
Uzbekistan's Implementation of the CAT

Responses to the List of Issues CAT/C/UZB/4
and Concluding Observations CAT/C/UZB/CO/3

Uzbek Bureau for Human Rights and Rule of Law

with the support of FIDH

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1. General Information Update 2007-2013

Uzbekistan ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1995, and has since submitted four periodic reports to the UN Committee Against Torture. Use of torture in Uzbekistan has been well documented for many years by local and international human rights organisations. Despite this, it remains a systematic practice at all stages of an investigation in Uzbekistan.

In May, 2002 European Bank for Reconstruction and Development held its annual meeting in Uzbekistan. Thanks to this event the Government of Uzbekistan took up a request to invite the UN Special Rapporteur against Torture, Mr. Theo Van Boven, to the country in 2003. By the end of his visit, Mr. Van Boven had concluded that torture in Uzbekistan was systematically applied, issuing 22 recommendations. From year to year both Committee members and the office of the UN Special Rapporteur re-emphasise their conclusions and recommendations in order to improve the situation in Uzbekistan. For many years the Government there has shown a reluctance to recognise the scale on which torture is perpetrated in the country, and failed to take the necessary steps to combat torture and ill treatment. One important recommendation from the Committee and the Special Rapporteur is public condemnation of torture. In spite of this, the President and other high-level state officials still fail to condemn torture in Uzbekistan in public.

Torture serves as a club with which to terrorise people, silence independent voice and strengthen mechanisms that maintain existing authoritarian rule in Uzbekistan. The Uzbek government's reluctance to tackle torture signals to its law enforcement apparatus that it is to keep public order in a manner that will serve its own and not the people's needs. Torture is used to silence and even kill the regime's political opponents, as well as independent civil society representatives.

Since Uzbekistan's last review by the Committee against Torture, the state has adopted legislation that appears to have been enacted under the banner of democratic reform. However, both on paper and in practice this law has brought no improvement to the situation in the country. A prime example is Uzbekistan's law on Habeas Corpus, which was amended in 2008; according to many international and local independent experts this legislation contains numerous shortcomings that have negated any possible democratic effect it may have had. Another example is 2008's new law on Legal Defence, enacted under the same banner of "democratization"; in fact, many independent analysts highlight that this alteration was introduced in order to enable the state to exert further control over Uzbek lawyers.

2. Definition of Torture

The Committee reiterates its previous recommendation that the State party take measures to adopt a definition of torture so that all the elements contained in article 1 of the Convention are included. The State party should ensure that persons who are not law enforcement officials but who act in an official capacity or with the consent or acquiescence of a public official can be prosecuted for torture and not merely, as stated, charged with "aiding and abetting" such practices (CAT/C/UZB/CO/3, Para 5).

Also related to List of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 1).

Article 235 of the Uzbekistan's Criminal Code contains the following definition of torture and other cruel, inhuman and degrading treatment or punishment:

"... unlawful psychic or physical influence on the suspect, the accused, the witness, the victim or other participant in the criminal process or the convict serving a sentence, or their close relatives, by means of threats, causing blows, beating, torturing, causing suffering or other unlawful actions committed by an inquiry officer, investigator, procurator or other employee of the law enforcement organs or penal institutions, with the aim of obtaining any kind of information, confession of committing crimes, arbitrary punishments for committed actions or forcing to commit any kind of actions"

To date, despite repeated recommendations from the CAT Committee, the above definition has not been amended to comply with the all the fundamentals contained in article 1 of the Convention against Torture.

The State is reluctant to amend the definition of torture, insisting that it is in full compliance with article 1 of CAT, despite clear abrogation. The narrow and limited formulation of article 235 permits law enforcement officers to use torture within the framework of a "what is not prohibited is allowed" reading of the law. In particular, there is an absence of provisions on using a third person as an object of torture or means of applying pressure, or provisions on torture committed with the knowledge or tactic approval of an official.

A slight improvement took place in 2004, when the government adopted the Supreme Court Plenary decision on torture, which found that the courts of the Republic of Uzbekistan must use the definition of "torture" provided in Article 1 of the Convention against Torture as a guide that has primacy over national legislation. However, this law has not been implemented in respect of Uzbekistan's Criminal Code.

Indeed, all judges, investigators and law enforcement personnel use only the Criminal Code in their everyday work, and ignore or are unaware of the decision of the Supreme Court Plenary. Thus, it is vital that this decision be applied to all penal provisions in Uzbekistan, and that Article 235 of the Criminal Code be amended.

3. Condemnation of Torture

The State party should apply a zero-tolerance approach to the continuing problem of torture, and to the practice of impunity. The State party should:

- (a) Publicly and unambiguously condemn practices of torture in all its forms, directing this in particular to police and prison staff, accompanied by a clear warning that any person committing such acts, or otherwise complicit or participating in torture be held personally responsible before the law for such acts and subject to criminal penalties;
 - (b) Immediately adopt measures to ensure in practice prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those responsible, including law enforcement officials and others. Such investigations should be undertaken by a fully independent body;
 - (c) Bring all suspected perpetrators to justice in order to eliminate impunity for law enforcement officials and others responsible for breaches of the Convention; and
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(d) Ensure in practice that complainants and witnesses are protected against any ill-treatment or intimidation as a consequence of his/her complaint or any evidence given. (CAT/C/UZB/CO/3, Para 6).

Also related to List of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 1).

High-level officials have never publicly condemned torture in local or foreign mass media in Uzbekistan, despite Special Rapporteur Van Boven's issuance of recommendations to this effect in 2003. The Uzbek Government claims that these recommendations were implemented when the Uzbek Minister of Foreign Affairs condemned the use of torture before a delegation of foreign diplomats in Uzbekistan. However, even this statement was not appropriately broadcast nor heard by the people of Uzbekistan. Thus, torture remains an everyday practice among law enforcement agencies, who operate under a de facto guarantee of impunity.

The maximum penalty provided by article 235 of the Criminal Code is 8 years imprisonment where the consequences of the crime are grave; in all other cases, 3 to 5 years imprisonment is the standard. Such provisions are inadequate in light of the gravity of the crime of torture. According to information provided in Uzbekistan's Fourth Periodic Report,¹ the authorities received 428 complaints about the use of torture during 2008-2011. Only 27 criminal cases have been instituted (6.3 per cent of total complaints received). Of 50 persons against whom criminal proceedings on the use of torture were initiated, only 18 were sentenced to incarceration, whilst the rest were amnestied, fined or sent to do correctional work. The general practice adopted in respect of the remaining complaints has been to reject them on the alleged basis that the complainant is simply seeking to avoid punishment for their own crimes.

Torture cases are never reported in Uzbekistan's mass media. The only sources of reportage on torture cases in Uzbekistan are the foreign media. For example, Turkish businessman - Vahit Güneş, head of the Turkuaz Shopping Centre in Tashkent, was detained in 2011 and held for nine-and-a-half months by the National Security Service. Here, he says he was tortured in order to force him to sign a confession:²

“We were tortured badly using electric shocks ... we saw people tortured to death; some of them had heads, hands and bodies dismembered.”

Since arriving in Turkey, Güneş has had clinical treatment for his injuries. He states that one of the persons sentenced along with him, 23-year-old Hairetdin Öner, is still in a Turkish hospital with damage to internal organs and psychological trauma.³

Another testimony of torture widely published in foreign mass media is that of a former security guard to British Embassy in Uzbekistan, Kayum Ortikov. Mr Ortikov was initially arrested on charges of human trafficking in December 2008. He claims that his refusal to become an informant for Uzbekistan's secret police led to torture sessions in which he was accused of spying for the British. He has testified that:⁴

1 Point 74 -77, Page -15 OF THE STATE REPORT TO THE CAT 2013.

2 “Businessman Files Torture Case Against Uzbekistan”, Institute for War and Peace Reporting, 30 April 2012, available at: .

3 Ibid.

He was hung from the ceiling and beaten, left naked in a freezing room, and burnt on his genitals with a newspaper, which had been set alight.

4. Right to Access to a Lawyer

The State party should ensure in practice that every detainee can exercise the right to access to a lawyer, independent doctor and family member and other legal guarantees to ensure protection from torture. (CAT/C/UZB/CO/3 Para 12).
Also related to list of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 6, 7 and 15).

The role of defence attorneys remains extremely limited. While access to lawyers is partially guaranteed under Uzbek law, in reality, even these provisions are not followed, especially in cases where torture has been used. If a family hires an independent lawyer law enforcement officers force the detained person to sign a refusal-letter to that lawyer, allowing access only to lawyers loyal to the establishment (also called pocket-lawyers). These representatives close eyes to evidence of torture and seek to persuade defendants to “cooperate” with investigators.

Since Uzbekistan’s last review by CAT, the Government has adopted a number of legislative measures improving access to a legal defence on paper. However, in practice these measures do not work as they should because, amongst other things, the State followed these innovations with the introduction of strict controls over the legal profession, making it impossible for independent lawyers to work freely.

In May 2008, the government adopted resolutions to organise the Chamber of Lawyers, with a view to substituting the National Bar Association.⁵ Under the pretence of slogans of democratic reform and greater freedom for the legal profession, this legislation has in reality helped to render the Chamber of Lawyers an organisation that can be entirely controlled by the State. Under this law the Chamber of Lawyers became a part of the Uzbek Ministry of Justice. The Ministry of Justice has powers to appoint and dismiss the Chair of the Chamber. As a result, the new Chamber of Lawyers is under the complete control of the Ministry of Justice and its membership is compulsory for all lawyers in Uzbekistan. This makes lawyers dependent on and more vulnerable to the executive branch of government.

In January 2009, the Uzbek Government adopted another piece of legislation further expanding the Executive’s control over lawyers. A new provision of the Law of Advokatura requires all attorneys to undergo recertification every three years by taking an exam to extend their legal practice license.⁶ This requirement acts as a double-checking mechanism for inconvenient lawyers, or those who act beyond the will of the State.

This latter measure is often used to deprive of independent lawyers of their licenses where they raise the issue of torture or other human rights violations. As a result, numerous prominent lawyers were unable to renew their licenses in 2009, including, for example, Ruhiddin Komilov, Rustam Tyuleganov and Bakhrom Abdurakhmanov.

4 J. Owen & J. Hanning, “‘Uzbeks tortured me,’ says British Embassy man”, *The Independent*, 30 June 2013, available at: <http://www.independent.co.uk/news/uk/politics/uzbeks-tortured-me-says-british-embassy-man-8679979.html>. Accessed on 19 August .08.2013.

5 “On organizing the activity of the Chamber of Lawyers” Cabinet of Ministers Resolution 112, May 27, 2008

6 Article 7 of Law on Advokatura http://lex.uz/Pages/GetAct.aspx?lact_id=1525332

In addition, State- sponsored legal defence is very poor. Usually these cases are presented by so-called “karmanniye advokati” (pocket lawyers), who are prepared to sign any document without meeting with the defendant and sometimes even testify against their own clients. Furthermore, most attorneys are not sufficiently qualified, with some even siding with prosecutors against their clients and others playing an extremely passive role in court hearings. For example, in the aforementioned case of Turkish businessman, Vahit Güneş - who was head of the Turkuaz Shopping Centre in Tashkent, and he was detained in 2011 and held for nine-and-a-half months by the National Security Service, he has said that he was tortured while in detention, to force him to sign confessions that were later used in court, being unable to choose a defence lawyer and having counsel appointed for him.⁷

5. The impact of Habeas Corpus on Prevention of Torture

In 2008 Uzbekistan introduced *Habeas Corpus*. Local and international NGOs have by now had sufficient time to evaluate and see the shortcomings of this procedure in both legislation and practical implementation. Firstly, the authorities have demonstrated a lack of political will to establish an independent Court System in Uzbekistan. Secondly, the way *Habeas Corpus* has been introduced into Uzbek legislation engenders a number of weaknesses and shortcomings. The procedure for determining an application of pre-trial detention does not provide suspects or accused persons with a right to appeal the legality of their arrest, nor to raise the issue of torture or inhuman and degrading treatment or other unlawful acts or decisions of law enforcement officials, before a judge.

Under this law, there is no special judge to review cases on detention in custody. Furthermore, the judge can only pass judgment over the following:⁸

- applications for pre-trial detention;
- refusals of pre-trial detention; and
- prolongations of the length of custody for not longer than 48 hours to presenting additional proof on the merits or demerits of an application of pre-trial detention.

Also, a judge deciding a pre-trial detention case can be the same judge that will hear the detained person’s subsequent substantive hearing, as there are no mechanisms to prevent this from happening. Consequently, the impartiality and objectivity of the judge can be affected in the future trial.

Furthermore, such judicial reviews of detention in custody are held in a closed hearing and the participation of lawyers is not obligatory. Article 243 of the Criminal Procedural Code lists the persons allowed to participate in the pre-trial detention hearing as the prosecutor, defence lawyer, if the latter participates in the case, and the suspected or accused person. Here, the conditional nature of the presence of a defence lawyer violates the right to a defence.

⁷ “Businessman Files Torture Case Against Uzbekistan”, Institute for War and Peace Reporting, 30 April 2012, available at: <http://iwpr.net/report-news/businessman-files-torture-case-against-uzbekistan> 12 August 2013.

⁸ Article 243, Criminal Procedural Code of Uzbekistan

Determining bail or other types of non-custodial conditions remains a consideration for the investigator and prosecutor (articles 237 and 240, Criminal Procedural Code of Uzbekistan). Additionally, Article 217 (1) provides that a suspect or accused person's liberty may be deprived without court scrutiny by their compulsory placement by the prosecutor or investigator into a medical institution for psychiatric examination.

Uzbekistan's current legislation does not provide any legal standards for a judge to determine the reasonableness of applying pre-trial detention. Judges are not obliged to weigh up evidence presented by the procurator or investigator, nor to evaluate the lawfulness of detention. Thus, *Habeas Corpus* is not brought any improvement to the independence of the Uzbekistan's court system, and nor does it protect the fundamental right to a fair trial.

6. Right to Complain against Torture

The State party should ensure in law and in practice that every person has the right to complain to a fully independent mechanism that will investigate and respond promptly, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party is urged to ensure that all procedures for dealing with these complaints are effective and independent and should take the necessary measures to ensure that the Parliamentary Ombudsperson is fully independent, in accordance with the Paris Principles. In addition, the State party should make the necessary declarations under articles 21 and 22 of the Convention. (CAT/C/UZB/CO/3, Para 15).

Also related to the list of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 28 (C)).

Opportunities to complain about human rights violations in Uzbekistan are extremely scarce. There is no access to an independent complaints' review mechanism outwith the Executive system, or mechanisms dependent on that institution. Uzbek citizens do not have access to international complaint review mechanisms other than the UN Human Rights Committee, though this is itself poorly used due to State repression targeting the legal profession over last years (discussed above).

Available complaint mechanisms are as follows:

a) Procuracy

There is no independent body to review complaints against the conduct of law enforcement agents in Uzbekistan, including in cases of torture. Complaints against the conduct of law enforcement officers are reviewed by the higher level of the same State structures about which the complainant is complaining, or by the office of the Procuracy.

The Procuracy is a State body accountable to the President of Uzbekistan. The Procurator General and his deputies are appointed by the President.⁹ The Procuracy in Uzbekistan serves a wide range of functions, including preliminary criminal investigations, representing the State in prosecution through judicial processes, and controlling the implementation of human rights and freedom laws etc.¹⁰ Holding both functions to conduct preliminary investigations

⁹ Article 12, Law of Uzbekistan "on Procuracy" with the latest amendments as of 2011, Collection of Legislation of Republic of Uzbekistan N16.

and represent the State in court, the Procuracy is dis-incentivised to open proceedings for torture where this would ruin the criminal case based on confessions obtained by this method.

b) Ombudsman

Another possible avenue for submitting a torture complaint is to do so via the Authorized Person of the Oliy Majlis in Human Rights - the Ombudsman office. However, this mechanism is rather weak because the Ombudsman is elected from members of Parliament, and is not therefore an independent person.

Complete control over the electoral system and the denial of access to Parliament for opposition parties, allows the Executive to retain a strong hold over the legislative branch of government.¹¹ Thus, even the Ombudsman, created and working within the structure of Uzbekistan's Parliament, holds a pro-government, declarative and ineffectual position vis-à-vis human rights protection.

In April 2009, the Uzbek Senate adopted amendments to legislation relating to the activities of the Ombudsman on Human Rights. These amendments broadened her authority, in particular giving her the right to freely visit places of detention, obliging preliminary detention centre administration staff to organise meetings with the representative of the Ombudsman, and making correspondence between detained persons and the Ombudsman confidential. Despite these new powers, the Ombudsman has not made any significant steps towards protecting human rights to date.¹²

Given the inactivity and pro-government stance of the Human Rights Ombudsman in carrying out her responsibilities, it can be said that her role represents the impotence of human rights protection for Uzbek society and citizens' interests. Indeed, the Ombudsman's activity is declarative alone and of no import to securing genuine human rights protection in Uzbekistan.

c) Human Rights Centre of Uzbekistan

Another state institution declared to have a role in human rights protection is the Human Rights Centre of Uzbekistan.

According to the Presidential Decree "On the creation of the National Human Rights Centre of the Republic of Uzbekistan" of October 31, 1996, this Centre has the following functions:

¹⁰ Article 4, Law of Uzbekistan "on Procuracy" with the latest amendments as of 2011, Collection of Legislation of Republic of Uzbekistan N1.

¹¹ In the most recent elections as well as previous elections no oppositional parties: Birlik (Unity), Erk (Liberty), OzodDekhon (Free Peasant Party), and the Birdamlik (Solidarity) opposition movement were registered or allowed to participate. The electoral framework has not significantly improved and continues to fall short of OSCE commitments. The current political spectrum does not offer the electorate a genuine choice between competing political alternatives. All parliamentary political parties have stated their support for the government and defined their role as constructively supporting the authorities' efforts. See abstract from OSCE/ODIHR Needs Assessment Mission Report 2009, available at: http://www.osce.org/documents/odihr/2009/11/41230_en.pdf.

¹² The law of the Republic of Uzbekistan "«On introduction of amendments and additions to some legislative acts of Uzbekistan in relation with to the improvement of Authorized Person on Human Rights of Oliy Majlis of Uzbekistan (Ombudsman)», Collection of legislation of Uzbekistan 2009, No 15, page p.179 .

- developing a National Action Plan and strategy on the realization of the Constitution, laws and international legislation on human rights;
- preparing national reports on the observance and protection of human rights in the Republic of Uzbekistan;
- developing co-operation between the Republic of Uzbekistan and international and national organisations in the sphere of human rights;
- providing consultations to State organs and public organisations on human rights, including recommendations to state organs on improvements in the sphere of human rights protection; and
- coordinating the activities of State bodies regarding learning, awareness-raising, and the publication of literature on human rights, and the creation of an information database.

The Human Rights Centre is not competent to accept and review complaints on human rights violations and thus remains wholly inactive as a mechanism for human rights protection for individuals in Uzbekistan. In preparing State reports to UN Treaty Bodies, the Human Rights Centre of Uzbekistan does not go beyond praising the activities of other State Bodies and does not provide objective criticism on human rights observance in the country.

7. Independent Monitoring and Human Rights Defenders

The State party should take all necessary measures to ensure that independent human rights monitors are protected from unjust imprisonment, intimidation or violence as a result of their peaceful human rights activities. The Committee urges the State party to release human rights defenders imprisoned and/or sentenced because of their peaceful professional activities and to facilitate the reopening and full functioning of independent national and international human rights organizations, including the possibility of conducting unannounced independent visits to places of detention and confinement. (CAT/C/UZB/CO/3, Para 16).

Also related to List of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 10).

Independent non-governmental organisations have no access to detention centres or prisons. The only independent international organisation that can access prisons in Uzbekistan is the International Committee of Red Cross. However, their reports are confidential and only communicated to the State.

It has been reported that before ICRC visits to prisons are due to take place, prison administrations create a picture of good prison conditions, severely punishing those prisoners speaking out about violations to the ICRC, after the delegation's departure. In addition, prison administrations impose collective punishments on all prisoners in order to impose a atmosphere of general fear about the next ICRC visit.

Moreover, prison administrations also create obstacles to prevent ICRC personnel from visiting human rights activists. In the most recent example, ICRC inspectors sought to visit journalist, Solijon Abdurakhmanov, in prison on two occasions in 2012 but were reportedly unable to do so.¹³

¹³ "Former RFE/RL Freelancer in Jeopardy in Uzbek Prison", 27 June 2013, available at: <http://www.rferl.org/content/journalists-in-trouble-former-rfe-freelancer-in-jeopardy-in-uzbek->

The ICRC terminated its visits to places of detention in Uzbekistan in April 2013. The ICRC's Director-General said: "In Uzbekistan we are unable to follow our standard working procedures when we visit detainees to assess the conditions in which they are being held and the treatment they are receiving. As a result, we cannot address humanitarian issues and that renders any visits pointless."¹⁴

a) Human Rights Defenders

The work of human rights defenders is extremely difficult in Uzbekistan. They face daily surveillance, pressure on family, and are forced to live in constant fear for their safety. For more than a decade hundreds of human rights defenders, journalists, and political and religious leaders have been imprisoned or forced to flee the country. Since Uzbekistan's last review by the Committee against Torture, the government has increased pressure on independent human rights defenders and journalists and conducted further arrests and imprisonments.

Those currently among Uzbekistan's imprisoned human rights defenders are: Azam Formonov, Solijon Abdurakhmanov, Mehriniso Hamdamova, Zulhumor Hamdamova, Isroiljon Holdarov, Nosim Isakov, Gaibullo Jalilov, Abdurasul Khudoinazarov, Erkin Kuziev, Ganihon Mamatkhanov, Zafarjon Rahimov, Yuldash Rasulov, Dilmurod Saidov, Akzam Turgunov and Gulnaza Yuldasheva. The detention conditions and health of most of these prisoners is appalling, and includes the use of torture and inhuman and degrading treatment. On 25 July 2012, Uzbek Human Rights activist and member of the Human Rights Alliance of Uzbekistan, Akromhodja Mukhiddinov, was insulted, attacked and stabbed to death by three unidentified individuals. Mukhiddinov died in the ambulance taking him to hospital.

b) Situation of Civil Society Organisations

The Government of Uzbekistan has targeted independent civil society organisations with oppressive policies since the beginning of Karimov's era. The wave of "colour" revolutions in former Soviet republics¹⁵ and the Andijan massacre of 2005 have led the State to become increasingly aggressive, openly employing severe methods to repress civil society, including by enacting oppressive legislation and directly threatening and otherwise persecuting NGO personnel in order to silence independent voices.

Since that time, no organisation has been able to report in detail or document the numerous human rights violations being perpetrated in Uzbekistan, making it almost impossible to obtain clear information on the human rights situation in the country. Severe suppression of freedom of association is now the most urgent issue in Uzbekistan, as voiceless NGOs are powerless to hold the Uzbek State to account for its widespread violation of human rights – it having obscured access to information on the overall human rights situation in the country.

[prison/25029524.html](http://www.refugees.org/25029524.html). Former RFE/RL Freelancer in Jeopardy in Uzbek Prison June 27, 2013

¹⁴ "Uzbekistan: ICRC decides to terminate visits to detainees", ICRC News Release 13/64, 12 April 2013 available at: <http://www.icrc.org/eng/resources/documents/news-release/2013/04-12-uzbekistan-detainees.htm>.

¹⁵ The term "colour revolutions" denotes various movements that developed in several former Soviet Union Societies and the Balkans in the early 2000s. Participants used mostly nonviolent resistance including demonstrations, strikes and interventions to protest against governments seen as corrupt and/or authoritarian, and to advocate democracy, creating strong pressure for change. The movements are notable for the important role of NGOs in their organisation.

A number of human rights defenders who strongly criticized the government and revealed serious human rights abuses were imprisoned or forced to flee the country. Those remaining in Uzbekistan work under daily surveillance, pressure, and harassment.

Independent NGOs are called “agents of the West” by State media; they are accused of propagandizing ideas “alien to the national mentality”. Independent NGO movements are blamed for conveying so called “western values” and breaking the traditional foundations of Uzbek society. Respect for human rights, protection from domestic violence, non-discrimination and gender equality are included in the list of “western values” allegedly being imposed. They are perceived to breach traditional Uzbek values and are therefore taboo in official vocabulary.

For detailed information on legislation adopted against independent civil society organisations, please see Annex 1, containing a - *the R* report prepared by the Uzbek Bureau for Human Rights and Rule of Law and International Federation for Human Rights (FIDH) for the UPR process of the UN Human Rights Council, from May 2013.

8. Independent Judiciary

The State party should guarantee the full independence and impartiality of the judiciary, inter alia, by guaranteeing judges’ security of tenure.

The State party should take immediate steps to ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings. The Committee reiterates its previous recommendation that the State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures. (CAT/C/UZB/CO/3, Para 19-20).

Also related to the list of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 8 and 16).

Uzbekistan’s judiciary is highly dependent upon the Executive. Even in the judicial process the weight of State accusation (represented by the Procuracy) is enormous. This also explains the low numbers of accused in torture cases.

The Executive dominates the judiciary through the system for judicial appointments, dismissal and remuneration. Under Article 63 of the Law “On Courts”, the Higher Qualification Commission for the Selection and Recommendation for the Position of Judges under the President of the Republic of Uzbekistan offers the Uzbek president candidates to fill judicial vacancies. He further proposes candidates to fill judicial positions in the Supreme Court and Supreme Economic Court to the Senate, while judges to regional, Tashkent and city courts are appointed by the President directly. Judicial dismissals are conducted under the same scheme as judicial appointments.

Members of the Higher Qualification Commission for the Selection and Recommendation for the Position of Judges are to be appointed from among Parliamentary, Supreme Court, Ministry of Justice, Ministry of Interior, and General Procuracy representatives, as well as from “other highly qualified specialists of law and representatives of civil society”.¹⁶ Despite the last provision of law, no independent civil society representative or human rights defender has ever been allowed to participate in work of Commission.

¹⁶ Decree of the President of Uzbekistan of 17 March 2006.

Uzbek law does not provide clear selection criteria for the selection of judges. Judicial vacancies are not published in the press or anywhere else. On the whole, the judiciary lacks transparency. Whilst the law requires all judicial publications, including verdicts and resolutions be made public, this stipulation is not implemented in practice and no procedures for the publication of courts decisions exist.

Corruption is widespread at all levels of the judiciary. Lack of judicial independence, the mechanisms for selecting and appointing judges, poor financing and lack of transparency make judges highly dependent upon the executive and increasingly corrupt.

Moreover, corruption is worsening in Uzbekistan, where it takes place on an ever widening scale and involves increasing numbers of officials. This tendency is also reflected in surveys such as Transparency International's Corruption Perception Index. If in 2005 Uzbekistan scored 2.2 (on the scale from 10 (very clean) to 0 (highly corrupt)), in 2011 this poor score deteriorated further to 1.6; in 2012 Uzbekistan was still one of the 10 most corrupt countries of the world on the Corruption Perception Index (CPI).¹⁷ It is clear that measures adopted by the government to combat corruption are inadequate and ineffective.

One means of combatting corruption is allowing access to information, but such access is restricted in Uzbekistan. Uzbek legislation provides for "state secrets" and "other secrets secured by law" with no further clear or precise definition of these terms. Officials often refer to internal information as constituting state secrets and refuse access. Information related to the State Budget is also kept under secrecy.

There is no law on civil service and existing legislation does not require officials to publicly declare their income or assets.

Courts continue to accept confessions obtained under torture, which is still a generally accepted practice. The State itself cannot name any case in which it was accepted that a detained person's confession was obtained by torture and the case was sent for re-investigation on that basis, in any of its reports. Example:

In April 2011, a human rights group reported on a case against 13 men for links to extremist and separatist groups and acts alleged to pose a threat to public security and order. The rights group reported that Judge Tullaev refused to accept retractions of guilt by the defendants in this case after they stated that they had been forced to confess under torture while in police custody.¹⁸

In the majority of cases, if a person explains that s/he confessed under torture in the course of court proceedings, judges tend to reject such allegations explaining them as attempt to avoid punishment. Examples:

On 14 July 2009, a police investigator reportedly poured boiling water on to human rights activist, Akzam Turgunov's back while he was in pre-trial detention in an attempt to elicit a confession. Authorities detained Turgunov, a lawyer who had

¹⁷ www.transparency.org

¹⁸ "Uzbek jihadists' confessions gained through torture, claims rights group", Central Asia Newswire, 14 April 2011, available at: <http://www.universalnewswires.com/centralasia/viewstory.aspx?id=3821>.

investigated local rule of law and corruption cases, on extortion charges on 11 July 2009 in the town of Mangit in Karakalpakstan. Human rights activists suspected that the charges against him were politically motivated. Receiving his statement referring to the use of torture, the judge concluded that the investigation showed that Turgunov had not been tortured and convicted Turgunov to 10 years in prison on 23 October 2009.

In July 2012, 54 year old Gulchexra Abdullaeva, complained to the Court that she had been tortured and signed confession after her arrest on 15 July 2012. She stated that police officers had forced her to stand up for four hours without water, while the temperature was over 40 degrees, and put a gas mask over her head, blocking the air supply. Abdullaeva's testimony was rejected and the Hazarasp District court found her guilty of violating Article 241 of the Code of Administrative Liability "Violation of rules on teaching religious beliefs".

9. Violence Against Women and Torture of Minors

The State party should ensure the protection of women in places of detention and elsewhere, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight. The State party should ensure protection of women by adopting specific legislative and other measures to prevent in practice domestic violence in accordance with the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) and provide for protection of victims, access to medical, social and legal services and temporary accommodation. Perpetrators should also be held accountable.

(CAT/C/UZB/CO/3, Para 21)

Also related to List of issues in relation to the fourth periodic report of Uzbekistan (CAT/C/UZB/4, Para 13 and Para 26)

a) Domestic Violence

The Uzbek government still officially denies the problem of domestic violence. There is still no law on domestic violence in Uzbekistan, and the term of domestic violence is not defined in criminal law. Moreover, aspirations for protection from domestic violence, non-discrimination and gender equality are included in the list of "western values" perceived to breach the traditional values of Uzbekistan, being therefore taboo in the official vocabulary.

The Uzbek state provides no terminology or definition for domestic violence, thus creating space for popular views of domestic violence as a private family issue rather than a criminal act. Such an attitude is very popular among law enforcement bodies themselves, making them often ignorant to complaints on violence within families and fail to take appropriate action, preferring not to intervene in "family conflicts". Even those women who decide to stop tolerating violence and seek assistance from law enforcement agents are neglected and ignored and thus usually denied access to both protection and justice. These women are usually sent back to the mahalla committee for the area in which they reside with a view to securing reconciliation with the perpetrator and his family.

Since 2003 a group of lawyers and experts have developed amendments and recommendations to be introduced into Uzbek legal codes for review by parliament to introduce proper terminology and procedural norms for prosecuting perpetrators of domestic

violence. Since their submission, the draft amendments have been stuck in parliament, with some confidential sources saying that there is no political will to adopt this document.

The Criminal Code of Uzbekistan outlaws crimes against health in Articles 104-111. These articles give a gradation of the harm caused to health, cases of psychological or economic violence are not subject to prosecution. Marital rape is not provided for as a separate crime in the legislation and can be only addressed under the article 118 of Criminal Code, which relates to rape.

Furthermore, a literal translation of “domestic violence” is not found in the official Uzbek language; instead the government uses the term “family conflict”. This recasts the phenomenon as a family issue in which the government should not intervene. Uzbekistan’s 2009 State report to the Committee on the Elimination of Discrimination against Women (CEDAW), refers to the patriarchal matrix in Uzbek family relations, where the traditional role of a mother is to raise her children whilst a father is absent most of time breadwinning. This reflects deeply rooted cultural stereotypes regarding the roles and responsibilities of women and men in the family and society in Uzbekistan.

As part of its campaign against independent civil society organisations the government has forced the closure of numerous women organisations, accusing them of being “western agents” trying to discredit the cultural norms of our society. For example, between 1998 and 2005 almost 20 crisis and trust centres were established with financial and logistical support from a number of international organizations in all municipal regions of Uzbekistan. These centres were the places where women could escape violence and get professional legal and psychological aid, shelter and food for themselves and their children. In 2004 after a wave of NGO closures by the government almost all of these centres were forced to close.

There are now only a few shelters left for women suffering from domestic violence. These are mainly State funded and prefer not to disclose the scope and prevalence of violence women facing in families. As such, victims of domestic violence are overwhelmingly left unattended.

b) Torture of Minors

Although Uzbekistan’s State report claims that there are no torture complaints received on the cases of minors, reports from NGO’s suggest the opposite. Example:¹⁹

On 11 September 2012 in Tashkent Central Park, Chilanzar rayon militia officers detained 16 year old Grigoriy Grigoryev. Militia officers accused the boy of stealing a mobile phone – an offence under article 169 of the Criminal Code. Grigoriy was beaten on his head and body and lost consciousness. Later that evening, a militia officer called Larissa Grigoryeva, Grigoriy’s mother and let him go home, keeping his birth certificate. Returning home, Grigoriy lost consciousness and Larissa called the emergency services. The boy was taken to hospital where he was diagnosed with “craniocerebral trauma” and “injuries of body soft tissues”. Later, Larissa was detained for 72 hours and also tortured to stop her from opening a case against the militia officers who tortured her son. Upon being freed she was diagnosed with “concussion of the brain” and “injuries of soft tissues of hands and legs”. At the time

¹⁹ Human Rights Alliance of Uzbekistan.

of writing the militia officers who had perpetrated these acts of torture had not been punished.

10. Definition of Terrorism

Uzbekistan uses counter terrorism or “war on terror” rhetoric to justify the criminal prosecution of those who peacefully oppose or speak out against the government. These persons are accused of crimes of terrorism, extremism, subversion or anti-state activity.²⁰ This is facilitated by a vague and broad definition of terrorism under Uzbek legislation, which gives the State the power to abuse this vagueness.

Under Article 155(a) of the Uzbek Criminal Code “terrorism” is defined as:

...violence, use of force, or other acts, which pose a threat to an individual or property, or the threat to undertake such acts in order to force a state body, international organization, or officials thereof, or individual or legal entity, to commit or to refrain from some activity in order to complicate international relations, infringe upon sovereignty and territorial integrity, undermine the security of a state, provoke war, armed conflict, destabilize a sociopolitical situation, or intimidate a population, as well as activity carried out in order to support the operation of and to finance a terrorist organization, preparation and commission of terrorist acts, direct or indirect provision or collection of any resources and other services to terrorist organizations, or to persons assisting to or participating in terrorist activities.

Such actions incur punishment ranging from imprisonment for 8 years to life. The Uzbek definition of terrorism is extremely broad and gives law enforcement officials great latitude to intimidate and threaten those who are merely speaking out in opposition against government policies, or practicing their religious beliefs. This wide range of conduct criminalized by the Uzbek Criminal Code, and its application in practice, could violate Uzbekistan’s international obligations under the ICCPR, in particular Article 15(1), which protects the principle of legality, and Articles 18, 19, 21 and 22, which protect freedoms of speech, assembly, association and religion or belief.²¹

The Uzbek government has already exploited this definition to target people who prefer to practice Islam outside of government-controlled mosques. Thousands were jailed, and around six thousand²² independent Muslims remain imprisoned today because they have refused to practice Islam in government-controlled mosques.

The Uzbek government has also exploited the phrase “acts which can destabilize the sociopolitical situation” by detaining and prosecuting human rights defenders and journalists giving interviews to the foreign media regarding events in Andijan. For example, S. Zaynabiddinov, a human rights defender from Andijan, was arrested and later convicted in a closed trial²³ under sections (a) and (b) of this article.²⁴ The facts forming the basis for this

20 Human Rights Committee, International Commission of Jurists Submission to the Review of the Third Periodic Report of Uzbekistan, May 2009, available at: http://www2.ohchr.org/english/bodies/hrc/docs/ngos/ICJ_Uzbekistan_HRC96.pdf.

21 Ibid.

22 C.W Maynes, “Uzbekistan: A Third Front in the War on Terrorism?” Yale Global, 5 April 2004, available at: <http://yaleglobal.yale.edu/content/uzbekistan-third-front-war-terrorism>.

23 Fortunately, following international pressure he was released in 2007.

24 Беженцы из Узбекистана в странах СНГ: угрозы безопасности [Refugees from Uzbekistan in the CIS:

prosecution were his giving an interview to the international media (BBC) regarding the events in Andijan in May 2005 and showing the bullets that had been used by law enforcement officers against the crowd on which they had fired.²⁵

It worth noting that despite international pressure and criticism of the Andijan Massacre, no independent investigation has been permitted. Nor have any steps been taken to even simply discuss the issue.

security threats] (2005-2006 гг.), 11 October 2006, available at:
http://www.osce.org/documents/odhr/2006/10/21559_ru.pdf.

²⁵ Над андижанским правозащитником Саиджахоном Зайнабитдиновым проходит закрытый суд, [Andijan human rights activist Saidjahon Zainabitdinov receives a closed trial], 11.01.2006, available at:
<http://www.ferghana.ru/article.php?id=4168>.

Annex

Legislation suppressing independent civil society institutions and NGOs

Upon the first “Colour Revolution” in the former Soviet Republic of Georgia, the Uzbek Government adopted a number of draconian laws that made the work of independent NGOs and other key agents of a democratic society (e.g. certain media) impossible. NGOs wanting to operate as legally registered entities have had to submit to State control over their work. Whilst many of these laws pre-date Uzbekistan’s last UPR they continue to be a devastating obstacle to civil society and democratic freedom. They are briefly outlined below together with newer legislative developments to ensure a complete picture of the situation faced by those seeking to inform the current review.

The Presidential Decree of December 2003 requiring the re-registration of all foreign NGOs continues to smother civil society representation. This law allows the government to control the activities of international NGOs through the Ministry of Justice and other State organs, exercising pressure on critical international NGOs, including through the denial of accreditation.

Another persisting obstacle to the operation of civil society remains the 2004²⁶ cabinet resolution forcing NGO’s to transfer their bank accounts to two State banks. Within these banks a Special Commission, staffed by bank personnel and National Security Services (former KGB) officers, is charged with deciding whether to allow NGOs to receive money. Numerous NGO grants have been blocked for some time and even sent back to donors because the Commission did not approve the grants. Officially, the Commission looks at whether a grant’s objectives are consistent with Uzbek Government policy, though in reality it simply denies independent NGOs the ability to access foreign funding.

The Presidential Decree of 27 May 2004 requiring the re-registration of all women’s NGOs (without stipulating the criteria for determining a “Women’s NGO”), also continues to oppress a free civil society. The Decree seeks to register all women’s organisations under one government organisation: the Uzbekistan Women’s Committee. This forces them to be subordinate to and work under the dictates of this organisation.

Moreover, Uzbekistan’s Criminal Code and its Code on Administrative Responsibility (as amended in December 2005), continue, under Article 239, to oblige all NGOs to obtain permission from the Ministry of Justice before conducting any activity, including providing documents confirming the use of property and financial resources. Failures are penalized with enormous fines under Administrative Code (from 100 to 600 times the minimum monthly wage, which is from 4,318 to 25,908 US Dollars²⁷), imposed on the managers and directors of the infringing NGO.

Penalties for the following offences under Uzbekistan’s Criminal Code have been increased to 3-4 times: Art. 139 (Libel); Art.140 (Insult); Art.159 (an encroachment on Constitutional order); Art.217 (infringement of rules on the organisation and holding of meetings, rallies, street marches or demonstrations); and Art.244(1) (producing or distribution of the materials

²⁶ The Resolution of the Cabinet of Ministers No. 56 of 4 February 2004.

²⁷ According to Presidential Decree of 15 August 2013 the minimal monthly wage in Uzbekistan is 91, 530 Uzbekistan som. US dollar rates are given at the exchange rate used by the Central Bank of Uzbekistan on 20 August 2013.

containing threat of public security). These articles has penalties “from 200 up to 600” times the monthly minimum wage.

The penalties for similar breaches under Uzbekistan’s Code on Administrative Responsibility have also been toughened. The rates of penalty relating to articles 40 (Libel) and 184 (Producing or distributing materials containing a threat to public security) have been increased up to 10 times. For example, where previously a penalty under Article 23 (exceptional cases) could be imposed from 10 to 15 times the minimum monthly wage, it is now possible to apply a penalty from 100 up to 150 times the minimum monthly wage. However, the law fails to specify the type of materials that can pose a threat to public security. Thus materials published by NGOs containing information on human rights abuses can easily be interpreted as causing a public disturbance and thus being a threat to public security under the legislation.

Parliament’s December 2006 adoption of the Law on the Guarantees for Activities of Non-State, Non-Profit Organisations also continues to impede democratic freedom. This law contains a number of vague and ambiguous definitions and restrictions that facilitate arbitrary administrative decisions targeting civil society organisations.

Contrary to international standards on freedom of association Uzbek law makes registration the central prerequisite to NGO activity, rendering informal active groups illegal and their members punishable by up to 5 years imprisonment under Article 216 of the Criminal Code of Uzbekistan.

Uzbekistan’s Law on Mass Media (as amended in January 2007) further continues to suppress independent voice. Under this law, Internet and bulletins are recognized as Mass Media with several attendant consequences, including the requirement for an NGO to obtain a license in order to issue regular bulletins or brochures. Consequently, if an NGO bulletin addresses critical issues, such as violence against women, sexual exploitation, or democratic values and ideas, it is unlikely to be granted a license. All web sites publishing critical information and being maintained from abroad are blocked. Notably, many critical thematic issues are discussed on these sites, though Uzbek readers are deprived of access to them. All access to the websites of international human rights organisations, such as Human Rights Watch, the International Federation for Human Rights (FIDH), Amnesty International, and many others is blocked.

In order to build a single State-controlled NGO administrative body, 2008 saw the Uzbek government create a so-called NGO, named the National Association of Non-governmental Non-commercial Organisations (NANNO). This organisation is intended to subsume all existing NGOs under its auspices. In 2012, the NANNO carried out six Projects funded by the European Commission for 1.3 million Euros. These projects were entitled “Plan your future”. Since 2010, another so-called NGO – Fond Forum of Uzbekistan – has been active in the country. Although, this organisation is officially an NGO, it is lead and reportedly funded by President Karimov’s eldest daughter, G. Karimova, who is an official government employee. In 2010, this organisation also got consultative status with the UN’s ECOSOC.

Any publication produced by an NGO or international organisation, including UN offices, must obtain permission from the Centre on Spirituality and Education under the Cabinet of Ministers. This regulation acquired a special force in March 2009 in light of the newly adopted “Program on enhancing national spirituality and the struggle against phenomena and activities alien to the Uzbek way of living and mentality”. The implementation of that

program began with the screening of numerous publications by international organisations (UN Uzbekistan offices inclusive) by the Centre on Spirituality and Education. The screening aimed to determine whether or not the publication is related to the issues and contains terminology of gender equality, domestic violence, feminism, safe sex, condoms, etc., which are identified as “hostile to the national culture”.

The government has forced the closure of many local NGOs by a variety of means. In some cases directors were called and threatened orally with negative consequences for disobedience; in others the Ministry of Justice initiated court cases on grounds that under normal circumstances would entail only a written warning at most. For example, in 2005 the Ministry of Justice instituted proceedings against the Legal Aid Society of Uzbekistan (LAS), on the basis that its original registration was questionable as the organisation did not provide a rental agreement for its office when supplying documents for registration. The Court consequently shut the organisation down.

The law in Uzbekistan imposes administrative liability for functioning as a non-registered group for more than 6 months. Under article 202 (1) of the Code of Administrative Liability, “Involving others in non-governmental, non-profit organisations, movements, sects, which are illegal in the Republic of Uzbekistan, is punishable by a fine ranging from fifty to one hundred minimum wages or by administrative arrest of up to fifteen days.” In February 2012 responding to the events of the Arab Spring, the Uzbek government also went on to ban Flash-mobs.

Registration of NGOs

NGO registration is mandatory in Uzbekistan. It is carried out by the Ministry of Justice and there are three types of response officials can provide upon consideration of the documents supplied by a group’s initiators: a) approval, b) denial, and c) leaving registration documents unconsidered due to shortcomings or errors. For an organisation whose Charter provides that it will work on human rights, religious freedoms and other so-called sensitive issues, the Ministry always uses the third type of response, launching endless bureaucratic mechanisms. With its documents for registration, an organisation must provide protocols for its members meetings and a list of founding group members. This requirement allows the government to put pressure on founding members to deny participation in the formation of NGOs and further use it as a shortcoming of the NGO’s registration.

The Ministry of Justice has found “shortcomings” in registration papers for NGOs to prevent their official registration. Examples of such shortcomings have historically included that “... the group cannot put as its goal protection of human rights since article 43 of the Constitution secures the State’s role in promotion and protection of the rights and freedoms of citizens...” (“Mazlum” human rights NGO’s refusal in 2002) and that an applicant could not choose to combat torture as one of its objectives because Uzbek law outlaws torture and there is no torture in Uzbekistan (other NGO 2003). Whilst these are clearly historical examples, given the State’s consistent stance on human rights NGOs, their applications, if not left languishing unanswered in the registration system, can expect similar such responses today.