist can expect a harsh sentence -- the death penalty.*”

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

On 20 April 2001 **Saidamir Karimov**<sup>91</sup> left for Moscow where he was subsequently arrested by Russian Federation police and extradited to Tajikistan on 14 May 2001. In Tajikistan he and six other people stood trial charged with murdering the former Deputy Interior Minister, Habib Sanginov, on 11 April 2001. Saidamir Karimov and three of his co-defendants were sentenced to death in Dushanbe on 27 March 2002. Six of the men tried in this case were convicted solely on the testimony of one man, Kiemmidin Mirzoyev, who later retracted his evidence in court alleging that he was tortured to force him to incriminate the defendants. The (UN) Human Rights Committee urged the authorities of Tajikistan to stay the executions of the four men while the Committee was considering allegations of serious human rights violations in their cases.

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, who was also sentenced to death, 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.

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.

Saidamir Karimov’s death sentence was replaced with 25 years’ imprisonment in December 2002 and the sentences of the three co-defendants were replaced with long prison terms following a presidential pardon in July 2004.

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<sup>91</sup> For more information on this case, refer to Amnesty International’s report *Tajikistan: Deadly Secrets*, AI Index: EUR 60/008/2002, and the 1 January 2003 *Appeal Case sheet*, AI Index: EUR 60/003/2003.

## **Tajikistan**

The authorities of Tajikistan detained **Iskandar Khudoberganov** and handed him over to Uzbekistan in February 2002. Iskandar Khudoberganov was sentenced to death in November 2002 in a trial that ignored his allegations that he was tortured to extract a “confession” while in pre-trial detention. (See chapter “Case examples“ above).

## **Turkmenistan**

**Bakhrom Abdullayev** and **Zokhidzhon Dekhkanov** were believed to have been arrested by the Special Services of Turkmenistan on 19 October 1998 and handed over to Uzbekistan in January 1999. The two men were sentenced to death by the Supreme Court of Uzbekistan after an unfair trial on 28 June 1999. They were probably executed on 14 December 1999 and 17 August 1999 respectively.

## **Ukraine**

Reportedly, at the beginning of the 1990s Ukraine deported a Belarusian citizen to Belarus who was subsequently sentenced to death and executed.

## Recommendations

### To the authorities of Belarus and Uzbekistan

- **Belarus** and **Uzbekistan** should take immediate steps towards abolition of the death penalty by promptly imposing a moratorium on all death sentences and executions.
- **Belarus** should build on the March 2004 decision of its Constitutional Court which ruled that abolition of the death penalty or, as a first step, a moratorium, may be enacted by the President and by the Belarusian parliament.
- **Belarus** and **Uzbekistan** should commute the sentences of all prisoners currently on death row to terms of imprisonment.
- The authorities of **Belarus** and **Uzbekistan** should assume leadership in preparing public opinion for the abolition of the death penalty and publish all procedures relating to the death penalty and statistics which would help inform a serious public debate.
- **Uzbekistan** should ensure that anti-death penalty activists in the country are not harassed and intimidated by the authorities and that they can engage in human rights work without hindrance.
- **Uzbekistan** should investigate and bring to justice those responsible for the torture, ill-treatment and harassment of the relatives of those suspected or convicted of capital offences.
- The authorities of **Belarus** and **Uzbekistan** should bring the prison conditions on death row into line with international standards.

### Transparency and humanity

- **Belarus** and **Uzbekistan** should publish all directives, legislation and annual statistics relevant to the death penalty, and the names and case details of those already executed.
- **Belarus** should promptly comply with the (UN) Human Rights Committee's 2003 rulings on the cases of *Bondarenko vs. Belarus* and *Lyashkevich vs. Belarus*.
- **Belarus** and **Uzbekistan** should ensure that death row prisoners and their families are kept fully informed of the progress of appeals and petitions for clemency; reports presented to the Clemency Commission and the reasoning behind the Commission's recommendation to support or reject the petitions; the date and time of executions.
- **Belarus** and **Uzbekistan** should ensure that relatives of a prisoner under sentence of death are:
  - kept fully informed of the prisoner's place of imprisonment and, in advance, any transfer;

- allowed to have regular and private meetings with the prisoner, including to say goodbye if the petition for clemency is rejected; and to collect the prisoner's body and personal effects;
- ensure that the relatives of prisoners already executed in Uzbekistan receive full access to information including the dates and places of execution and burial, and allow them to collect the prisoner's remains and any personal effects.

### **Ensuring fair trial**

- **Belarus** and **Uzbekistan** should bring domestic legislation into line with the country's obligations under international human rights treaties, in particular the International Covenant on Civil and Political Right (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) and implement the recommendations made by the (UN) Human Rights Committee and the (UN) Committee against Torture.
- **Belarus** should without delay implement all recommendations made by the UN Special Rapporteur on the independence of judges and lawyers in his February 2001 report.
- **Uzbekistan** should without delay implement the recommendations made by the UN Special Rapporteur on torture in his February 2003 report.
- **Uzbekistan** should implement without delay the National Action Plan against torture.
- **Uzbekistan** should ensure that no further executions take place of those death row prisoners on whose behalf the (UN) Human Rights Committee has requested a stay of execution.
- **Uzbekistan** should ensure that reports of mental disability are investigated promptly and impartially and that people with mental disabilities are not sentenced to death or executed.
- **Belarus** and **Uzbekistan** should establish a commission of authoritative, independent experts with the powers to examine thoroughly allegations of torture made by prisoners, and bring to justice in fair proceedings those responsible for torture or ill-treatment.
- **Belarus** and **Uzbekistan** should publish objective sentencing criteria on the use of the death penalty for the courts.
- **Belarus** and **Uzbekistan** should reconstitute the Clemency Commission on an independent basis and ensure that its criteria and operations are transparent and that prisoners and their lawyers have:
  - access to information before the Commission;
  - an opportunity to challenge this information and to make their own presentations; and
  - reasonable time and facilities to challenge any rejection of the petition before the President decides on clemency.

## **To the authorities of Kazakhstan, Kyrgyzstan and the de facto authorities of Abkhazia and the Dnestr Moldavian Republic**

- Build on the moratorium on executions currently in place and promptly fully abolish the death penalty.
- Commute the sentences of all prisoners currently on death row to terms of imprisonment. Such practice would put an end to the cruel and inhuman treatment of those who have been kept on death row for years in a state of uncertainty as to their ultimate fate.
- Publish comprehensive annual statistics on the passing of death sentences and commutations.
- Ensure that the relatives of anyone executed before the moratorium on executions came into force have access to full information about the dates and places of execution and burial, and allow them to collect the prisoner's remains and any personal effects.
- Ensure that conditions on death row are brought into line with international standards.
- The countries named above should ensure that no one is deported or extradited to a country where he/she would be at risk of serious human rights violations including the death penalty and torture. In particular, **Kazakhstan** and **Kyrgyzstan** should ensure that Uighurs wanted by the Chinese authorities are not forcibly returned to China and that Uzbek citizens at risk of torture, ill-treatment and/or the death penalty are not forcibly returned to Uzbekistan.
- **Kazakhstan** should swiftly ratify the ICCPR and its first Optional Protocol.

## **To the authorities of the Russian Federation, Tajikistan and the de facto authorities of South Ossetia**

- Build on the moratorium on death sentences and executions currently in place and promptly fully abolish the death penalty.
- **Russia** should ratify Protocol No. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 6).
- The countries named above should ensure that the relatives of anyone executed before the moratorium on death sentences and executions came into force have access to full information about the dates and places of execution and burial, and allow them to collect the prisoner's remains and any personal effects.
- **Russia** should bring the country's deportation and extradition practices into line with its treaty obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the Convention against Torture, the 1951 Convention relating to the Status of Refugees (Refugee Convention), and the 1967 Protocol relating to the Status of Refugees (1967 Protocol).

- **Tajikistan** should ensure that no one is deported or extradited to a country where he/she would be at risk of serious human rights violations including the death penalty and torture.

### To the authorities of Latvia

- **Latvia** should fully abolish the death penalty in domestic law.
- **Latvia** should ratify the Second Optional Protocol to the ICCPR (Second Optional Protocol) and Protocol No. 13 to the ECHR.

### To the authorities of Armenia, Azerbaijan, Georgia, Moldova and Turkmenistan

- **Armenia** should ratify the Second Optional Protocol and amend its Constitution to reflect the abolition of the death penalty.
- **Azerbaijan** should withdraw its reservation under the Second Optional Protocol in which it declared that the death penalty may be used in time of war and amend its Constitution to reflect the abolition of the death penalty.
- **Georgia** should amend its Constitution to reflect the abolition of the death penalty.
- **Moldova** should ratify the first and the Second Optional Protocols and amend its Constitution to reflect the abolition of the death penalty.
- **Turkmenistan** should bring the country's deportation/extradition practices in line with its treaty obligations under the Convention against Torture, to ensure that no one is deported or extradited to a country where she/he would be at risk of serious human rights violations including the death penalty and torture.
- **Ukraine** should ratify the Second Optional Protocol.

### To the international community

- Press the governments in the region covered in this report to implement the recommendations outlined above.
- Ensure that these concerns are included in all discussions of bench marks for human rights performance.

## Appendix

### Item 1: Ratification of key treaties relevant to the death penalty

(dates are given as Day/Month/Year)

	International Covenant on Civil and Political	First Optional Protocol to	Second Optional Protocol to the	Protocol No. 6 to the European Convention on	Prot. No. 13 to the European Convention on

	Rights (ICCPR)	the ICCPR	ICCPR	Human Rights	Human Rights
<b>Armenia</b>	1993	23/06/1993	<b>No</b>	29/09/2003	<b>No</b>
<b>Azerbaijan</b>	1992	27/11/2001	22/01/1999 (reservation re offences in times of war)	15/04/2002	<b>No</b>
<b>Belarus</b>	1973	30/09/1992	<b>No</b>		
<b>Estonia</b>	1991	21/10/1991	30/01/2004	17/04/2002	25/2/2004
<b>Georgia</b>	1994	03/05/1994	22/03/1999	13/04/2000	22/05/2003
<b>Kazakhstan</b>	02/12/2003 (signed, not ratified)	<b>No</b>	<b>No</b>		
<b>Kyrgyzstan</b>	1994	07/10/1994	<b>No</b>		
<b>Latvia</b>	1992	22/06/1994	<b>No</b>	07/05/1999	03/05/2002 (signed only)
<b>Lithuania</b>	1991	20/11/1991	27/03/2002	08/07/1999	29/01/2004
<b>Moldova</b>	1993	<b>No</b>	<b>No</b>	12/09/1997	03/05/2002 (signed only)
<b>Russia</b>	1973	01/10/1991	<b>No</b>	<b>No</b>	<b>No</b>
<b>Tajikistan</b>	1999	04/01/1999	<b>No</b>		
<b>Turkmenistan</b>	1997	01/05/1997	11/01/2000		
<b>Ukraine</b>	1973	25/07/1991	<b>No</b>	04/04/2000	11/03/2003
<b>Uzbekistan</b>	1995	28/09/1995	<b>No</b>		

## Item 2: State parties to key international treaties relevant to deportation and extradition cases

(with date of ratification or accession)

	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	1951 Convention relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees	European Convention on Human Rights
<b>Armenia</b>	13/09/1993	06/07/1993	26/04/2002
<b>Azerbaijan</b>	16/08/1996	12/02/1993	15/04/2002
<b>Belarus</b>	13/03/1987	23/08/2001	
<b>Estonia</b>	21/10/1991	10/04/1997	16/04/1996
<b>Georgia</b>	26/10/1994	09/08/1999	20/05/1999
<b>Kazakstan</b>	26/08/1998	15/01/1999	
<b>Kyrgyzstan</b>	05/09/1997	08/10/1996	
<b>Latvia</b>	14/04/1992	31/07/1997	27/06/1997
<b>Lithuania</b>	01/02/1996	28/04/1997	20/06/1995
<b>Moldova</b>	28/11/1995	31/01/2002	12/09/1997
<b>Russia</b>	03/03/1987	02/02/1993	05/05/1998
<b>Tajikistan</b>	11/01/1995	07/12/1993	
<b>Turkmenistan</b>	25/06/1999	02/03/1998	
<b>Ukraine</b>	24/02/1987	1951 Convention: 10/06/2002; 1967 Protocol: 04/04/2002	11/09/1997
<b>Uzbekistan</b>	28/09/1995	<b>No</b>	