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UZBEKISTAN: THE RIGHT TO REPARATIONS OF POLITICAL PRISONERS

Cover picture : Yusuf Ruzimuradov, a reporter for a “Erk” newspaper banned by the Uzbek authorities, had been held in prison since 1999 under the bogus charges of offences against the President, undermining the constitutional order of Uzbekistan, unlawful organisation of a non-governmental or religious association, and organisation of a criminal community. Released in 2018, he has been known as world’s longest-imprisoned journalist. © Timur Karpov

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EXECUTIVE SUMMARY

Since 2016, hundreds of Uzbekistan's political prisoners have been released by the mass pardons of President Shavkat Mirziyoyev. This policy paper analyses the fulfillment of the right to reparations of political prisoners in Uzbekistan. It takes stock of the current and long-term needs of political prisoners, many of whom were tortured and ill-treated while in prison, and provides an overview of their rights and State obligations under domestic and international law. Drawing on best practices of other post-conflict or post-authoritarian States, it offers policy recommendations for domestic authorities to ensure an effective remedy to those already released and those still in prisons on politically motivated charges, and to advance larger *transitional justice* goals like truth-telling, accountability and restoration of societal trust.

The relevant domestic framework in Uzbekistan provides adequate legal grounds for reparations for wrongful imprisonment, torture and ill-treatment, in line with its international legal obligations but well short of best State practice. It allows for a satisfactory fulfillment of the rights to compensation for material and moral harm, restoration of employment, pension, housing, and other rights of wrongfully convicted persons. Although mostly in line with international law if taken in its entirety, the domestic framework is fragmented and incomplete however, particularly in the sphere of medical and psychological rehabilitation. With respect to compensation, the mechanism of payment conditions reparation for moral harm, which is only available through civil litigation, on a criminal case judgment. Moreover, civil remedies are limited in scope and rest solely within the discretion of the judge. The possibility of current prisoners to seek release on the basis of being wrongfully accused is not clearly established by law.

Most importantly, the realization of the right to 'rehabilitation' or 'reparation' is not 'effective' within the meaning of international human rights law. The report finds that while over a thousand of political prisoners might have been released, perhaps as many as several thousand more remain behind bars. As of the time of writing this report, in 2020, just one former political prisoner has been provided with anything other than symbolic compensation for their suffering, or any medical or psychological support. Only three achieved a formal reinstatement of their rights through exoneration. In roughly half of the cases we surveyed, wrongfully convicted individuals have been unable to obtain their original convictions and other court case materials enabling them to file legal challenges. The reparations practice so far falls short of even the most basic country-specific reparations practice, including in neighboring Kyrgyzstan and Kazakhstan. Nor does the existing system further transitional justice objectives in Uzbekistan at the present time by acknowledging the truth about the past, recognizing victims, restoring trust in institutions and government, and ending abusive practices. Although there is an existing statutory basis for reparations, the existing legislation must be tied together by a common policy, comprehensive, streamlined and applied in a systematic manner through the creation of an ad hoc reparations or rehabilitation commission, following an initial needs assessment.

The following is a summary of Specific Recommendations:

- A Conduct a comprehensive mapping identifying individuals that have been released as a result of amnesties or pardons who might have been prosecuted on political motives, and persons still in custody for politically motivated crimes, including so called 'religious prisoners', entitled to release and reparations;

- B In consultation with victim representatives and former detainees, conduct a preliminary needs assessment of recently released political prisoners who have been legally acquitted, as well as political prisoners who have been released but not acquitted, particularly victims of torture and other ill treatment;
- C In line with the the Strategic Plan for the years 2017 - 2021, the National Human Rights Strategy, the Presidential Decree of 2 July 2018, and The 17 July 2018 Resolution of the Cabinet of Ministers of Uzbekistan No. 543, adopt a comprehensive policy on the 'Reparation' or 'Rehabilitation' of 'political prisoners' or 'wrongfully convicted persons', separate or part of a larger policy for transitional justice in Uzbekistan, envisioning the creation of a fully independent commission to implement its mandate and objectives. The policy should aim to:
- (1) harmonize the existing domestic legal framework for reparations, including by facilitating the provision of remedies available under criminal and civil law;
 - (2) allow for the expedited reconsideration of sentences of persons convicted of 'political' offenses, as defined by such policy, or persons falling within any of the categories of crimes identified in Annex A, during a certain period or broader, and their entitlement to reparations;
 - (3) provide for reparations to 'wrongfully convicted persons', or 'political prisoners', within the meaning of relevant international instruments, including by ensuring and overseeing the full execution of any international court or tribunal, domestic courts or administrative body decision;
 - (4) include the families and heirs of political prisoners in reparations as victims on an equal basis;
 - (5) ensure the execution of views issued against the State by the UN Human Rights Committee and decisions of other interstate organs;
 - (6) establish a central Reparations Commission, with regional branches, to achieve all of the above. The commission should have the following role, mandate and functions:
 - It should be formed outside of the national system for the prevention of human rights violations in prisons and closed institutions and be a separate ad hoc or permanent institution.
 - Such a body should be completely independent of the executive authority and ideally derive its authority from an act of Parliament.
 - It should incorporate within it a documentation unit to facilitate access to archives, investigation of politically motivated charges and development of commemorative initiatives;
 - The civil society, international experts, the Ombudsman, and representatives of political prisoners must be given an adequate voice in the process of the Commission's formation and determining its membership through meaningful consultation;
 - The Commission should conduct regular consultations with the civil society and international experts;
 - The Commission should possess adjudicatory powers, as prescribed by the policy, such as to give binding decisions and provide authoritative recommendations on the release and reparations requests;
 - The commission should design and facilitate the implementation of psychosocial and medical support policies focused on improving the mental and physical health of victims, and be charged with the design of such policies; and
 - Provide opportunities for ex-prisoners to participate in civic engagement, community and other employment, formal politics, and establish self-help organizations and ex-prisoners' associations.

- D Take effective measures to institute an impartial, thorough and effective investigation into the events of May 2005 in Andijan, including within the scope of a separate Commission of Inquiry, such as an a Truth Commission, or as part of a policy established pursuant to Specific Recommendation C. The investigation should establish the entire truth relating to these events, be capable of leading to prosecutions for violations of domestic and international law, and of ensuring that victims of such violations obtain full reparations as soon as possible.

FOREWORD

On 2 September 2016, the people of Uzbekistan were informed about the death of President Islam Karimov, who had ruled the former Soviet republic for over 25 years. At the time, Uzbekistan was a deeply corrupt,¹ authoritarian state facing an economic decline.² Its Soviet-era system of repression of fundamental freedoms was facilitated by omnipotent security services and an obedient judiciary.³ During Karimov's rule, thousands of political dissidents, human rights defenders, members of national minorities or religious groups, journalists, scholars and scientists, left the country, and thousands more were persecuted and imprisoned on politically motivated charges, often based on confessions extracted through beatings and torture.⁴ Uzbekistan was widely considered as one of the most repressive countries in the world.⁵

The country entered a period of political transition, which, despite uncertainty about the future of Central Asia's most populous State⁶, also presented an opportunity for positive change. On 8 September 2016, Shavkat Mirziyoyev, Uzbekistan's Prime Minister since 2003, was declared acting president. In the 4 December 2016 early presidential election, characterized by the Organization for the Security and Cooperation in Europe (OSCE) as being 'devoid of competition' and marked by significant violations of democratic norms as a result of long-standing systemic shortcomings, Shavkat Mirziyoyev secured the Presidency with 88.1% of the vote.⁷

In the months after his appointment the new President undertook an ambitious project of political and social reforms. A series of laws eased restrictions on freedoms of speech, movement and assembly, prohibited forced labor,⁸ streamlined the structure of the security services, strengthened the judiciary and resulted in the release of hundreds of political prisoners.⁹ Since then, Uzbekistan has managed to improve its economic growth, human rights record and international image, securing a seat at the UN Human Rights Council, and a distinction by one influential publication as 'the most improved nation of 2019'.¹⁰

But the reforms lack depth and consistency, and the continuation of certain abusive practices gives cause to believe that the gains in Uzbekistan's image outpace real human rights improvements. International human rights NGOs have called the gains in rights 'modest', with hundreds still detained on false charges, those released not cleared of any wrongdoing or compensated for their suffering, and ongoing arrests and convictions, which appear to be arbitrary, threatening to derail concrete advances in human rights and the rule of law.¹¹ The entire truth about the systemic crimes of the

1. According to Transparency International Uzbekistan ranked 157th out of 180 countries in 2017. See Transparency International. *Corruption Perceptions Index 2017*, https://www.transparency.org/news/feature/corruption_perceptions_index_2017

2. Freedom House Report 2016, Uzbekistan, available at <https://freedomhouse.org/country/uzbekistan/freedom-net/2016>

3. Uzbekistan: In Transition, Crisis Group Europe and Central Asia Briefing N. 82, 29 September 2016, p. 1.

4. *Ibid.* p. 5.

5. See, e.g. Casey Michel, *Uzbekistan's Karimov Leaves Behind a Legacy of Repression, Slavery, and Kleptocracy*, 3 September 2016, available at: <https://thediplomat.com/2016/09/uzbekistans-karimov-leaves-behind-a-legacy-of-repression-slavery-and-kleptocracy/>

6. At the time of writing, the population of Uzbekistan stood at approximately 30 million.

7. Uzbekistan PM wins presidential vote panned by Western monitors, 5 December 2016, available at: <https://www.reuters.com/article/us-uzbekistan-election/uzbekistan-pm-wins-presidential-vote-panned-by-western-monitors-idUSKBN13U1BH>; OSCE/ODIHR Election Observation Mission Final Report: Republic of Uzbekistan, Early Presidential Election of 4 December 2016, 21 March 2017, available at <https://www.osce.org/files/f/documents/c/2/306451.pdf>.

8. <https://www.economist.com/asia/2018/11/08/uzbekistan-tries-to-end-the-use-of-forced-labour-in-the-cotton-fields>

9. FIDH: Uzbekistan: [Release of human rights defenders a positive sign, others must follow](#).

10. <https://www.economist.com/leaders/2019/12/21/which-nation-improved-the-most-in-2019>.

11. Human Rights Watch, Report "Charting Progress in Mirziyoyev's Uzbekistan", 7 October 2019.

previous regime, and the total number of victims, remains untold and unknown. There has been no meaningful accountability for past abuses. Questions remain as to whether President Mirziyoyev, who pledged in 2016 to follow Karimov's course,¹² could dismantle the 'authoritarian and centralist structures'¹³, nepotism and corruption in the innermost political circles, and the pervasiveness of the power structures, which appear to continue to commit violations with relative impunity.

The authors of this policy paper started from the premise that democratization and lasting social change could only be achieved through justice, truth-telling, recognition and acknowledgment of the victims,¹⁴ including their right to full rehabilitation and other forms of reparations. In order to help secure Uzbekistan's progression away from repressions and authoritarianism towards the rule of law and greater respect for human rights, immediate steps should be taken to confront past violations and to prevent their recurrence, specifically by creating mechanisms to ensure the recognition of released political prisoners, the restoration of their rights and their reintegration back into society.

Reparations are a crucial component of post-conflict or post-authoritarian *transitional justice* processes. They represent the enhanced legal obligation of States to provide an 'effective remedy' for victims of human rights violations, when violations are of mass and systematic character and involve grave crimes like torture. Reparation efforts are seen as a central aspect of reconstruction of social trust in the aftermath of systemic violence; they further restoration of victims' dignity and a sense of belonging to the community as full members, expressing to victims and society at large that the State is committed to addressing their concerns and the root causes of abuses, and ensuring they do not happen again.¹⁵ This policy paper examines the issue of reparations for recently released political prisoners as a way to not only improve their situation, but also to further reestablishment of trust and consolidation of human rights advances in Uzbekistan more broadly. It also discusses how to move forward with releases of political prisoners who remain in custody.

To devise specific policy recommendations, the policy paper first takes stock of the current and long-term needs of former political prisoners in Uzbekistan, based on their own testimony and other research. It then describes the international legal standards and State reparations practice in transitional contexts, focusing on institutional approaches. In order to come up with policy recommendations for domestic authorities to ensure an effective remedy to those already released and wrongfully convicted individuals still in prisons, we needed to determine the existence and adequacy of the relevant domestic framework, and any reparations practice to date, in light of international law and practice. Lastly, drawing on this comparative research, we detail the recommendation to establish an independent *reparations commission*, or *rehabilitation commission*, echoing the calls of victims, international organizations¹⁶ and international NGOs.¹⁷

12. Freedom House Report 2016.

13. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25056&LangID=E>.

14. The recent decades have seen a trend towards an increased recognition of victims and their rights to remedy and reparation, particularly in transitional contexts. Frank Haldemann and Thomas Unger, *The United Nations Principles to Combat Impunity: A Commentary*, (OUP 2018), Principle 31, p. 346, para. 38.

15. <https://www.ictj.org/our-work/transitional-justice-issues/reparations>.

16. In its recent recommendations, the UN Committee Against Torture (CAT) urged Uzbekistan to ensure that victims obtain redress, including compensation and rehabilitation, and consider creating an independent commission tasked with looking into these matters. Concluding observations on the fifth periodic report of Uzbekistan, para. 18.

17. See, e.g., CAT, Concluding observations on the fifth periodic report of Uzbekistan, CAT/C/UZB/CO/5, 14 January 2020; Human Rights Watch, 'Uzbekistan: Release and Rehabilitate Political Prisoners,' available at <https://www.hrw.org/news/2018/11/17/uzbekistan-release-and-rehabilitate-political-prisoners>, accessed 5 September 2020.

METHODOLOGY

The policy paper was conceived within the scope of FIDH's project to support the right to an effective remedy and reparations of political prisoners in Uzbekistan. It draws on research of reparations or rehabilitation policies from other post-authoritarian or post-conflict countries, previous NGO reports and scientific literature on Uzbekistan, qualitative research, including interviews with former political prisoners and their families, questionnaires, and meetings with representatives of civil society in Uzbekistan and international experts.

The policy recommendations are built on legal and comparative transitional justice research, exchanges and expert consultations with Uzbekistan's civil society, representatives of international NGOs and independent experts. Many of these exchanges took place during meetings of an informal Working Group on the issues of transitional justice and rehabilitation of political prisoners in Uzbekistan, formed in early 2019. From January 2019 through June 2020, the Working Group held 7 teleconference meetings and one physical meeting, a workshop (Workshop). During the Workshop, FIDH brought together former political prisoners, local human rights defenders (HRDs), journalists, lawyers, activists, representatives of international NGOs and transitional justice experts. The meeting had the aim of generating policy proposals to reinstate the rights and well-being of the recently released political prisoners. It was guided by the following questions:

- whether there is a special individual and societal need to address the question of reparations or rehabilitation of former political prisoners;
- what is the domestic legal framework and up-to-date legal practice related to the right to reparations in Uzbekistan?
- how these efforts compare with the international legal framework for reparations and the experience of States of the former Soviet Union and other States;
- what should be the scope, and form, of mechanisms to improve the situation of former political prisoners and advance the broader transitional justice goals?

The terminology adopted by this policy paper is consistent with that prevailing under international law, particularly that of the UN, where the term 'reparations' encompasses a range of measures, of which 'rehabilitation' is but one, implemented by States overcoming legacies of mass abuses.¹⁸ When using the term 'political prisoners', the authors of the policy paper referred to the definition contained in the Parliamentary Assembly of the Council of Europe Resolution 1900 (2012).¹⁹

Informed consent was obtained prior to the publication of this report for the use of any testimony gleaned throughout the duration of the project.

18. The others include prosecutions, truth and reconciliation commissions, and institutional reforms. Question of the impunity of perpetrators of human rights violations (civil and political), Revised final report prepared by Mr Joinet pursuant to Sub-Commission decision 1996/119, UN Doc E/CN.4/Sub.2/1997/20/Rev.1 (2 October 1997) (hereinafter the Joinet Principles).

19. A person deprived of his or her personal liberty is to be regarded as a 'political prisoner': a. if the detention has been imposed in violation of one of the fundamental guarantees set out in the European Convention on Human Rights and its Protocols (ECHR), in particular freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association; b. if the detention has been imposed for purely political reasons without connection to any offence; c. if, for political motives, the length of the detention or its conditions are clearly out of proportion to the offence the person has been found guilty of or is suspected of; d. if, for political motives, he or she is detained in a discriminatory manner as compared to other persons; or, e. if the detention is the result of proceedings which were clearly unfair and this appears to be connected with political motives of the authorities." (SG/Inf(2001)34, paragraph 10).

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FIDH expresses its utmost gratitude to local partner organizations and human rights defenders, namely the representative of International Commission of Jurists (ICJ), former political prisoners, HRDs, journalists and activists, who provided invaluable input to the report, including during the Workshop, their testimonies and experiences relative to the issue of reparations of former political prisoners.

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Finally, FIDH expresses separate thanks to Cholpon Kainazarova who during her internship at the Geneva Academy of International Humanitarian Law and Human Rights contributed to the Transitional Justice research and drafting of sections of this report.

20. Their names and affiliations are withheld for security purposes.

21. Particularly Steve Swerdlow, former Central Asia Researcher at Human Rights Watch, Associate Professor of the Practice of Human Rights at the University of Southern California.

BACKGROUND

Former President Karimov came to power in 1989 as the First Secretary of the Communist Party of what was then the Uzbek Soviet Socialist Republic (Uzbek SSR).²² He became President of the Uzbek SSR on 24 March 1990 and remained in power after Uzbekistan declared its independence from the Soviet Union on 31 August 1991.²³ Much like in neighboring Tajikistan, Kyrgyzstan, Kazakhstan and Turkmenistan, the ruling political elite did not change substantially from the communist period, continuing to draw on Soviet-era *nomenklatura* for their post-Soviet government and institutions.²⁴ None of the Central Asian countries has therefore pursued lustrations or trials of former Communist Party officials or KGB personnel responsible for Soviet-era repressions.²⁵

Similar to its neighbours, the continuation of former communist political elites in post-Soviet Uzbekistan's government and institutions, emaciated civil society, and a legal culture grounded in socialist legality, have in large part impeded any other meaningful transitional justice measures after the Soviet Union's dissolution.²⁶ Mostly symbolic efforts were aimed at post-independence national identity building, they centered on fostering a collective historical memory based on Uzbekistan's victimhood at the hands of the Soviet regime. In 1999, President Karimov established a Commission for the Promotion of the Memory of Victims of Colonial Era crimes, an obscure organ formed entirely of members of the Parliament and completely dependent on the executive authority, but little information is available about its work or achievements.²⁷ The Museum of Victims of Political Repression in Tashkent, which opened its doors in 2002, documents and commemorates victims of mostly Stalinist-era crimes. Monuments of communist heroes were dismantled, and the process of changing street names had been more extensive than in Kazakhstan and Kyrgyzstan.²⁸ Unlike its closest neighbours however, not much by way of reparations for victims of Soviet-era abuses or access to KGB archives of the previous regime has been provided by the post-Soviet authorities.²⁹

In short, after Uzbekistan became independent, there has been no meaningful transitional justice process which would have helped to uncover the truth about networks of informants and the brutality of the Soviet KGB, predecessor to the Uzbek National Security Services (SNB), paving the way to the continuation of such practices in Uzbekistan following its independence.

A Culture of Repression

After Uzbekistan emerged as an independent state, its population began to reconnect with its national traditions, and to demand greater civil, political, cultural, social and economic rights, long suppressed by the Soviet regime. Calls for greater freedoms were also made by those who advocated for a more

22. Materials of the Plenum of the Central Committee of the Communist Party [Материалы Пленума Центрального Комитета КПСС], 13-14 July 1990, <http://kpss.su/mp2801.html>

23. Handbook of the history of the Communist Party and the Soviet Union 1898-1991, http://www.knowbysight.info/1_UZBEK/03465.asp

24. Lavinia Stan "Limited Reckoning in the Former Soviet Union", in Cynthia M. Horne and Lavinia Stan, eds. *Transitional Justice and the Former Soviet Union: Reviewing the Past, Looking toward the Future*, p. 36.

25. *Ibid.*, p. 20.

26. *Ibid.* pp. 32-36.

27. Omur Bakiner, Between Politics and History, in *Transitional Justice and the Former Soviet Union*, p. 157.

28. Natalia Romashina, *What happened to the monuments of soviet soldiers in Uzbekistan* [Что в Узбекистане сделали с монументами советским солдатам], 14 May 2020, <https://www.ridus.ru/news/326914>

29. Several reparations programs have been established in neighboring Kyrgyzstan and Kazakhstan, which have suffered more from Soviet repressions, particularly in the case of Kazakhstan. Although these provide a useful point of comparison, these have not provided nearly sufficient material and social support to victims. See, generally, A Daniel, L Eremina, E Zhemkova, Eds., *Rehabilitation and Memory*, (Memorial – Zvenya, Moscow 2016),

important role of Islam in the political life of the country.³⁰ The staunchly secular Soviet *apparatchik* Karimov cracked down on even the slightest manifestation of organized religion or political dissent.

Since 1991, all political parties declaring opposition to government policies, including Erk (Freedom) and Birlik (Unity), have been refused registration, and hundreds of opposition politicians and activists were arbitrarily arrested and prosecuted.³¹ For instance, Murod Juraev, a prominent member of Erk, served in Uzbekistan's Parliament (Oliy Majlis) from 1991 to 1992 and was a mayor of Mubarak, in Qashqadarya province. He was arrested in 1994 and served 21 years in prison simply for being the first public official to dissolve a city committee of the Communist Party after the fall of the Soviet Union.³² Samandar Kukanov, Vice Chairman of the Parliament following independence, who also served on the executive committee of Erk, protested Karimov's announcement of plans to consolidate all security service divisions under his direct command.³³ Kukanov was arrested in 1993 and subsequently served 23 years in prison.³⁴ Both were tortured.³⁵

Beginning with a wave of repressions against religious practitioners and activists in Namangan in 1992,³⁶ which were followed by numerous others resulting in scores of so-called 'religious prisoners',³⁷ prosecutions targeting human rights defenders, activists, journalists, members of the military - anyone critical of or perceived dangerous by the regime, became endemic by the turn of the century.³⁸ A 'blacklist' of citizens who were to be restricted in movement, surveyed and persecuted, was maintained by the executive authorities.³⁹ The targeted individuals included religious practitioners (including those wearing the hijab or praying five times per day), and those daring to speak out against corruption or other political and social problems.

The magnitude of repressions reached unprecedented proportions after the 16 February 1999 Tashkent explosions, with thousands more arrested in the aftermath of bombings that caused between 10 and 20 deaths.⁴⁰ Those arrested included -- Muhammad Bekjanov, former editor-in-chief of the banned Erk newspaper, and Yusuf Ruzimurodov, a journalist who was tried alongside Muhammad Bekjanov in 1999 -- two of some of the world's longest-imprisoned journalists in the modern era.⁴¹ Many prisoners, including Bekjanov, ended up in the new facility built to accommodate the increasing prisoner flow, Jaslyk, an institution that has become emblematic of abuses often referred to as Uzbekistan's 'house of torture'.⁴²

30. Philip Shishkin, *Restless Valley: Revolution, Murder, and Intrigue in the Heart of Central Asia*, Yale University Press, 2013, pp. 74 – 75.

31. See Universal Periodic Review of Uzbekistan, Uzbek Bureau on Human Rights and Rule of Law Report, https://www.fidh.org/IMG/pdf/ubhrrl_report_2013.pdf.

32. FIDH: Uzbekistan: Activist Freed After 21 Years; Rights Groups Call on UN to Hold Tashkent Accountable for Arbitrary Detention, available at <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/uzbekistan-activist-freed-after-21-years-rights-groups-call-on-un-to>.

33. 'Uzbekistan: 3 More Years for Long-Held Activist: Interim President Should Amnesty Political Prisoners', HRW, 3 November 2016.

34. HRW, 'Release and Rehabilitate,' supra n. 17.

35. *Uzbekistan: Activist released after 21 years in prison [Ouzbékistan : Un activiste a été libéré après 21 ans de prison]*, 12 November 2015, HRW, available at: <https://www.hrw.org/fr/news/2015/11/12/ouzbekistan-un-activiste-ete-libere-apres-21-ans-de-prison>; *Uzbekistan: 3 More Years for Long-Held Activist: Interim President Should Amnesty Political Prisoners*, HRW, 3 November 2016. Available at: <https://www.hrw.org/news/2016/11/03/uzbekistan-3-more-years-long-held-activist>

36. Human Rights Center Memorial: List of names, arrested and convicted for religious and political reasons in Uzbekistan (December 1997 – December 2003), May 2014, p. 4.

37. See Universal Periodic Review of Uzbekistan, Uzbek Bureau on Human Rights and Rule of Law (UBHRRRL) Report, https://www.fidh.org/IMG/pdf/ubhrrl_report_2013.pdf.

38. Supra, n. 32

39. https://www.fidh.org/IMG/pdf/en_letter-concerns_on_uzb_19.12-clean.pdf, accessed on 5 September 2020.

40. <https://www.rferl.org/a/1058611.html>, accessed 4 September 2020.

41. <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/uzbekistan-activist-freed-after-21-years-rights-groups-call-on-un-to>. See also, Uzbek editor sentenced to jail while still in prison," Committee to Protect Journalists, January 25, 2012, <http://cpj.org/2012/01/days-before-his-release-jailed-uzbek-editor-given.php> (accessed September 11, 2014).

42. <https://www.rferl.org/a/uzbekistans-house-of-torture/24667200.html>.

A CASE IN SPOTLIGHT: YUSUF RUZIMURADOV

In 1993, in the midst of Karimov's repressions, journalist Yusuf Ruzimuradov was detained by law enforcement officials in relation to his work for the banned Erk newspaper. He managed to escape the Uzbek authorities and fled to Kiev, where he continued his work for Erk. In 1999, together with five other opposition activists, he was abducted in Kiev by Uzbek law enforcement officials and extradited back to Uzbekistan.

He was tortured and mistreated already on the plane, and then endured more torture at a detention center in Uzbekistan. The authorities tried him and other captives in connection with the 16 February 1999 bombings in Tashkent.⁴³ Ruzimuradov recalls that during 15 days of beatings and torture the officials broke six batons. On 18 August 1999, the Criminal Court of Tashkent sentenced Yusuf Ruzimuradov to 15 years imprisonment under the bogus charges of offences against the President, undermining the constitutional order of Uzbekistan, unlawful organisation of a non-governmental or religious association, and organisation of a criminal community (articles 158, 159, 216 and 242 of the Criminal Code, respectively).⁴⁴

When serving his term in the colony 'Kyzyltepa' in the Nayoi region, for 10 years Yusuf Ruzimuradov worked at a brick factory, enduring horrendous tortures and ill-treatment.⁴⁵ After his imprisonment came to its term, the authorities extended his sentence at least twice on arbitrary grounds. On 22 February 2018, Ruzimuradov was finally released after 19 years of imprisonment. The Committee to Protect Journalists considers him to have been the longest imprisoned journalist in the world.⁴⁶

Mass arbitrary arrests and incommunicado detentions were routinely accompanied by ill-treatment and torture.⁴⁷ Abuses included beatings, electric shock, solitary confinement, deprivation of food and sleep, forced labor, rape and sexual humiliation, asphyxiation with plastic bags and gas masks, medical experimentation and even forced sterilization of women prisoners.⁴⁸ Women HRDs were also subjected to forced psychiatric treatment.⁴⁹

Abuses were particularly rampant in prisons like Jaslyk, located in northwestern Uzbekistan. Besides Bekjanov and Ruzimuradov, human rights activists like Azam Formonov and religious figures like Akram Yuldashev were repeatedly beaten and tortured there.⁵⁰ Twenty nine out of 34 political prisoners interviewed by Human Rights Watch (HRW) between the years 2010 and 2013 reported torture, pointing to its systematic character.⁵¹

43. Sergey Markelov, *Six broken batons and 19 years Yusuf Ruzimuradov spent behind the bars* [Шесть сломанных дубинок и 19 лет Юсуфа Рузимурадова за решеткой], 7 October 2019, <https://team29.org/uzbekistan/ruzimuradov/>

44. 'World's Longest-Imprisoned Journalist Is Freed in Uzbekistan', Rick Gladstone, *New York Times*, 2 March 2018, available at: <https://www.nytimes.com/2018/03/02/world/asia/yusuf-ruzimuradov-journalist-uzbekistan.html>

45. Sergey Markelov, *idem*, available at: <https://team29.org/uzbekistan/ruzimuradov/>

46. The Committee to Protect Journalists, Yusuf Ruzimuradov, <https://cpj.org/data/people/yusuf-ruzimuradov/>

47. 'UN Anti-Torture Experts Rebuke Uzbekistan for Its Abysmal Record'. Available at <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/14394-un-anti-torture-experts-rebuke-uzbekistan-for-its-abysmal-record>, accessed 5 September 2020.

48. <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/un-urges-uzbekistan-to-investigate-torture-and-ill-treatment-of-human>.

49. A prominent campaigner against forced labor Elena Urlaeva was ordered by a court to undergo compulsory treatment at the Tashkent City Psychiatric Hospital at least four times in 2001, 2005, 2012 and 2016. See: Frontline Defenders, *Elena Urlaeva forcibly detained in psychiatric institution*, <https://www.frontlinedefenders.org/en/case/elena-urlaeva-forcibly-detained-psychiatric-institution>; Frontline Defenders, *Uzbek HRD forced to take psychiatric drugs*, <https://www.frontlinedefenders.org/ru/case/uzbek-hrd-forced-take-psychiatric-drugs>

50. HRW, Report, 'Until the Very End' Politically Motivated Imprisonment in Uzbekistan' (25 September 2014), available at <https://www.hrw.org/report/2014/09/25/until-very-end/politically-motivated-imprisonment-uzbekistan>.

51. *Ibid*.

A CASE IN SPOTLIGHT: AZAMJON FARMONOV

Azamjon Farmonov, the chairman of the Syrdarya branch of the Human Rights Society Uzbekistan (HRSU), was helping local farmers to defend their rights against an important oil exporter, when he was arbitrarily detained on 29 April 2006. Farmonov was falsely accused of money extortion and charged under Article 165 of the Criminal Code of Uzbekistan.⁵²

The authorities started torturing him already at the stage of the investigation in the detention centre of the Gulistan Department of Internal Affairs, where he was held incommunicado for over one month. During this time, State agents suffocated him with a gas mask until he lost consciousness, beat his feet with a rubber baton and with water bottles, in an attempt to get him to confess to a crime he did not commit.⁵³ They would wrap Farmonov into a 'cholpon' - a rubber gown which squeezes a person when they move, and threatened him with killing his children and putting his wife into a neighboring prison cell.

On 15 June 2006, Farmonov was sentenced to a nine-year prison term and sent to Jaslyk, where ill treatment and torture continued. The prison authorities would put a rag into Farmonov's mouth to muffle the screams and strike his feet with batons until he could not feel any more pain. After these sessions he could not walk for ten days. 'If you ask me how many times I've been tortured,' - recalled Farmonov, - 'I can't give you an exact answer. I lost count'.⁵⁴ Farmonov testified to cases when detainees were beaten to death.⁵⁵

A few days ahead of his due release in April 2015, Azamjon Formonov was sentenced to five additional years in prison for alleged systematic violation of prison rules (Article 221 of the Criminal Code). He was released on 3 October 2017, 11 years into his unjust prison term.

In addition to torture and ill-treatment, detainees were routinely denied the right to fair trial, including availability and choice of lawyer and equality of parties, the right to family visits, access to adequate medical care and visits by the International Committee of the Red Cross (ICRC).⁵⁶ Many had their sentences arbitrarily extended for months and years for alleged violations of prison rules such as failing to properly clean their cell, stump out a cigarette or being late for roll call.⁵⁷

52. "Arbitrary detention of human rights defenders / obstacles to freedoms of association and assembly", FIDH press release, 30 June 2006, available at: <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/Arbitrary-detention-of-human>

53. Sergey Markelov, The forth story: About letters in shampoo bottles and an armoured car for a man called Liberty, О письмах в бутылке шампуня и персональном броневике для человека по имени Свобода, Team 29, 7 October 2019, <https://team29.org/uzbekistan/farmonov/>

54. Sergey Markelov, *Ibid*.

55. *Ibid*

56. See Human Rights Watch report, 'Until the Very End', *supra* n. 50.

57. Article 221 of Uzbekistan's Criminal Code – Violation of Prison Rules.1

A CASE IN SPOTLIGHT: SALIJON ABDURAKHMANOV

On 7 June 2008, Salijon Abdurakhmanov, an outspoken journalist reporting on government corruption and human rights abuses in his native Karakalpakstan, was arbitrarily detained and then charged with drug production, purchase, storage or transport (Article 276.2a of the Criminal Code). Abdurakhmanov's blood test was negative for narcotics, and on 2 August 2008, the charges were changed to drug possession with the purpose of selling (Article 273.5 of the Criminal Code). Abdurakhmanov denied his guilt and claimed that the drugs were planted with a view to sanctioning him for human rights and journalistic activities.⁵⁸ However, on 10 October 2008, after an unfair trial, the Tahtakupir District Court of Karakalpakstan sentenced Abdurakhmanov to ten years in prison.⁵⁹

In 2012, the ICRC has for several months attempted to meet with Abdurakhmanov. One time, the prison authorities presented before the ICRC another person who introduced himself as Abdurakhmanov. The ICRC officers, however, had a picture of the real Abdurakhmanov and refused to believe the impostor.

After spending almost a decade in prison, Salijon Abdurakhmanov was released on 4 October 2017. On 29 March 2019, the UN Human Rights Committee found that Uzbekistan violated Abdurakhmanov's rights to liberty, fair trial and freedom of expression (articles 9 (1), 14 (1) and 19 (2) of the International Covenant on Civil and Political Rights respectively). The Committee further found that Uzbekistan must provide the journalist with an effective remedy, including full reparation, reimbursement of legal expenses, and adequate compensation for the violations suffered and return of confiscated journalistic materials.⁶⁰ Salijon Abdurakhmanov believes the UN Human Rights Committee's decision will give local courts an important impetus to start his rehabilitation.⁶¹

Repression reached its worst point in 2005. The tragic events in Andijan began with protests in early May over the trial of 23 local businessmen, who were also devout Muslims and activists in their respective communities, accused of involvement in the so-called Akromiya movement and acts against the state.⁶² The demonstrations against arbitrary detentions were followed by arrests, causing an escalation in violence.⁶³ On the evening of 13 May 2005, armored personnel carriers were called into Andijan to quell the unrest. Government forces fired live rounds indiscriminately into the crowd, killing as many as 750 unarmed civilians, including children.⁶⁴

58. 'Confirmation In Appeal of Mr. Salijon Abdurakhmanov's Sentence,' the Observatory (FIDH-OMCT) Urgent Appeal, 20 November 2008, <https://www.fidh.org/en/region/europe-central-asia/uzbekistan/CONFIRMATION-IN-APPEAL-OF-MR>

59. Communication to the United Nations Human Rights Committee in the case of Salijon Abdurakhmanov against Republic of Uzbekistan, Freedom Now, 1 October 2012, <http://www.freedom-now.org/wp-content/uploads/2014/12/Abdurakhmanov-HRC-Petition-redacted.pdf>

60. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2295/2013, CCPR/C/125/D/2295/2013, <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=>

61. Compensation for the ten years of arbitrary detention [Компенсация за десять лет произвольного заключения], Centre1, 6 August 2019, <https://centre1.com/uzbekistan/kompensatsiya-za-desyat-let-proizvolnogo-zaklyucheniya-v-ruz-eto-skolko/>

62. An informal religious movement allegedly inspired by former adherent of Hizb ut-Tahrir, Akrom Yuldoshev. Uzbekistan: The Andijon Uprising, Crisis Group Briefing No. 38: Europe & Central Asia 25 May 2005, p. 2.

63. Ibid. See also <https://www.hrw.org/report/2005/06/06/bullets-were-falling-rain/andijan-massacre-may-13-2005>. Twenty-two defendants faced charges of organizing a criminal group, attempt to overthrow the constitutional order of Uzbekistan, membership in an illegal religious organization and possession or distribution of literature containing a threat to public safety, Articles 242, 159, 244-1 and 244-2 of the Criminal Code of the Republic of Uzbekistan, and one defendant was charged with abuse of power relating to his professional position, Article 205 of the Criminal Code.

64. Uzbekistan: The Andijon Uprising, Crisis Group Briefing No. 38: Europe & Central Asia 25 May 2005, p. 16.

Following the massacre, the government cracked down further by adopting broad anti-terrorism and anti-extremism laws,⁶⁵ and arresting approximately 5,900 more individuals on political or religious grounds.⁶⁶ One of these was Isroiljon Kholdorov, the former chairperson of the Andijan branch of Ezgulik, the only independent human rights organization then registered in Uzbekistan.⁶⁷ Following the Andijan massacre, Kholdorov spoke to international media about mass graves in and around Andijan. In June 2006, Uzbek security services kidnapped Kholdorov in Osh, Kyrgyzstan, and forcibly returned him to Uzbekistan. He was then sentenced to six years in prison on charges of 'threatening the constitutional order' and 'unlawful entry into or exit from Uzbekistan,' among others, with his sentence extended to nine years on arbitrary grounds.⁶⁸

To this day, no effective investigation into the mass killings, arbitrary arrests and prosecutions, tortures and other abuses, which would help identify those who gave orders to fire at civilians in Andijan, or at the very least acknowledge the victims, has ever taken place.⁶⁹

In addition to individual representatives of the civil society, independent media and NGOs were also decimated by repressions, in violation of the right to freedom of association. Between 2005 and 2012, over four hundred private organizations and NGOs, including FIDH member organizations, and about fifty international media outlets and NGOs, including Voice of America, Radio Free Liberty, Institute for War and Peace Reporting (IWPR), and HRW, have been closed down.⁷⁰ Since 2013, the ICRC, whose activities were permitted but severely hampered, terminated its visits to detainees.⁷¹

The State's participation in international organizations, particularly in processes dealing with human rights, was limited and uncooperative. The case of former UN employee Erkin Musaev is emblematic of the government's attitude towards external actors seen as hostile to the regime. From 1997 to 2001, Musaev represented Uzbekistan's government in Brussels at NATO and then became a project manager for the UN Development Programme's 'Border Management in Central Asia' project.⁷² In 2006, he was arrested and subsequently convicted of treason and other offenses, ending up serving 11 years of wrongful imprisonment, enduring torture.⁷³

The exact number of 'political prisoners'⁷⁴ in Uzbekistan is almost impossible to ascertain due to the scale of repressions, the lack of independent monitoring mechanisms and transparency of the penitentiary system. By 2014, estimates ranged from 7,000 to 12,000 individuals,⁷⁵ belonging to one of three categories of crimes, detailed in the attached Annex A. The first and most common are trumped-up charges of a political character. Hundreds of individuals have been convicted for instance under Articles 157 and 159 of the Penal Code, High Treason and Undermining the Constitutional Order of Uzbekistan, respectively.⁷⁶ The second encompasses another large group made up mostly of so-called religious prisoners who were convicted of Article 155 - terrorism, or extremism offenses based

65. *Idem*, p.16

66. Vitaly Ponomarev, "List of Persons Arrested on Political or Religious Motives in Uzbekistan (January 2004-December 2008)," Memorial Human Rights Center, (Moscow: 2009), p. 10.

67. HRW, 'Until the very end', *supra* n. 50.

68. *Ibid.*

69. CCPR/C/UZB/CO/5, 1 May 2020, para. 16.

70. See Universal Periodic Review of Uzbekistan, Uzbek Bureau on Human Rights and Rule of Law (UBHRRRL) Report, https://www.fidh.org/IMG/pdf/ubhrrl_report_2013.pdf.

71. According to local experts' testimony during the Workshop.

72. Erkin Musaev released after 11 years of wrongful imprisonment, <https://www.amnesty.org/en/latest/campaigns/2017/08/erkin-musaev-released-after-11-years-of-wrongful-imprisonment/>.

73. *Ibid.*

74. Defined in the Methodology section.

75. HRW, 'Until the Very End', *supra* n. 50.

76. <https://memohrc.org/ru/monitorings/pravozashchitnik-vitaliy-ponomarev-o-politicheskikh-zaklyuchennykh-v-centralnoy-azii>.

on falsified evidence or evidence procured through torture, and/or convictions involving Article 244-2 - Organization and participation in religious extremist, separatist, or other prohibited organization. The third, a relatively small group, includes opposition activists, political dissidents, journalists and human rights defenders convicted of ordinary offences like drug possession and larceny. Often, the members of this latter group, which before 2016 ranged between 25-30 individuals, were charged with ordinary crimes while also standing accused of political or terrorist offences.⁷⁷

⁷⁷. *Ibid.*

CURRENT SITUATION OF FORMER POLITICAL PRISONERS

By the time President Mirziyoyev came to power, the number of political prisoners in Uzbekistan exceeded that of all the other Central Asian states combined.⁷⁸ He began to stress the importance of bringing prosperity to the country while “building a democratic and just society in which human rights come first.”⁷⁹ While the current regime has so far not succeeded in prioritizing human rights, reforms generated by over 2,000 new laws and executive decrees⁸⁰ have resulted in their marked improvement.

Mirziyoyev attempted to overhaul the SNB, now renamed the State Security Service, by replacing its longtime head and one of the most powerful members of Karimov’s inner circle Rustam Inoyatov.⁸¹ There are palpable improvements in the independence of the judiciary⁸² in line with the ambitious new ‘Strategy for the Further Development of the Republic of Uzbekistan’ for the years 2017 – 2021.⁸³ A deep revision of Uzbekistan’s criminal law and procedure was commenced, with a view to improving their compatibility with international standards.⁸⁴

Effective measures have been undertaken to abolish forced labor in the cotton industry, although the practice does not appear to be entirely extinguished.⁸⁵ Mirziyoyev has eased restrictions on freedom of speech and assembly.⁸⁶ For the first time in almost 20 years, Uzbekistan invited a UN High Commissioner for Human Rights and representatives of UN Special Procedures, EU delegations, and NGOs, to come for official visits.⁸⁷ These, as well as the recent appointment to the UN Human Rights Council,⁸⁸ enabled Uzbekistan to deepen its international cooperation.⁸⁹

The rights of detainees are better respected and their number fell considerably, at least according to government sources. In 2020, Uzbekistan adopted a new National Human Rights Strategy of the Republic of Uzbekistan, which boasts that the number of detainees in the country has been reduced by two and a half times.⁹⁰ The authorities closed the notorious Jaslyk prison camp,⁹¹ although it appears to have been retooled for pre-trial detention purposes,⁹² and prohibited the use of evidence extracted under

78. Vitaliy Ponomarev, interview, <https://www.fergananews.com/articles/8846>, last accessed 5 September 2020.

79. Anthony C. Bowyer, *Political Reform in Mirziyoyev’s Uzbekistan: Elections, Political Parties and Civil Society*, Central Asia-Caucasus Institute and Silk Road Studies Program, SILK ROAD PAPER March 2018, p. 64.

80. N. Atayeva, *Is President Shavkat Mirziyoyev a reformer or a follower of the Karimov dictatorship?* Spotlight on Uzbekistan, p. 130.

81. Ministry of Foreign Affairs of the Republic of Uzbekistan, *President held an extended session of the board of national security service of the Republic of Uzbekistan*, 31 January 2018.

82. See, e.g. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25056&LangID=E>. See also Sergey Sayapin, “Critical Analysis, Strict Discipline and Personal Responsibility”: Some Reflections on Strengthening the Independence of the Judiciary in Central Asia, in *Land and State* No. 3 (84), December 2019, pp. 18 – 27.

83. Presidential Decree of the Republic Of Uzbekistan No. UP-4947 *About the strategy of actions for further development of the Republic of Uzbekistan*, 7 February 2017, <https://cis-legislation.com/document.fwx?rgn=94327>

84. Sergey Sayapin, “Crimes against the Peace and Security of Mankind in the Revised Edition of the Criminal Code of the Republic of Uzbekistan”, in *45 Review of Central and East European Law* (2020), pp. 1 – 23.

85. <https://www.economist.com/asia/2018/11/08/uzbekistan-tries-to-end-the-use-of-forced-labour-in-the-cotton-fields>

86. Amnesty International, *Blogging in Uzbekistan: welcoming tourism, silencing criticism*, June 2020.

87. Idem, p. 63

88. Navbahor Imamova, “Will Uzbekistan Seat on UN Human Rights Council Bolster Justice?”, available at <https://www.voanews.com/south-central-asia/will-uzbekistan-seat-un-human-rights-council>.

89. Among other NGOs, the Norwegian Helsinki Committee, a member organization of FIDH, has visited the country and met with the authorities. See, e.g. <https://www.nhc.no/en/uzbekistan-welcoming-human-rights/>.

90. National Human Rights Strategy, p. 4.

91. HRW, Report, “Shuttering Notorious Jaslyk Prison A Victory for Human Rights in Uzbekistan Human Rights Watch Helped Keep International Attention on ‘House of Torture’”, available at <https://www.hrw.org/news/2019/08/27/shuttering-notorious-jaslyk-prison-victory-human-rights-uzbekistan>, accessed 5 September 2020.

92. See International Partnership for Human Rights, Amnesty International, Association for Human Rights in Central Asia, “Uzbekistan: Submission to the United Nations Committee Against Torture,” p. 11, available at https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/UZB/INT_CAT_CSS_UZB_37515_E.pdf.

torture.⁹³ At the conclusion of its fifth Universal Periodic Review of Uzbekistan on the implementation of the International Covenant on Civil and Political Rights (ICCPR), conducted in 2020, the UN Human Rights Committee has remarked that since the election of the new President, 'Uzbekistan had made progress in developing a culture of human rights,' among others by having released political prisoners.⁹⁴

It should be noted that amnesties and pardons⁹⁵ also took place during Karimov's rule.⁹⁶ But the mass release of political prisoners under Mirziyoyev's administration demonstrates an unprecedented interest of the government to address some of the worst abuses and at least a tacit acknowledgment that the justice system has been misused to prosecute for political motives.

The releases began almost immediately following Karimov's death.⁹⁷ On 7 December 2017, Mirziyoyev signed a decree pardoning 2,700 prisoners, of whom 956 would be released immediately,⁹⁸ among them Bekjanov, Farmonov, Turgunov, Musaev, and Abdurakhmanov.⁹⁹ Besides its size, this pardon was also hailed as different from Karimov-era clemencies because it was accompanied by the establishment of a Clemency Commission to determine convicts eligible for further pardons, although its precise mandate and criteria for selecting eligible detainees are unknown.¹⁰⁰

Other presidential pardons followed which had resulted in releases and the transfer of individuals from penal colonies to open prisons. In 2018, three mass pardons were decreed, liberating approximately 600 individuals.¹⁰¹ More recently, a 27 August 2020 presidential pardon released 113 convicts, of whom 105 had been sentenced on charges of religious extremism, in a clemency ahead of the September 1 Independence Day celebrations.¹⁰² Out of the total number of over 1,500 individuals released since the end of 2016, the number of political prisoners is at least 55 but likely closer to several hundred individuals, possibly over a thousand.¹⁰³

93. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25650&LangID=E>.

94. *Ibid.*

95. Under Article 93.23 of Uzbekistan's Constitution, the President has the power to put to the Senate of the Oliy Majlis of the Republic of Uzbekistan submission on adoption of acts of amnesty and effectuate pardoning of persons condemned by courts of the Republic of Uzbekistan.

96. Murod Juraev was one of the world's longest-serving political prisoners, and his release, after 21 years in prison, came less than two weeks after then-U.S. Secretary of State John Kerry's visit to the country in 2015. Unfortunately, he died shortly thereafter from lingering medical conditions developed while in detention; The Diplomat, *A Death and a Question: What Does The Future Hold for Uzbekistan's Political Prisoners?* 5 December 2017, <https://thediplomat.com/2017/12/a-death-and-a-question-what-does-the-future-hold-for-uzbekistans-political-prisoners/>; *Fergana, In connection with the anniversary of the adoption of the Constitution of Uzbekistan, Islam Karimov signed a decree on amnesty* [В связи с годовщиной принятия Конституции Узбекистана Ислам Каримов подписал указ об амнистии], 1 December 2003, <https://www.fergananews.com/article.php?id=2380>

97. These were usually announced as collective grants of clemency. They often did not include political prisoners; and, where they did, no reference was made to the underlying crimes nor any acknowledgment of the political character of any of the prisoners released. Instead most were merely reductions in sentence or commutations of death sentences. For instance, In October 2016 Mirziyoyev amnestied close to 40,000 individuals, although the number of persons actually released is much smaller. See: Resolution of the Senate of the Oliy Majlis of the Republic of Uzbekistan on amnesty in connection with the twenty-fourth anniversary of the adoption of the Constitution, <https://lex.uz/docs/3043440>; Official Website of the President of the Republic of Uzbekistan, *On measures to prepare the pardoning sentenced persons serving their sentences in penal institutions in connection with the twenty-fifth anniversary of the adoption of the Constitution of the Republic of Uzbekistan*, 2 October 2017, <https://president.uz/ru/lists/view/1095>.

98. National Information Agency, *A commentary to the Decree of the President of the Republic of Uzbekistan Shavkat Mirziyoyev 'On pardon in connection with the 25th anniversary of the adoption of the Constitution of the Republic of Uzbekistan'*, 6 December 2017, <http://uza.uz/ru/documents/prezident-nashhey-strany-pomiloval-2-700-osuzhdennykh-06-12-2017>

99. Ozodlik (RFE/RL Uzbekistan), *Mirziyoyev pardoned 2,700 prisoners* [Мирзиёев 2700 маҳкуми афв қилди], 6 December 2017, <https://www.ozodlik.org/a/28901188.html>.

100. Official Website of the President of the Republic of Uzbekistan, *On measures to prepare the pardoning sentenced persons serving their sentences in penal institutions in connection with the twenty-fifth anniversary of the adoption of the Constitution of the Republic of Uzbekistan*, 2 October 2017, <https://president.uz/ru/lists/view/1095>. According to the testimony of Working Group experts, the Commission still exists and functions. However, its precise mandate and criteria for selecting eligible detainees are unknown.

101. Fergana, *The General Prosecutor's Office of Uzbekistan admitted fabrication of criminal cases* [В Генпрокуратуре Узбекистана признали факт фабрикации уголовных дел], 21 January 2019, <https://fergana.agency/news/104473/>.

102. Decree 'On pardoning a group of people serving a prison sentence, who have sincerely repented of what they did and who have firmly embarked on the path of correction', available at <http://uza.uz/ru/documents/ukazom-prezidenta-pomilovany-113-grazhdan-27-08-2020>, visited 3 September 2020.

103. Steve Swerdlow, 'Rehabilitation here and now: Pursuing transitional justice in Uzbekistan' in "Spotlight on Uzbekistan", FPC, p. 116. According to Swerdlow, the number does not include the so-called 'religious prisoners', who make up the vast majority of all political prisoners and whose cases are harder to track. See also the article in Russian at https://cabar.asia/ru/reabilitatsiya-zdes-i-sejchas-obespechenie-pravosudiya-perehodnogo-perioda-v-uzbekistane?_utl_t=tw.

In addition to the amnesties and pardons, Mirziyoyev has also instructed law enforcement authorities to review the 'black lists' of Uzbek citizens suspected of involvement with banned religious organizations. More than 20,000 people had been allegedly removed from those lists by 2018.¹⁰⁴

In addition to the release of prisoners to their families, the 27 August 2020 decree instructed the relevant ministries to offer former prisoners assistance to social adaptation, employment, and the return to a dignified role in society.¹⁰⁵ These instructions were a nod to recommendations of international treaty bodies,¹⁰⁶ such as to provide measures to rehabilitate and reintegrate former prisoners, including by immediately and fully reinstating their civil, political, economic and social rights, and to take measures to ensure that all allegations of torture and ill-treatment are promptly, impartially and effectively investigated by the authorities.¹⁰⁷

In reality, practically none of these recommendations has been implemented however. Political prisoners came back to homes devastated by separation, psychologically and physically harmed by years of confinement, with no employment or another source of income, some too old and unwell to seek employment, and with the lingering stigma of a criminal conviction to boot. The status of released political prisoners as victims of human rights violations has not been acknowledged and as such former political prisoners and their families face discrimination and social stigma. They have not been provided with any compensation for their suffering, or any medical or psychological support. As detailed in *Domestic Rehabilitation Practice* Section, below, wrongfully convicted individuals have been unable to even obtain their original judgments of conviction and other court case materials, including those relating to the nature of the charges and evidence presented at trial, which would enable them to file legal challenges.

Lacking access to justice, re-institution of rights, including through acquittal, return of property, restoration of employment, resumption of education

Released political prisoners face many challenges, including the lack of an effective remedy for wrongful conviction in courts, restrictions on employment or the independent practice of a profession, lost property and diminished social contacts.¹⁰⁸ Many have found it impossible to obtain a job or return to normal life after their release. Some released activists and HRDs are not allowed to return to practice and continue facing harassment and arbitrary detention. Those who became disabled because of torture or illness while in detention face even greater difficulties earning a living.

According to the Criminal Code of Uzbekistan, there are currently five ways for prisoners to be released prior to the expiration of their sentence: pardon, amnesty, acquittal, sickness and parole.¹⁰⁹ While only acquittal gives rise to the right to rehabilitation and reparations,¹¹⁰ all of the releases of political prisoners have taken the form of pardons or amnesties, precluding rehabilitation as a matter

104. Eurasianet, *Uzbekistan: Pardons come too late for many recipients*, 28 August 2020, https://eurasianet.org/uzbekistan-pardons-come-too-late-for-many-recipients?utm_source=dlyr.it&utm_medium=twitter, accessed 3 September 2020.

105. *Ibid.*

106. Concluding observations on the fifth periodic report of Uzbekistan, para. 18.

107. Committee against Torture, *Concluding observations on the fifth periodic report of Uzbekistan*, (CAT/C/UZB/CO/5), 14 January 2020, Para. 13; *Report of the Special Rapporteur on freedom of religion and belief on his mission to Uzbekistan* (A/HRC/37/49/Add.2), 22 February 2018, para. 101 (h).

108. Testimony recorded during the Workshop.

109. The latter has apparently never been applied to political prisoners. See: Criminal Procedure Code of the Republic of Uzbekistan, Article 163 - Cases of early release from serving a sentence, Article 18 - Protection of rights and freedoms of citizens, <https://lex.uz/docs/163627#168609>.

110. Article 301, read in conjunction with Article 83, of the Criminal Procedure Code of Uzbekistan.

of law until a judgment of acquittal is secured.¹¹¹ In some cases prisoners have been asked to reaffirm their guilt or to formally ask for forgiveness, in writing, making their subsequent attempts at acquittal or rehabilitation impossible.¹¹² Many have been released conditionally.¹¹³ Some were asked to sign away their rights to compensation and other forms of reparation.¹¹⁴

Obtaining an acquittal after release is extremely difficult in practice. To the knowledge of the Working Group, as of the time of writing of this report only three individuals have been acquitted, entitling them to reparations under domestic law. These cases, as well as the obstacles in seeking domestic rehabilitation, are detailed further in the *Domestic Rehabilitation Practice* Section.

Many employers are reluctant to hire former political prisoners because they fear penalties or the loss of lucrative government contracts; others are not convinced that the potential employee was not a political prisoner but rather a common criminal. The offers of employment by the government are often inadequate with respect to the person's qualifications, and at times humiliating. Even if hired for a state-sponsored job, most former prisoners are required to contribute 20 percent of their salary to the State.¹¹⁵

One of the better-known figures recently released was 53-year-old Rukhitdin Fakhritdinov, a former imam at a Tashkent mosque.¹¹⁶ Fakhritdinov was sentenced in 2006 to 17 years in prison on terrorism and religious extremism charges after a closed trial, for among others alleged involvement in the 1999 attack.¹¹⁷ He ended up serving 14 years until his release on 27 August 2020. He was summoned the following day to the office of the mayor of Tashkent's Olmazor district and offered a job at a factory assembling plastic window frames. Under the terms of the release, Fakhritdinov would be required to contribute 20 percent of his salary to the state.¹¹⁸

The brilliant diplomat and former Ministry of Defense and UN employee, Erkin Musaev, told FIDH that he has been unable to find employment due to his criminal record, despite his extensive experience at the highest levels of domestic and international diplomacy, and foreign language fluency.¹¹⁹

111. Workshop, interventions of former political prisoners.

112. State party's replies to its list of issues, CAT/C/UZB/Q/5/Add.1, 20 September 2019 Para. 15-24, 116, <https://undocs.org/CAT/C/UZB/Q/5/ADD.1>

113. Human Rights Watch, 'Uzbekistan: Release and Rehabilitate Political Prisoners,' supra n. 17.

114. The Workshop, interventions of former political prisoners.

115. Decree 'On the pardon of a group of people serving a prison sentence, who have sincerely repented of what they did and have firmly embarked on the path of correction', available at <http://uza.uz/ru/documents/ukazom-prezidenta-pomilovany-113-grazhdan-27-08-2020>, visited 3 September 2020.

116. https://eurasianet.org/uzbekistan-pardons-come-too-late-for-many-recipients?utm_source=dlvr.it&utm_medium=twitter.

117. *Ibid.*

118. *Ibid.*

119. Private statement to FIDH of 5 September 2020.

A CASE IN SPOTLIGHT: ERKIN MUSAEV

Erkin Musaev: 'I was released on 11 August 2017 following the decision of the President of Uzbekistan Shavkat Mirziyoyev. My sentence was reduced from 20 years to 11 years and 6 months.

After my release I tried to get a job as a school teacher. In particular, in September of 2017 I applied to the local Mahalla (a local organ of self-governance), which provided me with a recommendation to be employed in a school. The director of the school expressed his readiness to hire me so long as I pass the screening by the local public education authority. The latter informed me however that former convicts cannot be employed in a school.

In November 2017 I was hired to work at a private diagnostic clinic with a trial period. Soon afterwards however agents of security services visited the clinic and informed management that I was on the files of the Ministry of Internal Affairs. As a consequence I was forced to leave this job.

In December 2017 I got a job at the English language education center, which was organized by my sister in the building of the Mahalla. The center catered primarily to disabled children and those from low income families. I offered the center's management to organize an open lesson. Specifically, I reached out to foreign embassies and the center for working with youth and artists for help in organizing an entertaining English language lesson, where the center and embassies would offer gifts to participants, and various artists would perform. The event was a success; it was attended by diplomats from the EU, staff from the youth center and young artists, as well as parents of students. However, on the next day agents of the tax authorities and law enforcement came to the center and asked me not to appear there any longer or organize any similar events. I was therefore forced to leave the center.

I also applied to work on various projects of the UN and other international organizations. However I always received the same answer that in light of my conviction I cannot be hired by international organizations or foreign embassies. I cannot even get a job as a security guard.¹²⁰

Former HRDs, activists and journalists also face numerous obstacles in pursuing their work independently, especially if they self-organize into NGOs.¹²¹ Human rights defender Agzam Turgunov, along with former political prisoners Azam Formonov and Dilmurod Saidov, has repeatedly applied for permission with the Ministry of Justice to establish an NGO called 'Restoration of Justice' with the objective of investigating past allegations of torture and ill-treatment and to provide redress to victims.¹²² He has been denied on five different occasions on spurious grounds, primarily citing failure to comply with the registration procedure.¹²³ Turgunov's ongoing efforts to register another organization, 'Human Rights House,' have also so far not succeeded.

While other HRDs have complained of inability to register their organizations, on 9 March 2020, the Justice Ministry of Uzbekistan registered its first human rights NGO in the past 17 years: Huquqi Taynach (Legal Support), an organization headed by Azam Farmonov, Alisher Karamatov and Dilmurod Saidov, after a third attempt.¹²⁴

120. Private Statement to FIDH by Erkin Musaev, 5 September 2020.

121. This despite the adoption, in May 2018 of the law 'On measures to radically increase the role of civil society institutions in the process of democratic renewal of the country'. <https://cabar.asia/en/why-is-it-difficult-to-open-an-ngo-in-uzbekistan/>.

122. Concluding observations on the fifth periodic report of Uzbekistan, 14 January 2020, para. 17.

123. Agzam Turgunov, interview with FIDH, February 2020.

124. Uzbekistan registers first human rights NGO for 17 years", available at <https://en.fergana.plus/news/116120/>.

Some former political prisoners have reported not having their confiscated property, including real estate, vehicles, computers and other office equipment, returned to them.¹²⁵ While most face no voting restrictions, the majority report not being able to run for any political office.¹²⁶

Not only were the released political prisoners not cleared of any wrongdoing and restored in employment, property and the right to seek political office, in some cases they continue to endure violations of human rights. Those who were 'conditionally released' under Article 73 of the Criminal Code, said their freedom of movement had been restricted, despite the cancellation of *propiska*, the Soviet-era residence card limiting one's spectrum of activities to around their place of residence. They continue to be under surveillance and are required to report regularly to the police for 'preventative conversations'.¹²⁷ Others, like Agzam Turgunov, even continue to face arbitrary detention, fines, harassment and other measures aimed at deterring them from carrying out their work.¹²⁸

A CASE IN SPOTLIGHT: AGZAM TURGUNOV

After serving nine years in prison on fabricated extortion charges, Agzam Turgunov was amnestied on October 7, 2017. After his release, Agzam Turgunov continued human rights work and also started to advocate for rehabilitation of the other Uzbek citizens illegitimately convicted under President Karimov's rule, leading to retaliation against him and other activists involved.

Since October 2018, Agzam Turgunov has reported regular state surveillance, phone tapping and intimidation. He was detained and charged with administrative violations on several occasions after his release: in August 2018 and in March and June 2019. In August 2018, he was accused and subsequently charged with failure to comply with legal orders given by a law enforcement officer (Article 194 of the Administrative Code) for observing and taking photographs of an unauthorized peaceful assembly. Turgunov has appealed this decision. During the appeal hearings, Turgunov was accused of disrupting the proceedings, which led to new charges against him: on March 30, 2019, Turgunov received a summons from the court informing him that he was accused of 'defamation', 'contempt of court' and 'failure to comply with the orders of law enforcement officers' (Articles 41, 180 and 194 of the Administrative Code, respectively). Finally, on 4 June 2019, an administrative court in the Tashkent district found Turgunov guilty of hooliganism (Article 183 of the Administrative Code).¹²⁹

There are reasons to believe the charges against him were politically motivated and represent an attempt by the authorities to discourage his claims for rehabilitation and his human rights work.

125. FIDH Questionnaire distributed to former political prisoners – (Abdurakhmanov, Ruzimuradov, Turgunov).

126. *Ibid.*

127. Human Rights Watch, 'Release and Rehabilitate Political Prisoners,' supra n. 17.

128. FIDH, 'Uzbekistan: Agzam Turgunov arbitrarily arrested, fined and denied an exit visa', <https://www.fidh.org/en/issues/human-rights-defenders/uzbekistan-agzam-turgunov-arbitrarily-arrested-fined-and-denied-an-exit-visa>, accessed on 15 September 2020.

129. International Partnership for Human Rights, Report, "Uzbekistan: reforming or redecorating? 25 October 2019,"

Lack of Medical and Psychological Treatment, or Free Legal Assistance

*In prison I suffered unspeakable psychological and physical torture. I never thought that I would be free and living. At least now I am alive, thank God.*¹³⁰

Many of the former political prisoners are suffering from severe physical and psychological health problems resulting from years of beatings and torture, including deprivation of food and sleep, forced labor, solitary confinement and the consequent lack of exposure to sunlight or exercise, overcrowded cells, sexual humiliation, exposure to harsh climatic conditions, and the lack of or inadequate medical attention. Numerous detainees have contracted tuberculosis and other infectious diseases, as well as chronic ailments that caused them great psychological and physical harm.¹³¹ Journalist Dilmurod Saidov and Murod Juraev both contracted tuberculosis, the latter died only two months following his release.¹³² Salijon Abdurakhmanov developed an intestinal ulcer, Israiljon Kholdorov a spinal hernia, Mehriniso Khamdamova, a member of the HRSU, reported an urgent need of an operation to remove a tumor, and numerous others complained of developing heart disease, lung ailments and hypertension.¹³³ Another member of the HRSU, Chyan Mamatkulov, a former reserve officer of the Armed Forces of Uzbekistan, had a disability prior to his arrest in 2012. During the two years of imprisonment, where he was repeatedly tortured, he lost his teeth and still suffers back and hand pain.¹³⁴

Activist Mutabar Tadjibaeva, who was released from the Tashkent Women's Prison in 2008, where she had been frequently detained in solitary confinement in the psychiatric wing of the prison, raped and tortured, had to undergo years of treatment upon her release from prison, while living in forced exile in France.¹³⁵ Released political prisoners must often turn to international support, or family members, because domestic social support structures and services are inadequate or non-existent. None of the political prisoners questioned by the FIDH had reported receiving any psychological or medical assistance from the State to treat health and psychological issues arising from their confinement, which is provided for under domestic law. The obstacles for obtaining the assistance are so insurmountable, that the applicants simply give up.¹³⁶

In addition to the prisoners themselves, the families of political prisoners have also suffered extensive emotional distress and anguish due to the absence of, and often lack of information about, their loved ones, as well as knowing of their terrible suffering. At times, these family members also faced harassment and intimidation from the authorities.¹³⁷ Many of them have had to live with the adverse physical, mental, and financial consequences of prolonged or repeated detention of their loved ones, also without any redress.

Former political prisoners also reported that no free legal assistance has been offered by the State to help them reinstate their rights, or any kind of counseling. While some of them do benefit from legal assistance, this has been provided on a pro bono basis or with the material assistance of international NGOs, drawing the attention of local security services.

130. Former political prisoner Azam Formonov, in a statement to FIDH.

131. *Ibid.*

132. <https://thediplomat.com/2017/12/a-death-and-a-question-what-does-the-future-hold-for-uzbekistans-political-prisoners/>.

133. HRW, 'Until the Very End', supra n. 50.

134. In Uzbekistan, human rights activist has sought a full rehabilitation, 21 March 2020, available at <https://acca.media/en/in-uzbekistan-human-rights-activist-has-sought-a-full-rehabilitation/>

135. <https://www.martinennalsaward.org/hrd/mutabar-tadjibaeva/>.

136. Swerdlow, Spotlight on Uzbekistan, p. 122.

137. *Ibid.*

No Compensation for Material and Moral Harm Suffered by the Victims or Their Families, no Acknowledgment of Abuses

Political prisoners and their families often struggle to make ends meet upon their return, relying on help from relatives, friends and humanitarian donations from abroad, instead of Uzbekistan's authorities who bear responsibility for their plight. Although some released prisoners have received a nominal amount of compensation for 're-integration', at the time of writing only one released political prisoner reportedly received compensation for the moral and physical harm he has suffered as a result of years of false imprisonment, torture and other violations of human rights.¹³⁸ The Covid-19 pandemic has only exacerbated former prisoners' struggles to rebuild social ties and to secure themselves financially, forcing some of them to survive doing menial jobs and subsistence farming.¹³⁹

Some statements acknowledging falsification of charges in the past have been made by the highest officials.¹⁴⁰ These have not been followed by any kind of formal acknowledgement or symbolic measure such as a memorial to the victims however. No measures have been undertaken to counteract the reputational damage, stigmatization of former political prisoners as bearers of trouble for those around them. According to former political prisoner Salijon Abdurahmanov: 'the culture of fear of interacting with us [former political prisoners] is firmly embedded in the society'.¹⁴¹

Moreover, perpetrators of torture or ill treatment have not been brought to justice, save for a few exceptions. Specifically, in June 2018, the Military Court of Uzbekistan found seven former law enforcement officials guilty of torture giving them significant prison sentences.¹⁴² For the most part however, authorities continue to deny to international treaty bodies that former prisoners were ever tortured or otherwise subjected to abuse. In a written response to Committee Against Torture (CAT) in September 2019, the government stated that investigations had found no evidence of torture or other ill-treatment in the cases of Salijon Abdurakhmanov, Erkin Musaev, Azam Farmonov, journalist Bobomurod Abdullaev, Dilmurod Saidov and at least 10 other former prisoners, and insisted that there was no compelling case for redress.¹⁴³ At the CAT review in November 2019, the authorities refused to give details of any investigations conducted into the torture and ill-treatment allegations.¹⁴⁴

While the release of political prisoners has been hailed as an important step in improving the culture of human rights in Uzbekistan, much more needs to be done to address the needs of political prisoners in order to fulfill Uzbekistan's obligations towards them according to international law and avoid backsliding to the Karimov days.

The UN has remarked with concern in this connection that the statute of limitations continues to apply to the crime of torture, and that the State party continues to grant amnesties to persons who have been convicted of torture or ill-treatment.¹⁴⁵ Many persons convicted ostensibly on politically motivated charges still remain deprived of liberty, including religious prisoners Habibullah Madumarov,

138. The Case of Chuyan Mamtkulov is discussed later in the *Domestic Rehabilitation Practice* section, p. 55.

139. Interview of Azam Farmonov to FIDH, 14 September 2020.

140. Fergana, The General Prosecutor's Office of Uzbekistan admitted fabrication of criminal cases [В Генпрокуратуре Узбекистана признали факт фабрикации уголовных дел], 21 January 2019, <https://fergana.agency/news/104473/>.

141. In a private statement to FIDH.

142. International Anti-Torture Day: NGOs call on Central Asian governments to end torture, available at <https://ahrca.org/uzbekistan/torture-prevention/999-international-anti-torture-day-ngos-call-on-central-asian-governments-to-end-torture>.

143. State party's replies to its list of issues, CAT/C/UZB/Q/5/Add.1, 20 September 2019 Para. 15-24, 116, <https://undocs.org/CAT/C/UZB/Q/5/ADD.1> <https://www.amnesty.org/en/countries/europe-and-central-asia/uzbekistan/report-uzbekistan/>.

144. CAT, Concluding observations on the fifth periodic report of Uzbekistan, CAT/C/UZB/CO/5, 14 January 2020, para. 12.

145. *Ibid.*

Ravshan Kosimov and Khayrullo Tursunov, and soldiers Viktor Shin, and Alisher Achildiev, as detailed in Annex A.¹⁴⁶

Moreover, the continuation of political elites and entrenched institutional practices, particularly in the power structures, have led to a resurgence of arrests of groups of people accused of treason or extremism, and more reports of torture.¹⁴⁷ Those recently arrested include Kadyr Yusupov, a former Uzbek diplomat who was sentenced in January 2020 to five and a half years in prison,¹⁴⁸ and Vladimir Kaloshin, a former Defense Ministry journalist who was convicted of spying in March 2020 and sentenced to 12 years in prison.¹⁴⁹ In 2017, the authorities detained journalist Bobomurod Abdullaev for a period of nine months, and it appeared that his release came about only as a result of strong international pressure.¹⁵⁰ These practices have prompted the UN HRC to express concern over the continued restrictions of freedoms of religion, expression, assembly and association, in particular against political dissidents and of religious groups that are not sanctioned by the State.¹⁵¹ The practice of intimidating journalists, activists, and HRDs that expose these practices also continues to this day.

While the authorities have also repeatedly stated that they would stop using Article 221 of Uzbekistan's Criminal Code regarding 'violations of prison rules' to arbitrarily extend sentences of political prisoners,¹⁵² they appear to have not entirely eliminated the practice.¹⁵³ The UN High Commissioner on Human Rights and human rights NGOs have repeatedly raised with the authorities the need to continue with the release and restoration of the rights of political prisoners, and to put an end to arbitrary arrests, torture and violations of the right to fair trial, violating Uzbekistan's international commitments and damaging its reputation.¹⁵⁴

146. <https://www.hrw.org/news/2018/07/06/uzbekistan-mans-13-year-detention-revealed>.

147. See, e.g. 'Torture continues in Uzbekistan', available at <https://ahrca.org/uzbekistan/torture-prevention/1076-torture-continues-in-uzbekistan>.

148. Majlis Podcast: Spy Games In Uzbekistan, https://www.rferl.org/amp/majlis-podcast-spies-in-uzbekistan/30670139.html?_twitter_impression=true.

149. <https://www.amnesty.org/download/Documents/EUR5828642020ENGLISH.pdf>.

150. <https://www.nhc.no/en/kyrgyzstan-no-forced-return-to-uzbekistan/>.

151. CCPR/C/UZB/CO/5, para. 20.

152. Fifth periodic report submitted by Uzbekistan under article 40 of the Covenant, CCPR/C/UZB/5, 10 January 2019, paras. 187-189.

153. *Ibid.*, Para. 30.

154. *Ibid.*, see also Human Rights Watch, 'Release and Rehabilitate Political Prisoners', *supra* n. 17.

THE LEGAL FRAMEWORK GOVERNING THE RIGHT TO REPARATIONS OF FORMER POLITICAL PRISONERS

International Human Rights Law

*Any human rights violation gives rise to a right to reparation on the part of the victim or his or her beneficiaries, implying a duty on the part of the State to make reparation and the possibility for the victim to seek redress from the perpetrator.*¹⁵⁵

Even though the terms ‘rehabilitation’ and ‘reparations’ are often used interchangeably, they are not the same thing. In numerous judicial lexicons around the world, especially in Eastern and Central Europe, the term ‘rehabilitation’ means the full legal and physical rehabilitation, or the restoration of the ‘good name’ and reputation of the victim, the restitution of their rights by way of certain sanctions, including the provision of physical, medical and social services, and compensation of harm.¹⁵⁶ Under international human rights law, these obligations, along with measures of satisfaction, would be referred to in their entirety as ‘reparations’, with ‘rehabilitation’ as a type of reparation referring primarily to the restoration of physical and mental well-being of an individual.¹⁵⁷

The right of victims of human rights to receive reparations for the harm that they suffer has its roots in a State’s obligation to provide an ‘effective remedy’ or ‘repair’ the victim of a violation.¹⁵⁸ This is a norm that appears in most human rights treaties,¹⁵⁹ as well as in Article 8 of the 1948 Universal Declaration of Human Rights, and it likely amounts to customary law.¹⁶⁰ It provides that everyone has a right to ‘an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.’¹⁶¹ A similar provision appears in the ICCPR and the UN 1985 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), both of which Uzbekistan has ratified.¹⁶²

The right to an ‘effective remedy’ imposes duties on States that are both negative and positive in their nature. That is, they require both non-interference in the realization of the right and the provision of some good or service.¹⁶³ Moreover, an ‘effective remedy’ has a procedural and a substantive component, encompassing both access to remedial procedures by a victim of government overreach, through access to courts or an administrative body,¹⁶⁴ and adequate *redress* for the harm suffered by them.

155. Principle 31, Updated [United Nations Set of] Principles for the protection and promotion of human rights through action to combat impunity, UN Doc E/CN.4/2005/102/Add.1 (8 February 2005).

156. A. Kononov, ‘On the Drafting History of the Russian Law “On the Rehabilitation of Victims of Political Repressions”’, in A. Daniel, L. Eremina, E. Zhemkova, Eds., *Rehabilitation and Memory*, (Memorial – Zvenya, Moscow 2016), p. 16.

157. See, *supra* n. 18, Joint Principles.

158. Haldemann, Principle 31, *Impunity Principles*, p. 337.

159. See, e.g. Article 2 of the International Covenant on Civil and Political Rights, Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 39 of the Convention on the Rights of the Child, Article 7 of the African Charter on Human and Peoples’ Rights, article 25 of the American Convention on Human Rights, and article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (Judgment) [2005] ICJ Rep 168; and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136.

160. See e.g. De Shelton, *Remedies in International Human Rights Law* (2d edn, OUP 2006) 238; C. Bassiouni ‘International Recognition of Victims’ Rights’ (2006) 6(2) Human Rights Law Review 203-79, 217.

161. Article 8.

162. Article 2(3)(a), ICCPR, Article 13, UNCAT.

163. Haldemann, Principle 31, *Impunity Principles*, p. 337.

164. Grosman, p. 370, para 3.

The term 'reparation' is often reserved to refer to substantive redress for the most serious violations of human rights, such as arbitrary deprivation of life or liberty, torture and other forms of ill treatment, and violations of the right to due process and fair trial.¹⁶⁵ The intrinsic link between reparations and the right to an 'effective remedy' has been reiterated by numerous treaty bodies, such as the UN Human Rights Committee.¹⁶⁶ Similarly, the CAT considers that the term 'redress', used in Article 14 of the Convention, should be understood broadly as encompassing both 'effective remedies' and 'reparation'.¹⁶⁷

The Scope of the Right to Reparation

*The right to reparation shall cover all injuries suffered by victims; it shall include measures of restitution, compensation, rehabilitation, and satisfaction as provided by international law.*¹⁶⁸

In addition to the procedural right to access courts or administrative proceedings, victims of serious violations are entitled to other forms of reparation, depending on the type and gravity of abuses and their isolated or mass character. Already in 1976 the ICCPR recognized the individual right to *compensation* for persons subjected to unlawful arrest or detention.¹⁶⁹ The UNCAT provides in its Article 14 that victims of torture are entitled to 'redress', including 'the means for as full *rehabilitation* as possible.'

Later human rights treaties and soft law instruments have expanded on and synthesized these various State obligations to provide redress.¹⁷⁰ These include the UN 'Set of principles for the protection and promotion of human rights through action to combat impunity',¹⁷¹ and the Human Rights Committee 'Guidelines on measures of reparation under the Optional Protocol to the ICCPR'.¹⁷² But the most comprehensive statement on the right to reparations was adopted by the UN General Assembly in 2005. The Basic Principles and Guidelines on the Right to a Remedy and Reparation for victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ('Reparations Principles') reaffirm the right to adequate, effective, and prompt reparation, recognizing *restitution, compensation, rehabilitation, satisfaction*, and guarantees of non-repetition as forms of reparations, and providing a definition of each. Table 1., p. 33 summarizes each type of reparation measures, which are described in turn below.

Restitution

Principle 19 of the Reparations Principles provides that the victim should be *restored* to the original situation before the gross violation of human rights law took place. It includes, 'as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's

165. See International Commission of Jurists, *The Right to a Remedy and Reparation for Gross Human Rights Violations*, Revised Edition, (Oct. 2018), at xiii, available at <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>.

166. The 2004 General Comment No. 31 to the ICCPR explicitly recognized that the right to an effective remedy includes the right to reparation in the form of 'restitution, rehabilitation and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations. UN Human Rights Committee, General Comment no 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, CCPR/C/21/Rev.1/Add. 13 (26 May 2004) at para 16.

167. Committee against Torture, General Comment no 3, *Implementation of Article 14 by State Parties*, CAT/C/GC/3 (19 November 2012) para. 2.

168. Principle 34, Updated [United Nations Set of] Principles for the protection and promotion of human rights through action to combat impunity, UN Doc E/CN.4/2005/102/Add.1 (8 February 2005).

169. Article 9(5).

170. The 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides that where public officials or other agents acting in an official or quasi-official capacity have violated national laws, the victims should receive restitution from the State whose officials were responsible for the harm inflicted. Para. 11.

171. *Supra*, n. 18.

172. Human Rights Committee, CCPR /C/158, 30 November 2016.

place of residence, restoration of employment and return of property.’ Restitution is crucial for a person’s reintegration back into society. The list, summarized in Table 1, is not exhaustive, and remedial measures of restitution depend on the type and gravity of violation.¹⁷³

Numerous States have enacted measures reinstating the rights of former political prisoners, recognizing the crucial role that a clean slate means for them to become fully reintegrated into society. In the Czech Republic, the legislature passed the Act on Judicial Rehabilitation in 1990 that canceled convictions and was used to exonerate over 230,000 people, many sentenced for crimes of political nature.¹⁷⁴ That act also reinstated the rights of expelled students, employees dismissed for political reasons and relatives of deceased victims who could also seek ‘reinstatement’ of their employment.¹⁷⁵ Similarly, in Romania, legal rehabilitation included the legal annulment or erasure of the conviction, ‘legal de-incrimination’ based on a court assessment affirming that the conviction was political in nature.¹⁷⁶ In some places, restitution included more than voiding a conviction. In Albania, for instance, the law rehabilitating former prisoners also restored titles, honors, and jobs.¹⁷⁷

Restitution of former political prisoners has taken different forms. In Brazil, those who had lost positions in the civil service or military could apply to return to active duty in the same office or employment. Applications were processed and dealt with by ‘committees’ composed of at least three members chosen by high-level government officials within the administrative authority with jurisdiction over the applicant.¹⁷⁸ In Chile, where many thousands of government employees were dismissed from their positions for political reasons by the Pinochet regime, the new at the time President Aylwin issued a memo instructing public sector institutions to rehire those laid off for political reasons. In Argentina, laws were passed offering reinstatement to teachers, public employees of state-owned banks and companies, and Foreign Service officers who had been forced to resign, for ideological, political reasons or because of their affiliation to a trade union.¹⁷⁹

173. For instance, when an individual’s right to a fair trial has been breached, the restitution remedy would involve both vacating the judgment and ordering a new trial. See, e.g. *Sandzhar Ismailov v. Uzbekistan*, the HRC held that where the victim did not have access to a lawyer or know the nature of charges against him, the State party is under an obligation to provide the author with ‘a retrial in compliance with all guarantees enshrined in the Covenant, or release, as well as appropriate reparation, including compensation. UN Human Rights Committee, *Sandzhar Ismailov v. Uzbekistan*, Views of 25 March 2011, No. 1769/2008, para 9.

174. Act No. 110/1990, <http://www.ustrcr.cz/en/chronology-coming-to-terms-with-the-totalitarian-past>

175. Roman David & Susanne Choi Yug-ping, Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic, 27 *Human Rights Quarterly* 393-435 (2005): 399.

176. Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory*: 166, 174 (2013).

177. Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (2013): 164.

178. ICTJ Expert.

179. See Lei 23238, September 28, 1985. See also Arturo Carrillio and Jason Palmer, *Transnational Mass Claim Processes (TMCPs) in International Law and Practice* (2010): 359 n. 86.

Table 1

TYPE OF REPARATION	SPECIFIC MEASURE
Restitution	<ul style="list-style-type: none"> ● Restoration of liberty ● Vacating of judgment ● Retrial ● Return of property ● Return to place of residence ● Restoration of employment
Compensation	<ul style="list-style-type: none"> ● Loss of earnings ● Physical harm ● Cost of medical services ● Moral damages (mental harm and suffering) ● Property damage ● Legal or other expert costs ● Harm to family members
Rehabilitation	<ul style="list-style-type: none"> ● Medical Services ● Psychological services ● Social Services ● Restoring the good name of the victim
Satisfaction	<ul style="list-style-type: none"> ● Investigation of the whereabouts of the victim or his/her remains ● Investigation into cases of torture and sanctions for perpetrators; ● Public apologies/Declarations of responsibility ● Disclosure of truth ● Commemorative measures

Compensation

Compensation is a form of a material benefit, usually in the form of a monetary award, that a victim might be entitled to for a range of harms (see Table 1) such as loss of earnings, physical or mental harm or suffering, and legal or other expert costs.

In terms of the amount of compensation, as a general matter it should be ‘fair and adequate’ and not ‘purely symbolic’.¹⁸⁰ When calculating damages, compensation should be granted for economically ascertainable harm arising from the violation.¹⁸¹ In cases of lost earnings due to unlawful detention for instance, the International Court of Justice has recognized that compensation should include the amount of income that would have been received were the individual not detained.¹⁸² Some international courts calculate lost earnings based upon the victim’s earnings before the violation or the minimum wage in national law.¹⁸³ At times, compensation for lost earnings is awarded to family members of victims or other indirect victims of human rights.¹⁸⁴

180. See, e.g. HRC, *Griffin v Spain*, Communication No. 493/1992.

181. Reparations Principles, Principle 20.

182. International Court of Justice, *Ahmadou Sadio Diallo v. Democratic Republic of the Congo* (Compensation), Judgment of June 19, 2012, para. 40.

183. See, e.g. Inter-American Court on Human Rights, *Villagran Morales et al. v. Guatemala*, Series C No. 95, Reparations, (May 26, 2001), para 79.

184. See, e.g. In *Isayeva v. Russia*, the European Court awarded damages to the mother of a deceased victim after she demonstrated a causal link between her son’s death in violation of Article 2 of the ECHR and the loss by the mother of the financial support which he would have provided her had he continued living and working. European Court of Human Rights, *Isayeva v. Russia*, Judgment of February, 24, 2005, para 234.

Both the Inter-American Court and the European Court of Human Rights have ordered compensation to victims for moral damages (non-pecuniary damage), when they have suffered anguish, distress, or other mental or physical harm.¹⁸⁵ Mental harm need not necessarily be demonstrated by the victim, but may be presumed in the case of gross violations.¹⁸⁶

In cases of mass violations, such as after the fall of authoritarian regimes in Eastern Europe and Latin America, state practice has favored administrative approaches to payments, and generally compensation has been provided to individual victims by establishing broad categories, such as 'political prisoners', rather than by identifying the specific harm suffered by each person.¹⁸⁷ Argentina offered compensation for illegal and prolonged detention for political prisoners of the 1976-1983 military dictatorship, including not only ex-prisoners as beneficiaries but the families of those who died in prison as well as children who were born with their mothers in prison. The amounts varied and were based on the daily salary of the highest-paid civil servant multiplied by the number of days in detention but with a maximum amount of approximately \$220,000.¹⁸⁸

The Philippines' 2013 reparations law assigns points for four types of human rights violations, including prolonged and arbitrary detention; if a victim has also experienced other violations, such as torture and sexual violence, the amount of compensation will be adjusted.¹⁸⁹ Under Albania's Law for the Compensation of Former Political Convicts, political prisoners were compensated for time spent in prison hospitals and psychiatric facilities as well as in prison.¹⁹⁰ The Czech Republic also included the families and heirs of political prisoners as victims of an oppressive regime on an equal basis. The Act on Extra-Judicial Rehabilitation allowed victims or the heirs of those who were executed or died while in detention to gain financial compensation.¹⁹¹

The payments are at times established following recommendations from international or domestic commissions of inquiry such as *truth*¹⁹² or *reparations* (often called 'rehabilitation') *commissions*.¹⁹³ For instance, the South Africa Truth and Reconciliation Commission included a recommendation to provide payments to victims of apartheid, although the eventual payment of approximately \$4,000 was less than the recommended amount.¹⁹⁴¹⁹⁵

In Kyrgyzstan, after an international Kyrgyzstan Inquiry Commission found that the government had failed to protect the population during the 2010 ethnic tensions in the south of the country, and recommended adequate material compensation for loss and rehabilitation, the government signed a

185. See e.g., European Court on Human Rights, *Orhan v. Turkey*, no. 25696/94, Judgment of 18 June 2002, para. 443, <http://hudoc.echr.coe.int/eng?i=001-60509>.

186. European Court on Human Rights, *Orhan v. Turkey*, no. 25696/94, Judgment of 18 June 2002, para. 443.

187. Grosman, p. 375, para 27.

188. For a detailed description, see María José Guembe: "Economic Reparations for Grave Human Rights Violations: The Argentine Experience," in *The Handbook of Reparations*, available at <http://www.oxfordscholarship.com/view/10.1093/0199291926.001.0001/acprof-9780199291922>

189. Republic Act 10368 (2013), entitled "An Act Providing for Reparation and Recognition of Victims of Human Rights Violations during the Marcos Regime" and is available at http://hrvclaimsboard.gov.ph/images/DOWNLOADABLES/RA_10368-BSA.pdf

190. <http://www.arct.org/index.php/historical-memory/post-communism/207-ligji-per-demshperblimin-e-ish-te-denuarve-politike>.

191. Roman David and Susanne Y Choi, 'Forgiveness and Transitional Justice in the Czech Republic', *Journal of Conflict Resolution*, June 2006, 346.

192. See Principles 6 and 7, Joinet Principles, supra n. 18.

193. See, e.g. Rapport de la Commission de réhabilitation sur son activité pendant les années 2004 à 2008, Arrêté fédéral du 13 décembre 1996 concernant les recherches historiques et juridiques sur le sort des avoirs ayant abouti en Suisse à la suite de l'avènement du régime national-socialiste (RO 1996 3487).

194. Grosman, p. 375, para 28.

195. Pablo de Greiff ed., *The Handbook of Reparations*, J Malamud Goti, L Grosman, 'Reparations and Civil Litigation Compensation for Human Rights Violations in Transitional Democracies' (OUP 2006), p. 375.

resolution in May 2011 providing for compensation.¹⁹⁶ Under its terms, the families of those who had been killed or were missing were to receive 1m Kyrgyz soms (\$21,245),¹⁹⁷ provided that the courts had not found the victims liable in the violence. Those who suffered serious injuries received 100,000 KGS (\$2,143), while families of those with less serious injuries received 50,000 KGS (\$1,071).¹⁹⁸ Although the reparations program had many flaws,¹⁹⁹ at the very least it served as an acknowledgment of the State's responsibility and obligation to provide redress, reassuring trust in the government.

Section on Rehabilitation or Reparations Commissions, below, focuses on 'reparations' or 'rehabilitations' commissions, or committees, dealing specifically, or as part of a broader mandate, with former political prisoners in the former Soviet countries and other parts of the world.

Rehabilitation

The Basic Principles only describe rehabilitation as including 'medical and psychological care, as well as legal and social services.'²⁰⁰ It has been shown that victims of human rights abuses like torture seem more prone to disease and psychological ailments, and therefore such services are effective means of improving their quality of life and preventing cognitive decline.²⁰¹

The UN Human Rights Committee has found that States have an obligation to provide rehabilitative services to victims of torture and ill treatment by affording necessary medical and psychological assistance.²⁰² In the context of systemic torture, the CAT has recommended that, to comply with their international obligations, States should also provide victims of torture 'social rehabilitation,' including by establishing a rehabilitation and assistance scheme for victims.²⁰³ In its General Comment No. 3, the CAT elaborates that rehabilitation refers to acts that restore the function or the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or ill-treatment. The former UN Special Rapporteur on Torture Manfred Nowak argued that the CAT demands that torture rehabilitation centers are established and that such centers must provide holistic treatment for survivors.²⁰⁴

In terms of State practice, medical services, including psychiatric and psychological treatment, have been included as part of reparation programmes in Chile, Peru and Morocco, among others.²⁰⁵ For example, the government of Chile established a *Programa de Reparacion y Atencion Integral de Salud* or PRAIS, a comprehensive health care program for victims of human rights violations, including former political prisoners and their families, as a way of expressing 'the commitment of the State to victims of human rights violations' that occurred during the Pinochet regime.²⁰⁶ One of the significant advantages

196. The government took these steps despite opposing elements of the Commission's report and declaring its chairperson a persona non grata. See Jim Nichol, Kyrgyzstan: Recent Developments and U.S. Interests (August 30, 2013): 7.

197. Natasha Yefimov, 'Kyrgyzstan to Pay Osh Victims' Families: Can It Be Done Fairly?', 14 May 2011, <https://eurasianet.org/kyrgyzstan-to-pay-osh-victims-families-can-it-be-done-fairly>, accessed 18 September 2020.

198. *Ibid.*

199. The process was criticized for lack of fairness, transparency and accuracy. See, e.g. Natasha Yefimov, 'Kyrgyzstan to Pay Osh Victims' Families: Can It Be Done Fairly?', 14 May 2011, <https://eurasianet.org/kyrgyzstan-to-pay-osh-victims-families-can-it-be-done-fairly>, accessed 18 September 2020.

200. Reparations Principle, Principle 21.

201. *Rule-of-Law Tools*, 22.

202. See, e.g. *Raul Sendic Antonaccio v. Uruguay*, Communication No. 63/1979, UN Doc. CCPR/C/14/D/63/1979 (Oct. 28, 2981), available at <http://hrlibrary.umn.edu/undocs/newscans/63-1979.html>;

203. Concluding Observations of the Committee against Torture: Chad, CAT/C/TCD/CO/1, (June 4, 2009), paras 17 – 20.

204. UN General Assembly, *Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc A/65/273 (10 August 2010).

205. *Ibid.*, n 18, 24.

206. See Frequently Asked Questions and Answers on PRAIS at http://prais.redsalud.gob.cl/?page_id=36 (in Spanish)

of the program was that it was multilayered, since it provided health care services to victims of human rights violations, torture, enforced disappearances and arbitrary detention which were available to more than 190,000 survivors.²⁰⁷ By prioritizing a victim-centered approach, PRAIS embraced collaboration and joint initiatives with civil society organizations.²⁰⁸

Under decree laws passed in Romania, former prisoners could qualify for free use of public transportation; priority medical treatment in state-sponsored clinics and hospitals; 12 gratis train rides a year; free yearly treatment in a state-sponsored health resort; the free use of telephone lines, and a free cemetery plot, among other things.²⁰⁹ The Czech Republic's program included reimbursing prisoners or their heirs for legal fees and judicial fines that had been incurred.²¹⁰

Satisfaction

According to the Reparations Principles, satisfaction refers to symbolic and preventive measures that a State may take such as public acknowledgment of wrongdoing, truth seeking, and accountability. They are regarded as measures of *general*, rather than *individual*, redress, which might serve to acknowledge the plight of victims, reestablish trust in the government and prevent the recurrence of abuses.

Examples of measures of satisfaction described in the Reparations Principles include disclosure of the truth about the nature of abuses, including through inclusion of accurate historical accounts in textbooks, public apologies and other forms of recognition of responsibility, and investigations of wrongdoing culminating in prosecution and judgment of perpetrators. In *El Masri v. Former Yugoslav Republic of Macedonia*,²¹¹ the European Court of Human Rights recognized the right to 'truth' or access to information about gross violations of human rights, which also constitute a form of satisfaction under the Reparation Principles.²¹²

Measures of satisfaction have been widely ordered by the Inter-American Court on Human Rights, which has required States to search for the bodies, investigate, publicly report the decision and acknowledge responsibility, and even name a school with a reference to victims.²¹³ In cases involving torture, the Human Rights Committee has ordered Uzbekistan to 'conduct a full and effective investigation into the author's allegations of torture, to prosecute the perpetrators and punish them with appropriate sanctions, and to provide adequate compensation and appropriate measures of satisfaction.'²¹⁴ Reparations not only mean monetary or other benefits, but also 'the generation of moral values.'²¹⁵ Gestures recognizing the evils committed and acknowledging the plight of the victims are important with a view to preventing future tragedies arising on the same grounds, and for the sake

207. *Ibid.*

208. *Idem.*

209. Decree-Law 118/1990 on Granting Some Rights to Persons Politically Persecuted by the Communist Dictatorship; Law 221/2009 on Politically Motivated Sentences and Punishments Handed Down from 6 March 1945 to 22 December 1989; see also Lavinia Stan, *Reckoning with the Communist Past in Romania: A Scorecard*, 65 *Europe-Asia Studies*, no. 1 (January 2013): 138; Lavinia Stan, *Transitional Justice in Post-Communist Romania: The Politics of Memory* (2013): 167.

210. Roman David & Susanne Choi Yug-ping, *Victims on Transitional Justice: Lessons from the Reparation of Human Rights Abuses in the Czech Republic*, 27 *Human Rights Quarterly* 393-435 (2005): 399.

211. *El Masri v. Former Yugoslav Republic of Macedonia* (Judgment), ECtHR (13 December 2012).

212. Principle 22(b) of the Reparation Principles.

213. Monica Feria Tinta, 'Legal consequences for torture in children cases: the Gomez Paquiyauri Brothers vs Peru case,' January 2009, *Torture: quarterly journal on rehabilitation of torture victims and prevention of torture* 19(2):118-31; Hennebel Ludovic, *The Inter-American Court of Human Rights: The Ambassador of Universalism*, *Revue Québécoise de droit international*, hors-série septembre 2011. P. 70.

214. Human Rights Committee, *Sirozhiddin Allaberdiev v. Uzbekistan*, Views of 21 March 2017, No. 2555/2015, para. 10.

215. Regula Ludi, *Reparations For Nazi Victims In Post War Europe* 193 (2012) (Quoting Kurt R. Grossman, *Die Ehrengeld: Kurzgeschichte Der Wiedergutmachung* 43 (1967)).

of national harmony and stability. Symbolic reparations can serve as important acts of recognition of abuses and can be expressed through, among other means, memorials to victims, statements of apologies, renaming of streets and cities and commemorative and educational events.²¹⁶ In 1991, Russia adopted a 1991 rehabilitation law that acknowledges the criminal nature of the Soviet regime and victims of 'political repressions'.²¹⁷ The Philippines passed a reparations law in 2013 that offers material and symbolic acknowledgement for former political prisoners of the Marcos dictatorship.²¹⁸

In line with the practice of international courts and treaty bodies, measures of restitution, compensation, rehabilitation and satisfaction should be applied comprehensively and holistically. The Human Rights Committee has confirmed this much in dozens of its decisions condemning Uzbekistan²¹⁹ for violations of prohibitions against torture, ill-treatment and the right to fair trial.²²⁰ Practically none of these remedies has been provided to any former political prisoner however.

A Special Legal Regime for Reparations: Transitional Justice

Whether it is due to the legacy of the Holocaust, or of slavery in places like the United States, colonialism, apartheid in South Africa, or Stalinist Gulags, calls of victims for reparations or rehabilitation have become associated with demands of large groups of victims harmed by mass violence for justice and accountability. In these circumstances, in addition to ensuring reparations to victims there is also a need to tackle widespread impunity and the systemic causes of violence by prosecuting and punishing the perpetrators, investigating and disclosing the truth about the whereabouts of victims and sources of conflict, and reforming institutions to ensure that the violence does not reoccur.²²¹ When human rights abuses are committed during periods of oppressive rule or armed conflict, reparations are regarded as part and parcel of a broader patchwork of mechanisms comprising *transitional justice*.²²²

A term that emerged in the early 1990s, transitional justice refers to a set of judicial and non-judicial mechanisms that States have employed in times of political change, such as after the end of a conflict or a fall of a totalitarian regime, to overcome the legacy of mass violations of human rights, when the sheer number of victims and perpetrators overwhelms the regular justice system.²²³ In addition to reparations, these measures might include criminal trials and quasi-judicial proceedings, truth commissions, and institutional reform like the *lustration* of officials associated with the previous regime. This is why measures of reparation should not be considered in their isolation, but as an intertwined complex of mechanisms that could go beyond delivering justice to victims to reach wider transitional justice objectives, such as restoring confidence in institutions and the rule of law and preventing the recurrence of abuses.²²⁴

216. International Center for Transitional Justice, *Reparations in Theory and Practice* 4 (2007), available at <http://ictj.org/sites/default/files/ICTJ-Global-Reparations-Practice-2007-English.pdf>.

217. Federal Law of the Russian Federation on the Rehabilitation of the Victims of Political Repressions, No. 1761-1 (Oct. 18, 1991).

218. See The Human Rights Victims Reparation and Recognition Act of 2013, Republic Act. No. 10368, H. No. 5990, S. No. 3334,

219. There are at least 45 such cases. See <http://ccprcentre.org/country/uzbekistan>.

220. The Committee ordered Uzbekistan to provide Musayev with an effective remedy, 'including: carrying out an impartial, effective and thorough investigation into the allegations of torture and ill-treatment and initiating criminal proceedings against those responsible; either his retrial in conformity with all guarantees enshrined in the Covenant or his release; and providing the victim with full reparation, including appropriate compensation. The State party is also under an obligation to take steps to prevent similar violations occurring in the future.' HRC, *Saida Musaeva v. Uzbekistan*, Views of 21 March 2012, Nos. 1914, 1915 and 1916/2009., para. 11.

221. *The United Nations Principles to Combat Impunity: A Commentary*, p. 5.

222. See Joinet Principles, *Supra* n. 18.

223. See <https://www.ictj.org/about/transitional-justice>.

224. <https://www.ictj.org/about/transitional-justice>.

Many societies transitioning away from repressive rule and conflict have adopted reparations or rehabilitation laws addressing political prisoners as part of a wider process to reform the political system and the judiciary, reconcile the society and consolidate a new national identity. In Brazil, the advent of reparations coincided with the beginning of the extended process of political and constitutional reform to move the country away from decades of military rule. In Morocco, the national human rights institution – the *Conseil Consultatif des Droits de l'Homme* (CCDH) – was tasked with facilitating the release of hundreds of political prisoners; this paved the way for a truth-seeking process and a reparations program that covered not only released political prisoners but communities that had been economically marginalized because they were seen as opposing the government.²²⁵

The transitional justice processes in the Czech Republic demonstrate how reparations can positively impact the identity of released political prisoners and further democratic institution-building. The adoption of the law 'On the participants in anti-communist opposition and resistance' resulted in an evident shift in the public and self-image of former political prisoners from 'victims of repressions' to 'heroes' who opposed the totalitarian regime.²²⁶ The state put the documentation and archiving activities at the forefront of its work on reintegration of political prisoners.²²⁷ A special Office for the Documentation and Investigation of Communist Crimes was created to facilitate the investigation, archiving, data analysis and identifying illegitimate state prosecutions and those subject to rehabilitation, ensuring that the full truth is known.

Rehabilitation or Reparations Commissions

Besides truth commissions, rehabilitation or reparations commissions, or committees, have been instrumental in facilitating the release of political prisoners, furthering their reintegration into society by acknowledging the abuses and identifying those entitled to release and reparations. In some cases, such institutions helped to build trust and sustain peace in post-conflict and authoritarian societies. At the very least, they provided for compensation or other, albeit at times purely symbolic, benefits acknowledging abuses and providing an impetus for further reform. Reparation or rehabilitation commissions, in their various forms, have existed in Belarus, Brazil, Chile, Georgia, Kazakhstan, Kyrgyzstan, Northern Ireland, Russia and Ukraine, among other countries. A more detailed account of several of these is provided in the following section. While the authors of this report prefer the term 'Reparations Commissions' to 'Rehabilitation Commissions' to stay in line with international law terminology, we will use the term 'Rehabilitation Commissions' and 'Reparations Commissions' interchangeably in this section.

Former Soviet Union

Programs of 'rehabilitation' have been implemented as early as the 1950s in the former Soviet Union. Soon after the death of Stalin, and after the 20th Congress of the Communist Party of the Soviet Union, where his successor Nikita Khrushchev publicly denounced Stalinist repressions and the cult of personality, Khrushchev instituted mass rehabilitations of GULAG prisoners, among others by setting

225. See <http://www.ictj.org/sites/default/files/ICTJ-Morocco-TRC-2009-English.pdf>; James Salter, Civil Society and Political Change in Morocco (2007): 72-73.

226. Moreover, the new law provided the communist resisters with a one-off payment of 100,000 Czech crowns (about 3,000 EUR). McDermott, Kevin and Pinerova Klára (2015), 'The rehabilitation process in Czechoslovakia : Party and popular responses', in McDermott, Kevin and Stribbe, Matthew, (eds.) *De-Stalinising Eastern Europe : the rehabilitation of Stalin's victims after 1953*. Basingstoke, Palgrave Macmillan, 11.

227. Roman David, Susanne Y.P. Choi, 'Forgiveness and Transitional Justice in the Czech Republic', *Journal of Conflict Resolution*, June 2006, 346.

up commissions, albeit without any solid legal basis and inconsistently.²²⁸ Despite these hindrances, by the time of his ouster in 1964, the number of victims who saw their freedom and legal rights restored was estimated to be between 800,000 to 2 million people.²²⁹

Russia

On October 18 1991, the Russian Federation adopted a Federal Law 'On the Rehabilitation of the Victims of Political Repressions', rehabilitating all victims of political repressions after 1917.²³⁰ The language in the preamble famously condemned the Soviet rule, during which: 'millions of people bec[a]me victims of [the] arbitrary reign of a totalitarian government, subjected to repressions for political and religious views based on social, national and other grounds' and guaranteed the provision of the rule of law and human rights. The law provided for the right of return and reunification of families, recognized children of those repressed as victims, provided for material reparations to survivors including financial compensation, restitution of confiscated property, access to housing, medical care and other free social services.²³¹

Much debate during the drafting of the legislation concerned the term 'political repressions', which appears in the title of the Law and throughout the document. Under this term, the measures adopted by the government, in particular deprivation of life and liberty, forced labor, ill treatment, deportation and other violations against individuals considered as dangerous for the State based on national origin, social class, religious or other motives, needed to be 'politically motivated'. Articles 3 and 5 of the Law defined the categories of 'politically motivated' convictions. Firstly, these concerned individuals who were prosecuted for 'State or other crimes'. Article 5 defined State crimes including anti-Soviet Propaganda,²³² and the 'spreading of knowingly false opinions, defaming the Soviet State or social order.'²³³ In Uzbekistan's case, this would correspond to the first category of political prisoners in Annex A. 'Other crimes' referred to ordinary criminal offenses which were used as a pretext for arrests that in reality targeted the underlying human rights, activism or other undesirable activity, and which were falsified by the State (similar to category 3 in Annex A).²³⁴

Article 19 of the law established a commission for rehabilitation, which would have full access to archives and the capacity to assist in the restoration of rights of victims of political repressions, coordinate the work of other agencies in providing for reparations, identifying inconsistencies in the national legislation in terms of providing rehabilitation, assisting the regional and federal authorities in commemorating victims of political violence and accepting individual or group complaints lodged by NGOs like International Memorial.²³⁵ The Federal Commission was extremely productive in its early years with respect to restitution of rights: over 3,7 million individuals were rehabilitated between the

228. Obidina, 'Rehabilitation of Victims of political repressions: on the history of the question', available at [http://www.unn.ru/pages/e-library/vestnik/99990195_West_pravo_2002_1\(5\)/B_30.pdf](http://www.unn.ru/pages/e-library/vestnik/99990195_West_pravo_2002_1(5)/B_30.pdf), at 245.

229. *Id.* at 247.

230. Federal Law of the Russian Federation on the Rehabilitation of the Victims of Political Repressions, No. 1761-1 (Oct. 18, 1991).

231. *Ibid.*, Arts. 16, 17.

232. Article 58, and after 1960 Article 70 of the Criminal Code of the RSFSR.

233. Article 190.1 of the Criminal Code of the Russian Soviet Socialist Republic.

234. A L Kononov, 'On the Drafting History of the Russian Law "On the Rehabilitation of Victims of Political Repressions"', in A Daniel, L Eremina, E Zhemkova, Eds., *Rehabilitation and Memory*, (Memorial – Zvenya, Moscow 2016), p. 16.

235. Article 19 ceased to be in force in 1993 with the introduction of the Presidential Decree of 24.12.93 N 2288 *On measures on bringing the legislation of the Russian Federation in conformity with the Constitution* [О мерах по приведению законодательства Российской Федерации в соответствие с Конституцией Российской Федерации]. See: <https://memorial.krsk.ru/zakon/911018.htm>

years 1991-2015.²³⁶ The commission operates presently and acquired a permanent status on the basis of the Presidential Decree of the Russian Federation of August 25, 2004.²³⁷

Despite the vast number of persons whose rights and 'good name' were reinstated, the impact of the Commission on achieving justice for victims or overall transitional justice goals has been very limited. There is no genuine political will to recognize and honor the victims of Soviet era repressions, in light of the current regime's ideological roots and the historical emphasis on Soviet heroism in the Second World War.²³⁸ Thus, there are numerous obstacles in terms of providing effective remedies to victims, including severely restricted access to archives, outright refusal to carry out many of the reparations provisions²³⁹ and the merely symbolic material compensation. In its current version, Article 15 of the Law of Rehabilitation mandates the State to pay 75 rubles for each month of imprisonment, yet no more than 10,000 rubles (about \$130 USD) in total.²⁴⁰ The rehabilitation law served as a model for similar legislation in Armenia, Azerbaijan, Belarus, Moldova, Kazakhstan, Kyrgyzstan and Ukraine, and similar commissions were set up in Belarus, Kazakhstan and Ukraine.

Georgia

In 2012, a new government came to power in Georgia promising to put an end to torture, ill treatment and expropriation of property committed between the years 2004-2012.²⁴¹ During this time span the prison population grew by around 300 percent,²⁴² with some arguing that previous President Mikheil Saakashvili was using the criminal justice system excessively to not only fight crime and corruption but also to retain power and quash dissent.²⁴³

The new administration faced a choice on how to handle thousands of complaints received by the Prosecutor's Office alleging abuses in the penitentiary establishments and police units in Georgia: whether to create a special commission, or to create a new Department inside the Prosecutor's Office.²⁴⁴ It opted for the latter, citing a lack of resources, establishing in 2015 the Department for the Investigation of Offenses Committed in the Course of Legal Proceedings within the Chief Prosecutor's Office in order to investigate offenses, restore rights and return the property of victims.²⁴⁵

A new article was added to the Criminal Procedure Code of Georgia²⁴⁶ enabling the Prosecutor's Office to appeal to the Appellate Court with the request to revise judgments, if the new investigation identified a substantial violation of a person's rights' which proves his innocence, or commission of a

236. Meeting of the Commission for Rehabilitation of Victims of Political Repression [Заседание Комиссии по реабилитации жертв политических репрессий], 28 October 2015, <http://kremlin.ru/events/administration/50615>.

237. Boris Yeltsin e-library, Presidential Decree of the Russian Federation of August 25, 2004 No., 1113, available at <https://www.prilib.ru/en/node/354156>, accessed 16 September 2020.

238. See, e.g. Nikolai Koposov, 'Defending Stalinism by Means of Criminal Law: Russia, 1995 - 2014', pp. 93 - 309, in Uladzislau Belavusau and Aleksandra Gliszczynska-Grabias eds. *Law and Memory: Towards Legal Governance of History*, (CUP: 2017).

239. Grigory Vaipan, 'The Right to Return Home: Victims of the Gulag Are Waging a Legal Battle for Reparation', 1 June 2020, <https://www.wilsoncenter.org/blog-post/right-return-home-victims-gulag-are-waging-legal-battle-reparation>

240. See Order of the Government of the Russian Federation of 16 March 1992, No. 160. available at <http://eao.memo27reg.org/vkpo>.

241. Order N62 of the Minister of Justice of 13 February 2015, available at <https://www.matsne.gov.ge/ka/document/view/2728207?publication=0>.

242. *Crime and Excessive Punishment: The Prevalence and causes of Human Rights Abuse in Georgia's Prisons* (Tbilisi: Open Society Georgia Foundation, 2014), iv.

243. Alexander Kapatadze, *Georgia's Break with the Past*, Journal of Democracy 26, 1 (2016), p. 110.

244. Human Rights Center, 'Monitoring of the Activities of the Department of the Chief Prosecutor's Office of Georgia for the Investigation of Offenses Committed in the Course of Legal Proceedings (2018)', p. 4.

245. *Ibid.*

246. Article 310 of the Criminal Procedure Code of Georgia, subparagraph 'g'.

crime less grave than that for which he or she was convicted.²⁴⁷ The motion for review could be filed by the convicted person and/or their defense lawyer, their successor in the case of death, or the prosecutor.²⁴⁸ A person with a court judgment in his or her favor was entitled to compensation of damages.²⁴⁹

The Department investigated over 440 cases, 49 of them concerning allegations of beatings, torture and inhuman and degrading treatment.²⁵⁰ The process provided compensation for extorted property to a total of 149 victims who recovered around 44 million GEL (around 13,5 million \$USD).²⁵¹ Charges were brought against 43 public servants for abuse of power, ten of whom were found guilty.²⁵² However, according to representatives of the civil society, the process was fraught with violations of procedural fairness and an inherent conflict: each case was considered by the same institution that was responsible for abuses in the first place, casting a doubt on its impartiality. The process also appears to have left aside many victims while benefiting some of those close to the new political power.²⁵³

Kazakhstan

Already in 1988 in Karagandy, Kazakhstan, the local Communist Party committee created a commission to investigate Stalin-era political terror, appointing a former member of a camp authority in charge.²⁵⁴ That entity rehabilitated approximately 75,000 persons between 1989-1993 before becoming defunct.²⁵⁵ In 1993, the Parliament created a commission on rehabilitating the victims of mass repressions and protecting their rights, and another commission on declassifying government and Communist Party documents relating to human rights abuses.²⁵⁶ The rehabilitation commission functioned through 2009 and assisted with the rehabilitation of approximately 350,000 individuals. It was closed citing completion of rehabilitation of victims of Stalinist terror.²⁵⁷

In 1993, Kazakhstan adopted the law 'On Rehabilitation of Victims of Massive Political Repressions' modeled on the Russian prototype, defining rehabilitation as 'recognition of a person as victim of political repressions or injured from political repressions, restoration of his (her) violated rights, compensation for inflicted moral or material damage in judicial or other manner established by the Law.'²⁵⁸ Rehabilitated individuals were entitled to the restoration of all of their social, political and civil rights, awards and military ranks, restoration of property and citizenship, and monetary compensation. Victims of repressions who were disabled or pensioners were additionally entitled to:

- vacation in a time convenient for them, as well as to additional vacation without pay for the term up to two weeks per year;
- free housing;
- free phone;

247. *Ibid.* at p. 8.

248. Article 312.2 of the Criminal Procedure code of Georgia.

249. Decree No. 1044 'about the activities to be implemented by the Public Law Legal Entity - National Agency of State Property within the auspices of the Ministry of Economics and Sustainable Development of Georgia,' 25 May 2014.

250. Human Rights Center, 'Monitoring of the Activities of the Department of the Chief Prosecutor's Office of Georgia for the Investigation of Offenses Committed in the Course of Legal Proceedings (2018), p. 14.

251. *Ibid.* at p. 23.

252. *Ibid.* at p. 16.

253. Intervention of HRC Lawyer, the Workshop.

254. Alexei Trochev, 'Transitional Justice Attempts in Kazakhstan', in Stan. et al eds., *Transitional Justice and the Former Soviet Union*, p. 98.

255. *Ibid.*, at p. 99.

256. *Ibid.*

257. *Ibid.*

258. <http://adilet.zan.kz/eng/docs/Z930002200>, accessed 15 September 2020.

- access to horticultural societies and housing co-operatives;
- primary placement to homes for elderly and disabled;
- preferential provision of prosthetic and orthopedic appliances;
- free advice of attorneys for the defence on the issues linked with rehabilitation.²⁵⁹

In practice however, obtaining the status of a rehabilitated person was easier than obtaining the material benefits. The compensation packages offered for physical and moral harm have been largely symbolic. For instance, it is estimated that as of 2015, some 35,793 persons or 10% of all those rehabilitated received a monthly payment of 2,121 tenge (at that time \$11 USD).²⁶⁰ Access to archives was difficult and the decision on the legal status and the appropriate compensation remained under the control of the executive branch, which made the process elite-driven and half-hearted. The rehabilitation policies of Nursultan Nazarbayev's regime have been motivated by the prospect of easy political gains rather than seeking the truth, accountability and offering meaningful reparations to victims and their families.²⁶¹

Selected Examples from Around the World

Northern Ireland

In Northern Ireland, the 1998 Good Friday Agreement paved the way for the creation of a Sentence Review Commission under the Northern Ireland Sentences Act,²⁶² which helped former prisoners to move away from the violence and achieve genuine reintegration²⁶³. The Commission facilitated the involvement of former political prisoners in community development and conflict transformation process, which was conducive to their reintegration. For instance, the Commission provided former political prisoners broad avenues for civic engagement, community employment, participation in formal politics, establishing self-help organizations and ex-prisoners' associations.²⁶⁴

In addition to the above, political prisoners were able to partake in retraining, reskilling, and mental health development programs delivered by the Northern Ireland Association for the Care and Resettlement of Offenders and the European Union Peace and Reconciliation Fund.²⁶⁵ These efforts were important in shoring up confidence and self worth of former prisoners, while also strengthening societal bonds. Former political prisoners worked with young people, reducing levels of inter-community rioting, and contributed to community development as leaders with a reputation for commitment, dedication, and reliability. Rather than representing a problem for their communities upon their release, they became a key asset contributing to community development and the strengthening of civil society.²⁶⁶

259. Article 18 - 21 of the On Rehabilitation of Victims of Massive Political Repressions.

260. Trochev, p. 100.

261. Trochev, p. 103.

262. Northern Ireland (Sentences) Act, July 28, 1998, http://www.legislation.gov.uk/ukpga/1998/35/pdfs/ukpga_19980035_en.pdf.

263. Democratic Progress Institute, 'The Good Friday Agreement – Prisoner Release Processes', 6 August 2013, <https://www.democraticprogress.org/wp-content/uploads/2013/09/The-Good-Friday-Agreement-Prisoner-Release-Processes.pdf>

264. Bosi, Lorenzo, and Gianluca De Fazio. "Contextualizing the Troubles: Investigating Deeply Divided Societies through Social Movements Research." In *The Troubles in Northern Ireland and Theories of Social Movements*, edited by Bosi Lorenzo and De Fazio Gianluca, p. 12, Amsterdam: Amsterdam University Press, 2017. Accessed May 24, 2020.

265. Democratic Progress Institute, 17.

266. Bill Rolston & Lillian Artz (2014) Re-entry problems: the post-prison challenges and experiences of former political prisoners in South Africa and Northern Ireland, *The International Journal of Human Rights*, 18:7-8, 871, DOI: 10.1080/13642987.2014.960922.

Myanmar

Between May 2011 and December 2013 in Myanmar, President Thein Sein ordered the early release of approximately 1,200 persons classified as 'political prisoners' by activists.²⁶⁷ Other political prisoners were released after having served their full sentences while an unknown number had died in prison.²⁶⁸ Many of those releases were the result of a process that started in February 2013 when the President created a Committee for Scrutinizing the Remaining Political Prisoners. The Committee was tasked with developing a definition of 'political prisoners' and recommending prisoners for release.²⁶⁹ The sixteen (later expanded to nineteen) person committee consisted of state ministers and representatives of groups of former political prisoners and opposition parties, although its makeup changed again on January 5, 2015 when the President reconstituted the body with 28 members.²⁷⁰

Over the course of 2013, the Committee met 12 times and compiled lists of individuals recommended for release as political prisoners.²⁷¹ Based on these lists and after vetting by the government, a series of seven releases were ordered in 2013 that took into account the committee's recommendations.²⁷²

However, it ceased operating in 2014 and appears to have been dissolved before being reinstituted again in 2015. Since that time no public information is available regarding its mandate, procedures or activities. The lack of information and action appear to justify concerns that the Committee had been reconstituted merely to deflect growing national and international criticism, rather than to resolve the issue of remaining political prisoners.²⁷³

267. Assistance Association for Political Prisoners (AAPP), Annual Report 2011, December 24, 2011: 2; AAPP, Annual Report 2012, December 24, 2012: 12; AAPP, Annual Report 2013, April 7, 2014: 6; AAPP, Monthly Chronology of Burma's Political Prisoners for January, 2014, January 22, 2014: 4; AAPPs, Monthly Chronology of Burma's Political Prisoners for May, 2014, June 11, 2014: 7; AAPP, Monthly Chronology of Burma's Political Prisoners for June, 2014, July 15, 2014: 6. President's Office, Pardon, Order No. 1/2014 (January 2, 2014); Amnesty Granted, Order No. 1/2012 (January 2, 2012).

268. The number of political prisoners who have died in custody in Myanmar remains unknown, although estimates place the number well in excess of 100, AAPP, Eight Seconds of Silence: The Death of Democracy Activists Behind Bars (May 2006): 17, <http://aappb.org/wp-content/uploads/2014/03/AAPP-8-seconds-of-silence.pdf>.

269. Myanmar President's Office, News release, Committee to be formed to grant liberty to remaining political prisoners (6 February 2013), <http://www.president-office.gov.mm/en/?q=briefing-room/news/2013/02/07/id-1539>

270. According to the civil society reports the new committee will "no longer include former members critical of the government." See Myanmar Times, 'New political prisoner body is "just for show", say activists,' (January 9, 2015), <http://www.mmmtimes.com/index.php/national-news/12750-new-prisoner-committee-just-for-show-activists.html>. In April 2015, it was reported that the Committee's name reverted back to the Remaining Political Prisoner Scrutiny Committee, see <http://www.mmmtimes.com/index.php/national-news/13886-government-to-form-new-political-prisoner-committee.html>

271. Press Release on work progress report of Committee for Scrutinizing the Remaining Political Prisoners, 14th Waning of Nadaw, 1375 ME (December 31, 2013), <http://www.president-office.gov.mm/en?q=print/3136>

272. UN News Centre, Myanmar: UN human rights expert welcomes latest release of political prisoners, http://www.un.org/apps/news/story.asp?NewsID=46718#_U9fftfldV8F

273. <https://www.amnesty.nl/actueel/myanmar-establish-an-independent-prisoner-review-mechanism-to-end-politically-motivated-imprisonment>.

DOMESTIC LAW AND REPARATIONS PRACTICE

Uzbekistan has not yet ratified the Optional Protocol of the UNCAT, the Rome Statute of the International Criminal Court, or the Convention for the Protection of All Persons against Enforced Disappearances. Nevertheless, its status as State party to the ICCPR and the UNCAT obliges Uzbekistan to adopt and implement a legal framework allowing for the fullest realization of the right to reparation as set out in the Reparations Principles.

During the previous regime's rule, due to lack of independence of the judiciary from the executive and other serious justice system flaws, courts almost never issued not guilty verdicts or awarded reparations to unlawfully convicted individuals. Things have improved slightly since 2017.²⁷⁴ According to the statement of the Supreme Court of Uzbekistan from October 2019,²⁷⁵ out of 26,859 accused individuals that year 567 have been found not guilty and 'rehabilitated'.²⁷⁶ This figure has not been confirmed independently however, and whether the term 'rehabilitation' here refers to the quashing of arrest and criminal record, the restoration of the good name of the individual in question, or something else, is also unclear. Domestic law does provide avenues for redress for a wrongfully convicted individual, particularly when she or he had suffered grave injustices while in detention, like torture.

Legislative Remedies for Reparation

The Constitution of Uzbekistan guarantees freedom from torture, violence or any other cruel or humiliating treatment,²⁷⁷ equality before the law,²⁷⁸ freedom from arbitrary arrest or detention,²⁷⁹ and the right to fair trial, among other fundamental rights.²⁸⁰ Although not expressly in the Constitution, the right to an effective remedy is established by two articles of Uzbekistan's supreme law.²⁸¹ It guarantees the right of everyone to appeal any unlawful action of State bodies.²⁸² Moreover, any citizen should be allowed access to documents, resolutions and other materials, relating to their rights and interests.²⁸³

The Criminal Procedure Code of Uzbekistan (CPC) contains an entire section on 'Rehabilitation' which provides for an array of procedural and substantive rights for victims of state-sponsored abuse.²⁸⁴ Article 301 of the CPC sets out the general grounds for rehabilitation, while Article 302 speaks to its consequences. Article 303 provides the basis for and consequences of 'partial rehabilitation.' Under Article 301, the grounds for rehabilitation are determined by reference to Article 83 of the CPC, which states that the suspect, accused, or defendant shall be acquitted and rehabilitated if:

274. In his speech before the newly elected Parliament on January 2020, President Mirziyoyev stated that in last three years Uzbekistan's courts went from zero acquittals to close to 2000 not guilty verdicts, calling the fall in conviction rates the biggest achievement in the judicial and legal sphere. President's speech from January 24, 2020 is available at: https://www.norma.uz/nashi_obzori/poslanie-2020_glavnye_tezisy_iz_rechi_prezidenta

275. Statement of the Supreme Court of Uzbekistan from April 2019; available at: sud.uz/ru/informatsionnoe-soobsheniye-o-deyatelnosti-sudov/

276. Statement of the Supreme Court of Uzbekistan from October 2019; available at: <https://www.gazeta.uz/ru/2019/10/15/criminal-court/>.

277. Part 3 of the Article 26, of the Constitution of Uzb.

278. Part 1 of the Article 18 of the Constitution of Uzb.

279. Part 2 of the Article 25 of the Constitution of Uzb.

280. Part 2 of the Article 26 of the Constitution of Uzb.

281. The Constitution acknowledges the priority of international law in its preamble, but in practice international law is almost never applied by Courts or administrative bodies, according to local experts.

282. Article 44 of the Constitution of Uzb. Constitution of Uzbekistan has been adopted in December 1992.

283. Article 30 of the Constitution of Uzb.

284. Section 7, CPC. Rehabilitation.

1. the occurrence of offense, on which the case has been brought, the investigation and trial conducted, does not exist;
2. the constituent elements of an offense in the act are not available;
3. he is 'pure from the crime'.²⁸⁵

Article 83 thus offers three possibilities as grounds for 'rehabilitation': absence of the event of the crime, insufficiency of the legal elements of the crime, i.e. *corpus delicti*, and the lack of participation of the person in the imputed offense. Under CPC Article 302, persons falling into one of these categories are entitled to full compensation, 'elimination of consequences of the moral damage,' caused by unlawful detention,²⁸⁶ as well as restoration of employment, pension and housing.²⁸⁷

Moreover, Uzbekistan's civil law also provides that any harm caused to an individual by illegal actions of public investigative agencies, prosecutors and the courts resulting in an unlawful detention, illegitimate prosecution and conviction, should be compensated by the state, regardless of the fault of officials of the agencies.²⁸⁸ Under the Civil Code of the Republic of Uzbekistan, they are entitled to compensation for both material damage and moral harm.²⁸⁹ A person whose rights have been violated may demand full compensation for the losses.²⁹⁰ Civil law also protects the loss of or injury to property, including missed income and benefits.²⁹¹

Restitution

Article 301 sets out the right of the rehabilitated person to *restitution*, including restoration of employment to the position she or he lost, or one of equal status, reinstatement in the place of education, and return of property or access to a similarly situated and equal-value dwelling. Notably, if a claim filed by a person to restore his or her employment, pension, and housing rights and to return property is not satisfied, they could file a separate claim in a civil suit.²⁹²

According to the Article 117 of the Constitution of Uzbekistan, citizens serving a prison term following a court verdict for having committed serious crimes do not have a right to participate in elections.²⁹³ According to the newly adopted Election Code of Uzbekistan however, the voting rights of a person whose voting rights were restricted during deprivation of liberty is restored as soon as they finish the jail term.²⁹⁴

There are specific norms on reparation for military personnel. Restoration of their rights such as employment, pension, housing and other material and personal rights, are to be determined by the procedure prescribed by the Prosecutor General, Minister of Defense, Minister of Interior and Chairman of the National Security Service of the Republic of Uzbekistan.²⁹⁵

285. Official translation available at http://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=41811.

286. Article 309 CPC.

287. Article 310 CPC.

288. Part 1 of the Article 991 of the Civil Code of Uzb..

289. Articles 11; 14; 15; 99; 100; 163; 990; 991; 1020; 1021 of the Civil Code of the Republic of Uzbekistan.

290. Part 2 the Article 14 of the Civil Code of Uzb.

291. Ibid.

292. Article 309, CPC.

293. Part 5 of the Article 117 of the Constitution of Uzbekistan; this clause was adopted in Sep, 2019.

294. Article 5 of the Election code of Uzbekistan, has adopted in Sep, 2019.

295. Implementation of this law is regulated by the Regulation: #2355664, on the restoration of work, pension, housing and other personal and material rights of the rehabilitated military personal, compensation for material and moral harm; adopted by the Ministry of Justice, in March 11, 2014.

Compensation

Compensation for rehabilitated persons is determined according to Article 304 of the CPC, which entitles them to full compensation for pecuniary damage suffered as a result of wrongful actions, including: 1. *lost wages*; 2. *lost pension and social benefits*, if payment thereof was suspended; 3. *deposits and interest*, including interest lost, on securities and bonds; 4. the cost of *property* seized during arrest and as a result of prosecution; 5. *penalties and court fees* recovered from the person in execution of a sentence; and 6. *cost of legal and other fees* borne as a result of illegal actions. In the case of the death of the rehabilitated person, Article 304 entitles his or her heirs to the right to compensation for the same damages.

The amount and procedure for the determination of compensation amount for material damages are established by Article 306, which requires the sentence of acquittal or a ruling of dismissal of the criminal case under one of the grounds specified in Article 83, stipulating the right to rehabilitation. A copy of the sentence must be served on or sent by post to the rehabilitated person.²⁹⁶ Within one month after the receipt of the complaint from a rehabilitated person, the court, the prosecutor or the investigator, must determine the damage amount. After the calculation of the extent of material damage, the court must issue a ruling, in the case of investigator or procurator they shall issue a resolution, regarding the procedure for the receipt of payment to recover monetary damages.²⁹⁷ The sources of payment of reparations stem from the Ministry of Finance and the Agency for Social Welfare.²⁹⁸

Apart from criminal law, Uzbekistan's civil law also recognizes the right to reparation in the form of both material and moral harm for unlawful conviction. While there is no legislative definition of 'moral harm', in 2000 Uzbekistan's Supreme Court Plenum Resolution explained that it includes 'ethical and physical suffering', including humiliation, physical pain, subservience, conditions of distress, among others, caused by actions (or inaction), experienced (suffered) by the victim, as a result of an offense against them.²⁹⁹ The 2000 Plenum Resolution also specifies that:

a moral harm may include moral distress due to the loss of relatives, inability to continue an active social life, the loss of work, disclosure of family or medical secrets, dissemination of false information that discredits a citizen's honor, dignity or business reputation, temporary restriction or deprivation of any rights, physical pain associated with other bodily harm caused by injury or in connection with a disease suffered as a result of moral sufferings, and others.³⁰⁰

According to Article 1021 of the Civil Code of the Republic of Uzbekistan, a moral harm shall be compensated regardless of the fault of the perpetrator when, among others, the harm was caused to a citizen as the result of illegal arrest, prosecution, conviction, and detention, as well as for the dissemination of information impugning his or her honor, dignity, and business reputation.³⁰¹ Article 1022 of the Civil Code regulates the form and amount of compensation for moral harm, which as a general matter should be in monetary form.³⁰² The amount of compensation for moral harm is to be determined by a court depending on the nature of the physical and moral suffering caused to the victim, and taking into consideration the fault of the perpetrator.³⁰³

296. Article 306, CPC.

297. Part 1 of the Article 307 of the CPC, of Uzb.,

298. Regulation #1095 of 12.01.2002 of the Ministry of Justice, on the payments from state budget in compensation of harm caused to citizen as a result of illegal actions or inactions of the state bodies or its officials.

299. Part 2(1) of the Supreme Court Plenum's Resolution on the Application of legislation on Compensation on Moral Harm, adopted on April 2000; available at: <https://www.lex.uz/acts/1449507>.

300. *Ibid*.

301. Article 1021 of the Civil Code of Uzb.

302. Part 1 of the Article 1022 of the Civil Code of Uzb.,

303. Part 3 of the Article 1022 of the Civil Code of Uzb.

While there are ample avenues of redress for moral harm for a rehabilitated individual, there appears to be no independent way to claim compensation for moral harm through civil law without a prior acquittal or exoneration. The Plenary Resolution of the Supreme Court of Uzbekistan instructs that: '[t]he right for compensation for a moral harm arises after acquittal or dismissed of a criminal charge in accordance with Articles 302; 306; 309; and 310 of the Criminal Procedural Code of Uzbekistan.'³⁰⁴

Rehabilitation and Satisfaction

With regard to measures of psychological and medical rehabilitation, they do not appear to be provided for in any legislation. Three recent executive acts are aimed at changing this policy.

The 17 July 2018 Resolution of the Cabinet of Ministers of Uzbekistan No. 543 'On the practical measures for further refinement of the system of socio-economic assistance and employment of persons released from places of detention' sets out a comprehensive policy on: *rehabilitation* and *social adaptation* of former prisoners, providing for social protection of released persons; initial provision for basic needs by way of subsidies for the provision of clothes, food and rent payments; and access to psychological or medical treatment, legal aid and, if necessary, placement in nursing and elderly persons homes.³⁰⁵ Following its adoption, the government devised a road map for the system of rehabilitation and social adaptation of persons released from places of deprivation of liberty for the years 2018-2022.³⁰⁶ The Annex of the regulation provides instructions to the appropriate government organizations to work on social adaptation and rehabilitation of such people together with non-governmental organizations.³⁰⁷ In line with this initiative, another Presidential Decree 'On measures for major improvement of the system of prevention of torture during investigative activities and detention', promises to reform the mechanisms of compensation for material and moral harm to individuals who have suffered torture during the investigation, arrest, prosecution and detention phases, as well as the provision of social, legal and psychological help.³⁰⁸

Another executive act, a Presidential Decree of 2 July 2018, also prescribes a system for social rehabilitation and adaptation, including reintegration through the establishment of regional rehabilitation and reintegration centers, but from a gender perspective, with the primarily aim of prevention and treatment of domestic violence.³⁰⁹ The focus is also primarily on medical rehabilitation.

Another important development is the adoption of the 'Ombudsman Plus' model that guarantees more prerogatives to the Parliamentary Ombudsman, such as the right to appeal to the Constitutional Court or the Parliament concerning individual complaints, including for rehabilitation, making communications to the Parliament, and conducting prison visits alongside with representatives of non-governmental organizations.³¹⁰ For instance, in 2019, the Ombudsman visited 26 prisons with German Agency for International Cooperation, met with 248 prisoners and issued 7 recommendations

304. Part 9(3) of the Supreme Court Plenum's Resolution on the Application of legislation on Compensation on Moral Harm, adopted on April 2000; available at: <https://www.lex.uz/acts/1449507>

305. Resolution of the Cabinet Ministers of Uzbekistan # 543 from 17 July 2018; available at: https://lex.uz/docs/3827084?lact_id=3827084&version=print.

306. CCPR/C/UZB/5, 1 August 2018, para. 218.

307. The Annex of the Resolution of the Cabinet Ministers of Uzbekistan # 543 from July 2018; available at: https://lex.uz/docs/3827084?lact_id=3827084&version=print

308. <https://kun.uz/ru/news/2020/05/29/litsam-podvergnutym-pytkam-budet-vozmeshchyon-prichinyonnyy-ushcherb-svetlana-artykova>.

309. <https://www.lex.uz/ru/docs/3804813>.

310. Human Rights Council's concluding remarks on the human rights situation in Uzbekistan, 3 March 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25650&LangID=E>, last accessed: May 1, 2020.

to the Constitutional Court.³¹¹ The model, however, needs to be further consolidated in granting more independence, impartiality to the Ombudsman, as there have not been reported any appeals to the court with regards to the individual complaints for the last two years.³¹²

With respect to measures of satisfaction, the CPC section on rehabilitation contains a provision dealing with 'elimination of the consequences of moral damage caused to the rehabilitated person'.³¹³ However, this law only envisions a public communication by a media outlet of the fact of the person's rehabilitation in cases where his unlawful detention was also publicly announced. A more promising approach for a victim might be to pursue qualification as a civilian plaintiff, under Article 56 CPC, and to bring a complaint against the procedure or decision of the inquiry officer, investigator, prosecutor, judge, and court, for moral damages pursuant to Article 57 of the CPC, triggering a civil claim.³¹⁴ According to the Plenum of the Supreme Court of Uzbekistan, if a claim of the rehabilitated person to moral damages has not been initiated or resolved during the criminal case, the claim should be considered separately in a civil suit.³¹⁵

Domestic Rehabilitation Practice

There is hardly any reliable or accurate data regarding the number of released individuals or any form of reparations to wrongfully imprisoned individuals. In 2007, Uzbekistan provided information to the UN CAT on victims of torture, stating in part that:

Over the period from 2004 to the first half of 2007, following criminal proceedings relating to the use of torture and other cruel, inhuman or degrading treatment or punishment (Criminal Code, art. 235), 26 persons are deemed to have been victims of such practices (9 in 2004, 5 in 2005, 10 in 2006 and 2 during the first six months of 2007.) There are no records of such persons having filed suits for compensation for physical and moral harm.³¹⁶

Uzbekistan's State Reports have only once provided quantitative information on compensation to the CAT, for the years 2002 and 2003, when it was claimed that over 490 million Som were paid in compensation to torture victims in 2002; in 2003, payments reached 850 million Som and US\$ 450,000.³¹⁷ However, this information has not received confirmation in subsequent communications from the government: in September 2007, the CAT had asked a specific question about the particular compensation cases referred to in the earlier statement, and to provide figures for the period 2003-2006.³¹⁸ The State replied that:

It is not possible to provide figures on compensation paid over the period 2003-2006 to torture victims for physical and moral harm, since no cases recorded in the civil court proceedings of applications to the courts for the payment of compensation or of the actual payment of such compensation.³¹⁹

311. Ibid.

312. Ibid

313. Article 309, CPC.

314. Part 9(1) of the Supreme Court Plenum's Resolution on the Application of legislation on Compensation on Moral Harm, adopted on April 2000; available at: <https://www.lex.uz/acts/1449507>

315. Part 9(2) of the Supreme Court Plenum's Resolution on the Application of legislation on Compensation on Moral Harm, adopted on April 2000; available at: <https://www.lex.uz/acts/1449507>

316. UN Committee Against Torture (CAT), Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3), 17 September 2007, Point 717, to be taken up in connection with the consideration of the Third periodic report of Uzbekistan (CAT/C/UZB/3).

317. CAT, Third periodic report of Uzbekistan (CAT/C/UZB/3), 28 July 2006, Point 162, available at: <https://www.refworld.org/docid/45c30b9a0.html>

318. Point 720, of the government answer to the CAT Committee, of the Written replies by the Government of Uzbekistan to the list of issues (CAT/C/UZB/Q/3).

319. Ibid.

Compensation for physical and even moral harm is possible in ordinary civil cases, where it is regular practice.³²⁰ A recent judgment awarded a plaintiff in a tort claim arising out of a car accident resulting in a loss of life to a relative 42,532,600 UZB (approximately 4,100 USD), including moral harm for pain and suffering.³²¹

But wrongfully imprisoned individuals do not benefit from any of the available measures of redress in Uzbekistan. Despite positive legislative changes³²², they face legal and practical impediments if they attempt rehabilitation through any of the available administrative and judicial mechanisms. The situation of wrongfully imprisoned persons currently in detention, who have exhausted all appeals prescribed by law, is even more dire. Members of the Working Group report that Sandzhar Ismailov, political prisoner subject of a Human Rights Committee decision against Uzbekistan,³²³ has written close to 200 letters demanding reexamination of his case, to no avail.

Many of the former political prisoners don't have access to their criminal court files.³²⁴ Former political prisoners reported the following reasons for which the authorities limit access to case materials: a) if the case is connected to a state secret; b) the case concerns political offenses, (c) the case is connected with corruption or persons trafficking or (d) the file was lost or destroyed.³²⁵ Samandar Kukanov was released on 24 November 2016³²⁶ and appealed to the Tashkent Court for rehabilitation. In September 2018, he received a letter from the Supreme Court informing him that the Tashkent Region State Archives had destroyed the materials of his criminal case under established procedure, and thus, his request for full rehabilitation could not be reviewed.³²⁷

Even if their complaint is considered, the response is almost always negative. Often, as in the case of Erkin Musaev, the court will refuse to consider the appeal citing lack of a copy of the indictment, which the released person was not able to obtain. The unavailability of the copy of a judgment is a bar to rehabilitation as a matter of law. Agzam Turgunov has written over 20 complaints, beginning with the Supreme Court of Karakalpakstan and the Prosecutor's Office of Karakalpakstan, all the way to the Supreme Court of Uzbekistan and the Prosecutor General's office. He has solicited the help of the Ombudsperson of the Oliy Majlis of Uzbekistan, the Director of the National Center for Human Rights, and the President of Uzbekistan, all to no avail.³²⁸ Salijon Abdurahmanov also sought reparations in courts. In September 2019, Abdurahmanov launched an attempt for reparation to the Supreme Court of Uzbekistan. The Supreme Court did not recognize him as unjustly convicted however, contrary to the decision of the Human Rights Committee.³²⁹

There are currently three known successful cases of rehabilitation, in terms of exoneration and restitution of rights, in the recent practice. Andrei Kubatin, a scholar imprisoned on Article 157 treason charges in 2017, and who was tortured in prison, was released following a ruling by the Regional Criminal Court of Tashkent reversing his conviction on 26 September 2019.³³⁰ Since he was acquitted,

320. Civil cases related to car accidents, job loss, material losses and etc.

321. This amount is about 5 000 USD. A copy of the Tashkent city, Mirabad district Civil Court Ruling from March 2018 in the possession of FIDH consultant.

322. For instance, since 2016, the Criminal Code permits the restoration of case materials, including the indictment, in case of its loss.

323. Human Rights Committee, *Sandzhar Ismailov v. Uzbekistan*, Views of 25 March 2011, No. 1769/2008

324. All but one respondents to the FIDH questionnaire stated that they did not have access to their court file.

325. HRW, 'Release and Rehabilitate', supra n. 17.

326. *Ibid.*

327. Human Rights Watch, 'Beyond Samarkand', available at: <https://www.hrw.org/news/2019/03/08/beyond-samarkand>

328. FIDH interview, 15 September 2020.

329. Centre 1, 'I will be rehabilitated on this life or after', available at: <https://centre1.com/uzbekistan/salidzhon-abdurahmanov-pri-zhizni-ili-posle-ya-budu-reabilitirovan/>

330. <https://eurasianet.org/uzbekistan-scholar-imprisoned-for-espionage-absolved-and-released>.

he was subject to rehabilitation under Article 83 of the CPC.³³¹ He applied for rehabilitation to the same court that absolved him and had his rights formally reinstated, without any compensation however, and no health care for the hypertension he developed while in prison. Kubatin reported being well integrated into society and grateful for being released. Tragically however, he died due to Covid-19 complications just one year after his release, at the age of 36.

Two other former political prisoners who have served time at Jaslyk Prison have been acquitted and are seeking compensation over unlawful convictions.³³²

The most successful case to date has been that of Chuyan Mamatkulov. He is known for having been the only person to sue Islam Karimov for violating the rights of military personnel. He was sentenced to 10 years in prison in 2012, on charges of kidnapping (Article 137), attempts at constitutional order (Article 159), fraud (Article 168) and preparation of extremist materials (Article 244-1), among others, of the Criminal Code, and served time in Jaslyk, where he was tortured among others by being placed in a cell filled with chlorine.³³³ In 2015, his sentence was extended by three and a half years under Article 221 by the Navoi Criminal Court.³³⁴ He was released in March 2018, following a series of reductions to his sentence.³³⁵

In December 2018, in an extraordinary development the Supreme Court granted him a re-trial.³³⁶ In March 2020, the Regional Criminal Court of Qashqadarya acquitted him of all charges and awarded him nominal monetary compensation.³³⁷ The fight for justice is not over however. The judgment awarding compensation only entitled him to seek compensation for moral or other damages in a separate civil suit, where the defendant would be the Ministry of Finance.³³⁸ Mamatkulov has filed a civil claim to the Qashqadarya inter-regional Court in Qarshi, seeking 500,000,000 som (approximately \$49,000) for the 878 days of unlawful detention prior to the Article 221 conviction,³³⁹ which counts as a new case and does not entitle him to compensation for the original conviction. On 9 October 2020, the inter-regional Court in Qarshi ruled in his favor awarding him 60,000,000 som (approximately \$5,800).³⁴⁰ Mamatkulov will appeal this judgment. In parallel proceedings, he is now appealing to the Supreme Court of Uzbekistan to have his Navoi Criminal Court Judgment annulled, and a parallel proceeding at the regional level for exoneration. If he succeeds to have an acquittal of the Navoi 2015 judgement, he plans to pursue another claim for compensation separately.³⁴¹

More recently, another former political prisoner convicted under Articles 155 and 159 of the Criminal Code, Elyer Tursunov, was acquitted by a regional court in Karakalpakstan. Tursunov was also tortured in Jaslyk. In March 2020, he filed a legal claim for compensation for \$20,000.³⁴²

331. Notably, his release and exoneration followed a visit by the UN Special Rapporteur on the Independence of Judges and Lawyers, Diego Garcia-Sayán and activism by his sister. *Ibid.*

332. In Unprecedented Lawsuits, Former Uzbek Political Prisoners Seek Compensation From Tashkent, <https://www.rferl.org/a/uzbek-scholar-andrei-kubatin-dies-of-covid-19-one-year-after-release-from-prison/30919404.html>.

333. HRW, Beyond Samarkand, *supra* n. 326.

334. <https://www.gazeta.uz/ru/2020/03/20/mamatkulov/>.

335. *Ibid.*

336. Swerdlow, 'Rehabilitation Here and Now,' *supra* n. 103.

337. 'Former prisoner of Jaslyk seeks compensation for suffering' [Бывший заключенный «Жаслыка» требует компенсацию за пережитые страдания], <https://www.gazeta.uz/ru/2020/03/20/mamatkulov/>, 19 August 2020.

338. As per Working Group expert.

339. <https://rus.ozodlik.org/a/30790712.html>.

340. Uzbek Rights Activist Wins Lawsuit Against State Over Illegal Imprisonment But Will Appeal, <https://www.rferl.org/a/uzbek-rights-activist-wins-lawsuit-against-state-over-illegal-imprisonment-but-will-appeal/30889329.html>.

341. Interview with FIDH 20 September 2020.

342. Former prisoner of Jaslyk in Karakalpakstan seeks compensation for torture' [Бывший заключенный колонии «Жаслык» в Каракалпакстане потребовал компенсацию за пытки,] 29 September 2020, available at <https://mediazona.ca/news/2020/09/29/jaslyk>.

CONCLUSION AND RECOMMENDATIONS

Past state practice shows that mass releases of political prisoners often signal an end to a period of state-sponsored repression or internal violence and a regime change. This has been the case in post-dictatorship Brazil and Chile, post-communist Czech Republic, Romania, and Russia, after the end of inter-religious violence in Ireland, the end of apartheid in South Africa, and the stepping-down of military regime in Myanmar, among other countries.

Release is the first step towards the reinstatement of the rights of those unjustly imprisoned and arguably the most important, as it ends inhuman suffering of innocent individuals and reunites thousands of families torn apart by repressions. But much more needs to be done to address individual grievances and contribute to broader transitional justice goals. Reforms, peace, security and development will not be durable without a renewed focus on human rights, as demonstrated by the less successful transitional justice processes like in Myanmar. Practice shows that former communist countries that have done more to reckon with the abuses of the communist era have enjoyed greater prosperity and stability than those that avoided any reappraisal of the past or did so halfheartedly.³⁴³ This is why the release of individual prisoners in Uzbekistan should be regarded as part of a larger reform process that discloses and acknowledges past abusive practices, many of which took root in the Soviet past.

In this vein, President Mirziyoyev's recent decision to commemorate victims of Soviet-era repressions is a positive step,³⁴⁴ albeit difficult to reconcile with the authorities' positive attitude towards various other aspects of Soviet rule.³⁴⁵ When he announced the commemorative initiative, Mirziyoyev commended previous efforts to restore the good name of those repressed, and to open expositions and museums, '[a]ll in order to bring to the people historical justice and truth, so that our people know and never forget' past violence.³⁴⁶ Speaking of the thousands repressed during the totalitarian regime at the ceremony, the President called them: 'real leaders, the leading representatives of intelligentsia, the best literary and cultural minds – in short, the brightest of our nation. Just imagine, what great deeds they could have done ... had they not been repressed!'³⁴⁷

The same logic should apply to those repressed during the predecessor regime. Historical truth, justice, meaningful opportunities to change and develop the nation, should all be part of the ongoing reform process. These principles are not only consistent with the President's statements, but also international law and transitional justice practice. For prisoners released since 2016, the adverse mental and physical effects from prolonged detention, solitary confinement, violence, sickness and malnourishment, will continue and cannot be remedied merely by their release. Those harms will require specialized care and constant support, including financial assistance, which many families cannot now access or provide to those released on their own. Without government backing and resources, these reparations measures cannot be sustained or address the large number of political prisoners. This is

343. Mark Kramer, 'Public memory and Communist Legacies in Poland and Russia', in *Transitional Justice in the Former Soviet Union*, p. 80.

344. On 31 August 2020, the Day of Commemoration of Victims of Soviet-era Repressions during the Soviet regime, President Mirziyoyev ordered the investigation for each of around 100 thousand victims of repressions, publications of books of memory, renaming of mahallas and schools in their honor. https://fergana.agency/news/120925/?fbclid=IwAR17cBjUvaH54dZEcBhJK64ikzkPs_OmqDts00kz-WFUWWnSKwzQ3kmgE_c.

345. For example, in June 2017, Uzbekistan joined CIS agreement on perpetuation of the memory of Great Patriotic War participants, in May 2018, after many years, Friendship of People, as well as Sabir Rakhimov Monuments were put on their former place. Fergana, The monument to General Sabir Rakhimov will be returned to its original location in Tashkent [*Памятник Генералу Сабиру Рахимову в Ташкенте Вернут На Прежнее Место*], 3 May 2018, <https://www.fergananews.com/news/29785>).

346. <https://president.uz/ru/lists/view/3821>.

347. Authors' translation. Original available at <https://president.uz/ru/lists/view/3821>.

a practical reason why reparations cannot be left to non-state institutions but must be assumed as a state responsibility.

To fully restore political prisoners and further transitional justice objectives, reparation measures should be implemented along with commemorative measures, prosecutions of offenders, access to archives and official acknowledgment of abuses, that is to say, holistically.³⁴⁸ Persons wrongfully imprisoned should be recognized as 'political prisoners'³⁴⁹ or otherwise victims of repressions, and measures should be instituted to commemorate those who died at the hands of State agents and to prosecute those responsible for abuses. While the term 'political' is contentious, the question of the right terminology design could be important in fostering a debate that could engender pluralism.³⁵⁰ In this work we provided numerous alternatives for such a formulation. Attempts should be made to avoid sidestepping this issue like in Georgia and Myanmar.

Thus, adequate reparation in Uzbekistan's case should: (1) include necessary medical and psychological services; (2) be implemented through an administrative government program established to address the specific needs of victims, such as survivors of torture; (3) be holistic in its approach, potentially including basic social support such as housing, development, and financial assistance; and (4) ensure recognition of victims as such, and symbolic measures.

The domestic legal framework provides ample grounds for reparations for wrongful imprisonment, torture and ill-treatment for the hundreds of released political prisoners, allowing in principle a satisfactory fulfillment of the rights to compensation for material and moral harm, restoration of employment, pension, housing, and other rights of wrongfully convicted persons. Although mostly in line with the international law if considered in its entirety, the domestic legal framework is fragmented and incomplete, particularly in the sphere of medical and psychological rehabilitation. There is currently no law prescribing rehabilitation in its narrow international law sense of medical and psychological care as well as legal and social services. With respect to compensation, the legal framework currently conditions reparation for moral harm, which is only available through civil litigation, on a criminal case judgment. Moreover, the number of available benefits is limited and their determination is exclusively within the discretion of a judge. The biggest flaw in the current system however is that it is woefully underutilized.

In addition to the practical impediments like the threat of persecution for seeking rehabilitation, lack of legal counsel, blocked access to court records or failing to acknowledge complaints by courts, our analysis shows operational shortcomings. For instance, the existing reparations mechanism does not allow a complaint to a single judicial organ or administrative entity which could then facilitate a challenge of one or more unlawful convictions occurring in several different jurisdictions, like in the case of Chuyan Mamatkulov. Currently, the determination of compensation must be made for each individual political prisoner by a separate civil lawsuit after an Article 83 judgment, which might be impracticable in the case of hundreds, or thousands, of released persons. It is also unclear how a current prisoner could seek release and reparations, because their case could be 'political', other than by way of a legal challenge to their conviction. Human rights defenders report that it is practically impossible to achieve a reconsideration of one's sentence while in prison after exhausting legal appeals.

348. Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN doc. A/HRC/21/46, 9 August 2012. para. 50.

349. One such definition was articulated during the Workshop: 'Individuals Subject to Reparations': are individuals, including those addressed by the views, decisions or resolutions of international organs, who were subjected to criminal prosecution for Crimes Against the Republic of Uzbekistan, Crimes Against Peace and Humanity, or ordinary criminal offenses, based on their political or social activity or views.

350. In South Africa, a Working Group on Political Offenses came up with criteria for resolving when a common crime might be regarded as a political offense. Louise Mallinder, 'Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa,' Working Paper No. 2 from *Beyond Legalism: Amnesties, Transition and Conflict Transformation* (February 2009).

A separate institution could streamline all these processes, while identifying gaps in law and the appropriate government agencies and other institutions concerned, like the archives and the Ministry of Finance. A rehabilitation commission could facilitate access to all relevant records, and the relevant agencies, for the benefit of the person released, like in post-Soviet Russia. The same entity could devise programs providing for social and medical rehabilitation and reintegration, possibly tying it with symbolic and accountability measures.

We believe that a Reparations Commission is the most effective way to achieve wide-scale reconsideration of politically motivated sentences, coordinate State-sponsored rehabilitation and other programs designed to rehabilitate former detainees physically, and reintegrate them into society as dignified and respected citizens with full rights. A reparations or rehabilitation commission could also advance the truth and recognition aspects. Like the laws in Russia and Kazakhstan, Uzbekistan could establish such an entity with a law acknowledging the *political* character of some of the prisoners during a certain time period, recognizing their rights to reparations. Importantly, such a mechanism should be built after wide-scale consultations and be independent from government institutions to ensure that their individual functions are not subject to political influence or interference.

One measure that could take into account the context of the period of repression and provide recommendations for prosecutions or reparations programs could be a truth commission. The primary difference between truth commissions and reparations commissions is that the earlier is an ad hoc investigative, evidence-gathering enterprise that determines the facts, root causes, and societal consequences of past human rights violations, while the latter focuses on extraordinary reconsideration of criminal judgments and administration of compensation. A truth commission could better address the historical causes of abuses in parallel with the efforts to address the Soviet legacy. However, while disclosing the full truth regarding Karimov-era abuses, particularly the Andijan events, is important, a Truth Commission is not the most effective reparations implementation mechanism. If a truth commission is to be prioritized, the truth cannot substitute justice, reparations nor guarantees of non-recurrence.³⁵¹ Rather, these mechanisms should be sequenced for a more gradual and holistic approach.

GENERAL RECOMMENDATIONS TO UZBEKISTAN'S AUTHORITIES

We recommend the following general measures:

- a Amend the Constitution to provide for the right to an 'effective remedy' to victims of human rights violations expressly;
- b Amend the Criminal Code to abrogate or revise articles: 157, 159, 216, 216.1, 216.2, 221, and 244.1 or otherwise immediately discontinue their use;
- c criminalize interference with lawyers' access to accused individuals held in detention facilities, ensure access to legal aid, and establish sanctions against any public official or person responsible for impeding that access;³⁵²
- d Ratify the Optional Protocol to the Convention against Torture (OPCAT), Convention for the Protection of All Persons against Enforced Disappearances;

351. Report of the Secretary-General (2004) UN "The rule of law and transitional justice in conflict and post-conflict societies".

352. <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25056&LangID=E>

- e Allow local civil society and international humanitarian organizations, including the ICRC, to conduct independent monitoring of Uzbekistan's prisons;
- f Allow the registration of and ensure a legal and safe operating environment for independent human rights NGOs;
- g Cease surveillance, harassment, pressure and any other form of persecution of independent journalists, civil society, HRDs and other civil society activists;
- h Build tighter cooperation with international and regional international institutions;
- i Take additional measures to prevent torture and ill treatment in places of detention and to ensure that all allegations of torture and ill-treatment are promptly, impartially and effectively investigated by authorities independent of the alleged perpetrators, and consider establishing a special division of the Office of the Procurator tasked solely with carrying out thorough and independent investigations into official misconduct, including allegations of torture and ill-treatment.

SPECIFIC RECOMMENDATIONS TO UZBEKISTAN'S AUTHORITIES

In addition to the General Recommendations, we recommend the following Specific Recommendations, adopted sequentially:

- A Conduct a comprehensive mapping identifying individuals that have been released as a result of amnesties or pardons who might have been prosecuted on political motives, and persons still in custody for politically motivated crimes, including so called 'religious prisoners', entitled to release and reparations;
- B In consultation with victim representatives and former detainees, conduct a preliminary needs assessment of recently released political prisoners who have been legally acquitted, as well as political prisoners who have been released but not acquitted, particularly victims of torture and other ill treatment;
- C In line with the Strategic Plan for the years 2017 - 2021, the National Human Rights Strategy, the Presidential Decree of 2 July 2018, and The 17 July 2018 Resolution of the Cabinet of Ministers of Uzbekistan No. 543, adopt a comprehensive policy on the 'Reparation' or 'Rehabilitation' of 'political prisoners' or 'wrongfully convicted persons', separate or part of a larger policy for transitional justice in Uzbekistan, envisioning the creation of a fully independent commission to implement its mandate and objectives. The policy should aim to:
 - (1) harmonize the existing domestic legal framework for reparations, including by facilitating the provision of remedies available under criminal and civil law;
 - (2) allow for the expedited reconsideration of sentences of persons convicted of 'political' offenses, as defined by such policy, or persons falling within any of the categories identified in Annex A, during a certain period or broader, and their entitlement to reparations;
 - (3) provide for reparations to 'wrongfully convicted persons', or 'political prisoners', within the meaning of Reparations Principles, including by ensuring and overseeing the full execution of any international court or tribunal, domestic courts or administrative body decision under Article 83 of the Criminal Code of Uzbekistan;
 - (4) include the families and heirs of political prisoners in reparations as victims on an equal basis;
 - (5) ensure the execution of views issued against the State by the Human Rights Committee and decisions of other interstate organs;³⁵³

353. There are currently at least 47 such views. See, <http://ccprcentre.org/country/uzbekistan>.

(6) establish a central Reparations Commission, with regional branches, to achieve all of the above. The commission should have the following role, mandate and functions:

- It should be formed outside of the national system for the prevention of human rights violations in prisons and closed institutions and be a separate ad hoc or permanent institution.
 - Such a body should be completely independent of the executive authority and ideally derive its authority from an act of Parliament.
 - It should incorporate within it a documentation unit to facilitate access to archives, investigation of politically motivated charges and development of commemorative initiatives;
 - The civil society, international experts, the Ombudsman, and representatives of political prisoners must be given an adequate voice in the process of the Commission's formation and determining its membership through a process of meaningful consultation;
 - The Commission should conduct regular consultations with the civil society and international experts;
 - The Commission should possess adjudicatory powers such as to give binding decisions and provide authoritative recommendations on the release and reparations requests;
 - The commission should design and facilitate the implementation of psychosocial and medical support policies focused on improving the mental and physical health of victims, and be charged with the design of such policies; and
 - Provide opportunities for ex-prisoners to participate in civic engagement, community and other employment, formal politics, and establish self-help organizations and ex-prisoners associations.
- D Take effective measures to institute an impartial, thorough and effective investigation into the events of May 2005 in Andijan, including within the scope of a separate Commission of Inquiry, such as a Truth Commission, or as part of a policy established pursuant to Specific Recommendation C. The investigation should establish the entire truth relating to these events, be capable of leading to prosecutions for violations of domestic and international law, and of ensuring that victims of such violations obtain full reparations as soon as possible.

Annex A : Categories of crimes of persons convicted on politically motivated charges

Category of Charges Against Political Prisoners	Type of Offences Charged (Criminal Code)	Number of Political Prisoners as of 2016	Examples
1. Religious or Political	Article 155 – Terrorism; Article 156 – Incitement of Ethnic, Racial or Religious Hatred; Article 157 – Treason Article 158 – Offences against President of Republic of Uzbekistan Article 159 – Undermining the Constitutional Order of Uzbekistan; Articles 160 – Espionage; Article 161 – Sabotage; Article 162 - Disclosure of State Secrets; Article 216 – unlawful creation of public (civil society) associations or religious organizations; 216 ("Illegal organization of public associations or religious organizations"),- 216-1 ("Inclination to participate in the activities of illegal public associations and religious organizations"),- 216-2 ("Violation of the law on religious organizations"), Article 223 - Illegal Exit from or Entry in Republic of Uzbekistan;	Several Thousand	Kadryzhan Yusupov Fayzulla Agzamov Ravshan Kosimov Nematullo Ibragimov Muhammad Rashidov Jahongir Kamolov Alisher Achildiev Viktor Shin Rafik Saifullin Kutbiddin Naraliyev
2. Terrorism Offenses	Article 155 - Terrorism Article 242. Organization of Criminal Community Article 244-1 Production, storage, distribution or display of materials containing a threat to public security and public order"; Article 244-2 Organization and participation in religious extremist, separatist, or other prohibited organization;	Hundreds	Khayrullo Tursunov Tohir Djumanov Avaz Tokhtakhodjaev Ubaydulla Murtazoyev Alisher Kasymov Shakhzodjon Zokirov Azimjon Abdusamatov Habibullah Madumarov Vladimir Kaloshin
3. Ordinary Crimes	Article 165 – Extortion; Article 167 – Larceny by embezzlement; Article 168 - Fraud; Article 205 – Abuse of Power or Office ; Article 211 – Bribe; Article 248. Illegal Possession of Arms, Ammunition, Explosive Substances, or Explosive Assemblies; Articles 270-276 the fabrication, use and selling of narcotics; Article 301. Abuse of Power, Stretch of Power or Administrative Dereliction	Between 25 - 30	Sandzhar Ismailov Bakhrozhmon Suvanov

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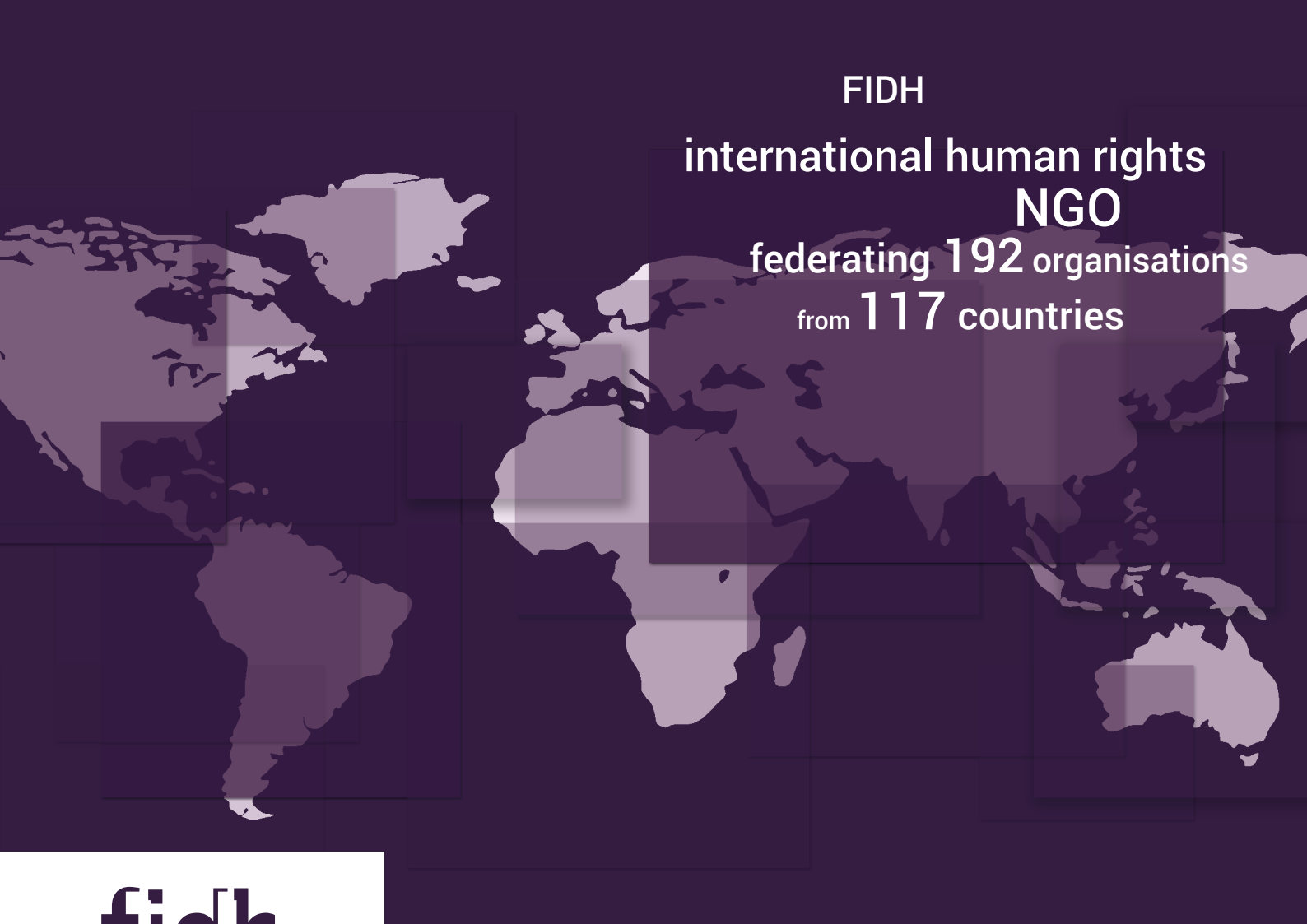
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