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Human Rights violations in Uzbekistan

AN ALTERNATIVE REPORT
TO THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE

INCLUDING THE COMMITTEE'S CONCLUDING OBSERVATIONS

A project presented by



Initiative Youth Group
“Orzu”



and coordinated by



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HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

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HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

Foreword

Writing alternative reports is one of the main activities of the World Organisation Against Torture (OMCT) and a vital source of information for the members of the Human Rights Committee. With these reports, it is possible to see the situation as objectively as possible and take a critical look at government action to eradicate torture and other cruel, inhuman or degrading treatment.

Under the aegis of the European Union and the Swiss Confederation, the “Prevention of torture” project presented this report on Human Rights violations and torture in Uzbekistan at the 83rd session of the Human Rights Committee in New York, in March 2005.

This report was jointly prepared by three national human rights non-governmental organisations (NGOs) in collaboration with OMCT:

Women’s Resource Centre (WRC) was founded in 1995. It is a NGO that defends and promotes women’s rights as human rights and enlightens women and communities on women’s human rights through it is publications, educational programs, meetings and collection of information on situation on women’s human rights in the country.

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The Initiative-taking Youth Group “Orzu” was established in Tashkent province in 2004 by the young activists, who have worked for several years in one of first NGOs in Uzbekistan, the Women’s Resource Center. The members of the organization include youth activists, who have had humanitarian, medical, economic and legal education.

The mission of the organization is to contribute to achieve gender equality in the family and the society and the development of civil society in Uzbekistan in the transitional period via education in the medium of the youth with initiative-taking citizenship, morally worthy tolerance, and aesthetically development of individualism by means of carrying out educational programs, including seminars, round tables, and actions.

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The central activity is to collect of materials and documents in the problems of young people; to conduct joint educational seminars and trainings; organize debates on the problems of the youth; to advertise in the media the basic tasks of the organization; to work in partnership with other youth organizations of Uzbekistan and countries of the CIS; to play a role on the vital problems of the country.

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Legal Aid Society (LAS) is a member of the SOS-Torture Network. It specifically focuses on human rights – civil and political rights, economic, social and cultural rights, by providing legal aid, monitoring human rights and training.

LAS regularly submits alternative reports on the Human Rights situation in Uzbekistan to the UN Treaty Bodies.

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PART I

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

GENERAL SITUATION

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

1. Human rights legal background

1.1. International law framework

1.1.1. Ratification and entry into force

Below is the list of international agreements, conventions and covenants regarding International Human Rights signed and ratified by the Uzbek Government.

Instrument	Date of ratification	Date of entry into force
CERD ¹	28-Sep-95	28-Oct-95
CCPR ²	28-Sep-95	28-Dec-95
CCPR – OP1 ³	28-Sep-95	28-Dec-95
CESCR ⁴	28-Sep-95	28-Dec-95
CEDAW ⁵	19-Jul-95	18-Aug-95
CAT ⁶	28-Sep-95	28-Oct-95
CRC ⁷	29-Jun-94 ⁸	29-Jul-94

1 International Convention on the Elimination of All Forms of Racial Discrimination.

2 The Human Rights Committee.

3 Optional Protocol to the International Covenant on Civil and Political Rights.

4 International Covenant on Economic, Social and Cultural Rights.

5 Convention on the Elimination of All Forms of Discrimination against Women.

6 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

7 Convention on the Rights of the Child.

8 CRC - amendment: Article 43(2), acceptance of the amendment: 25-Apr-97.

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1.1.2. Due reports, Relevant Treaty Bodies' concluding observations / comments and Jurisprudence

CERD	Due	Received	Examined
Initial	28-Oct-96	27-Dec-99	18-Aug-00
Second periodic ⁹	28-Oct-98	27-Dec-99	18-Aug-00
Third periodic	28-Oct-01 ¹⁰		
Fourth periodic	28-Oct-03		

CCPR	Due	Received	Examined
Initial	27-Dec-96	10-Jul-99 ¹¹	26-Mar-01
Additional information	06-Apr-02	30-Sep-02 ¹²	
Second periodic	01-Apr-04	14-Apr-04	[pending Mar 05]
Third periodic	01-Apr-09		

CESCR	Due	Received	Examined
Initial	30-Jun-97	14-Apr-04	[pending Nov 05]
Second periodic	30-Jun-02		

9 The initial and second periodic reports were submitted together as one document. CERD/C/327/Add.1.

10 In its concluding observations adopted on 23 August 2000, the Committee on the Elimination of Racial Discrimination set the date for the submission of the third periodic report at 28 October 2001.

11 Partial reply. The Human Rights Committee requested a complete response. On 6 January 2004, the State party submitted further information (CCPR/CO/71/UZB/Add.2).

12 In its concluding observations adopted on 4 April 2001, the Human Rights Committee set the date for the submission of the second periodic report at 1 April 2004.

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CEDAW	Due	Received	Examined
Initial	18-Aug-96	19-Jan-00	25-Jan-01
Second periodic	18-Aug-00		
Third periodic	18-Aug-04		

CAT	Due	Received	Examined
Initial	27-Oct-96	18-Feb-99	17-Nov-99
Second periodic	27-Oct-00	29-Nov-00	01-May-02
Third periodic	27-Oct-04		

CRC	Due	Received	Examined
Initial	28-Jul-96	27-Dec-99	09-Oct-01
Second periodic	28-Jul-01		

Concluding Observations/Comments	
CERD	CERD/C/304/Add.87 (2001)
CCPR	CCPR/CO/71/UZB (2001)
CESCR	
CEDAW	A/56/38, paras.147-194 (2001)
CAT	A/55/44, paras.76-81 (1999), CAT/C/CR/28/7 (2002)
CRC	CRC/C/15/Add.167 (2001)

HRC jurisprudence	Decision
Arutyunyan v. Uzbekistan, 917/2000, 29 March 2004	Violation of articles 6, 10(1) and 14(3d)
Nazarov v. Uzbekistan, 911/2000, 06 July 2004	Violation of articles 9(3) and 14

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**1.1.3. Status of international law**

In 2001, the Human Rights Committee stated:

“While welcoming the fact that the Covenant takes priority over national legislation and its provisions can be directly invoked before the courts, the Committee is concerned that no relevant case has as yet been brought before the courts. The State party should make serious efforts to disseminate knowledge of the provisions of the Covenant among judges to enable them to apply the Covenant in relevant cases and among lawyers and the public to enable them to invoke its provisions before the courts (article 2 of the Covenant).”¹³

The Preamble of the Constitution stipulates that: “the people of Uzbekistan recognise the primacy of generally recognised norms of international law”, and Article 15 stipulates that: “the laws of the Republic of Uzbekistan shall have absolute supremacy in the Republic of Uzbekistan. The state, its bodies, officials, public associations and citizens shall act in accordance with the Constitution and the laws”.

The constitutionality of many provisions in Uzbek penal and criminal procedure laws has been questioned numerous times in particular cases, though these cases have never been published or made known to a wider public otherwise. Unfortunately, judges took a view that it is premature to challenge domestic public order. At the time of introducing the Bill on Legal Normative Acts, one of the draft provisions provided that in case of divergence the courts shall give superior weight to an act of supreme power. However, this provision has disappeared at the later stage of adoption and enactment of the law. Although the Constitution declares in its Preamble the priority of generally recognized rules of international law, in judicial practice any argument based on this preposition is almost never taken into account.

13 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §28.

1.2. Domestic law guaranteeing human rights

According to the Constitution: “all citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status. Any privileges may be granted solely by the law and shall conform to the principles of social justice” (Article 18). “Both citizens of the Republic of Uzbekistan and the state shall be bound by mutual rights and mutual responsibility. Citizens’ rights and freedoms, established by the Constitution and the laws, shall be inalienable. No one shall have the power to deny a citizen his rights and freedoms, or to infringe on them except by the sentence of a court” (Article 19). “The exercise of rights and freedoms by a citizen shall not encroach on the lawful interests, rights and freedoms of other citizens, the state or society” (Article 20). “The Republic of Uzbekistan shall guarantee legal protection to all its citizens both on the territory of the republic and abroad” (Article 22).¹⁴

According to Article 43: “the state shall safeguard the rights and freedoms of citizens proclaimed by the Constitution and laws”. “All citizens shall perform the duties established by the Constitution” (Article 47) and “shall be obliged to observe the Constitution and laws, and to respect the rights, freedoms, honour and dignity of others” (Article 48). “Foreign citizens and stateless persons, during their stay on the territory of the Republic of Uzbekistan, shall be guaranteed the rights and freedoms in accordance with the norms of international law. They shall perform the duties established by the Constitution, laws, and international agreements signed by the Republic of Uzbekistan” (Article 23).

14 The Constitution also guarantees: the right to exist (Article 24), the right to freedom and inviolability of the person (Article 25), the right to liberty and security of person and the prohibition of torture or other ill-treatment (Article 26), the right to protection of honour, dignity and interferences in private life (Article 27), the right to freedom of movement (Article 28), the right to freedom of thought, speech and convictions (Article 29), the right to access to materials relating to rights and interests (Article 30), the right to freedom of conscience (Article 31), the right to participate in the management and administration of public and state affairs (Article 32), the right to engage in public life by holding rallies, meetings and demonstrations (Article 33), the right to form trade unions, political parties and any other public associations, and to participate in mass movements (Article 34), the right, both individually and collectively, to submit applications and proposals, and to lodge complaints with competent state bodies, institutions and public representative (Article 35).

1.3. Domestic law restricting human rights

State of emergency

Item 15 of Article 93 of the Constitution stipulates that: the President shall “have the right to proclaim a state of emergency throughout the Republic of Uzbekistan or in a particular locality in cases of emergency (such as a real outside threat, mass disturbances, major catastrophes, natural calamities or epidemics), in the interests of people’s security. The President shall submit his decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation within three days. The terms and the procedure for the imposition of the state of emergency shall be specified by law”.

Anti-terror legislation

Several articles of the Criminal Code (C.C.) deal with terrorism.

According to article 155 C.C.: “terrorism, that is defined as violence, use of force, or other acts, which pose a threat to an individual or property, or the threat to undertake such acts in order to force a state body, international organization, or officials thereof, or individual or legal entity, to commit or to restrain from some activity in order to complicate international relations, infringe upon sovereignty and territorial integrity, undermine security of a state, provoke war, armed conflict, destabilize sociopolitical situation, intimidate population, as well as activity carried out in order to support operation of and to finance a terrorist organization, preparation and commission of terrorist acts, direct or indirect provision or collection of any resources and other services to terrorist organizations, or to persons assisting to or participating in terrorist activities – shall be punished with imprisonment from eight to ten years. Attempt to life of or infliction of bodily injury to a state official or public figure or representative of authorities, committed in connection with their state or public activities with the purpose of destabilization of situation or influence upon decision making by state bodies or impediment to political or other public activity shall be punished with imprisonment from ten to fifteen years. The actions punishable under Paragraphs 1 or 2 of this Article, resulted in: a) death of a person; b) other grave consequences – shall be punished with imprisonment from fifteen to twenty years, or capital punishment. A person who participated in preparation of terrorism shall be discharged from criminal liability in the instance if he assisted actively to the prevention of occurrence of grave consequences and attainment of terrorists’ goals

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through his timely informing the authorities or in any other way, if his acts do not contain other elements of *corpus delicti*". (As amended by Law of 29.08.2001.)¹⁵

However, due to the lack of publicity on these matters (frequently recognized as a state secret) and reluctance of judiciary to provide a clear guidance, it is formidable to assess the practical implication and meaningful interpretation of aforementioned provisions.

Domestic and world-wide terrorism lead the Uzbek parliament to adopt an anti-terror law,¹⁶ which establishes a kind of zone of emergency within the

15 Article 242 C.C. Organization of a criminal community, that is establishment or direction of a criminal community or divisions thereof, as well as activities aimed at ensuring their existence and operation – shall be punished with imprisonment from fifteen to twenty years. Establishment of an armed organized group, as well direction thereof or participation therein – shall be punished with imprisonment from ten to fifteen years. (As amended by the Law of 29.08.2001)

Article 244-1 C.C. Production or keeping with the purpose to dissemination of materials that contain ideas of religious extremism, separatism, and fundamentalism, calls for pogroms or violent eviction, or aimed at creating a panic among the population, which have been committed after imposition of an administrative penalty for the same acts – shall be punished with a fine from fifty to one hundred minimum monthly wages, or correctional labor up to three years, or arrest up to six months, or imprisonment up to three years. Any form of dissemination of information and materials containing ideas of religious extremism, separatism, and fundamentalism, calls for pogroms or violent eviction of individuals, or aimed at creating a panic among the population, as well as the use of religion in purposes of breach of civil concord, dissemination of calumnious and destabilizing fabrications, and committing other acts aimed against the established rules of conduct in society and of public security – shall be punished with a fine from seventy-five to one hundred minimum monthly wages, or arrest up to six months, or imprisonment from three to five years. The actions foreseen in Paragraph 1 or 2 of this Article, committed: by previous concert or by a group of individuals; with use of official capacity; with use of financial or other material aid received from religious organizations, as well as from foreign States, organizations, and nationals – shall be punished with imprisonment from five to eight years. (Introduced by the Law of 1.05.1998, amended by the Law of 29.08.2001)

Article 244-2 C.C. Establishment, direction of or participation in religious extremist, separatist, fundamentalist or other banned organizations – shall be punished with imprisonment from five to fifteen years. The same actions that have resulted in grave consequences – shall be punished with imprisonment from fifteen to twenty years. A person shall be discharged from liability for the offense punishable under Paragraph 1 of this Article, if he voluntarily communicated about the existence of banned organizations and assisted to detection of the offense. (Introduced by the Law of 1.05.1998, amended by the Law of 29.08.2001.)

16 Law of the Republic of Uzbekistan "On Fighting Against Terrorism" dated 15 December 2000.

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territory where anti-terror operations take place. In particular Article 19 of the law grants certain exclusive rights to authorized state officials involved in conducting anti-terror operation such as follows: unlimited control and check of passports of citizens; limitation of restrictions on movement of vehicle; detain suspected people; unlimited penetration to the premises and houses at any time and etc.

For years, Uzbek government has imprisoned on “fundamentalism” charges individuals whose peaceful Islamic beliefs, practices, and affiliations fell outside of strict government controls. An accumulated total of about 7,000 people are believed to have been imprisoned since the government’s campaign against independent Islam began in the mid-1990s. The government justifies this campaign by referring to the “war on terror,” failing to distinguish between those who advocate violence and those who peacefully express their religious beliefs. By November 1, 2004, there were documented 241 convictions; the true numbers are believed to be much higher. In 2004 Uzbekistan was shaken by two episodes of violence—bombings, and shootings in Tashkent and Bukhara in late March and early April, and bombings of the U.S. and Israeli embassies and the General Prosecutor’s office in Tashkent on July 30. Uzbek government used the March-April attacks to give new validation to the “war on terror” campaign. Uzbekistan is a key ally of the United States in the global campaign against terrorism, but undermines that campaign by using it to justify gross human rights abuses. Unfair trials of terror suspects in Uzbekistan that result from gross abuses further undermine counterterrorism efforts by producing unreliable convictions which damage rather than promote the rule of law.¹⁷

Amnesty laws and pardons

Pursuant to Item 20 of Article 93 of the Constitution, the President of Uzbekistan submits petition on amnesty to the Senate and pardons convicted.

Since many detention facilities are often overcrowded due to excessive use of custody and arrest by prosecution procuracy office, it is almost an annual routine when President signs an amnesty act devoted to another celebration of anniversary of independence or Constitution. As a result of the December 2002 amnesty, the Government applied an amnesty to more than 5,000 prisoners, most of them are believed to be “religious extremist” convicted under

17 <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

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criminal charges. Another amnesty act declared in December 2003 released several thousands prisoners. However, in majority of cases amnesty act does not apply to those convicted under “anti-constitutional activity” or other “gross violence” charges. Last amnesty act declared on December 1, 2004 does not look distinguished.¹⁸ It is reported that according to testimony by relatives, before the amnesty act and immediately after that prisoners are forced to sign statements begging President Islam Karimov for forgiveness, renouncing their faith, and incriminating themselves as terrorists. Prisoners who refuse are punished with beatings, time in punishment cells, and even new criminal prosecutions.¹⁹

Statutes of limitation with respect to torture and violations of the right to life

Uzbek Criminal Code does not contain any specific provisions related to statutes of limitation with respect to torture and violations of the right to life. Article 64 of the Criminal Code only contains general norms on application of statute of limitations to all crimes depending on the type of committed crime. Specifically, pursuant to this Article, a person is relieved from criminal responsibility, if from the date of fulfillment of crime the following terms have expired:

§1 “A person shall be discharged from criminal liability, if the following periods have been expired from the day of commission of a crime:

three years – for commission of a crime of a minor social danger;

five years – for commission of a less serious crime;

ten years – for commission of a serious crime;

fifteen years – for commission of a especially serious crime, except for the case envisaged by Paragraph 7 of this Article.” (i.e. Terms of conviction envisaged by this Article shall not be applied to persons, who committed crimes against peace and humanity.)

§2 “A term of conviction shall be calculated from a day of commission of a crime until a moment of coming into an effect of a sentence.”

18 <http://press-service.uz/rus/documents/uk12012004.htm>

19 <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

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§5 “A person may not be subject to liability, if twenty-five years have elapsed since a moment of commission of a crime.”

The aforementioned prescription is general in nature and varies depending on certain circumstances contained in Article 64. Since torture is qualified as a serious crime, the statute of limitation for torture is ten years.²⁰

Uzbek Criminal Code provides for two types of discharge with respect to the crime committed by a person: discharge from criminal liability and discharge from criminal penalty.²¹

20 Article 15 of Criminal Code sets forth the qualification of crimes depending upon the maximum penalty provided for committing thereof. Such qualification breaks all crimes into the following categories: a crime of a minor social danger, less serious crime, serious crime, and especially serious crime. Article 235 of Criminal Code that establishes criminal liability for tortures has three *corpus delicti* divided on a crime of a minor social danger, less serious crime, and serious crime respectively depending on the consequences or aggravated circumstances. Therefore, the statute of limitation for torture ranges from three years up to ten years.

21 Under chapter 12, there are the following types of discharge from liability: Expired Term of Imposition of Liability (Article 64); Loss of Socially Dangerous Nature of Act or of Person Who Committed Thereof (Article 65); Active Repentance (Article 66); Settlement with a Victim (Article 66-1); Serious Illness (Article 67); Act of Amnesty (Article 68).

Under Chapter 13, there are the following types of discharge from penalty: Expired of Term of Execution (Article 69); Loss of Socially Dangerous Nature by Person (Article 70); Active Repentance (Article 71); Conditional Conviction (Article 72); Conditional Early Release from Serving Penalty/Probation (Article 73); Easement of Penalty (Article 74); Serious Illness or Disablement (Article 75); Act of Amnesty or Pardon (Article 76).

Uzbek Criminal Code also provides for Mitigating Circumstances (Article 55) such as: voluntary surrender, active repentance, or assistance in crime detection; voluntary expiation of the harm; commission of a crime due to severe personal, family, or other conditions; compulsive crime or crime committed due to financial, seniority, or other dependence; commission of a crime in a heat of passion caused by violence, great insult, or other wrongful act of a victim; commission of a crime in excess of necessary self-defense, extreme necessity, infliction of injury when apprehending a person having committed a socially dangerous act, justifiable professional or economic risk; commission of a crime under influence of wrongful or amoral behavior of a victim.

Discriminatory legislation

In general Uzbek criminal legislation does not contain any major discriminatory provisions, except criminal liability for homosexuality stipulated in Article 120 of the Criminal Code.²² Homosexuals are targeted by virtue of existing corpus delicti in the Criminal Code. Although this crime has a very high level of latency, law-enforcement bodies can use the charge in some fabricated cases to humiliate the accused or to blackmail homosexuals.

2. General background

2.1. Executive, legislative, judiciary relevant structures

Uzbekistan became independent on September 1st 1991. Pursuant to the Constitution, adopted on December 8th 1992, Uzbekistan is a sovereign democratic republic based on the principle of the separation of powers into a legislative, an executive and a judiciary. Unfortunately, many declared democratic values and principles remained on paper.

In fact, Uzbekistan is a State with limited civil and political rights. The executive, represented by the President, concentrates most political power yielding influence in all spheres of government. Though the Constitution provides for the separation of powers and representative government, in reality, the judiciary lacks independence from the executive and the bicameral legislature (Parliament) consisting of lower – Oliy Majlis and upper – Senate chambers also has little power and regional governors are dependent on the President. In fact, Uzbek legislature became bicameral based on recent results of elections held 26th December 2004 to the lower chamber of the Parliament. Before, Uzbek legislature consisted only of one chamber – Oliy Majlis.

Article 89 of the Constitution stipulates that the President, Islam Karimov, is the head of state and holds executive power, and article 93 lays down the

22 Article 120 of the Criminal Code states “Homosexuality which means satisfaction of sexual needs with male is subject up to three years sentence”.

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powers of the President.²³ The same person, i.e. the President, appoints and dismisses persons representing both the executive and judicial powers as well as the General Prosecutor of the country. Consequently, the executive and judicial powers constitute a single and indivisible system in Uzbekistan, where the executive power visibly dominates the judiciary.

There are approximately 1,000 judges in Uzbekistan, divided among the Courts of general jurisdiction, the Economic Courts, and the Constitutional Court. (Article 107 Constitution)

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- 23 Article 93: “the President of the Republic of Uzbekistan shall: 1) guarantee the rights and freedoms of citizens and observance of the Constitution and the laws of the Republic of Uzbekistan; 8) form the administration and lead it, ensure interaction between the highest bodies of state authority and administration, set up and dissolve ministries, state committees and other bodies of administration of the Republic of Uzbekistan, with subsequent confirmation by the Oliy Majlis; 9) appoint and dismiss the Prime Minister, his First Deputy, the Deputy Prime Ministers, the members of the Cabinet of Ministers of the Republic of Uzbekistan, the Procurator-General of the Republic of Uzbekistan and his Deputies, with subsequent confirmation by the Oliy Majlis; 10) present to the Oliy Majlis of the Republic of Uzbekistan his nominees for the posts of Chairman and members of the Constitutional Court, the Supreme Court, and the Higher Economic Court, as well as the Chairman of the Board of the Central Bank of the Republic of Uzbekistan, and the Chairman of the State Committee for the Protection of Nature of the Republic of Uzbekistan; 11) appoint and dismiss judges of regional, district, city and arbitration courts; 12) appoint and dismiss khokims (heads of administrations) of regions and the city of Tashkent with subsequent confirmation by relevant Soviets of People’s Deputies; the President shall have the right to dismiss any khokim of a district or a city, should the latter violate the Constitution or the laws, or perform an act discrediting the honor and dignity of a khokim; 15) have the right to proclaim a state of emergency throughout the Republic of Uzbekistan or in a particular locality in cases of emergency (such as a real outside threat, mass disturbances, major catastrophes, natural calamities or epidemics), in the interests of people’s security. The President shall submit his decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation within three days. The terms and the procedure for the imposition of the state of emergency shall be specified by law; 16) serve as the Supreme Commander-in-Chief of the Armed Forces of the Republic and is empowered to appoint and dismiss the high command of the Armed Forces and confer top military ranks; 17) proclaim a state of war in the event of an armed attack on the republic of Uzbekistan or when it is necessary to meet international obligations relating to mutual defense against aggression, and submit the decision to the Oliy Majlis of the Republic of Uzbekistan for confirmation; 20) issue acts of amnesty and grant pardon to citizens convicted by the courts of the Republic of Uzbekistan; 21) form the national security and state control services, appoint and dismiss their heads, and exercised other powers vested in him”.

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The Courts of General Jurisdiction handle most disputes, including criminal matters, commercial disputes where an individual is a party, and civil matters such as divorces. These courts are split into criminal and civil sections. The Courts of General Jurisdiction have three levels, with city (district) courts, regional courts, and the Supreme Court (SC) at the apex. In addition to criminal and civil sections, the SC has a military section, made up of military judges.

There are 210 districts in Uzbekistan, each one of which has a criminal court, and many of which have civil courts. These 76 civil courts typically cover more than one district and are called interdistrict courts. Regional courts are located in the 12 regions in Uzbekistan, plus the city of Tashkent and the Republic of Karakalpakstan. Criminal cases, at the first instance, are heard by one professional judge and, in more serious cases (where the defendant is subject to imprisonment of five or more years), two lay assessors. The lay assessors are selected by the makhalla (essentially a local citizen's council) for a term of 2.5 years. Civil cases are heard by one judge, without the participation of lay assessors. The regional courts, usually sitting in panels of three, hear some appeals *de novo* and others as a court of cassation. The regional courts also hear important cases, such as those dealing with terrorism or premeditated murder, as a trial court, in which case one judge and two assessors will hear the matter. The SC has 34 members divided into criminal, civil, and military sections. It generally hears cases as a court of cassation.

In 2001, the Human Rights Committee stated:

“The Committee is gravely concerned about the lack of independence of judges contrary to the requirements of article 14, paragraph 1, of the Covenant. The appointment of judges for a term of five years only, in particular if combined with the possibility, provided by law, of taking disciplinary measures against judges because of “incompetent rulings”, exposes them to broad political pressure and endangers their independence and impartiality. The State party should amend the relevant domestic legal provisions, as well as the Constitution, in order to ensure full independence of the judiciary.”²⁴

24 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §14.

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According to Article 106 of the Constitution, “the judicial authority in the republic of Uzbekistan shall function independently from the legislative and executive branches, political parties and public organizations”. Although the Uzbek government has always been declaring that establishing independent judiciary is the primary objective of almost all reforms in the judicial system, the executive power still managed to preserve tight and direct control over the cases. Procurator prosecutors, not judges, play significant role in criminal and civil cases. The power to sanction the arrest, detention, search and seizure, perustration and listening, direct investigation, conduct surveillance and supervision, issue the charges, recommend sentences, and object sentences are still rested upon state procurators.

Until recently, the Courts of General Jurisdiction were managed entirely by the Department on Enforcement of Judicial Decisions, Material, Technical and Financial Provision of Courts under the Ministry of Justice. Pursuant to a 2001 governmental decree, the courts have become responsible, through Judicial Qualification Commissions, for the selection of candidates for appointment to the courts. In practice, the process of appointing and removing judges is still non-transparent and largely non-objective. In addition, corruption among judges remains a problem.

2.2. Ministry of the Interior (MVD)

The Ministry of the Interior (MVD) controls the police which, together with a number of other forces such as the Prosecutor’s office, the National Security Service and the Customs Committee, perform most police functions. Of these, the National Security Service (NSB) is responsible for the repression of certain types of crimes such as organized crime and drug related crimes.

The MVD is also responsible for places of detention. Uzbek law determines that those persons arrested under the suspicion of having committed a criminal offence, who are usually held for an initial pre-trial detention period of 72 hours until the prosecutor decides on measures of restraint, should be kept in operational isolation wards²⁵. The IVSs are under the authority of the relevant district offices of the Ministry of Interior (MVD). In cases where detention is selected as a measure of restraint, the person is then placed in

25 It is our own translation of the Russian term – *isolyator vremennogo sodержaniya* or IVS – Article 228 of the Code of Criminal Procedures of the Republic of Uzbekistan.

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investigatory isolation wards²⁶ which are, in effect, colonies for the execution of punishment.²⁷ The National Security Service (NSB) has its own detention centers -SIZOs.

After a case has been examined by the courts persons are transferred to prisons. The MVD also controls the Main Directorate for Punishment Execution (GUIN) which is the agency in charge of the whole penitentiary system, including the investigatory isolation wards (SIZOs).

IVS are used to detain suspects in the initial phases of investigation and, in principle, persons can be held in an IVS for no more than 72 hours, normally incommunicado. Prisoners are routinely kept incommunicado in spite the fact that according to Uzbek Criminal Procedure Code should provide detainees with the means to communicate with family members and lawyers. In extraordinary circumstances a person may be held in an IVS for up to 10 days.

SIZOs or investigatory isolators are used to hold persons accused by the investigation before examination of their cases by the court, after which, they are transferred to prisons. Persons held there are usually not kept incommunicado.

One important structural feature which favours the practice of torture is the fact that the Ministry of the Interior is responsible for both law enforcement and detention / imprisonment. In accordance with current legislation, arrests and investigation of crime are conducted by law-enforcement agencies such as the public Prosecutor's Office, the Ministry of the Interior-MVD, NSS, and the Customs Committee.

The offices of the MVD are responsible for carrying out inquiries and preliminary investigations of a considerable part of cases. Therefore currently, the same agency detains, carries out certain investigatory actions and imprisons detainees. Consequently, in the great majority of cases, so as to keep their reputation intact, officials of the MVD will do everything possible to impede persons from obtaining factual proof of torture.

26 It is our own translation from the Russian term *sledstvennyi izolyator* or SIZOs.

27 Article 244 of the Code of Criminal Procedures of the Republic of Uzbekistan.

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2.3. National human rights measures

In 2001, the Human Rights Committee stated:

“While noting that the State party has established a variety of institutions for monitoring human rights, such as the Parliamentary Commissioner for Human Rights (Ombudsman), the Commission for the Observance of Citizen’s Constitutional Rights and Freedoms, the Institute for Monitoring Current Legislation and the National Centre for Human Rights, the Committee is concerned that none of these institutions is entirely independent of the executive branch of government and that their investigative powers do not seem to allow them to take adequate steps to resolve complaints brought before them. The Committee recommends that the powers of the Ombudsman be broadened and his/her independence secured.”²⁸

Ombudsman

Based on the facts of inactivity and pro-governmental policy of the human rights commissioner in carrying out her responsibilities, it can be said that the activity of the Ombudsman is declarative and insignificant to adequate human rights protection.

The Human Rights Commissioner position was initiated by the President in February 1995, and was upheld by passing the Law “On the Parliamentary Human Rights Commissioner (Ombudsman)” adopted on 24 April 1997, which determines that the Ombudsman shall be an institution of extra-judicial protection of human rights. S/he is to accept and examine complaints, when all other legal remedies are exhausted; s/he shall facilitate the restoration of the violated human rights via issuance recommendations on ways to resolve dispute between a state agency and a citizen. The commissioner is declared to be independent from the executive and judicial organs, basing her activity only on the law.

28 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §25.

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The human rights commissioner is a Member of Parliament²⁹ and is elected by the Parliament for the term of the effective Parliament. S/he is elected at the Parliament session by open ballots and simple majority of votes.

Human rights commissioner shall facilitate the restoration of violated rights of citizens (foreign citizens and persons without citizenship) as well as of third parties (non-governmental organizations and groups of citizens) via accepting and examining communications regarding the violation of their rights by the state agencies and officials and forwarding her/his recommendations on possible measures to restore the violated rights and freedoms. Due to the fact that the activity of the Commissioner does not replace but, mainly, complements the existing instruments of protection, s/he, mainly, accepts complaints, which have already been examined in the administrative or judicial procedures and the decisions did not satisfy the complainant.

Upon the results of an independent revision of the validity of claims the Commissioner has a formal authority to recognize the said actions or inactivity of state organizations and officials as unlawful, violating the rights and freedoms of a citizen and to notify the complainant in writing. Commissioner can forward her/his recommendations regarding the restoration of the violated rights to respective organization that violated human rights.

Since any of the Ombudsman's decision is just a recommendation, s/he has failed to implement any significant step in protecting rights and interests of citizens of Uzbekistan, making this institution largely ignored by state agencies and disappointed by citizens.

National Human Rights Centre

The National Human Rights Centre of the Republic of Uzbekistan (herein-Centre) was founded by the President's Decree.³⁰ The Centre is a state analytical, consulting, interagency coordination unit. Among main tasks of the

29 Due to the exercised powers on the protection of citizens' rights and freedoms and independent parliamentary supervision over effectiveness of the current human rights legislation, this position is incompatible with membership and participation in political parties. Ombudsman does not have the right to engage in entrepreneurial activity or other paid work (any part-time arrangements) except teaching, scientific research or other creative activity.

30 30 President's Decree "On the creation of the National Human Rights Centre of the Republic of Uzbekistan" of 31 October 1996.

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Centre, there should be distinguished the following: preparation of national reports on the observance and protection of human rights in the Republic of Uzbekistan; development of cooperation of the Republic of Uzbekistan with international and national organizations in the sphere of human rights; development of a national plan of actions and strategy of the implementation of the provisions of the Constitution, laws and universally recognized norms of international law in the sphere of human rights. The Centre is not competent to examine individual complaints of citizens and organizations. Centre is headed by a director, whose status is ranked to that of a minister and is appointed by the President.

The activity of the Centre is carried out in accordance with the Regulations on the National Human Rights Centre adopted by the Cabinet of Ministers³¹. Due to the fact that the Centre is a state organization it is not capable of objective assessment of the human rights situation in Uzbekistan. As in case of Ombudsman, the Centre is more of a declarative institution, supporting state interests rather than those of an individual. The majority of positive developments in the sphere of human rights cannot be accredited to the activity of the Centre or the Ombudsman but to the activity of the international non-governmental and governmental organizations as well as to the representatives of governments of foreign developed democracies.

In May 2003 the government of Uzbekistan formed an inter-agency committee headed by the Director of the National Human Rights Centre for the development of the action plan on the implementation of the recommendations reflected in the February Report of the U.N. Special Rapporteur on Torture. In September-October of same year the draft action plan was discussed at the meetings with participation of foreign embassies as well as local and international non-governmental organizations (NGOs). The government failed to finalize the action plan by the end of the year despite its previous declarations that the plan would be ready by the end of November. However, the government started to realize some of the recommendations of the Rapporteur in the course of the year.³²

31 Resolution of the Cabinet of Ministers No. 399 "On issues of activity of the National Human Rights Centre of the Republic of Uzbekistan" of 13 November 1996.

32 Report on human rights practices in the countries of the world in 2003. Prepared by the Bureau on Democracy, Human Rights and Labour of 25 February 2004.

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**Follow-up of the recommendations adopted by the UN Special Rapporteur on Torture**

In the past few years, the Uzbek government has come under increased pressure from the international community to improve its human rights record. It has responded with positive but halting steps – extending a long-overdue invitation to the Special Rapporteur on torture to visit the country, and registering two independent human rights organizations, Ezgulik and Independent Human Rights Society in March 2002 and March 2003 respectively. Others such as Ozod Dehkonlar (Free Farmers) were denied registration to obscure their participation in parliamentary elections.

After his visit in Uzbekistan from 24 November to 6 December 2002, the Special Rapporteur on torture submitted his report, included the following recommendations to the Commission on Human Rights:³³

The highest authorities need to publicly condemn torture in all its forms. The highest authorities, in particular those responsible for law enforcement activities, should declare unambiguously that they will not tolerate torture and similar ill-treatment by public officials and that those in command at the time abuses are perpetrated will be held personally responsible for the abuses. The authorities need to take vigorous measures to make such declarations credible and make clear that the culture of impunity must end;

The Government should amend its domestic penal law to include the crime of torture the definition of which should be fully consistent with article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and supported by an adequate penalty;

The Government should also amend its domestic penal law to include the right to *habeas corpus*, thus providing anyone who is deprived of his or her liberty by arrest or detention the right to take proceedings before an independent judicial body which may decide promptly on the lawfulness of the deprivation of liberty and order the release of the person if the deprivation of liberty is not lawful;

33 Cited from:

<http://daccessdds.un.org/doc/UNDOC/GEN/G03/107/66/PDF/G0310766.pdf?OpenElement>

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The Government should take the necessary measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary. Measures should also be taken to ensure respect for the principle of the equality of arms between the prosecution and the defence in criminal proceedings;

The Government should ensure that all allegations of torture and similar ill-treatment are promptly, independently and thoroughly investigated by a body, outside the procuracy, capable of prosecuting perpetrators;

Any public official indicted for abuse or torture should be immediately suspended from duty pending trial;

The Ministry of Internal Affairs and the National Security Service should establish effective procedures for internal monitoring of the behaviour and discipline of their agents, in particular with a view to eliminating practices of torture and similar ill-treatment. The activities of such procedures should not be dependent on the existence of a formal complaint;

In addition, independent non-governmental investigators should be authorized to have full and prompt access to all places of detention, including police lock-ups, pre-trial detention centres, Security Services premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. They should be allowed to have confidential interviews with all persons deprived of their liberty;

Magistrates and judges, as well as procurators, should always ask persons brought from MVD or SNB custody how they have been treated and be particularly attentive to their condition, and, where indicated, even in the absence of a formal complaint from the defendant, order a medical examination;

All measures should be taken to ensure in practice absolute respect for the principle of inadmissibility of evidence obtained by torture in accordance with international standards and the May 1997 Supreme Court resolution;

Confessions made by persons in MVD or SNB custody without the

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presence of a lawyer/legal counsel and that are not confirmed before a judge should not be admissible as evidence against persons who made the confession. Serious consideration should be given to video and audio taping of proceedings in MVD and SNB interrogation rooms;

Legislation should be amended to allow for the unmonitored presence of legal counsel and relatives of persons deprived of their liberty within 24 hours. Moreover, law enforcement agencies need to receive guidelines on informing criminal suspects of their right to defence counsel;

Given the numerous reports of inadequate legal counsel provided by State-appointed lawyers, measures should be taken to improve legal aid service, in compliance with the United Nations Basic Principles on the Role of Lawyers;

Medical doctors attached to an independent forensic institute, possibly under the jurisdiction of the Ministry of Health, and specifically trained in identifying sequelae of physical torture or prohibited ill-treatment should have access to detainees upon arrest and upon transfer to each new detention facility. Furthermore, medical reports drawn up by private doctors should be admissible as evidence in court;

Priority should be given to enhancing and strengthening the training of law enforcement agents regarding the treatment of persons deprived of liberty. The Government should continue to request relevant international organizations to provide it with assistance in that matter;

Serious consideration should be given to amending existing legislation to place correctional facilities (prisons and colonies) and remand centres (SIZOs) under the authority of the Ministry of Justice;

Where there is credible evidence that a person has been subjected to torture or similar ill-treatment, adequate reparation should be promptly given to that person; for this purpose a system of compensation and rehabilitation should be put in place;

The Ombudsman's Office should be provided with the necessary financial and human resources to carry out its functions effectively. It should be granted the authority to inspect at will, as necessary and without notice, any place of deprivation of liberty, to publicize its findings regularly and to submit evidence of criminal behaviour to the relevant prosecutorial body and the administrative superiors of the public authority whose acts are in question;

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Relatives of persons sentenced to death should be treated in a humane manner with a view to avoiding their unnecessary suffering due to the secrecy and uncertainty surrounding capital cases. It is further recommended that a moratorium be introduced on the execution of the death penalty and that urgent and serious consideration be given to the abolition of capital punishment;

The Government should give urgent consideration to closing Jaslyk colony which by its very location creates conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives;

All competent government authorities should give immediate attention and respond to interim measures ordered by the Human Rights Committee and urgent appeals dispatched by United Nations monitoring mechanisms regarding persons whose life and physical integrity may be at risk of imminent and irreparable harm;

The Government is invited to make the declaration provided for in article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recognizing the competence of the Committee against Torture to receive and consider communications from individuals who claim to be victims of a violation of the provisions of the Convention, as well as to ratifying the Optional Protocol to the Convention, whereby a body shall be set up to undertake regular visits to all places of detention in the country in order to prevent torture. It should also invite the Working Group on Arbitrary Detention and the Special Representative of the Secretary-General on human rights defenders as well as the Special Rapporteur on the independence of judges and lawyers to carry out visits to the country.

However, nearly none of the UN Special Rapporteur on Torture's 22 recommendations has been fully implemented. A government action plan against torture has had little impact on the reality of the criminal justice system.

The governmental action plan was composed of numerous training, conference and round table events with involvement of officials from all of the law-enforcement agencies and international human rights institutions. Unfortunately, the action plan has produced no substantial results and was limited to 'talking' and 'naming-and-shaming' practices. Public recognition or chastisement (let alone - apology) has never been announced or addressed by

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supreme authorities. In fact, the action plan is now not an issue anymore and was set aside in light of reactivation of the war with terrorism. To illustrate, in November 8, 2002 Commission of Uzbek Parliament on matters of further deepening of democratic reformatations and forming fundamentals of civil society in Uzbekistan approved the Concept on Further Deepening Legal and Judicial Reform. The Concept envisioned, inter alia, introducing of *habeas corpus* procedure by III quarter of 2003 with General Procuracy, Ministry of Justice, Supreme Court, Ministry of Interior, and National Security Agency being responsible for preparation of legislature bill. As of now, the bill is not there yet.

These gestures have not translated into more systemic change and have been consistently undermined by other setbacks to human rights. As a result, Uzbekistan's human rights record continues to fall well below acceptable standards.

Opposition parties have been denied registration, their members face harassment and sometimes arrest, and there is increasing pressure on NGOs and civil society generally. In a worrisome development, the Uzbek government has begun imposing new, unjustifiably burdensome registration requirements on international non governmental organizations.

The Uzbek government persecutes human rights defenders and obstructs human rights work, in violation of its international commitments. Human rights defenders and ordinary people who speak out against local or central authorities face harassment or arrest from law enforcement agencies. Throughout the year, the Uzbek government harassed, threatened, and detained human rights defenders in an attempt to restrict information on human rights abuses. At least two activists were severely beaten by unknown assailants after receiving threats from the government to stop their activities. Uzbek authorities continue to harass, detain, and hold under effective house arrest activists who attempted to stage demonstrations.

Authorities also steadfastly refuse to allow most independent human rights groups to register, restricting their operations and rendering them vulnerable to harassment and abuse. The Uzbek government refused to register any independent human rights organizations in 2004.³⁴

34 Human Rights Watch, Briefing to the 60th Session of the UN Commission on Human Rights, January 2010⁴. available at <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

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Authorities also suppress some independent Muslims and their groups, mainly through persecution and torture.

International reports suggest that torture is still widespread in places of detention, despite the government's rhetorical commitment to act against it.

Freedom of expression remains extremely limited. Despite the removal of formal censorship, newspapers and broadcasting remain almost exclusively under state control, and journalists work under constant pressure from the authorities.

Freedom of movement is seriously restricted by upholding the soviet system of registration of residents through 'propiska' procedure handled by the Ministry of Interior.

3. NGOs and human rights defenders' situation

In 2001, the Human Rights Committee stated:

"The State party should take the necessary steps to enable the national non-governmental human rights organizations to function effectively. The Committee recommends that the State party engage in intensive dialogue with these organizations on the situation in the country in order to improve the setting in which respect for human rights can be ensured (article 2 of the Covenant)."³⁵ "The State party must protect all individuals from harassment and ensure that persons whose rights and freedoms have allegedly been violated have an effective remedy in accordance with article 2, paragraph 3, of the Covenant."³⁶

35 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §22.

36 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §27.

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Uzbek Criminal Code criminalizes certain behavior of citizens as it relates to the right to assembly.³⁷ These articles are so broadly phrased that they serve as the repellant provisions to restrict and obscure any meeting not authorized by state and local agencies.

Other articles were amended to oppress existing social society institutions such as local NGOs. New editions of articles for treason and espionage have been

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- 37 Article 216 C.C. Illegal establishment or reactivation of illegal public associations or religious organizations as well as active participation in the activities thereof – shall be punished with fine from fifty to one hundred minimum monthly wages, or arrest up to six months, or imprisonment up to five years. (As amended by Law of 15.04.1999.)
- Article 216 (1) C.C. Inducement to participate in operation of public associations, religious organizations, movements or sects, which are illegal in the Republic of Uzbekistan, after imposition of administrative penalty for the same actions – shall be punished with fine from twenty-five to fifty minimum monthly wages, correctional labor up to three years, or arrest up to six months, or imprisonment up to three years. (As introduced by Law of 1.05.1998.) (As amended by Law of 15.04.1999.)
- Article 216 (2) C.C. Performance of illegal religious activity, evasion from the registration of an organization's charter by leaders of religious organizations, and conducting special meetings for juveniles, labor circles, and other circles and groups, unrelated to worship, by religious leaders and members of religious organizations, after imposition of administrative penalty for the same acts – shall be punished with fine from fifty to one hundred minimum monthly wages, or arrest up to six, or imprisonment up to three years. Conversion of believers belonging to certain religion to other religions (proselytism) and other missionary activities, after infliction of administrative penalty for the same actions – shall be punished with fine from fifty to one hundred minimum monthly wages, or arrest up to six months, or imprisonment up to three years. (As introduced by Law of 1.05.1998.)
- Article 217 C.C. Violation of procedures for organizing or holding of assemblies, meetings, or demonstrations, committed by their organizer, after infliction of administrative penalty for the same actions – shall be punished with fine from fifty to seventy-five minimum monthly wages, or arrest up to six months, or imprisonment up to three years. Violation of regulations on holding religious assemblies, processions, and other cultic ceremonies, after infliction of administrative penalty for the same actions – shall be punished with fine from fifty to seventy-five minimum monthly wages, or arrest up to six months, or imprisonment up to three years. (As amended by Law of 1.05.1998.)

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tailored as to restrict free movement of information on human rights abuses to foreign organizations³⁸.

Certain restrictive measures have been taken by Uzbek government recently in order to keep a tight control over activity of foreign and local NGOs operating in Uzbekistan and to human right defenders acting through NGOs.

In particular, in early 2004, the Uzbek Cabinet of Ministers issued Decree No. 56, which ordered the transfer of all non-governmental organization funds received from international grants to the Uzbekistan National Bank or Asaka Bank in order to ostensibly prevent and crack down on money laundering. In effect, this decree translates into the freezing of NGO funds, as NGOs now have to obtain permission from government committees in order to access their funds.

These committees, composed of persons from government bodies and the justice system, evaluate whether or not NGO project activities would be useful to Uzbekistan or would duplicate the efforts of government owned bodies. According to reports,³⁹ normally the funds have simply been returned to the donors unused.

On March 1, 2004, a Decree was published requiring the licensing of educational programs, including NGOs, and effective since May 27, 2004, another Decree expanded the influence of the government Women's Committee of the Republic of Uzbekistan. The decree requires women's NGOs to apply for re-registration under the patronage of Women's Committee of the Republic of Uzbekistan. This Decree does not stipulate the reason and motive for re-registration campaign. It is also not clear is what the correlation between

38 In accordance with the Law of the Republic of Uzbekistan on December 12, 2003 N 568-II amending Criminal Code part one of Article 157 is amended as follows: "Treason against the State, i.e. premeditated act committed by Uzbek Republic's citizen to the detriment of sovereignty, territorial integrity, security, defensibility, economy of the Republic Uzbekistan by means of espionage, by giving away state secrets or through assisting foreign state, foreign organization or their representatives by any other means while they are engaged in activities hostile towards Republic of Uzbekistan,"; part one of Article 160 is amended as follows: "Passing on, as well stealing, collecting or storing of an information that represents matter of state secrets in order to pass on that information to a foreign state, foreign organization or to their agents, as well as passing on or collecting, on orders made by a foreign intelligence service, of any other type of data to be used against the Republic of Uzbekistan, when such acts are committed by a foreign citizen or by a person without citizenship".

39 Center for support of civil society.

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strengthening women movement in Uzbekistan as it is says in the preamble to the decree and unlawful requirement to re-registration of all women NGO's.

Moreover, the Women Committee of the Republic of Uzbekistan claiming non governmental status represents and conducts the interest and policy of the state. The Committee supervised by the deputy prime minister of the Republic of Uzbekistan and thus lacks independence and sovereignty in decision making. In fact the state has established the body with strong pro state mission and ability to regulate the activity of other NGO.

The most recent development in this troubling trend of government-imposing restrictions on NGOs was a June 11th, 2004 Resolution of the Cabinet of Ministers²⁷⁵ requiring all NGO publications to obtain licenses from government authorities. Thus any publication and brochures so often printed for problematic for the whole society topics, now requires to be issued by the body having the license issued by the Cabinet of Ministers. In fact that receiving such a license on the background of full isolation from the funds of main sponsors to NGO movement puts all NGOs in a very difficult position whereas activities of the most critical and independent opponents to the government falling under the close control from the state.

Total police and security control over public and private matters justified by the fight with terrorism and terrorism financing has resulted in excessive intrusion of governmental agencies into private life of citizens. The voice of concern raised by independent groups and NGOs is being considered as anti-patriotic (let alone anti-constitutional) or opportunistic behavior. This situation clearly evidences absence of effective dialogue between the State Party and national Human Rights NGOs.

Being anxious and irritated by the "revolution of rose" in Georgia and "orange revolution" in Ukraine where decisive role was played by local and international NGOs, the Uzbek government tightened its grip on civil society in 2004 by extending to international nongovernmental organizations (NGOs) many of the repressive tactics it has used against local NGOs. In 2004 it introduced burdensome new registration and reporting procedures requiring international NGOs to obtain "consent" from the Ministry of Justice (MOJ) on the content, agenda, timing and place of any activity, and to invite MOJ officials to attend. The government denied re-registration application of the local representative office of the Open Society Institute, which provided vital support for civil society groups, and suspended the activities of the local affiliate of the media-support organization Internews for six-months for alleged

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minor administrative violations. It also forced all women's NGOs to undergo re-registration procedures.

The government refused to register any independent human rights organizations in 2004. Throughout the year, the government harassed, threatened, and detained human rights defenders in an attempt to restrict information on human rights abuses. At least two activists were severely beaten by unknown assailants after receiving threats from the government to stop their activities.

“On November 20, 2004 Mr. Tolib Yakubov, President of the HRSU, and his wife, Mrs. Tursunoi Yakubova sent a letter to the Regional Prosecutor of Djizak and to the General Prosecutor of Uzbekistan, informing them that he would organise a picket on November 29, 2004, in front of the regional administration (Hokimiat) building in order to protest against impunity of violations perpetrated by the police and law enforcement bodies, as well as against the arbitrariness of some legal procedures opened by the prosecutor's office. On November 28 and 29, 2004 members of the Hokimiat tried to talk off Mr. and Mrs. Yakubov from organizing the picket. However, Mr. Yakubov refused and on November 29, 2004, as they were heading to the Hokimiat building, their car was stopped near their house by a police officer who forced them out of the car and interrogated them. Approximately 250 meters away from the Hokimiat building, two other men, looking like militiamen, attacked them. Mr. Yakubov was kicked very violently on his feet and on his chest. Mr. Yakubov later went to the hospital where the doctors found he had bruises on his chest. In the evening of November 29, 2004, their house was put under surveillance by a group of militiamen. A similar picket, organised by the HRSU in Djizak, on October 15, 2004, was violently repressed. 25 to 30 demonstrators, including members of the HRSU, had gathered in front of the Hokimiat to protest against human rights violations against farmers, perpetrated by law-enforcement bodies. Some of them were beaten and arrested.”⁴⁰

“On February 16 2004, authorities arrested defender Mumindjon Kurbanov and held him incommunicado for three days, during which they threatened and forced him to sign a dictated confession. He was tried and sentenced to three years' imprisonment on fabricated charges of weapons possession in an unfair trial that focused on his human rights work. The sentence was reduced to a fine on appeal and after international outcry”.⁴¹

40 LAS case No. UZB 001 / 1204 / OBS 092.

41 <http://www.hrw.org/english/docs/2004/02/26/uzbeki7659.htm>

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Uzbek authorities continue to harass, detain, and hold under effective house arrest activists who attempted to stage demonstrations. For example, in June 2004 authorities prevented Bahodir Choriev, a farmer trying to prevent government confiscation of his farm, from holding a demonstration by holding him and his relatives in their apartment. Police forced Choriev and eighteen of his relatives onto a bus and drove them outside Tashkent where they interrogated them and confiscated their passports.⁴²

Public awareness has been gradually increasing as the oppressive regime of Uzbek government shows no respect to public opinion. During last period of 2002-2004 there were started small group protests and pickets in Tashkent and Ferghana Valley organized by human rights activists and women protection defenders. The majority of demonstrations addressed such issues as law-enforcement and unjust trials, corruption and housing problems. A few small group pickets videotaped by security agents were held in support of opposition and human rights activists.

4. Right to life (Article 6 ICCPR)

4.1. Legal framework

Uzbek legislation provides the following basic standards relating to right to life and death penalty. Specifically, Article 13 of the Constitution of the Republic of Uzbekistan states : ‘Democracy in the Republic of Uzbekistan shall rest on the principles common to all mankind, according to which the ultimate value is the human being, his life, freedom, honour, dignity and other inalienable rights. Democratic rights and freedoms shall be protected by the Constitution and the laws’. Furthermore Article 24 reads : ‘The right to life is the inalienable right of every human being. Attempts on anyone’s life shall be regarded as the gravest crime’.

42 <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

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4.2. Practice

4.2.1. Extrajudicial executions

Cases of unlawful deprivation of life are still practices in Uzbekistan. According to the U.S. Department report, there were no confirmed reports of political killings; however, in three separate incidents in May and December 2003, prisoners died in custody, apparently as a result of torture.

Another suspicious death occurred in May 2004. On incident of Andrei Shelkovenko's death in prison, Uzbekistan authorities collaboratively allowed independent investigation that revealed no torture. However, international organizations still consider this case to be questionable since independent medical examination was admitted only a week ago, when allegedly the traces of torture became indistinguishable from the death signs.⁴³

"The murder of Shavruk Ruzimuratov, a chairman of the Kashkadariya region branch of the Human Rights Society of Uzbekistan is quite illustrative case. Ruzimuratov has been engaged in monitoring of the current state of affairs of human rights in Kashkadariya and Surkhandariya regions by taking part at "political" court hearings on criminal prosecution of the members of such religious organizations as Hizb-ut-Tahrir and by making those trials publicly known. He also has been conducting his independent investigations of the most outrageous violations of human rights. On June 15, 2001 he was detained and placed into a ward cell of MVD where he was kept incommunicado. No responses were received for the enquiries sent by his relatives, colleagues, international organizations and Human Rights Society of Uzbekistan. On July 7 2001, however, Ruzimuratov's sister got phoned from khokimiyat (local authority) of Yakkabakskiy district, and she was informed that her brother Shovruk is dead. Some time afterwards, his body was delivered".⁴⁴

4.2.2. Death penalty

Death penalty in Uzbekistan is performed by shooting (Art. 51 of Criminal Code). There are two types of offenses committing of which may be punished

43 <http://www.bostonherald.com/international/view.bg?articleid=29583>. Uzbekistan allows unprecedented international investigation of prisoner's death By Associated Press Thursday, May 27, 2004.

44 Interview with Human Rights Society (unpublished material).

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by death penalty (capital punishment) pursuant to Uzbek Criminal Code, such as follows: murder with aggravated circumstances (Art. 97(2) of Criminal Code), terrorism (Art. 155(3) of Criminal Code).

The first version, the 1994 Criminal Code, had thirteen offences, which could be punished by death. In August 20, 1999 Uzbek Parliament made first step to reduce the scope of the death penalty. It had abolished death penalty in relation to the following five criminal offences: rape in unnatural form (Article 119 of Criminal Code)⁴⁵; violation of the laws and customs of war (Article 152 of Criminal Code); attempt to murder the President (Article 158); Espionage (Article 160); and Contraband (Article 260). On 29 August 2001 Parliament made further step and reduced offences punishable by death to the following four offences: rape of a woman under 14 years old (Art. 118(4) of Criminal Code); treason (Art. 157(1) of Criminal Code); organization of criminal community (Art. 242(2) of Criminal Code); and sale of drug in large amount (Art. 273(5) of Criminal Code).

The Human Rights Committee stated:

“The Committee deplores the State party’s refusal to reveal the number of persons who have been executed or condemned to death, and the grounds for their conviction, both during the time covered by the report and during the time elapsed since then. The State party should provide such information as soon as possible, to enable the Committee to monitor the State party’s compliance with article 6 of the Covenant.”⁴⁶

Although there is certain interest showed by the wider public in Uzbekistan in knowing what is the figures of the persons waiting for their executions and persons condemned during the latest period of the report, such information is not publicly available. However, according to President interviewed by Reuters, courts of Uzbekistan sentenced 50-60 persons to death penalty in 2004.⁴⁷

⁴⁵ The ground of this unnatural form is still unclear and the term unnatural is not defined by Uzbek criminal legislation.

⁴⁶ HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §6.

⁴⁷ <http://www.CentrAsia.org/newsA.php4?st=1102000560>

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“Iskander Khudaiberganov extradited on February 5, 2002 from Tajikistan was kept in custody SIZO of the Uzbek Ministry of Interior (MVD) and National Security Service (SNB) where he was subjected to torture by beating with a rubber club, beating with a chair on kidneys and head, was charged with terrorism, attempting on the life of the President, conspiracy with the purpose of overthrowing the constitutional order, and subversive activity. In the course of investigation he was basically deprived of legal assistance, and the sentence was grounded on his own confessions obtained under torture. Tashkent City Court ignored all evidence of torture and sentenced Khudaiberganov to capital punishment on 28 November 2002, inter alia, for “anti-constitutional activity” (art. 159 (4)), the organization of a criminal group (art. 242 (1) and (2)), terrorism (art. 155 (2)), murder (art. 97 (2)), aggression (art. 151), robbery (art. 164) and the instigation of national, racial or religious hatred (art. 156 (2)). In the sentencing the judge is said to have stated that his verdict relied exclusively on the statements and confessions of the defendants and witnesses. Iskander Khudaiberganov was reportedly arrested in Tajikistan on 24 August 2001 and handed over to Uzbek law enforcement officials from the MVD on 5 February 2002. During the investigation process, he was reportedly kept in incommunicado detention. His family is said to have found out about his arrest only in March 2002. Hearings on appeal at the Tashkent City Court on January 28 2003 and petition for the judicial review to Supreme Court did not alter the sentence. It was also reported that Iskandar Khudoberganov’s sister received a letter from the Ombudsman indicating that there is no basis for the Ombudsman to intervene. In April 24 2003 the petition was filed with UNHCHR under reference G/SO 215/51 UZBE (28). As a result of submission of the individual complaint to the U.N. Committee on Human Rights the execution of the sentence with regard to Khudaiberganov was suspended.⁴⁸

4.2.3. Disappearances

Uzbek legislation does not broadly regulate disappearances. Article 137 of the Criminal Code refers to kidnapping and subjects it to maximum 15 years of imprisonment. Further Article 138 contains general norms on violent deprivation of liberty and subjects it to maximum 5 years of imprisonment. Statistical data of such cases is not publicly available in Uzbekistan and probably does

48 LAS case No. 50, petition to UNHCHR filed under reference: G/SO 215/51 UZBE (28).

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not exist at all. Below is a case related to existing practice of short disappearances in Uzbekistan.

“On September 27th 2004, Mr. Abdukadir Usupov, a resident of Tashkent Oblast, did not return home after a trip to Tashkent City by his own vehicle. His wife, Shohida Usupova, set out to search for her husband’s whereabouts. Three days later, she found out that Mr. Abdukadir Usupov was held in the National Security Trial Centre in Tashkent City”.⁴⁹:

“Mr. Bahtiyor Muminov was arrested at his home in the Tashkent district at about 10pm on 29 March 2004, by six members of the National Security Services (NSS). The whereabouts of Mr. Muminov were kept from his family for four months and he was denied access to his lawyer. Only on 12 August 2004, his wife, Mrs. Shohida Muminova, found out that he was being held at the SI-1 “Tashturma” detention centre”.⁵⁰

4.3. Right to life and article 2§2 ICCPR

The Uzbek Government has been reducing the number of corpus delicti providing death penal as a punishment. According to the public statement made by the President of Uzbekistan in his interview to Reuters, Uzbek authorities consider the possibility to enact the moratorium on capital punishment in Uzbekistan. However, this statement should be taken with a grain of salt in light of other public promises that have never been realized.

In the post-Soviet space only two countries – Uzbekistan and Byelorussia – apply death penalty as a punishment. As a result of many years of pressure from international organizations on this issue President Islam Karimov made a recent statement at the briefing for journalists regarding the abolishment of death penalty and establishment of moratorium on death penalty made after the speech of the President at the 16th Session of Oliy Majlis of the Second Convocation.

49 Country Report on Human Rights Practices 2003, released by the Bureau of Democracy, Human Rights, and Labor February 25, 2004.

50 Collection of urgent appeals of 2004 by OMCT and LAS. LAS cases No. UZB 151004 and UZB 200804 respectively.

5. Prohibition of torture and other ill-treatment (Article 7 ICCPR)

5.1. Legal framework

At the level of Constitution:

Article 26 part 2 of the Constitution declares that no one may be subject to torture, violence or any other cruel or humiliating treatment and no one may be subject to any medical or scientific experiments without his consent.

At the level of Criminal Procedure Code:

Article 17 “Respect for Honor and Dignity of Individual”⁵¹ establishes that no one can be subjected to torture, violence or other humiliating human’s dignity treatments.

Article 22. “Establishment of Issue” prohibits the obtainment of statements from a suspect, accused, defendant, victim, witness, and other participants of the proceedings by means of violence, threats, violation of their rights, and other illegal treatment.

Article 88. “Protection of Rights and Legal Interests of Individuals, Enterprises, Agencies, and Organizations during Evidence-Obtaining” prohibits to conduct any actions dangerous for life and health or insulting human honor and dignity; extract testimonies, statements, conclusions, experiments, documents or items by force, threat, fraud and other illegal methods, conduct investigation during night-time (subject to exceptions); attend while a person of opposite sex is naked in connection with investigation or hearing action etc.

Article 215. “Treatment of Persons Apprehended, Taken into Custody or Placed to Medical Institution” disallows inhuman treatment of a person detained.

51 “Judges, procurators, and persons carrying out initial inquiries or pre-trial investigations are under obligations to respect the honour and dignity of persons involved in a case. No one shall be subject to torture, violence or other cruel, humiliating or degrading treatment. It is prohibited to perform acts or hand down judgements which humiliate or demean a person (...) or will cause unjustified physical or mental suffering.” Article 17.

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Article 270. “Ensuring Security of Participants of Proceedings in Criminal Case” obliges law-enforcement officers to undertake appropriate measures to ensure the safety of the harassed persons participating in criminal case.

At the level of Criminal Code the following conduct is criminalized:

Bringing to Suicide (Article 103), Intentional Infliction of Serious Bodily Injury (Article 104), Intentional Infliction of Medium Bodily Injury (Article 105), Infliction of Serious or Medium Bodily Injury in Heat of Passion (Article 106), Intentional Infliction of Serious or Medium Bodily Injury by Abuse When Apprehending Person Committed Socially Dangerous Act (Article 108), Tormenting (Article 110), Threat of Killing or of Violence (Article 112), Rape (Article 118), Forceful Sexual Intercourse in Unnatural Form (Article 119), Engagement of People for Exploitation (Article 135). Besides, Chapter 7 criminalises Criminal Complicity⁵²

Finally, a recently introduced provision of Article 235⁵³ of Uzbek Criminal Code contains definition and sanction torture and other cruel, inhuman or degrading treatment or punishment. Specifically Article 235 states: “Act of tortures and other cruel, inhuman or degrading treatment or punishment i.e. illegal psychological or physical pressure on the suspect, accused/charged, witness, victim or other persons involved in criminal procedure or convicted,

52 Article 28. Types of Accomplices. Accomplices shall be committers of the crime as well as heads for, and instigators and helpmates thereof. Committer shall be a person who, in part or in full, committed a crime alone or using other persons, which are not liable under this Code, or by other means. Head for crime shall be a person who directed preparation and commission of the crime. Instigator shall be a person who tempted somebody to commission of a crime. Helpmate shall be a person who assisted commission of a crime with advices, directions, providing with tools or removing obstacles, as well as who promised in advance to conceal a criminal or objects obtained illegally or promised to purchase or distribute them.

Article 30. Limits of Liability for Complicity Heads for crime, instigators and helpmates shall be subject to liability under the same Article of the Special Part of this Code, as committers. Heads for crime, as well as members of a criminal group organized by previous concert, organized criminal group, or criminal community, shall be subject to liability for all crimes, of which preparation or commission they participated. For commission of an act, which is out of intent of other accomplices, criminal liability shall be incurred only by a person committed thereof. Voluntary renunciation of a head for crime, instigator, or helpmate shall discharge from liability for complicity, if he took all timely measures, which he was in position to take, for prevention of the commission of the crime.

53 Law on Amendments into Certain Legislative Acts of the Republic of Uzbekistan dated 30 august 2003.

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including their close relatives by means of threats, assault and battery, beating, torture, torturing or other illegal actions performed by public inquirer, investigator, public prosecutor or other employee of law enforcement body, punishment execution agencies with the purpose of obtaining from them any information, acknowledgment in guiltiness of a crime, their self-willed punishment for committed action or any action forcing them to do any kind of action". The aforementioned Article provides criminal sanctions varying from three years (or three years of correctional works) up to eight years of imprisonment depending on certain circumstances and other aspects of the action.

The definition contained in the Criminal Code raises more concerns than clearness as it refers to "illegal application of torture". In other words, it was unclear whether the state authorizes some form of legal application of torture.

The Supreme Court later issued a clarification saying that interpretation of the Article on torture in the Criminal Code must be made in accordance with the spirit and meaning of the Article 1 of CAT.⁵⁴ In theory Uzbek legislation is strict that the Supreme Court clarifications are deemed to be binding within Uzbekistan, however, in practice neither law enforcement agencies nor other state agencies follow this requirement.

5.2. Practice

As the Human Rights Committee stated in 2001:

"The State party should ensure that all allegations of torture are properly investigated and the persons responsible prosecuted. Complaints about torture and other forms of abuse by officials should be investigated by independent bodies. Provision should be made for medical examination of detained persons, particularly persons held in pre-trial detention, in order to ensure that no physical abuse of detainees occurs. The State party should institute an independent system of monitoring and checking all places of detention and penal institutions on a regular basis, with the purpose of preventing torture and other abuses of power by law

⁵⁴ The criminal code definition differs from the interpretation dicta of Supreme Court which makes the reference to the Convention against torture. In its report, the state party refers to the judicial definition issued by the Supreme Court, not to the one adopted by the Parliament in its amendment to the Criminal Code.

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enforcement officials. Free access to lawyers, doctors and family members should be guaranteed immediately after the arrest and during all stages of detention.”⁵⁵ “The State party must ensure that all allegations of ill-treatment by public officials which are brought before the courts by detainees are investigated by the presiding judge and that the persons responsible are prosecuted. The State party must ensure that no one is compelled to testify against himself or herself or to confess guilt.”⁵⁶

Problems of systematic torture practices in Uzbekistan are probably the most serious problem among other violations of human rights practiced in Uzbekistan. Despite the fact of severe international critics in address of Uzbek government on the issue of torture, nowadays Uzbekistan definitely is leading the list of the most careless states in this area.

5.2.1. Torture and detainees

Torture and ill-treatment in Uzbek pre-trial and post-conviction facilities remain widespread, and occur with near-total impunity. Since May 2003, there were documented four new deaths in custody apparently due to torture. Torture allegations were raised by defendants and witnesses in some trials. In all of these cases, the presiding judges ignored the allegations and proceeded to convict the defendants.⁵⁷

Torture is most often reported during the whole stages of criminal procedure starting from first moments of detention, police interrogations, prisons and etc. Needless to say that most common types of victims, with certain exceptions are political opponents and economically disadvantaged or in other words poor people. Uzbekistan does not keep any official records or statistics on torture cases, therefore, reports are usually based on statements made by victims or personal investigations of human rights defenders and international human right organizations.

Cases of torture are widespread and strong as ever and examples of those are numerous. For example the case of 23 years-old Mr. R. Rakhimov was

55 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §7.

56 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §8.

57 <http://hrw.org/english/docs/2004/02/02/uzbeki7252.htm>

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arbitrary detained and tortured in January of 2004 in Tashkent, Yunus-Abad district. Other terrifying examples of torture death cases are cases of Mr. Muminov and Mr. Eshonov. Eshonov was tortured to death. Another case when our lawyers filled the case on torture of Agzam Sharipov, a minor who lost his leg as a result of torture. Law enforcement officer responsible for torture was subjected to 10 years sentence. However, the police officer is on search and has not been arrested up to date.⁵⁸ Appellate division of Tashkent City court has recently reinstated the sentence.

Research conducted by Legal Aid Society and OMCT⁵⁹ has demonstrated that the majority of cases of torture occur during the 72 hours pre-trial detention period, before charges are brought and preventive measures selected, during which prisoners are usually kept incommunicado. From the materials gathered it would appear that the use of torture during this period is the rule rather than the exception. In addition, in cases perceived as being political the length of incommunicado detention reported is sometimes much longer.

The most common methods reported were:

- Beatings; sometimes with rubber clubs or with metal and wooden objects
- Suffocation, with gas masks or plastic bags
- Burns
- Rape
- Deprivation of food
- Sleep deprivation
- Shackling and binding
- Denial of access to bathroom facilities
- Denial of medical attention
- Serious threats to the detainee or family members
- Threats that the detainees will be charged with serious additional crimes other than the one they are suspected of having committed and which provide for more severe sentences relying on fabricated evidence

58 LAS Statement, OSCE, 2004.

59 Comments on the Report of the State of Uzbekistan Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. May 2002.

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The consequences of torture most frequently reported by medical personnel interviewed were the following: bruises and grazes, different blood extravasations, traumas of thorax, bruises on the abdomen, kidneys, head concussions and others. It was noted that law-enforcement officials usually try to inflict damage in such a manner so as to leave no trace.

“Mr. Ruslan Rakhimhov, a 23 years-old electrician, was arrested in the night of 29 to 30 January 2004, together with at least 17 other people. They were handed over to the Yunus Abad RUVD (regional department of the interior) of Tashkent city, where they were kept for 2? days. The detainees were put under investigation regarding the murder of Mr. Yakshigulov Ildar Nailevich. Police officers, one of which is identified as Mr. Ruzmatov Ravshan Djuraevich, reportedly used interrogation methods involving physical pressure and ill-treatment. From 29 to 31 January 2004, Mr. Rakhimhov was allegedly beaten and officers put gas masks on them, while blocking the access of air. Unable to bear the acts of torture he was subjected to, Mr. Rakhimhov signed a confessing document. These allegations of ill-treatment were reportedly verified during a hearing before the criminal court of Yunus Abad district of Tashkent city (court of first instance which considered this case between March and May 2004) by the testimonies of the victims themselves and of two witnesses who had allegedly heard the victims shout for help from the room next door. During the hearings, Mr. Rakhimhov rejected their statements, saying that they were forced into signing them under torture. However, the court gave more weight to the statements by Mr. Rakhimhov given under torture. On 7 April 2004, the defense lawyers reportedly filed a petition against the police officers suspected of acts of torture on the detainees. However, the petition has reportedly been refused by judge on the grounds that it was premature.”⁶⁰

“Mr. Murod Jumaev was arrested on March 10, 2000 by the police officers, when he was spreading the leaflets issued by Hizb-ut-Tahrir, an outlawed organization to which he was a member since 1999. Upon the arrest he was then handed over to the Yunus Abad department of National Security Service and further to the head office of NSS with a record on detention (protocol of detention) filed one day later. He was then forwarded to the basement where he was subjected to torture. To extract his confession statements, security agents allegedly beat him and put gas masks on him, while restricting the access of air. His criminal case was delivered for the court trial only after nine

60 Collection of urgent appeals. LAS case No. UZB 100904.

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months of preliminary investigation on December 1, 2000. His allegations of tortures were stated during a hearing before the criminal court that gave more weight to the testimonies of the security agents who denied any ill-treatment. However, immediately after the interrogation of security agents, Mr. Jumaev was beaten by the police officers of the guard.”⁶¹

“On November 13 2002, Mr. Nabidjon Mirzanov was falsely accused of extortion and arrested by security agents. During the arrest he was brutally beaten and was subsequently held up by two policemen during his trial because he wasn’t able to stand up by himself. This undoubtedly indicates that he had been subjected to torture during his interrogation. A few days ago Mr. Mirzanov’s brother Bakhtijor Mirzanov visited him in detention. During the visit, Nabigeon Mirzanov regularly coughed up blood and revealed that during his interrogation he was naked for 24 hours. As a result he was frozen solid and caught a cold in his lungs”.⁶²

Only a few police officers and security agents have been brought to justice for torture-related deaths. No such cases were brought in 2003, however, and no thorough and independent investigations were carried out into the torture deaths that occurred in 2002 and 2003, despite extensive international attention and pressure on the government to undertake swift action. Countless reports of torture remain without remedy and no legal safeguards against torture have been introduced, despite persistent recommendations to that effect by international monitoring bodies, including the U.N. Special Rapporteur on torture and the Committee against Torture.⁶³

Police officers and security agents use torture and other illegal means to coerce statements and confessions from these detainees and Uzbek courts continue to accept as evidence confessions extracted under torture, although the Supreme Court issued an instruction to judges to exclude defendants’ testimony and confessions extracted under torture. Indeed, in practice, judges do not implement this instruction. Judges routinely accept as evidence testimony and confessions in cases where torture is alleged as well as base convictions solely on confessions made by defendants during the investigation.

61 LAS case No. 36.

62 LAS case No. UZB 050203.

63 <http://hrw.org/english/docs/2004/02/02/uzbeki7252.htm>

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**5.2.2. Torture and human rights defenders, political opponents and independent religious activists**

Human rights defenders, political opponents and independent religious activists are the most common victims of torture.

Uzbek authorities have used repressive strategies to silence persons who are engaged in denouncing human rights violations perpetrated by the authorities. For example, Mr. Muradov, Mr. Hamraev, Mr. Radjapov and Mr. Utamuratov, all members of the Human Rights Society of Uzbekistan, who were sentenced in 2002 upon false charges, are still in detention there where registered many acts of pressure and intimidation against human rights defenders and their families.⁶⁴ This is best illustrated in the cases of Ruslan Sharipov, a prominent human rights defender and Iskander Khudobergenov, a religious activist. In many instances, even witnesses are subjected to duress.

“On May 26, 2003 Mr. Ruslan Sharipov, a human rights defender, was charged with having committed homosexual acts, under art. 120 of the Criminal Code, which is in contravention of the provisions of the International Covenant on Civil and Political Rights, which guarantee non-discrimination and equality before the law. The police are reportedly further inquiring into allegations that Mr. Sharipov had sex with two male minors for money. Mr. Sharipov has been detained in Mirzo-Ulugbek District Police Department of Tashkent city. He was granted access to a lawyer on 28th May only, and only in the presence of police officers. During this meeting, Mr. Sharipov said that the police hit him several times, threatened to rape him with a bottle, and put a gas mask on him”.⁶⁵

“In case of Iskander Khudoberganov, a religious activist, the accused had insisted several times that he had been forced to make self-incriminating statements as a result of torture and other forms of ill-treatment they had been subjected to while in custody, as well as threats and actual ill-treatment against family members. Two witnesses reportedly stated in court that they had been ill-treated, and that they too retracted their statements. On 19 November 2002, one of the witnesses, Farkhod Kadirkulov, has stated in court that he had been beaten in order to incriminate himself and the defendants. The judge in the case dismissed all allegations of torture, telling Iskander

64 See Observatory Open Letter to Uzbek President A. Karimov, on 12th May 2003.

65 LAS case No. UZB 002/0503/OBS 025.

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Khudoberganov that the Ministry of Internal Affairs was not “a holiday resort” or a “sanatorium”. He is furthermore said to have accused the defendants of “making up” the allegations of torture in order to “get away from (their) criminal responsibility”. The judge failed to order any impartial and prompt investigation to be carried out into the allegations of torture. The defendant was detained in the basement of the MVD in Tashkent where he was pressured to confess to a murder and a robbery. He was allegedly told that if he did not confess, he would die there and his family would never find out about his fate. He was beaten with clubs, metal rods, a chair, kicked in his kidneys and twice given electric shocks. As a result, he agreed to confess. Subsequently, he was transferred to the building of the SNB in Tashkent on 12 February 2002 where he was also beaten, deprived of sleep and was administered injections against his will. During parts of the trial at Tashkent City Criminal Court at the end of 2002, Iskander Khudoberganov was reportedly drugged or very weak. He was reportedly held in incommunicado detention throughout most of the trial, and was denied all medical treatment, including for tuberculosis”.⁶⁶

Approximately one hundred people were tried on terrorism, murder, and other charges relating to the March-April 2004 violence. Many defendants alleged that police had held them incommunicado and used torture, threats, and other pressure to coerce confessions during the investigation. Bakhtior Muminov, whose case is mentioned above, charged in October 2004 along with four others for alleged participation in the March-April violence and alleged membership Hizb ut-Tahrir testified at trial that he had been tortured with beatings and electric shocks to coerce a confession. The judge failed to launch any inquiry into Muminov’s or other defendants’ torture allegations and sentenced him to sixteen years’ imprisonment.⁶⁷

5.2.3. Non-refoulement

As the Human Rights Committee stated in 2001, non-refoulement is not assured:

66 Cited from:
<http://daccessdds.un.org/doc/UNDOC/GEN/G03/107/66/PDF/G0310766.pdf?OpenElement>

67 <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

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“The State party should ensure that individuals who claim that they will be subjected to torture, inhuman or degrading treatment, or the death penalty in the receiving state, have the opportunity to seek protection in Uzbekistan or at least assured of non-refoulement (arts. 6 and 7 of the Covenant).”⁶⁸

Uzbek legislation on principals of mandatory return of refugees is strictly regulated: there are no basic safeguards and no refugee status are defined in Uzbek legislation.⁶⁹

“The Republic of Uzbekistan remains the only country in the CIS which has not ratified any international refugee instrument, adopted any national legislation or established any administrative asylum procedure. Moreover, Uzbekistan’s official policy remains to deny the presence of refugees and asylum seekers on its territory. Nevertheless, by virtue of a Gentlemen’s Agreement with the Ministry of Foreign Affairs, mandate refugees enjoy a degree of protection against arrest, detention and refoulement, although this agreement becomes practically invalid in cases where the powerful state security services are involved. This verbal understanding has led to a clear decline in numbers being refouled, however, a few cases of deportations continue to be registered by this office yearly.”⁷⁰

5.3. Prohibition of torture and other ill-treatment and article 2§2 ICCPR

In November 2002, the U.N. Special Rapporteur on Torture, Theo Von Boven, visited the country and concluded in his February report that “torture or similar ill-treatment is systematic.” The Government initially informed Mr Von Boven that it had investigated all cases in his report and could not confirm any of the allegations. However, in a statement to the press on March 19 2003, then State Advisor for Foreign Policy Abdul Aziz Kamilov acknowledged that serious abuses occurred in Uzbek prisons and pre-trial detention

68 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §13.

69 Article 10 of Uzbek Criminal Procedure Code, Denial of Extradition to Another State, does not contain any grounds for non-refoulement if there is a risk of torture.

70 Country Operations Plan, Executive Committee Summary, Country: Uzbekistan, Planning Year: 2005. <http://www.unhcr.org/>, consulted on December 10th 2004.

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facilities and pledged that the Government would “use all the resources in its possession” to combat abuses.⁷¹

Against a background of political promises and programs approaching resolution of this problem, the government has done almost nothing but jailed few low ranked police officers.

The National program against torture limited to seminars and official meeting scheduled for the year 2004. No visible progress or public censure in the mass media can be heard.

However the Article 235 has not been amended yet, but supplemented with clarification of the Supreme Court of Uzbekistan to interpret the Article on torture of the Criminal Code in accordance with the spirit and meaning of the Article 1 of CAT. In routine practice such clarification does not affect the issue at all, as law enforcement agencies have very rare advertent to the Supreme Court clarifications understanding those as a secondary source of legislation with very little application on practice without any effect on police and the officers applying torture on daily basis.

6. Arrest, pre-trial custody, judicial process and detention (Articles 9, 10 and 14 ICCPR)

6.1. Arrest and pre-trial custody

Arrest

According to Article 25 of the Constitution: “everyone shall have the right to freedom and inviolability of the person; no one may be arrested or taken into custody except on lawful grounds”.

Grounds for procedural arrest are determined by Article 221 CPC and are quite broad. Procedural arrest can take place prior to opening a criminal case and after it. In the latter instance the resolution of the inquiry officer,

71 <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm>

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investigator, procurator or court ruling is sufficient. Arrest may last up to 72 hours from the moment of arrival of the detainee to militia or other law enforcement organ. Pursuant to CPC before the expiry of the detention period and upon availability of grounds the person may be involved in the case as a defendant and a restriction measure should be determined in his regard. In exceptional cases and upon the procurator's sanction up to 10 days of custody may be used as a restriction measure with respect to a suspect before he is charged. Otherwise, the restriction measure shall be cancelled and the person shall be released from custody.

The situation analysis as well as citizens' and detainees' complaints revealed a number of human rights violations at the stage of judicial process. Part of the violations is embedded in the criminal procedure legislation, which is aimed at prosecution rather than objective examination. For instance, due to the fact that the list of exceptional grounds for incarceration prior to charging is not determined by CPC such cases became a regular practice. Other violations occur due to the infringement of the law by investigation officers.

Among the mass violations committed in arrest and detention and at the inquiry stage of investigation we distinguished the most frequently occurring gross violations: use of violence and violation of the right to legal defense.

Violence is especially wide spread during the arrest and detention; it is customary to hear that beating occurred because the detainee showed resistance. Many detainees try to document the bodily injuries and some of them manage to do that, but these measures do not turn out to anything.

Law enforcement organs of Uzbekistan automatically regard the fact of arrest and detention as an evidence of a detainee's guilt on the basis of the concept that if a person is arrested or detained then he is guilty, and if arrested and beaten – it should be presumed to be lawful.

One of the main problems is lack of legal culture of population owing to which inquiry and investigation organs do not advise the detainees of their rights and courts do not pay any attention to that circumstance.

In reality, inquiry and investigation organs while interrogating a person, who was not advised of his rights and is scared and often beaten up, frequently use the following technique – they “forget” to advise a person involved in the case as a suspect or defendant of his citizen's right not to give any testimonies, then, in the course of interrogation, he is given a form to sign, which says that

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the person under interrogation has been advised of his rights. Further on, all references of the citizen to lack of knowledge of the law remain ungrounded because his signature is everywhere, where it is required to be.

Frequently, while interrogating close relatives of the suspect or the defendant as witnesses an ill-faith investigator “forgets” to warn them of their right not to testify against the close relatives. Afterwards having them to sign the testimony he obtains the needed signature that the interrogated person was advised of his procedural rights.

These violations considerably infringe a person’s right to defense as well as undermine the concept of presumption of innocence because subsequently the confessions and testimonies of the interrogated persons are put in the foundation of the indictment instead of facts and evidence. Concerning the presumption of innocence, this concept is only declared, in reality the prosecution, as a rule, wins over the defense in the course of the criminal investigation.

One of the most common restricting measures applied by law enforcement is custody⁷², which devalues the concept of presumption of innocence. In the indicated Article 242 CPC there is a list of crimes whereby the defendant can be put in custody upon the grounds of a mere danger of commitment of the presumed crime. Thus, the guilt of the person is presumed long before the issue is established by the court decision. Such unconstitutional approach entails the same kind of unlawful consequences.

Keeping in custody during the investigation is frequently used in order to coerce to testify. There is one more facet to this problem. The longer the person is kept in custody during the investigation the more difficult it is to acquit him. As a rule, in such cases the court would issue a sentence whereby the time spent in custody is counted for the time served for the crime or determine a term near to the one already spent in custody.

72 Pursuant to Article 242 CPC “Incarceration in custody as a restriction measure shall be used in cases of premeditated crimes, for which The Penal Code determines more than 3 years of imprisonment and in cases of crimes committed through carelessness, for which the Penal Code determines more than 5 years of imprisonment. In exceptional cases this restriction measure can be applied in cases of premeditated crimes, for which the Penal Code determines punishment of not more than 3 years of imprisonment or less and crimes committed through carelessness, for which the Penal Code determines punishment of not more than 5 years of imprisonment”.

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Further on, there is a typical violation of law, whereby the person remains in custody under the expired sanction. Often more than a month passes from the time of expiry to the time when the sanction is prolonged. Frequently, other techniques are used to defer the official date of detention while the person is in detention.

The detainee may be kept in the militia cars or other places for long periods of time before he is brought to the relevant militia department in order to defer the moment of official documentation of arrest and detention.

The suspect is “documented” as a detainee in the administrative proceedings in order to defer the time of documenting the real arrest and detention.

The suspect is levied an administrative sanction whereby he is detained for 15 days upon a light administrative delinquency, while “working” on him upon the criminal charges.

The aforementioned techniques are the evidence of the faults of the current criminal procedure legislation in part concerning the detention on the expired sanctions. Besides, inhuman conditions of detention of the suspects, the defendants and the convicts lead to the development of grave diseases such as tuberculosis, hepatitis, AIDS, which often lead to lethal outcomes.

In order to bring the relevant legal provisions in compliance with international norms, in particular, Section 3 of the Article 9 of ICCPR it is necessary to transfer the right to apply the restriction measure exclusively to court without waiting until the detainee himself will complain against the detention, and do not arrest or detain without the court decision.

This said the judicial hearing on the restriction measure should be public and adversarial as any other judicial process. However, even such measures will not change the situation radically as long as the CPC has a provision enabling the law enforcement organs to put a person in custody merely depending on the gravity of the crime determined by the CPC article, upon which the person is charged.

Concerning the expiry of the sanction on arrest and detention it is necessary to demand that the SIZO investigation custody officials strictly fulfill the Criminal Procedure Code, in particular, if at the time of expiry of the established period of custody as a restriction measure the respective decision regarding the release of the suspect or the defendant or of the extension of his detention period has not been received, the head of the custody shall release him by his own resolution.

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“Ruslan Rakhimov, a 23 year old electrician, was arrested and detained at night of 29 to 30 January 2004 together with other 17 persons and taken to the district department of interior of the Yunus-Abad district of the Tashkent city under the suspicion of the murder of Yakshigulov Ildar Nailevich. From 29 through 31 January 2004 district department of interior officers including Ruzmatov Ravshan Juraevich beat Ruslan Rakhimov and Gainulina, who was arrested and detained under the same suspicion. Militia officers put a gas mask on him and obstructed the flow of the air. During the interrogation Gainulina was threatened with rape. Unable to bear torture Rakhimov signed confession that he had a quarrel with Yakshigulov at night of 28 to 29 January 2004, after which Gainulina and Smirnova beat him, after which, as Gainulina and Smirnova testified under torture, Rakhimov allegedly took Yakshigulov home by taxi. With the exception of Rakhimov all the detained were set free in 2.5 days without documenting their detention. Rakhimov was charged with murder, Gainulina was charged with failing to report the crime, their detention was documented as of 31 January 2004. During the court hearing in the Yunus-Abad district court of the Tashkent city in March through May 2004 they denied their confessions testifying that they had been given under torture, which could be confirmed by two witnesses. Witnesses Gauss and Ochilov also subjected to arbitrary arrest and detention together with Rakhimov confirmed that they heard screams for help from the neighbouring rooms. But the court refused to accept complaints of torture, recognizing as evidence of guilt the confessions of Rakhimov and Gainulina obtained under torture. Complaints against torture submitted by the lawyers of the defendants on 7 April 2004 were declined by the court on the grounds of being premature. RAKhimov was sentenced to 5 years of imprisonment for the murder without aggravating circumstances. The appellate commission of the Tashkent city court on criminal cases ignored all evidence of Rakhimov’s innocence and violation of his procedural rights, upheld the decision without amendments”.⁷³

Information of reasons of arrest, charges and rights

As the Human Rights Committee stated:

“The Committee is concerned about the length of detention (72 hours) before detainees are informed of the charges being brought against them. This period of detention before detainees are informed of the charges

73 Collection of urgent appeals by LAS, 2005.

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being brought against them is too long and not in compliance with article 9, paragraph 2, of the Covenant. (...). The State party should take urgent measures to bring the Law of Criminal Procedure into compliance with the Covenant, so that the accused are promptly informed of any charges against them and promptly brought before a judge.”⁷⁴

Length of detention before detainees are informed of the charges being brought against them is not clearly set forth by CPC. However, the accused should be informed about the charges brought against him within ten day period from the moment of arrest.

Article 217 of Criminal Procedure Code of Uzbekistan obliges the inquirer, investigator or court, when detaining someone, to inform family members of the detained within a period of not less than 24 hours. Nevertheless complaints that family members are not notified of detentions are frequent. Family members are also frequently not granted the right to visit for some time.

Pre-trial custody

The Human Rights Committee stated:

“The Committee is concerned that from the time an accused person is arrested, and throughout the judicial procedure, until the final judgement, the accused remains in the hands of and under the authority of the police or the Ministry of the Interior. The State party should ensure that promptly after apprehension the accused is removed from the custody of the authorities responsible for law enforcement and brought under the jurisdiction of the authorities responsible for the administration of justice, thus minimizing the risks of a violation of articles 7, 9, paragraphs 1 and 2, and 10, paragraph 1, of the Covenant.”⁷⁵

Time spent by the accused in the hands of and under the authority of the police or prosecution officers can be very lengthy.

74 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §12.

75 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §11.

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Article 287 of the Uzbek Administrative Liability Code⁷⁶ defines a strict list of state agencies authorized to implement administrative detention. In general, the person can be detained administratively for not more than 3 hours. However, in certain cases there is a maximum term of up to 24 hours. Such cases include charges related to drugs, minor theft, poaching, violation of trade rules and currency exchange, minor hooliganism, gambling, most notably non-compliance with police officer's orders and resistance, violation of meeting and demonstration rules, violation of registration for passport control "propiska" etc or any person who conceals his identification data⁷⁷. Furthermore, a state-boarder trespasser can be detained administratively for three days upon written notification to a procurator within 24 hours or for the period of 10 days with the sanction of procurator, if a trespasser does not have identification documents.

Then the accused can be apprehended under criminal charges for 72 hours that can be prolonged up to 10 days (under extraordinary circumstances not defined anywhere and with the sanction of a procurator) (Article 226 CPC). Upon the expiration of this period, the detainment under custody can be sanctioned by the procurator for the period of 3 months. This period of custody can be prolonged up to 1 year by the sanction of General Procurator in case of gross grave crimes (Article 245 CPC).

Control of the legality of detention

The Human Rights Committee stated:

"The Committee also deplores the unwillingness of the delegation to answer questions relating to court review of arrest (art. 9, para. 3).⁷⁸"

A fact which contributes to the practice of torture is the lack of an adequate control of the legality of detentions by a legal authority within a short period after detention.

76 Code of the Republic of Uzbekistan on Administrative Liability, entered into force 1 April 1995. (the "Administrative Code").

77 Article 288 of the Administrative Code.

78 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §12.

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According to the requirements of article 243 of Criminal Procedure Code of Uzbekistan, the prosecutor can authorize measures of preventive detention and others towards the detainee up to 72 hours after arrest. At that moment, the prosecutor decides on the measures of restraint to be adopted and presumably controls the legality of the detention. As the prosecutor in Uzbekistan is not a judicial institution (Chapter 22 of the Constitution of Uzbekistan sets forth a list of judicial institutions and the procuracy is not listed as a judicial agency), this article of the Criminal Procedure Code is in contradiction with paragraph 3 of article 9 of International Covenant on Civil and Political Rights which determines that those arrested or detained on criminal charges should be taken to court or brought before other persons authorized to exercise judicial power within a reasonable period or be released.

In addition, in practice and contrary to the law, at the moment of detention, persons are given no opportunity to appeal or complain of unlawful acts and/or decisions by public officials, including concerning the use of torture, committed during the detention and case procedure in that detention period. In most cases, persons are taken to court only at the conclusion of the preliminary investigation.

Although the Constitution provides for the right to appeal any decision of governmental agency or official to the court (Article 44), the CPC does not provide any procedure for the court review of arrests. In practice, when counsels appeal to the court on the basis of Constitution, such a petition is always dismissed without any hearing.

Besides, appeals against an investigator's decision to detain a suspect are not submitted to an independent court but to the head of the investigation division. No procedure similar to a writ of *habeas corpus* exists in Uzbekistan.

6.2. Judicial process

Fair trial

Even though Uzbek Constitution and Procedural Codes mandate almost all court hearings to be carried out publicly, except for a few category cases related to sexual crimes and classified information, judges sometimes restrict the participation of a wider public by limiting sitting places or conducting hearing in their small cabinets. The “extremist” cases have been made available to

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international community representatives and local journalists under the pressure of lobby groups blaming government for secrete trials.

At present in Uzbekistan the role of courts as well as the professional qualification of judges is quite low. Judicial errors are quite numerous; judges do not notice obvious defects in the work of the investigator and procurator or do not want to. Judges seem to forget that aside from the guilty sentence there also is an acquittal. Courts, representing an independent branch of power by the Constitution are still controlled by the state in the name of the executive power.⁷⁹ Such influence on judges is largely rooted in the mechanism of appointment and dismissal of judges. First, judges only have a five year term of appointment. Second, their candidacies before the approval by the President undergo selection by the qualification commission under each court and then by the Higher Qualification Commission under the President, where all members are appointed by the President and are accountable to him. Starting with 2001 judicial qualification commission selects candidates to judges' positions for lower instance courts who are then appointed by the President. The Chair of each province court is the head of the Province Qualification Commission. Six members of the commission are elected by the judges of the district and province courts from among the judges. Each Province Qualification Commission arranges judicial qualification examination. Candidates who passed the exams are included on the "reserve list" of potential candidates to judges. As soon as the vacancy opens, qualification commission puts forward two or three candidacies from the reserve list for the consideration of the Higher Qualification Commission under the President, which interviews the candidates and recommends one of them to the President for approval. The whole process of appointment and dismissal is non-transparent and largely subjective.

Although article 26 of Constitution and article 23 of Criminal Procedure Code provide in pertaining parts that no one may be found guilty of a crime except by the sentence of a court and in conformity with the law and such a person shall be guaranteed the right to legal defence during open court proceedings, in legal practice this presumption does not work. Biased and incompetent judges, no jury system, almighty prosecution and ignored attorneys turned the presumption upside down, and now the accused has to produce and present evidence of his innocence.

79 Article 106 of the Constitution determines that the judicial power in the Republic of Uzbekistan is exercised independently of legislative and executive powers, political parties, or other public amalgamations.

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Due process guarantees

Article 116 of the Constitution states: “Any defendant shall have the right to defence. The right to legal assistance shall be guaranteed at any stage of the investigation and judicial proceedings. Legal assistance to citizens, enterprises, institutions and organizations shall be given by the chambers of attorneys. Organization and procedure of the chamber of attorneys shall be specified by law.” And Article 26: “no one may be found guilty of a crime except by the sentence of a court and in conformity with the law; and such a person shall be guaranteed the right to legal defence during open court proceedings”.

Articles 48-53 of the Criminal Procedure Code of Uzbekistan provide for the right of suspected, charged or defendant to be assisted by a lawyer. According to these provisions, persons have a right to be represented by a lawyer from the moment of suspicion or from the moment of detention.

In addition, in 1996, the Parliament of Uzbekistan promulgated a law “On Advocacy” and a law “On guarantees of advocate activities and social protection of advocates”.

Unfortunately, however, in practice, these laws seem have only declarative character and their provisions are not respected in concrete cases. Law enforcement personnel employ all means at their disposal to deny persons in detention access to a lawyer while trying to gather evidence for prosecution through various unlawful methods, including torture.

A common situation originates in the fact that the law provides for the right of attorney’s to meet with his or her client only after obtaining written authorization from the officials in charge of admittance to the criminal case. However, no time period for issuing this authorization is indicated by law. This deficiency in the law results in lawyers being unable to meet with their clients for long periods of time, which also violates the right to a defence.

Examples of the procuracy-investigative and judicial bodies intentionally violating defendant’s rights as guaranteed by law are numerous. In case of arrest of Bahodir Karimov on March 29, 2004, he was denied access to a lawyer provided by Legal Aid Society for 53 days.

Another pitfall which is frequently used to avoid granting persons in detention access to a lawyer is that of arresting a person as a witness rather than a suspect. The procedure of detention of a witness is absolutely unregulated. A witness is statutory required to appear before prosecutors, investigators,

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procurators and judges upon a call. If a witness fails to show up, he may be detained and delivered (Articles 65, 261-264 of Criminal Procedure Code). Although there are restrictions on the length of interrogation (eight hours per day), there are no limits on the number of interrogations, no requirements to register the detention of a witness etc. Besides, a witness does not have the same bundle of rights like a suspect has. In such cases it is only when the charges are brought against a witness, who then becomes the accused, (articles 238 and 240 of the CPC) he has the right to a lawyer.

Persons are also frequently arrested and detained in administrative procedures for “identity checks”. In such cases persons can be held in detention for considerable periods without being registered as a prisoner and therefore without being recognized any of the rights guaranteed to other prisoners.

Other main reasons are the following:

Dependence of the judiciary upon the executive power.

Intentional disregard of the law by officials at different levels

Absence of effective legal mechanisms for holding such officials accountable

Conflict between laws adopted at different times

Inadequate formulation of the norms resulting in difficulties in their application.

Current legislation regulating the activity of lawyers does not completely comply with international standards. In particular, a lawyer cannot carry out his/her own investigation into the facts alleged and present separate evidence to the court (Articles 86 and 95 of the CPC).

There are many other violations of the defendant’s rights to due process and professional counsel at the trial stage.

State-provided counsels show little interest to the case and reportedly often act in the interests of state. Judges give no weight to denial of an access to attorney by prosecution in pre-trial investigation. Since Uzbekistan has no jury system, judges have unlimited power to refer to prosecution opinion. Hearings are badly recorded and sentences are never published.

Article 90 of the Criminal Code of Procedure stipulates that only legally obtained evidence can be considered admissible. Furthermore, a decree of the

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Plenum of the Supreme Court of Uzbekistan⁸⁰ aimed at providing guidance indicates that in the establishment of the facts, only information gathered, verified and appraised in the manner approved by law shall be accepted by courts and that any evidence obtained in violation of the law shall not have judicial power and cannot be used as a basis of convictions. The same decree of the Plenum makes direct reference to evidence obtained in violation of the law and evidence obtained through the use of unlawful investigation methods (psychic or physical violence and other). Guiding decrees “On courts” of the Plenum of the Supreme Court are obligatory for courts and other agencies conducting criminal procedures (agencies of inquiry, preliminary investigation and agencies conducting supervision of compliance with legal order of criminal case conduction – procuracy).⁸¹ Consequently, by law whenever torture is used in obtaining evidence in a criminal procedure that evidence is subject to exclusion from the case. Nevertheless, in practice, judges give more weight to the confessing statements extracted from a defendant under the torture than to rejecting statements announced by a defendant during the trial, ignore any allegation of torture and fail to conduct any investigation of a matter. Judges routinely ignore complaints of torture and continue to use evidence obtained under torture as a basis for convictions.⁸²

Right to appeal

Article 44 of the Constitution states: “Everyone shall be entitled to legally defend his rights and freedoms, and shall have the right to appeal any unlawful action of state bodies, officials and public associations”.

Right to appeal to a higher court, though constitutionally guaranteed, almost in all occasions especially on politically sensitive cases produces no result.

6.3. Detention

Article 225 of the CPC of the Republic of Uzbekistan determines that immediately after the arrival of a detained person in a militia (police) station, or other law-enforcement agency, a register (called ‘a protocol’) should be established indicating who, by whom, when, under what circumstances and on

80 Decree “On Courts” of May 2 1997 # 2.

81 This law was introduced in 1999 in the Regular session of Supreme Assembly.

82 See part “Practice of torture”.

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what legal grounds the person has been detained; what type of crime the detained person is suspected of having committed; and at what time the person was taken to the militia station or other law-enforcement agency. The register or protocol should be signed by militia personnel, other law-enforcement agency employee assigned to control the grounds of detention, the person empowered to or making the detention, the detainee and an attested witness. However, key issues are not included in the protocol such as information on notification of family members of a detention or a description of the state of health of the detainee at the time of detention.

Conditions of detention

The Human Rights Committee stated:

“The Committee continues to be concerned about conditions in detention centres and penal institutions in Uzbekistan. The Committee is also concerned that insufficient information has been provided in this regard, except the State party’s comments on conditions in the Jasluk prison. The Committee is particularly concerned about numerous allegations of deaths in prisons and the return of marked and bruised corpses to the families of detainees. The State party should ensure that measures are taken to improve conditions in detention centres and penal institutions so that they are compatible with articles 7 and 10 of the Covenant. The State party should ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity, in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners.”⁸³

In spite of existing legislation that provides for a framework for detention conditions, in practice they fall far from minimum standards. Conditions in detention centers and penal institutions fall short to sanitary and hygienic norms and can easily be qualified as ill-treatment.

Although pertinent provisions of CPC provide for the access and monitoring of detainment conditions by public organizations, in practice independent groups are denied the access, while pro-governmental organizations find everything satisfactory and produce unreliable information. Unfortunately, no

83 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §9.

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monitoring is routinely conducted in detention areas, and, therefore, it is difficult, if not impossible, to fully assess the conditions of detention providing that mass media and independent groups provide no coverage of the topic.

Uzbek authorities are frequently blamed for suspicious deaths in detention areas. Due to previous occasions of the suspected executions, international community usually scrutinizes every fact of death in prison with the involvement of independent foreign medical experts⁸⁴. Allegation of death of Samandar Umarov was thoroughly investigated by Freedom House Office in Tashkent and the fact of violent death was not confirmed.⁸⁵

“Orif Eshonov was arrested between May 5th and 6th, 2003, by members of the Karshi National Security Service (NSS). On May 15th, 2003, Karima Eshonova, Orif Eshonova’s sister, was informed by a prosecutor of the Yangiyul militia department that her brother was being detained by the NSS and is currently in poor health. On May 16, 2003, Karima Eshonova and another brother were told by the Karshi prosecutor that Orif Eshonov has died in the hospital, reportedly from a combination of heart and lung disease. In the morgue, Ms. Eshonova saw Orif’s body and noticed large 3-4 centimetre bruises on his arms, a large puncture wound on his torso, which appeared to have been caused by a metal bar, and large needle puncture wounds on his hands a feet. Orif’s body was then brought to the Karshi prosecutor’s office, and a car from the Karshi prosecutor’s office drove them back to Yangiyul. At arrival to Yangiyul Mr. Eshonov’s family was informed that Orif’s tomb was ready and that the funeral costs would be covered from the neighbourhood budget. The family was also told that the Yangiyul deputy mayor had personally ordered Orif’s funeral to be held as soon as possible. Eight unknown individuals attended the funeral”.⁸⁶

Chapter 27 Section 4 of the Criminal Procedure Code of the Republic of Uzbekistan contains the internal order or Code of Practice establishing the regulations regarding the requirements, legal grounds, rights and duties as well as the type of places where detainees can be held.

84 Daniel Kimmage. Uzbekistan Faces New Allegations Of Torture Death. RFE/RL Central Asia Report Vol. 5, No. 1, 12 January 2005.

85 Press Release of Permanent Mission of the Republic of Uzbekistan to the United Nations Office No. UZ/UN/05-013 On press conference in the Freedom House Office in Tashkent regarding results of independent investigation of international experts and human rights activists as of 25 January 2005.

86 LAS case No. UZB 020603. Collection of Urgent Appeals.

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However, certain requirements directly relevant to humane detention conditions of detainees are only covered in general terms by the order, such as the requirements and norms of detention, sanitary and hygiene requirements, and access to medical treatment. Regarding these issues the Code makes reference to other legislative acts, where these conditions are laid out and regulated in detail⁸⁷.

Of these, the Instructions for the operation of the IVSs determines that persons detained on suspicion of having committed a criminal offence have got the right to, among others: use their own clothing and shoes as well as other necessary items and belongings the list of which is set forth in the Rules of the IVS; be given food free of charge according to the designated dietary norms and provision of other household or domestic items, and when needed clothing and shoes for the particular season; request from the administration of the IVS or the management of the MVD offices the provision of free-of-charge travel to the place of residence (in the event of a detainee being released) and obtain a letter of reference for the time spent in the IVS.

The provision of household and domestic items and the question of medical treatment of persons kept in the IVS are regulated by section 9 of the mentioned Instructions. According to that law the detainees should be kept in cells of the IVS with access to natural light and allocation of not less than 2.5 m² available space per person. Pregnant women and women with children are allocated not less than 4 m² per person. During the cold season the temperature in the IVS premises should be maintained at no less than 18C°. In every IVS there should be a room equipped with electric stove for heating the food, water heater, cupboard etc.

87 Some such laws are; the Rules and Regulations Chart of the Militia Service on the guarding and conveying of detainees and persons held in custody (hereinafter Rules and Regulations Chart or RRC); Operational Instructions for IVSs for temporary keeping of detainees and persons held in custody that are under the MVD's authority (hereinafter Instructions); Rules for Internal Practices in the IVSs for temporary keeping of detainees and persons held in custody that are under the MVD authority (hereinafter Rules); Instructions for Medical, Sanitary and Epidemiological Provision Practices in the IVSs for temporary keeping of detainees and persons held in custody that are under the MVD authority (hereinafter Instruction for Medical Provision or IMP). All mentioned regulatory by-laws (the above-mentioned acts) have been confirmed by Order of the Minister of Interior No.477 from the 29 December 1992.

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Unfortunately, everything is very different in practice.

Most frequently reported ill-treatment in detention are:

- Food deprivation
- Stripping the detainee naked
- Denial of access to bathroom facilities
- Unavailability of sleeping places and linen
- Unsanitary wards of confinement
- Severe overcrowding and unacceptable shortage of space in wards of confinement per person in square meters
- Insults

Persons interviewed who had been held in a department of the District Militia (district police station), indicated that detainees were held in official premises of inquest and investigation, without proper fulfillment of procedural documentation. Holding person in these facilities is contrary to the law which stipulates that persons detained under suspicion of having committed a crime shall not be held in district department of Militia but in the IVS of the City Administration of Internal Affairs of Tashkent city, where the conditions of confinement are more or less suitable.⁸⁸ These premises (the District militia) are intended for only for detainees held for administrative crimes and, by law persons, cannot be held there more than 3 hours.⁸⁹

Frequently, during the whole confinement period, detainees were held in the duty department of the militia under conditions that can be hardly called normal. Often up to 12 people are held in the ward size of 10 square meters at one time. There is no toilet in these premises and sometimes no illumination or ventilation. No linen is provided there, the detainees have to sleep on the metal surfaces of the beds.

No food had been delivered to the detainees and as a result the detainees were often deprived of food for several days. On the whole, conditions in these premises are not acceptable for holding people.

88 Articles 88, 107 and 228 of the CPC.

89 Article 228 of the Administrative Code.

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Conditions of detention in death rows

The Human Rights Committee stated:

“The Committee is particularly concerned at information about the extremely poor living conditions of detainees on death row, including the small size of cells and the lack of proper food and exercise. The State party should take immediate action to improve the situation of death row inmates in order to bring their conditions into line with the requirements of article 10, paragraph 1, of the Covenant.”⁹⁰

Extremely poor living conditions of detainees on death row are demonstrated by the Khudaybergenov case. According to Khudaybergenov, every week the guards of prison deliver him to a room where they shave his head with bare razor and if he moves they beat him by this razor. With another person condemned to capital punishment he is confined in such a small ward cell that they cannot sleep at one time. Khudaybergenov is denied access to a priest (imam) and Koran.⁹¹

Prisons improvement

The conditions in detention areas are now in the focus of international community. The overall objective of the programme established by the OSCE Project “Prison improvements in Uzbekistan” is to improve the prison conditions throughout Uzbekistan with an emphasis on the Human Rights situation and combating torture. The programme envisages five different projects relating to prison conditions in Uzbekistan: regional seminars on the legal status of and healthcare provision to prisoners; training of trainers on monitoring places of detention; support of the trainees in prison monitoring and in conducting further trainings; publication of a leaflet regarding prisoners’ rights; support of programme follow-up activities.”⁹² The Project is still on implementation stage, but has already resulted in Instruction on cooperation of Head Department on Execution of Punishments of the Ministry of Interior with ngos, monitoring of prisons by NGOs, and induction of establishment of training center for penitentiary officers, not to mention numerous training workshops and seminars.

90 HRC Concluding Observations/Comments, CCPR/CO/71/UZB, 26 April 2001, C. Principal subjects of concern and recommendations, §10.

91 LAS case No.50 referred *supra ad* page 10.

92 OSCE Projects, Prison improvements in Uzbekistan, start: 1 May 2003, end: 31 October 2004. http://www.osce.org/osceprojects/show_project.php?id=423, consulted on November 15th 2004.

7. Remedies (Article 2§3 ICCPR)

7.1 Complaints, investigation and punishment

7.1.1. Complaints

Everyone shall be entitled to legally defend his rights and freedoms, and shall have the right to appeal any unlawful action of state bodies, officials and public associations (Article 44 of the Constitution).

Uzbek criminal legislation guarantees to all persons involved in a criminal case as a suspect or defendant as well as the defence lawyer the right to enter a motion for a specific investigative action, including medical check-up or forensic medical examination. The investigator, however, by his ruling can turn down the entered motion, as more often than not is the case. The persons involved (defendant and his/her defence) have the right to appeal against the investigator's ruling to the head of the investigation division and to the prosecutor, who should oversee the enforcement of the law and the process of investigation in a case.

In reality, proving torture and ill-treatment of a detainee is extremely complicated as the process of consideration of motions and appeals can be delayed for quite some time. In the event that an examination is ordered by the time the decision is taken to do so all physical marks of torture have usually disappeared. As a result, it is usually nearly impossible to document the use of torture on a detainee.

There are many cases where judges and law-enforcement agencies do not adequately respond to complaints of torture made by detainees.⁹³

7.1.2. Investigation

For a number of reasons, both institutional and legal, the government does not comply with its obligation to investigate, prosecute and punish torture in the overwhelming majority of cases. As was observed and illustrated above in a number of cases, public officials routinely refuse to investigate allegations of torture and judges often simply do not take evidence of torture into account.

93 See, for example, Rahimov, Jumaev and Khudaiberganov cases referred *supra ad*

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Article 231 of CC of Uzbekistan provides for criminal responsibility for officials who illegitimately rule out a criminal investigation (decree). Therefore, in the event of a court's ungrounded refusal to examine a criminal case against persons responsible for torturing a detainee (judicial act, permitting petition enters in form of ruling) the judge could, theoretically, be held criminally responsible.

As already mentioned, all persons involved in criminal procedures as suspects or accused or their lawyers have the right to lodge a petition regarding certain investigative acts, including certification or judicial medical examination. However, it is the investigator who decides on the precedence of such petitions, most often rejecting all such complaints. The person arrested or his/her lawyer has the right to appeal the investigator's acts. However, this appeal is to be made to the head of the investigative subdivision or procurator implementing the supervision of law observance investigation. In practice, therefore, because of lack of action by the authorities it is nearly impossible to obtain a conviction for torture.

At first sight the national legislation of Uzbekistan contains numerous provisions establishing legal guarantees against torture. In practice, however, the courts decline the absolute majority of petitions for initiating a criminal case submitted by the defence against members of the power structures who apply such methods.

7.1.3. Punishment

Only in exceptional circumstances are criminal cases filed, and, as a rule, those responsible get very light, purely symbolical, punishment. Besides, those convicted often benefit from amnesties.⁹⁴

“Azam Sharipov aged 17 years, was arrested on 6 June 2000 at his place of work. He was taken to ROVD (district militia department or district police station) and accused of stealing a car and murdering the owner and narcotics use. Azam was beaten, suffocated by a gas mask and threatened with the fabrication of additional criminal charges. He was deprived of water, food and toilet use for whole duration of his detention at ROVD. No lawyer was admitted. In consequence, Azam attempted to commit suicide by throwing

94 See “Domestic law restricting human rights”.

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himself out of the window. He was taken to the hospital where one of his legs was amputated. Eventually, one of the men responsible was sentenced to three years imprisonment. He benefited from an amnesty and was released shortly afterwards. A new complaint has been lodged and the case has been re-opened.⁹⁵ Azam's lawyer brought a civil action against the Ministry of Interior. Out of 20 mln UZS (19,000 USD) claimed, almost 1 mln was awarded; the award, in the opinion of plaintiff attorneys, is not sufficient and is expected to be appealed to the higher instance".

7.2 Reparation

Though a victim oriented trend in criminal justice is being developed and approved by international standards relating to the right of victims to reparation, the Criminal Procedure Code of the Republic of Uzbekistan does not provide for enforceable right to compensation with sufficient degree of certainty for damages caused by breach of any of Art. 9 ICCPR requirements, since it conditions compensation by rehabilitation. CPC is designed to enforce the right to obtain compensation for unlawful criminal prosecution and conviction, but not for unlawful deprivation a person from liberty as required by Art. 9(5) ICCPR. The CPC provisions conflict with the provisions set forth by Civil Code of the Republic of Uzbekistan.

There are many reasons, why the courts of law do not rehabilitate the violated rights of torture victims. One reason is that in practice, civil procedures depend on the result of criminal procedures so that it is impossible to obtain compensation in the civil courts for torture if there has been no conviction of the person responsible.

One of the most important reasons, which make it nearly impossible to obtain redress is the lack of independent court of law as an autonomous constituent of the state power in the Republic of Uzbekistan. That is, the judiciary system is there and it functions but in reality it cannot rehabilitate and protect the violated rights in the form it (the system) exists since it is dependent on the executive power.

In case of Sharipov Azam, a civil action filed against the Ministry of Interior for 20 million Uzbek Soums (approx. US \$19,000) succeeded, although with

95 Questioner of LAS – Sharipov A of 24.10.2001; Questioner of Sharipov's mother of 06.11.2001; Examination of criminal case materials.

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a modest compensation awarded to the plaintiff 1 million Uzbek Soums (approx. \$900). This, however, is the precedent of great magnitude since the Ministry of Interior was found responsible for torture practice in civil action. The Ministry of Interior is still trying to dismiss the case by alleging that police officers responsible for torture were fired and are no longer associated with the Ministry.

There are no governmental or any non-judicial reparation schemes available for victims in Uzbekistan.

PART II
VIOLENCE AGAINST WOMEN

1. Introduction

Uzbekistan became independent in 1991. As in many of the republics of the former Soviet Union, the post-Soviet period in Uzbekistan has affected the situation of women adversely. During the 13 years of independence of Uzbekistan, the Uzbek society was confronted by overwhelming power of the State. The government of Uzbekistan turned out to be one of the most conservative, especially attitudes towards women's roles in the society and workforce. It has continued to use Soviet administration practise in all sides of life and has kept under control economic and social life. Despite declaration of reforms in social, economic and political spheres, the process of reforms promoted is slow and contradicted. The Uzbek society stays close and human rights violations remain widespread. Instead of democratisation and modernization the state promotes national ideology and national traditions.

So far women are suffering violation of their rights to greater extend then men and regardless of declaration of gender equality which exists in the Uzbekistan Constitution of 1992. The reason is more likely to be the social phenomena of the post Soviet Uzbekistan then the deficiency of legislation; first of all is the Soviet state's heritage: a general absence of respect of legislation exists. Second is the growth of patriarchal ideology and its increasing role in society regulation due to restoration of religion norms. Gender inequality is interpreted as a vital part of national culture opposed to expansion of western gender equality with its perverse influence on "tender and modest, highly moral orient women". Early marriages, polygamy, domestic violence are interpreted as woman protection or otherwise as a punishment merited by her for not respecting patriarchal patterns of behavior. Writers, politicians, cultural workers, media are pointing out low level of understanding of gender equality in the society among law enforcement agents and members of judiciary. In fact, for example, judges have no gender sensitive training⁹⁶.

Many cases of violence are not disclosed or/and not legally prosecuted because society gives the responsibility to woman, who is "truly" punished for her misbehavior.

So far, regardless of affirmations of equality as well as gender equality, *de facto*

96 Gulnara Sabirova Monitoring of observing the rights of women at divorces processes at civil country of Fergana district, NGO "Ishonch-OCSE", Fergana 2002 p. 5.

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these principles do not have legal weight. Human rights, equality topics are banned from political discourses. “Social practice” is against equality principle. State attitude of this kind (concerning human rights) and estates reinforcement are integral parts of social and cultural processes. The change of gender related policy is hardly possible without modification of leading political ideology which is basing itself on national values and increasing hostility towards “western influence”. *Ichkari* - women’s part of a house in mediaeval architecture - are sometimes rehabilitated. Occasionally anger is rising against those who question discrimination of women and by doing this “damage the very base of Uzbeki family”⁹⁷.

There are no special State antidiscrimination or equal right granting programs in Uzbekistan. National program for the realization of Beijing platform provisions is a formality, confrontation between state institutions and civil society slows down its realization. Participation of women in decision making process is limited *de facto* in Uzbekistan. Women are appointed on high rank positions, including the Women’s Committee, by “principe”. As the result of quota introduced in 2004, number of women in parliament grew up. However, due to non-democratic and corrupted elections, women indifferent to gender problematic, hostile to feminism and distant to women movement found their way to parliament.

The executive power had control over elections of 2004 in Uzbekistan; dysfunctions took place during period of candidates’ nomination as well as during elections.

The so called “elected” women-deputies are representing interests of their clans and not of women. New members of the Committee of Women are hostile to the term “gender” considered inimical to “national mentality” and the use of this word is forbidden. The government created the Committee of Women of Uzbekistan with branches in various regions in the country. Although the Committee of Women has the status of an NGO, it is a governmental organisation. From 2004 and on acts are undertaken to limit NGO’s access to the target groups⁹⁸. Women grass-root NGOs are declared unwanted and accused of propaganda alien to “national mentality”. Accords of the Ministry of Education to introduce gender education course in schools and

97 Practical conference “Women of Uzbekistan: yesterday and today”, Tashkent, 2004.

98 Interview with the Heads of local NGOs Fergana and Karshi at December 2004-January 2005.

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universities programs were cancelled⁹⁹. The Elite Academia of state and social construction is well known to prepare leading specialists of government and administration of national and regional level however since 2001 women present less than 5 % of its scholars.

The media and especially the Uzbek ones played a grave role in promoting and publishing discriminative norms; they promote gender stereotypes and sexist women image. The later is pointed out by an audit (several women NGO) and research works¹⁰⁰. For example, in the article “Women and market” in *Mohiät* journal N. 29, the author is blaming businesswomen and women engaged in retail trade for their conduct that do not correspond to “east education”. Women should be satisfied with their husbands’ income.

Finally, opportunity for women to acquire university degree has worsen since the abolishment of the USSR and following are the main reasons: economic; 60% of population reside in the countryside and have difficulty to pay tuition costs; parental desire to prioritize the male family members’ education; as young girls marriage age decreases, this leads to the impossibility to finish university or even college studies, in fact early marriages do not allow girls to complete their secondary education¹⁰¹.

As a result of privatisation, the significance of property inequality of women rose, and the discrimination and segregation of women in the economic sphere were strengthened. No women (with exception of the relatives of the highest officials in the state) are practically among the elite groups, managing properties. For example women in Tashkent textile enterprises received only 20% of shares. Majority of workers are women, women are only few in administration. Persons, who worked on high positions had more long experience and qualification, most of them were men. Women workers have shorter experience, because conditions of work are not safe and are hard, so overage of experience is 5 years. So, due to shorter experience and low position their participation in privatisation become week. Access of women to credits is limited because their overage revenues are less then men.

99 Marfua Tikhtakhodjaeva, Natalia Bushueva. Gender censorship at Uzbek media. Collection # 3: Image of women at Central Asia Media, CIMERA, 2002.

100 Communication strategy NGO for overcoming violence against women at Central Asia countries. INIFEM, 2003.

101 But at National report art.60 p.13 it is opposite opinion. At reality their decision is cancelled.

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The Uzbek government doesn't pay much attention to problematic of women rights violations and human rights violations in general which may lead the society to suffer the coming 10 year if women discrimination is maintained and the general public is not informed of their legal rights and the ways of legal defense. Population has trust in ways and customs of patriarchal tradition and lack faith in legislation.

Already in 2001 the Human Rights Committee in its concluding observation stated:

“The Committee is concerned that the traditional attitudes to women, whereby a woman's role continues to be seen by the State primarily as that of wife and mother, exclusively responsible for children and the family, make the establishment of equality for women very difficult. The Committee is also concerned about the limited contribution by women to civil society (articles 3 and 26 of the Covenant).

The State party should take measures to overcome traditional attitudes regarding the role of women in society. It should take steps to increase the number of women in decision-making bodies at all levels and in all areas. It should also organize special training programmes for women and regular awareness campaigns in this regard.¹⁰²”

2. Oppression of women's rights NGOs

Beginning 2004, the government passed a number of decrees that have complicated or made impossible any activities of the NGOs.¹⁰³ Decree #56 of the Cabinet of Ministers of 4 February 2004 “On measures to increase the effectiveness of the control of financial assistance, grants and humanitarian aid received from international, foreign, governmental and non-governmental organisations” was aimed at “prevention of opportunities and channels of laundering ‘dirty financial means’”. According to this decree, funds obtained through international grants were supposed to be transferred promptly to two

102 UN Doc, CCPR/CO/71/UZB, § 20.

103 For further information on repression on NGO and Human Rights Defenders, see Part 1 “Human Rights violations in Uzbekistan” of this report.

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major banks, namely Asaka Bank and the National Bank of Uzbekistan. As it consecutively turned out, this was a trap for the foreign funds going through the international grants, which were frozen. This decree seriously undermines the autonomy of Uzbek NGOs specifically, and civil society in general. It will serve to silence independent voices in Uzbekistan and therefore provides only a singular viewpoint to the international community.

For example, the commission at the National Bank refused to give funding to 10 NGOs (NGO Society “Mehri”, “Women and society” etc.) which projects were supported by Eurasia Foundation. 2 NGOs could not receive funding from UNIFEM and Global Fund for Women, because these donors have no registration at Ministry of Justice of Uzbekistan and have offices there. 80 % of funding of projects that were supported by IREX could not reach the recipients at 2004.

Some more documents were passed. The decree of the President of Uzbekistan No VII-3434 of 25 May 2004 “On additional measures for the support of the activity of Women’s Committee of Uzbekistan” was aimed at the toughening the control of the activities of women’s NGOs. According to this decree, all women’s NGOs were supposed to pass registration in governmental legal bodies before November 1, 2004, provided they had a reference letter from the Women’s Committee of Uzbekistan. This note was meant to eliminate independence of NGO and forced to be subordinate to the Women’s Committee. This document was followed by another document “On the program of measures aimed at implementation of the decree of the President of the Republic of Uzbekistan No VII-3434 ‘On additional measures for the support of the activity of Women’s Committee of Uzbekistan’”, which was adopted on 29 June 2004.

Not only these decrees preclude the existence of an independent women’s movement, they are also in violation of international agreements which Uzbekistan has ratified as the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1996. Under article 7 (c), state parties are required to ensure that women have the right to participate in non-governmental organisations and associations. The decrees targeting and disempowering NGOs in Uzbekistan contradict this treaty and should incur the criticism of the international community.

Unofficial sources say that all these measures are aimed at the destruction of independent non-governmental organizations created by women at the

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grass-roots level. The Coalition of Women's NGO named "Mehr" was initiated by the Women's Committee of Uzbekistan and its Board consists of head of CONGOs – not on the principle of Head of Coalition rotation. The new administration of the Women's Committee has revealed to prepare its own, "friendly" NGOs so that they could represent the civil society of Uzbekistan before the international community. Policy of the Women's Committee to take under control grass-root NGOs is revealed by initiatives to create coalitions, unions or councils under the heads-officials, who have high position at Governmental bodies.

The question of consolidation of the NGO community remains open in Uzbekistan, where a dialogue between NGOs and state agencies can hardly be achieved. Interrelations between these two sides are perceived only through the sight of confrontation, because NGOs consider that official would like to take NGOs under control, officials consider that independent NGOs activities promote "Western orders". Bodies of justice jointly confront NGOs on various pretexts. For example the Ministry of Justice prohibited the forum of NGOs dedicated to March 8 in 2004 under the pretext that the organizer was an NGO registered as a city NGO; otherwise the Ministry of Justice would limit the number of the participants of NGOs meetings. The obligation that NGO submit a request to the executive authorities for conducting an event was restored.

Grass-root NGOs should receive permission from local administration for collecting target groups and holding workshops or other activities at Universities, mahallas and colleges and should present their program and materials to executive authorities. Ministry of Justice considers that activity of grass-root NGOs should be geographically limited: town's NGO should work only in town not in district or at national level. Only national NGOs that have branches in the provinces can work at national level. Most grass-root NGOs have no opportunity to organise branches in provinces due to a lack of funds and so national NGOs are mostly CONGOs that receive financial support for offices and communication of the Government.

3. Survey of the national legislation on the status of women

The Human Rights Committee in its concluding observation on Uzbekistan in 2001 stated:

“The Committee expresses grave concern about the prevalence of violence against women, including domestic violence. The State party should take effective measures to combat violence against women, including marital rape, and ensure that violence against women constitutes an offence punishable under criminal law. The State party should also organize awareness campaigns to address all forms of violence against women, including domestic violence, in order to comply fully with articles 3, 6, 7 and 26 of the Covenant.¹⁰⁴”

For Uzbek officials the issue of violence against women is taboo. There is no clear definition of violence against women in the Criminal Code. No definition of the term “discrimination” and “violence” against women exist in the legislation of Uzbekistan, although in the juridical practice these terms are used sometimes, but for the majority of legislators and law enforcement agents, they are not sufficiently clear. In Uzbekistan the majorities of legislative standards, which relate to discrimination, are material standards, and in the legislation procedure, guarantees turn out to be insufficient. So accessibility of redress and reparation by women is limited

104 UN Doc, CCPR/CO/71/UZB, § 19. See also § 177 of the Concluding Observations of the Committee on the Elimination of Discrimination against Women on Uzbekistan in 2001: “The Committee requests the Government to pass a law against violence, especially against domestic violence, including marital rape, as soon as possible and to ensure that violence against women and girls constitutes a crime punishable under criminal law and that women and girls victims of violence have immediate means of redress and protection. It recommends that the Government organize training on gender issues for all public officials, in particular law enforcement officials and the judiciary, as well as for members of khokims’ offices at all levels and the local mahalas, to educate them about all forms of violence against women and girls in accordance with general recommendation 19 of the Committee, on violence against women. The Committee also recommends that the Government organize awareness-raising campaigns to address all forms of violence against women and girls, including domestic violence.”

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From a *de jure* point of view, Uzbekistan is upholding the principle of gender equality. The Constitution of the Republic of Uzbekistan of 1992 promulgates human rights and freedoms and equality of sexes. Article 18 of the Constitution states that all citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without distinction on grounds of sex, race, nationality, language, religion, social origin, convictions, individual and social status and that any privileges may be granted solely by the law and shall conform the principles of social justice. Furthermore, article 46 of the Constitution stipulates that women and men shall have equals rights.

This provision of the Constitution (Art. 46)¹⁰⁵ is reproduced in a number of laws. For example, the Civil Code¹⁰⁶ guarantees general equality of civil rights of citizens; the Family Code¹⁰⁷ in its article 2 establishes the principle of equality of the spouses within marriage and article 19 states that spouses have equal rights as well as equal responsibilities; the Criminal Code¹⁰⁸ confirms the equality of all citizens before the law (Art. 45, 141). In fact, the notion of gender equality is also incorporated into the Criminal Code of which article 45 stipulates that all persons enjoy equal rights before the law regardless of any differences, including gender. Furthermore, article 141 states that the direct or indirect benefits of citizens on the basis of sex, race, nationality, language, religion, social status, convictions, personal and social status shall be punished. The Labour Code¹⁰⁹ forbids any forms of discrimination in the working relations. However, the Law on equal Rights and Opportunity has still not been adopted.

Despite existing legal guarantees for gender equality, cases exist when gender neutrality are disrupted, for example, in the Family Code as the age of the entry into marriage for men is 18 years as for women it is 17 years (Art. 15).

The legislations on in theprivatization¹¹⁰, which are gender-neutral, do not contain provisions, which limit the rights according to sexes; however, no statistics exists on results of privatisation on women.

105 The Constitution of the Republic of Uzbekistan, Adolat , Tashkent 1992.

106 The Civil Code of the Republic of Uzbekistan, Adolat ,Tashkent, 1996.

107 The Family Code of the Republic of Uzbekistan, Adolat ,Tashkent, 1998.

108 The Criminal Code of the Republic of Uzbekistan, Adolat ,Tashkent, 1994.

109 The Labour Code of the Republic of Uzbekistan, Adolat ,Tashkent, 1995.

110 The Law of Degovernmentalization and Privatization of the Republic of Uzbekistan, Tashkent, 1992.

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The forms of violence against women include early marriages, polygamy and theft of brides. National legislation itself contains loopholes for these phenomena, which are evaluated as national traditions in the society. So the Family Code prescribes the legal age of marriage for men at 18 years and for women at 17 (Art.15). This article indicates that with the presence of valid reasons the head of local administration can on the request of those, who desire to enter marriage, lower the age for entering into marriage for 1 year. What is the “valid reason”? The law allows it to decide by *Hokimu* (Mayor). This is counted the practice of the conclusion of religious marriages *Nikoh* (agreement), which also contributes to an increase in the number of early marriages, although according to the law this marriage does not have legal value the society and *Mahalla* secretly give it unofficial accord. Although by law it is forbidden to conclude a religious marriage without the state marriage certificate (Family Code, Art. 13), these kinds of marriages are widespread and no one bears the responsibility for violating the law.

Despite some legal guarantees, women and men do not enjoy *de facto* equal rights in marriage as traditions and customs continue to rule the relations between and roles of women and men in marriage. Although vaguely formulated, article 8 of the Family Code may reinforce traditions and customs in family relations and undermine gender equality. This article states: “In the absence of pursuant norms in the legislation to regulate family relations, local customs and traditions not in contradiction to the legal principles of the republic of Uzbekistan may be applied.” In general, customary law seldom protects the rights of women in family relations.

3.1 Polygamy

The Women Resource Center and OMCT wish to recall that the Committee on the Elimination of Discrimination against Women in its General Recommendation 21 stated:

“Polygamous marriage contravenes a woman’s right to equality with men and can have such serious emotional and financial consequences for her and her dependents that such marriages ought to be discouraged and prohibited.¹¹¹”

111 U.N. Doc.HRI/GEN/1Rev.4.

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According to the information of a woman-journalist of IWPR, 70% men of Uzbekistan have a second family. The large part of the polygamists lives in the cities. These are men, who occupy higher governmental positions or those persons, who lead successful legal or shady business. The statements about cases of polygamy didn't go to the procurator. The president of ZAGS-Civil Registration Office Dilnoza Mutalova from Andijan testified that the only possibility to learn about the issue of polygamy is through the birth of child and the issuance of birth certificate, and in this case the name of the father remains unknown.¹¹²

Polygamy is a punishable offence under article 126 of the Criminal Code which states that polygamy is the cohabitation with at least two women within one household and shall be punished with fine from 100 to 200 minimal monthly wages or correctional labor up to 3 years, or imprisonment up to 3 years. This means that polygamy is a crime not due to the fact of having a relation with several women but due to the common household with more than one woman. If a person lives together with two or more women, but he does not share domestic economy, then the crime has not been committed. The action of polygamy is absent, too, when a person, without having cancelled the marriage, ceases the marriage relations and enters into a new actual marriage and lives together with two women and does not share domestic economy.

Moreover, to prove the presence of the crime for polygamy is complicated, despite the fact that neighbours and relatives are frequently present at the conclusion of religious marriage. By the absolute majority of men, polygamy is received as completely normal phenomenon, and they see in it nothing amoral and criminal. Moreover, there are the opinions that polygamy is necessary because of the existing demographic unbalance. The cases of commitment and responsibility for polygamy in the judicial practice are absent. Therefore, this formulation of law looks like a trick, which makes it possible for polygamy to occur.

The scales of this phenomenon are considerably more than in the countries where polygamy is allowed. Although there is no official data on this question, according to the data of Dr. G. Kuzibaeva¹¹³, the increase in the number of

112 âuksina Xamidova, *Polygamy Ceases to Be the Past*, IWPR, 2003. one year at the life of country p.174-175.

113 Interview with Dr. G. Kuzibaeva at May 2003 (Archive of Women's Resource Center).

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extramarital children are more than 30% in the cities, and 26% in the villages. It makes it possible to calculate polygamy in approximate terms, since the children of the second or third wife in the official statistics are recorded as extramarital.

3.2 Early marriage and abduction of brides

According to the Tashkent Legal Training Center, as the result of an investigation in mahalla of the Shayhantahur district of Tashkent early marriages and polygamy are sufficiently widespread, 12% of marriages concluded in 2002 are early marriages, 15%—polygamy, and most of other marriages were contracted under parent's pressure. The Center notes that domestic violence is especially extensive in the cases of early marriages, since many of the young brides don't understand and, furthermore, they are not ready to resist and to protect themselves from the humiliation and ill-treatment.¹¹⁴

Forcing women into marriage or preventing marriage is forbidden under article 136 of the Criminal Code¹¹⁵. However, the theft of brides in Uzbekistan revived together with the revival of the traditions and as the consequence of an increase in poverty. Incapacity to pay bride-money and finance generous wedding leads young men of non sufficient wealth and/or unemployed to use this tradition. The information about this phenomenon came from the activists the NGO "Tumaris". According to their information, those guilty of bride theft are not brought to justice for two reasons: the bride's family does not want publicity and people believe that bride theft is committed with the family approval and is part of century old custom. Law-enforcement agencies have usually the same vision on this issue. The theft of brides is often accompanied by rape. The NGO "Tumaris" presents the case of Rosa K.

Case

The 18-year-old Rosa K., a student of the Nukus Pedagogical Institute, was abducted by four young men. The young men were in the state of intoxica-

114 The Interview with Gulnaz Khidoyatova, Head of NGO (Tashkent Legal Training Centre), Jan. 2005.

115 Article 136 of the Criminal Code, "Forcing or Preventing Marriage" punishes "forcing a woman to get married or continue cohabitation, or abducting her with intend to marry against her will, as well as preventing her to get married with fine up to twenty-five minimal monthly wages or correctional labor up to three years, or arrest up to six months, or imprisonment up to three years".

tion and they decided at the moment to find a wife for their friend Timur K., who complained about being single. They jostled Rosa, who went along the road, into a car and brought her home to Timur, they literally carried the girl by hands into the house in spite of her resistance. The next morning Timur found out an unknown girl in the house with surprise. The parents of the girl sent a man to the house to demand where she was. The parents of Rose were forced to agree on the marriage of Rose with Timur in order to save their honor. But the marriage did not succeed. Unemployed Timur frequently went drunk and thrashed his wife. Without bearing the beatings, Rose ran out to her parents after several months. She was pregnant, and her parents forced her to abort but she suffered complication. The doctors reported to Rosa that she will never have children again.¹¹⁶

3.3 Rape

Rape is believed to be widespread in Uzbekistan, but due to cultural norms and values which place great importance on women's sexual purity, the crime is underreported. Public condemnation of rape victims is common, particularly in rural areas.¹¹⁷

Article 118 of the Criminal Code criminalises rape, i.e. sexual intercourse using physical force, threats and abusing the helpless condition of a victim, and provides that it is punishable by three to five years' imprisonment. Rape committed by a) two or more persons; b) by a dangerous recidivist or a repeat offender; c) by a group of persons; or d) accompanied by a threat of murder is punishable by seven to ten years imprisonment. The rape of a) of a person under the age of 18 if they are known to the perpetrator, b) committed during mass riots, c) committed by an especially dangerous recidivist; or c) resulting in grave consequences is punishable by 10 to 15 years imprisonment or capital punishment.

Rape of a person under the age of 14, if the age of the victim is known to the perpetrator, is punishable by imprisonment for a period of fifteen to twenty years or by the death penalty.

116 The materials of the NGO "Tumaris".

117 International Helsinki Federation for Human Rights, see note 16, p. 504.

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Moreover, rape in custody is not considered to constitute an aggravated circumstance. OMCT and the Tashkent Women Resource Center are concerned about the fact that according to article 321 and 325 of the Criminal Procedure Code, rape is not subject to automatic prosecution in Uzbekistan as criminal proceedings can only be initiated after a written complaint is filed by the victim. Thereafter the investigator starts to gather evidence. A case may be dropped if the victim withdraws the charges herself. As a result, many rape cases are not prosecuted as women do not report or drop charges because of social pressure.

According to the law, perpetrators of rape cannot avoid prosecution by marrying the victim. However, in practice, rapists escape criminal prosecution when all sides agree to arrange a marriage between the perpetrator and the victim.¹¹⁸

Uzbekistan's articles on rape in the Criminal Code neither explicitly address marital rape nor do they exclude it. However, police reportedly often fail to take action in cases of marital rape and the victim very often does not file a complaint or withdraws her allegation out of fear.¹¹⁹

4. Trafficking in women and Prostitution

Uzbekistan is a country of origin, transit and destination of human trafficking and women trafficking. Human beings are exported for labor, military¹²⁰ and sexual exploitation. Sometimes people are sold into Kazakhstan where they become slaves. 279 Uzbek citizens did seek help from embassies of Uzbekistan or law enforcement units of different countries according to the Tashkent NGO, "Istiqlolli avlod". These were victims of trafficking in human beings. The geography of the victims of human trafficking is extensive and includes the European countries and the United States as well as the countries of Asia. The majorities of victims were brought out of the country for sexual

118 Information received by the Human Rights Society of Uzbekistan; see also the International Helsinki Federation for Human Rights, see note, p. 505.

119 Information received by the Legal Aid Society. See also the International Helsinki Federation for Human Rights, see note 16, p. 505 and Human Rights Watch p. 38-39.

120 deceived young men were trafficked to Chechnya and Afghanistan to militant camps.

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exploitation by intermediaries, testifies Ms. N. Kochubey in her journalist materials¹²¹. Another category of victims is composed by women who contacted bride or employment websites through internet. Shuttle transportations of women for sexual exploitation particularly spread through Kazakhstan and Kyrgyzstan.

Women and men fall same prey to labor– slavery and exploitation but women are victims of sexual harassment, forced prostitution and trafficking. According to the Women's Resource Center, every second “day-labor” woman was in situation when she didn't get paid for the accomplished work, every third was forced to give her passport or other papers to employers for the working period. Every fifth was victim suffered sexual harassment from the tenant or other workers. Women did not acknowledge that they were the victims of rape, but they would talk about the existence of such cases. Women tell in interviews that they undergo threats, beatings, forced labor, and sexual harassment beside work¹²².

Until 2001 the topic of human trafficking in Uzbekistan was forbidden, although in the media the information about this phenomenon has percolated. But these phenomena were presented exclusively in the didactic tone, condemning the “adventure-seekers”, and the “immorality” of women, who left for abroad in the pursuit of “easy money”, whereas not only one article in the media, showed the role of the corrupted staff of the law-enforcement agencies in the human trafficking issue. Information about judicial trials of persons from these agencies, participating in this kind of crime, does not exist.

The Criminal Code of Uzbekistan provides the pursuit and punishment for “Keeping disorderly houses and Procuration” (Art. 131 – as amended by the Laws of 20.08.1999 and 29.08.2001), for “Kidnapping” and “Forced Illegal Deprivation of Liberty (Art. 137-138) and also for “Engagement of People for Exploitation” (Art 135 – as amended by the Law of 29.08.2001)

The following provisions of the Criminal Code may apply to the prosecution and punishment of trafficking in women. Article 121 of Chapter IV entitled “Crimes against Sexual Freedom” provides that forcing a woman to have sexual intercourse and satisfy sexual needs in unnatural forms at work or by a

121 Natalia Kochubey, *We were sold*, Eastern Truth, No. 125, p. 5; *Under Strangers' Names*, Eastern Truth, No. 148, p. 45; *We are not for sale*, Eastern Truth, No. 187, p. 2, 2003.

122 *The situation of the Mardikor Markets in Tashkent Region in the News Bulletin*, Special Issue, Women's Resources Centre, 2004.

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person on whom the woman is economically dependent is punishable by correctional work of up to two years or detention for up to six months. In chapter 6 entitled “Crimes against Freedom, Honour and Dignity”, article 135 states that the recruitment of persons for the purpose of sexual or other exploitation, committed through deception, is punishable by a fine ranging from 100 to 200 times the minimum salary, correctional work for up to three years or detention for up to 6 months, with or without the confiscation of property. The same crime committed a) repeatedly; or b) by a group of persons in prior conspiracy; or c) against a minor, is punishable by imprisonment for up to five years, with or without the confiscation of property. The same crime, committed for the purpose of trafficking persons abroad from Uzbekistan is punished by 5-8 years imprisonment.

However, trafficking of women, which has been evaluated by international experts, is not officially acknowledged in Uzbekistan. As practice shows, hundreds of young women leave abroad, if they were promised to work in order to earn money for the living. Most frequently, they leave as tourists and, also, with the visas of brides. They were promised the work as waitresses, dancers, nurses, and governesses. But in reality they ended up being concubines of rich Arabs in the countries of the Persian Gulf or prostitutes in other countries. According to the data of the network Dignity¹²³, among the victims of trafficking from Uzbekistan there are also minors: 4 women from Uzbekistan, who provided sex-services were arrested by the Indian police in the hotel Bombay (Mambay); 93 women by the Malaysian police, 6 women in Tel Aviv by the Israeli police.

The victims of trafficking are afraid and ashamed to turn to the law-enforcement agencies, because if they were prostitutes, even in the cases of coercion, they can be subjected to punishment according to the Uzbek administrative Code (Art. 190)¹²⁴, which prescribes that prostitution must be punished by administrative measures, such as administrative detention, personal watch or medical investigation. The presence of the special correction school in the city of Kokand, where minor prostitutes fall for the “immoral behavior” testifies the fact that this punishment is real¹²⁵. Moreover, the public attitude makes

123 Head of Network Dignity Ms. Dona Hughes distributes the materials of media from different countries to NGOs members of network.

124 Code of Republic of Uzbekistan on administrative responsibility. Tashkent, Adolat 1995.

125 Prostitution is presented as social phenomenon closely linked to western influence. State and private media condemn prostitutes and describe them as “immoral, antisocial” people who corrupt society.

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victims of trafficking outcasts of the society, and there is no Centre for the Rehabilitation of Victims of Trafficking in Uzbekistan.

The scale of organized prostitution is of great concern. It is reported that recruiters work in schools, universities, and nightclubs and on the streets. The discrepancy of the law-enforcement agencies doesn't make it possible to hold their staff accountable for covering organizers of prostitution. The hypocrisy of the authorities doesn't address complains to the organizers, but to the street prostitutes. The responsibility of law-enforcement agencies and the economic conditions, which have an influence on an increase in this phenomenon, the hypocrisy of the Committees of women, and the specific feature of the structure of the shady and legal business, which facilitates the development of the network of the suppliers of "living goods" were not raised in the media. Studies on this topic in academic studies and on governmental level haven't been touched upon.

The Committee on the Elimination of Discrimination against Women stated in 2001:

"The Committee recognizes the efforts made by the Government to address the issue of trafficking of women and girls, which has increased in the region following the opening of the borders. It notes with concern that there is still not enough information on the subject or a comprehensive policy to address the problem."¹²⁶

According to the data of the representative of Fergana Provincial Center of Confidence "Uzbekoyim" on the Social-Legal Protection of Women and Adolescents, Zulfiya Ahunova, cases of sexual violence against day workers, mockeries, and, now and then, beatings by the employers have a tendency to increase. "Our day workers encounter violence not only in the regions of Fergana province, but also in Kirgizia and in Tajikistan. Indeed, in the searches for work they leave also for adjacent countries", reported by Zulfiya Ahunova), "But unfortunately, the victims of violence don't report to the responsible administrations the acts of violence"

Case

The 15-year-old (day-laborer) Nigora from the Tashlak region of Fergana province did not return home, after leaving home in search for work. The girl

126 A/56/38, § 178.

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returned home after a week and parents were horrified, after learning, that their daughter was raped by a certain Hayrullo. As it is later known, Hayrulla is the inhabitant of the village “Arsiv” from the town of Kuvasay of Fergana province, on the market for charwomen in Tashlak region he hired Nigora and her girlfriend Salima for the work in the apple-tree garden. Kayrulla brought them to a certain house, but after feeling the evil intention of the employer, Salima found the possibility to run out, and Nigora was raped by Hayrullo. The girl returned home only after a week and described, sourly weeping, about what happened to her parents. Parents calmed down, when Hayrulla took Salima as the second wife, and the honor of the family was preserved.¹²⁷

To memory of a senior attorney of the region, similar cases are frequent, but victims don't refer to law-enforcement agencies, because they are fear of publicity and the loss of the honor of family. In the opinion of the leader of Fergana provincial Committee Abdusalom Ergashev, the problem of day worker is possible to solved positively only with the interference of the government. “In Uzbekistan the right to work is flagrantly disrupted”, emphasized by Abdusalom Ergashev, “employers hire women, and then commit violence against them, they treat them as disenfranchised people. Violence goes even to minor girls”¹²⁸

Case

20-year-old girl Rahimahon, an inhabitant of the Baghdadsii region of Fergana province, has been hired to manual labor at the Altyaryk market for five years. The latest employer—a 50-year-old farmer by the name of Ahmad, who hired her for the weeding of the cotton plant, unexpectedly to the young woman asked for sexual intercourse in his cotton field. After refusal, the “employer” blackmailed her, saying that if she would resist, he would disseminate rumor among the relatives, “Rahima sells herself for money”. The rapist attained his aim¹²⁹.

127 Nogora Sadikova, *Women—Charwomen—Victims of Rape*, IWPR, Jun, One year in life of country. 2003 p. 72.

128 Ibid.Sadikova, *Women—Charwomen—Victims of Rape*, IWPR, Jun, One year in life of country. 2003 p. 72-73.

129 Nogora Sadikova , *Women—Charwomen—Victims of Rape*, IWPR, Jun, One year in life of country. 2003 p. 71.

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Case

Rohila Hushvaktova from the Mirzachul region of the Dzhizak province, collected a group of volunteers of 36 people of women and men from Samarkand to work in the adjacent Kazakhstan, and she promised that they will be paid by 100 dollars per month. On the entrance to Shardara town in the south of Kazakhstan the “recruiters” took away their passport, allegedly for the temporary registration, and settled them in the barracks in the suburb of city, Rokhila herself obtained on 4000 teng for each worker (about \$25) and left for Uzbekistan. (it is a women)

“We worked on the cotton plantations,” says the 18-year-old Usupova Zulayho, but we fell into the hands of swindlers, they treated us like slaves, and we were very badly fed. A loaf of black bread and two spoons of sugar were out daily quota. When we began to require the earned money, they responded to us, that they do not pay slaves”. “In the barracks, in which we lived”, the 20-year-old young man Samarkand Muhammad Hursandov, “with us there were 150 additional Uzbeks from all regions of Uzbekistan. Some of them, who couldn’t bear the severe conditions, attempted to run out, but them they rapidly caught and strongly beaten”.¹³⁰

The staff from the press-service of the Administration of Internal Affairs (UVD) of the Dzhizak province reported that the criminal cases against Rohila Hushvaktova is closed, since, according to the workers’ lawyer, the evidences weren’t sufficient to prove her guilty. As one staff of UVD of the province says, in the Dzhizak province 10 other people are doing the business of sending or sale people abroad. The criminal cases were brought against three of them, but then they were closed for the unknown reasons.¹³¹

130 Ibid.

131 Ibid.

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Table: Destination of Uzbek Citizen in Trafficking within the Period of Nov. 2002-Apr. 2004

No.	Countries	Reached	Returned
1	Israel	206	139
2	UAE	24	6
3	Thailand	12	5
4	Malaysia	9	6
5	Turkey	7	
6	Indonesia	2	
7	Greece	2	
8	Russia	2	
9	Singapore	1	
10	Armenia	9	9
11	Pakistan	1	1
12	Kazakstan	4	4
		279	170

From the Information of the NGO "Istiqbolli avlod"

5. Legal Protection afforded to women in police custody

According to the human rights organisation in Uzbekistan torture remained routine in Uzbekistan. It has been reported that both male and female detainees are regularly threatened with rape. The police make such threats in particular against female detainees in the presence of their male relatives to force the

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men to sign self-incriminating statements. Women relatives of independent Muslim leaders are frequently arrested and harassed by state authorities¹³².

On 9 September 2003, OMCT issued the following urgent appeal on violence against women by state agents in Uzbekistan¹³³.

The International Secretariat of OMCT had been informed by the Kyrgyz Committee for Human Rights, a member of the SOS-Torture network, of the harassment of Surao Yusupova, wife of Akmal Yusupov, by government officials in Uzbekistan.

According to the information received, on September 4, 2003, at 11:00 a.m., government officials from the City Administration of Internal Affairs (CAIA) arrived at Surae Yusupova's home and conducted a search, without showing any warrants or other documents legitimizing such a search. The officials reportedly did not find anything incriminating in the house, but brought Mrs. Yusupova to the offices of the CAIA and questioned her there. It was reported that during the questioning, the officials threatened to rape Mrs. Yusupova. The officials reportedly brought her home in the afternoon, searched the house again, and then again brought Mrs. Yusupova to the offices of the CAIA for more questioning. She was returned to her home at 23:00 that evening. Mrs. Yusupova lives with her three children.

Surae Yusupova is the wife of Akmal Yusupov, who has been sentenced to twenty years imprisonment by a court in Uzbekistan. The report received alleges that Mr. Yusupov was unfairly sentenced under a variety of charges, including articles 156 ("for starting national, race and religious conflict"), 159 ("encroachment to the constitutional regime of Uzbek Republic"), 216 ("illegal organization of public associations or religious organizations"), 241 ("for not informing about crime or its concealment"), 244 ("forming, administration, participation in religious extremist, separatist, fundamental or any prohibited organizations"), and 28-246 ("co partnership in crime" – "contraband").

Case

The 29-year-old businessman Bokhodyr Karimov was arrested on 29 March 2004, the day when explosions occurred in Tashkent by unknown Islamic

132 OMCT, *Violence against Women in Uzbekistan, A report to the Committee against Torture*, 2002, p. 310.

133 See OMCT Case UZB 090903.VAW.

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organization, according to the statement of the authorities. The entire family of Karimov, including his elderly mother, two brothers with their wives and 5 young children at the age of 2,5-11, were suspected of the participation in the organization of the explosions. They were arrested at home by the Special Force and brought to the General Administration of Internal Affairs of Tashkent. After holding the women and children in the police for more than twenty-four hours, without allowing them to sleep, eat and go to the toilet, the police let them go home. The charges were brought against Bokhodir on allegation that he supplied terrorists with aluminum powder for preparing the explosives.¹³⁴

Case

The 20-year-old Sevara Azimova from Tashkent was summoned on 4 April to the Chilanzar (part of Tashkent) police department together with her family and was detained. According to her father Najmitdin Azimov, Sevara fell under suspicion after making several calls to her girlfriend Shakhnoza Inoyatova, who in the day of the explosions run away from home and was later known killed during the skirmish. “The father of Shakhnoza searched for his daughter in all the acquaintance, he also called Sevara, since the two girls studied together. Afterwards my daughter called him several times in order to learn about the whereabouts of Shakhnoza. The police detected all the calls, which were done to the Inoyatovas’ in the day of the terrorist actions and arrested Sevara”, explained Najmitdin Azimov. Within almost 2 months after the arrest of Sevara, Najmitdin Azimov said that they weren’t allowed to meet with their daughter, and they could not send her anything. The police advised them not to hire any attorney, saying that the defender of the government detained her. “We only know that Sevara is detained in Tashkent prison”, said Najmitdin Azimov to the correspondent.¹³⁵

Case

The 25-year-old Nilufar Khaydarova (woman) from Tashkent was arrested on 5 April 2004, also being suspected of the participation in the explosions. The alleged reason for her arrest was the fact that her two brothers were already sitting in prison for membership in “Khizb-ut-Tahrir”. “Nilufar has cancer, so

134 Galima Bakharbaeva, *The Investigations for the March Explosions in Tashkent resulted in Massive Arrest*, IWPR, Apr. 2004 p.1.

135 Ibid. Galima Bakharbaeva, *The Investigations for the March Explosions in Tashkent resulted in Massive Arrest*, IWPR, Apr. 2004 p. 2.

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she converted to Islam and began to pray and subscribed to the courses of Arabic language in the Egyptian Embassy. And she became to feel better herself, the illness stepped back”, says her mother Lydia khaydarova.

In 2003 Nilufar married an imprisoned member of the organization “khizb-ut-Tahrir”, this idea came from her brother Raim, who was serving a time in the colony of Zarafshan. The ceremony of the marriage took place directly in the colony, the just-married-couple stayed together for only 3 days, after this they haven’t seen each other. “We agreed to this marriage, knowing that hardly someone, who knows about her illness, would marry Nilufar, but she, like any girl, wants to be loved, they wrote each other romantic letters”, says the mother of Nilufar.

In the days of the explosions the mother together with Nilufar went to Karshi in order to visit in the colony her 22-year-old son Kayum, sentenced in 2000 to 11 years of deprivation of freedom for membership in “Khizb-ut-Tahrir”. According to the human rights defenders, it is possible that Nilufar knew some girls, suspected of the organization of the explosions, through the courses of Arabic, where, for example, she met Shakhnoza Kholmuradova, who according to the trial was a suicide-terrorist, firstly who completed suicide attack on the Chorsu market in Tashkent.¹³⁶

6. Prisons and conditions of detention for women

Uzbekistan has 12 preliminary investigation “isolators”, (investigation isolator is a prison where suspects are kept before being judges by tribunal) where men and women are kept separated, the biggest of them being the Tashkent prison with a separate building for women, and 3 colony settlements with different zones for each sex. Tashkent has one closed colony for women, where all women sentenced are centralized.

Two women’s rights NGOs, “Women and Society” (Tashkent) and Center of Social adaptation of women in Detention (Chirchik) have official permission to access to the women’s colony.

136 Ibid. Galima Bakharbaeva, *The Investigations for the March Explosions in Tashkent resulted in Massive Arrest*, IWPR, Apr. 2004, p. 2-3.

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Statistic regarding women currently detained is not accessible however problem of overcrowding seems absence at current time, but problems of homosexuals violence, physical and economic violence from criminal authorities exist.¹³⁷

In the women colony in Tashkent, guards are women and the colony entails sanitary facilities as bath, laundry and clinic. Pregnant women have opportunity to give birth at town hospital. There is separated children house at colony and mothers can see their children according to a time table. Regarding health problems, cases of tuberculosis are widespread. Cells for tuberculosis sentenced prisoners are separated but they have possibility to use the same bath as healthy prisoners. According to the information, food is poor.

There are single cell at women colony for punishment. As disciplinary measures administration use disfranchisement of meetings with relatives or call to them by telephone, refusing medical treatment, or also refusing to give recommendation to amnesty.

On 31 July 2003, OMCT issued the following urgent appeal on violence against women prisoners¹³⁸.

OMCT had been informed by a reliable source about violence against women prisoners, particularly Muslim women, in the jail known as KIN-7 (64/7) in Tashkent, Uzbekistan. Specifically, OMCT expresses its concern for 7 Muslim women who have been placed in a special punishment cell which reportedly has very poor conditions. Additionally, the information received indicates Muslim women are discriminated against in the prison and are not able to freely practice their religion.

137 Information from Human Rights defender Mahbuba Kasimova, who was in detention at women colony 2001-2002. interview at February 2005.

138 See OMCT Case UZB 310703.VAW.

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In an open letter, the following 21 women appealed to the President of Uzbekistan to take action with respect to this prison. These women were:

- | | |
|----------------------|-----------------------|
| 1. Ahmadaliyeva R.A. | 12. Abduvaliyeva M. |
| 2. Abbaskhujayeva N. | 13. Yerbalayeva K.A. |
| 3. Tursunova S.I. | 14. Gafurova K. |
| 4. Olimjonova O.K. | 15. Tumanova F. |
| 5. Mirzaahmedova M. | 16. Muydinova O.N. |
| 6. Musayeva Sh. | 17. Sultanova R. |
| 7. Najmiddinova I.A. | 18. Sultanova I. |
| 8. Isakova Z. | 19. Lukmanova D. |
| 9. Rahmanova U. | 20. Lakayeva A. |
| 10. Usmanova N. | 21. Kurbangaliyeva M. |
| 11. Hamdamova M.J. | |

According to the information received, seven Muslim women have been placed in the special punishment cell (DZO) for requesting that a woman with a severe heart condition receive medical treatment. OMCT is particularly concerned about reports concerning conditions in the DZO. The cell is very small and there is consistently water on the floor of the cell. Occasionally, when there is high pressure, water from the sewage overflows into the cell. The conditions are unsanitary and the food is poor.

The woman in need of medical treatment, Ms. Rakhima Akhmadaliev, reportedly never received any medical attention while she was held in the prison. According to the information, she was arrested because the authorities of Uzbekistan were searching for her husband.

According to the information received, women in prison are not permitted to wear dresses that cover their knees, part of their religious observance, and in at least one instance, a prison employee ripped off the dress of a woman who wore such a garment. It has also been reported that Muslim women in this prison suffer discrimination because they are Muslim, with most violence being directed at them first. The prisoners may only receive visits from their families once every six months.

The President of Uzbekistan issued an order to grant amnesties to many of the prisoners currently being held in Uzbekistan. However, despite the fact that women are the first group mentioned in the President's amnesty order, none of the women in this prison have benefited from the order. They claim that they have been unjustly imprisoned because they are Muslims and that they do not have the right to freedom of religion within the prison.

PART III

VIOLENCE AGAINST CHILDREN

1. Introduction

Uzbek population could be considered as a “young” population since, according to UNICEF figures, persons under the age of 18 years old represent more than 40% of the total population of Uzbekistan and approximately 25% of them are aged under 5 years old.¹³⁹ These sole figures show the importance of issues concerning children in Uzbekistan.

In the private sphere, one can detect a strong cohesion exist between members of the family in Uzbekistan, where several generations live together under the same roof or in living communities. Children are considered as an important part of family life and are deemed of great importance for the security and survival of the family in the future; in this respect especially boys are favoured.¹⁴⁰

Structurally speaking, child protection dramatically lacks adequate and comprehensive organization. There is no ministry, neither state committee or agency on childhood, or specifically dealing with children's issues. Some ministries (ministry of culture and sport, ministry of labour and social protection of population, ministry of public education, ministry of higher and middle education, ministry of health) have programmes or services in charge of children's issues, but there is no global coordination between them. At the local level, Mahalla committees partly address children issues through “modling the moral and spiritual atmosphere in the family, and the upbringing of the young generation”, in intervening in family conflicts, providing advice on parenting and proper behaviour for children.¹⁴¹

Uzbekistan partly protects children through its legislation. Uzbekistan has recognised the supremacy of generally recognised norms of international law in the Preamble of its Constitution. In this framework, the state, its bodies, officials, public organisations and agents shall act in accordance with

139 According to UNICEF statistics, in 2003, the total population was about 26 093 thousands of persons, among them 10 600 thousands were under 18 and 2 691 thousands under 5 years old. See UNICEF website
<www.unicef.org/infobycountry/uzbekistan_statistics.html>

140 Minnesota Advocates For Human Rights, Domestic Violence in Uzbekistan; <<http://www.mnadvocates.org/sites/608a3887-dd53-4796-8904-997a0131ca54/uploads/Uzbekreport.pdf>>, p.12.

141 For more information on Mahalla committees, see Human Rights Watch, Uzbekistan, from house to house: abuses by Mahalla Committees, <<http://www.hrw.org/reports/2003/uzbekistan0903/uzbekistan0903full.pdf>>.

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international standards to which Uzbekistan is a party. Uzbekistan has signed and ratified the main UN human rights standards, most of them containing provisions on child rights compliance or including children as beneficiaries. National law protects children through very general principles: support and care for the children by the parents and the state and the society mentioned in article 64 of the Constitution¹⁴², protection of childhood by the state in article 65 of the Constitution.

In presenting this report one should be aware that the information available on the situation of Human Rights violations against children is highly limited. Besides, the last examination of the situation of children's human rights in Uzbekistan by the Committee on the Rights of the Child underlined the "insufficient information and awareness" in several issues relating to children such as juvenile justice and violence in general. The government of Uzbekistan seems indeed still reluctant to provide any type of statistical information or grant access to information or institutions. Hence, OMCT strongly urges the government of Uzbekistan to open its doors (also legislative) to the work of non-governmental organizations, i.e. independent bodies to assess the situation.

2. Definition of a child

General age of majority:

In conformity with article 1 of the CRC, article 22 of the Civil Code of Uzbekistan establishes that citizens attain full active capacity at the age of 18. However, the emancipation of a child is possible from 16 years old. Emancipation requires parental consent and is necessary if the child works under an employment contract or entrepreneurial activity.

Age of marriage:

The marriageable age is set for men at 18 and for women at 17. It may be

¹⁴² Article 64 of the Constitution is as follows: "Parents shall be obliged to support and care for their children until the latter are of age. The state and society shall support, care for and educate orphaned children, as well as children deprived of parental guardianship, and encourage charity in their favour."

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lowered in exceptional circumstances by decision of the hokimiyat, a local government, but by no more than one year (article 15 of Family Code). This means that in exceptional cases, women can marry at 16 and men at 17.

Minimum age for working:

According to article 17 of the Labour Code, the minimum age for the admission to the employment is fixed at 16 years old.

The minimum age of criminal responsibility:

According to article 17 of the Criminal Code, the minimum age of criminal responsibility is 16 years old. Nevertheless, there are exceptions according to the seriousness of the crime where the age may be lowered to 14 or 13 years old.¹⁴³

Sexual intercourse:

Age of consent for sexual activity is 16 years old.

3. Non discrimination

Non discrimination principle in the law

Article 65 of the Uzbek Constitution¹⁴⁴ which states that “all children shall be equal before the law regardless of their origin and the civic status of their parents” guarantees to children respect of their rights without discrimination. Anti discriminatory dispositions can also be found in the Code of Criminal Procedure, the Education Act, the Labour Code or The Freedom of Conscience and Religious Organisations Act.

Gender discrimination: minimum age for marriage

As previously mentioned the age for women’s marriage is one year lower compared to the men. Despite article 65 of the Constitution, the difference in

¹⁴³ See section on Juvenile Justice.

¹⁴⁴ Uzbek Constitution, <<http://www.umid.uz/Main/Uzbekistan/Constitution/constitution.html>>

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legal age between men and women for marriage is unfortunately still prevalent in Uzbek law. A consequence of this provision is early marriage. This leads to numerous difficulties and risks that girls have to face once they are married such as the widespread problem of domestic violence and the traditional role of women. In southern part of Uzbekistan, there are number of cases of self-immolation of women and girls, however not all of them are reported. In addition, early marriages have also a consequence on the low rate of girls involving in higher education compared to boys.¹⁴⁵

Discrimination for religious purposes

Discrimination for religious purposes leads to discriminatory expulsions of pupils from seven to sixteen, because of their religious attire. Most of those expelled were girls. For instance, the mother of a primary school student reported that her daughter and a niece, aged eight and nine, attended school each day wearing white headscarves, with their faces uncovered. When the teacher asked them to remove their scarves when on campus, they refused to do so. Four or five days after the teacher issued a warning and the director of the primary school expelled the girls, but did not give their parents an official expulsion order. The mother of one of the expelled girls claimed that at least two or three girls in each grade were dismissed because of religious dress.¹⁴⁶ Although this case is not very recent, the situation has not moved until now.

Discrimination regarding the right to education according to social origins

Although school enrolment is generally high in Uzbekistan, meaning that nearly all children are enrolled in primary and secondary school, poor families, mostly from rural areas, have been restricted access to the educational system.

Discrimination of other groups according to their vulnerable status

Refugee children, disabled, street children, children in prison (and those that have been released) and those placed in orphanage and colonies do not enjoy

145 Uzbekistan, Supplementary NGO Report, 2001

<http://www.crin.org/docs/resources/treaties/crc.28/Uzbekistan.pdf> p. 24.

146 Uzbekistan. Class dismissed: discriminatory expulsions of Muslim students, HRW, October 1999, Vol. 11, No. 12 (D).

the same access to educational and health facilities as other children who did not face such vulnerable situation.¹⁴⁷

Especially the group of disabled children is vulnerable regarding the equal access to education, healthcare services and opportunities for social integration. There is an exceptionally high number of disabled children in Uzbekistan and they receive far from sufficient support. The relief payments are low and are made available only until the age of 16. Children with disabilities are discriminated regarding the right to education firstly because they are educated separately from other children. Moreover, the quality of education of those children is quite low.¹⁴⁸ In addition, in case where disabled children successfully pass their admission exams, some of them are not admitted to schools for some unknown reasons¹⁴⁹. It is thus not without surprise that disabled children are often seen begging on the streets.¹⁵⁰

4. Protection against torture and other cruel, inhuman or degrading treatment

4.1. Legal framework

Regarding the Constitution, the Criminal Procedure Code and the Criminal Code, children have the same protection as adults (see Part I, section 5.1 of the present report).

Some articles of the Criminal Code could be used to denounce acts of violence or degrading treatment against minors committed by state officers: article 127 on the inducement of a juvenile in antisocial conduct; article 128 prohibits sexual intercourse with a person under 16 years old and article 129 states that vicious acts (unforced, by force or threat) in respect of a person

147 Uzbekistan, Supplementary NGO Report, 2001, p. 4,
<http://www.crin.org/docs/resources/treaties/crc.28/Uzbekistan.pdf>.

148 www.unicef.org/infobycountry/uzbekistan_background.html?q=printme

149 Uzbekistan, Supplementary NGO Report, 2001, p. 26,
<http://www.crin.org/docs/resources/treaties/crc.28/Uzbekistan.pdf>.

150 Uzbekistan, Supplementary NGO Report, 2001
<http://www.crin.org/docs/resources/treaties/crc.28/Uzbekistan.pdf>, p. 20.

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known to be under sixteen years of age shall be punishable. But these are only some specific aspects of child violence and do not cover torture or other cruel, inhuman or degrading treatment or punishment. Real protection of the child needs an effective prohibition of torture against children when committed by state agents with aggravated penalties according to the age of the victim.

The law of Uzbekistan does not apply capital punishment to juvenile offenders under 18. The most severe form of punishment they can get is a long-term imprisonment.

Finally, a recently introduced provision of Article 235¹⁵¹ of Uzbek Criminal Code contains definition and sanction torture and other cruel, inhuman or degrading treatment or punishment. Specifically Article 235 states: “Act of tortures and other cruel, inhuman or degrading treatment or punishment i.e. illegal psychological or physical pressure on the suspect, accused/charged, witness, victim or other persons involved in criminal procedure or convicted, including their close relatives by means of threats, assault and battery, beating, torture, torturing or other illegal actions performed by public inquirer, investigator, public prosecutor or other employee of law enforcement body, punishment execution agencies with the purpose of obtaining from them any information, acknowledgment in guiltiness of a crime, their self-willed punishment for committed action or any action forcing them to do any kind of action”. The aforementioned article provides criminal sanctions varying from three years (or three years of correctional works) up to eight years of imprisonment depending on certain circumstances and other aspects of the action.

The definition contained in the Criminal Code raises more concerns than clearness as it refers to “illegal application of torture”. In other words, it was unclear whether the state authorizes some form of legal application of torture.

The Supreme Court later issued a clarification saying that interpretation of the Article on torture in the Criminal Code must be made in accordance with the spirit and meaning of the Article 1 of CAT.¹⁵² In theory Uzbek legislation is strict that the Supreme Court clarifications are deemed to be binding within

151 Law on Amendments into Certain Legislative Acts of the Republic of Uzbekistan dated 30 august 2003.

152 The criminal code definition differs from the interpretation dicta of Supreme Court which makes the reference to the Convention against torture. In its report, the state party refers to the judicial definition issued by the Supreme Court, not to the one adopted by the Parliament in its amendment to the Criminal Code.

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Uzbekistan, however, in practice neither law enforcement agencies nor other state agencies follow this requirement. Moreover, despite the law and the Supreme Court case law, practice shows that evidence has been rarely declared inadmissible on this basis.¹⁵³

4.2. Practice

Regarding detention,

As previously regretted by the Committee on the Rights of the Child in 2001 the situation is far from being improved in 2005 and information still lacks in order to properly assess the situation of torture against children in Uzbekistan.¹⁵⁴ NGOs receive claims but it is difficult to verify, since visits to prisons by NGOs and other non-governmental groups has been made impossible. According to Uzbek NGOs and testimonies, torture of children has been taken place in youth detention facilities, by the staff as well as by other children and practice of torture by law enforcement agents exist towards children.

In 2001, the Committee on the Rights of the Child was yet “concerned by numerous and continuing reports of ill-treatment of persons under 18 by the militia, including psychological intimidation, corporal punishment, including for purposes of extorting confessions [and] deplore[d] the insufficient efforts to investigate allegations of torture, as well as the failure to prosecute alleged perpetrators.”¹⁵⁵

Problems of systematic torture practices in Uzbekistan are probably the most serious problem among other violations of human rights practiced in Uzbekistan. This fact also concerns children and despite the fact of severe international critics in address of Uzbek government on the issue of torture, nowadays Uzbekistan definitely is leading the list of the most careless states in this area.

153 Human Rights Watch Report, Torture in Uzbek Law,
<<http://www.hrw.org/reports/2000/uzbek/Uzbekd00-02.htm#TopOfPage>>.

154 Concluding observations of the Committee on the Rights of the Child : Uzbekistan, CRC/C/15/Add.67, 07/11/2001, point 45 et 69.

155 Concluding observations of the Committee on the Rights of the Child : Uzbekistan, CRC/C/15/Add.67, 07/11/2001, point 39.

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Torture is most often reported during the whole stages of criminal procedure. Violence is especially widespread during arrest and detention. The majority of cases of torture occur during the 72 hours pre-trial detention period, before charges are brought and preventive measures selected, during which prisoners are usually kept incommunicado. From the materials gathered it would appear that the use of torture during this period is the rule rather than the exception. Regarding detention, torture and ill-treatment in Uzbek pre-trial and post-conviction facilities remain widespread, and occur with near-total impunity. Systematic torture practices in the Uzbek detention centers long ago became daily.

Most common types of child victims, with certain exceptions are children of political opponents and poor children (for instance street children). In the interrogation process, authorities have regularly threatened to inflict harm on family members of the suspect, including their children in order to reach a confession of the detained. Some children are also ill-treated by state agents only because their parent is a human rights defender.

A clear example is the case of Mr. Abdousamad Ergachev, son of Mr. Abdousalom Ergachev, a defender well-known for his articles on the human rights situation in Uzbekistan. On March 28, 2003, Abdousamad, aged 17, was arrested on his way home with a friend. Both he and his friend were hit and insulted. They were then taken to the police station without having been informed of the charges against them. Abdousamad suffered beatings to the head and lost consciousness. When he regained consciousness, the policemen began to beat him again, while yelling “your father is an extremist” and “this is an extremist case”.¹⁵⁶

Reportedly, torture or even beatings to death have been executed in the eyes of the child(ren) of the suspect.¹⁵⁷ This is frequent in Uzbekistan and constitutes a clear psychological violence.

Uzbekistan does not keep any official records or statistics on torture cases, therefore, reports are usually based on statements made by victims or personal investigations of human rights defenders and international human right organizations.

156 FIDH, Open letter to President A. KARIMOV, President of the Republic of Uzbekistan, 12th/05/2003.

157 HR Watch Report, Torture in Uzbek Law, at <http://www.hrw.org/reports/2000/uzbek/Uzbekd00-02.htm#TopOfPage>.

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Impunity of perpetrators is a major problem and torture will continue until the authorities address the question of impunity.

Only a few police officers and security agents have been brought to justice for torture-related deaths. No such cases were brought in 2003, however, and no thorough and independent investigations were carried out into the torture deaths that occurred in 2002 and 2003, despite extensive international attention and pressure on the government to undertake swift action. Uzbek courts continue to accept as evidence confessions extracted under torture, although the Supreme Court issued an instruction to judges to exclude defendants' testimony and confessions extracted under torture. Indeed, in practice, judges do not implement this instruction.

Cases

A'zam Sharipov was an apprentice learning to make keys. His work place was near the bus stop of the Chilanzar Trade Centre. One day two persons approached him and without presenting their identities complained about the quality of a key made at the same place earlier. Upon the persistent demands of the individuals, A'zam followed them and found himself in the Chilanzar District Department of Interior (RUVD) of Tashkent City, where he was detained for 30 hours. In the RUVD he was charged with the theft of a "Mercedes" car, murder of the owner of the car and insinuated complicity to drug dealing, and was demanded to sign a testimony. A'zam could not say anything, because he had nothing to do with these charges. After that they started beating him with hands and legs on his ribs, hips, calves, head, stomach, and with a wooden stick on his soles; they tied thumbs of hands, squeezed and beat; they put a gas mask on him, impeding the breathing; they intimidated him that in case he did not confess to the charges brought against him drugs would be planted on him. The boy was denied food, drink and sleep, and during the time he was kept in RUVD he was only let out once to use the toilet. He could not complain to anyone, because he was held incommunicado, no one was allowed to see him, his requests for a lawyer were ignored, and he was not taken to an investigator. Unable to bear such suffering, he jumped out of the window in a state of utter despair. He was taken to the hospital by a criminal investigation officer, who later was convicted under Article 103 (leading to suicide), 206 (position abuse), 235 (forcing to testify) of the Penal Code. Only after

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his leg was amputated, a criminal case opened and A'zam recognised as a victim".¹⁵⁸ Recently, the Legal Aid Society filed a lawsuit on behalf of A'zam for the compensation of the material damage caused by the acts of torture.

On May 8, 2003 police arrested 17-year-old Chingiz Suleimanov, without any warrant, on charges of having been involved in a fight. Suleimanov has mental disabilities, and his parents claimed that he was at home on the night the fight allegedly took place. The parents speculated that the real reason for the arrest was that earlier in the year they had written to the prosecutor about alleged criminal activities taking place under the protection of local police. The parents stated that they arrived at the Akhangaran District Police Station in time to see their son, whose head was bleeding, being forced into a car. Suleimanov screamed that he was being beaten and begged his parents to help. The parents reported that they were unable to meet with their son but that investigators told them that their son had been arrested to silence the family and would be beaten to death if they persisted in interfering in matters that were none of their concern or complained about their son's treatment. During his trial, Suleimanov maintained his innocence and that he had been beaten. The parents reported that the judge dismissed the allegations, responding that the country's police do not beat people. On June 25, the judge sentenced Suleimanov to 5 years' imprisonment on charges of hooliganism and theft. Before transferring him to the Tashkent Youth Prison, authorities took him back to the Akhangaran Police Station on the judge's orders, where his parents claim he was beaten again. He was released on September 2004 after he served 1 year.

Under the suspicion of theft and in the presence of 5 members of the Mahalla Committee, a 50-year-old criminal recidivist citizen, Abbos Sobirov, and his 40-year-old brother-in-law, Murod Khakimov, tortured 14-year-old Farkhod Saliev in order to force him to confess a house theft of one of the Mahalla dwellers. Despite the fact that the adolescent totally denied his participation in the crime and pleaded that this issue be dealt with by the law enforcement organs, Sobirov and Khakimov did not bother to notify the parents of Saliev or the inspection on minors' issues. Having detained the child for more than 8 hours, they used a

158 Interview of the Legal Aid Society with A'zam Sharipov of October 8, 2001, "Analysis of the judicial practice with regard to minors in the Republic of Uzbekistan", 2001, Legal Aid Society.

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piece of a rubber hose as a means of obtaining confessions, which was pushed up into the anus of the child, as a result of which the child developed peritonitis. Not a single participant of this outrageous arbitrariness acted as a witness against the criminals. On the contrary, they testified that the victim slandered “a decent person”. This Mahalla Committee was composed of several persons in prestigious positions. Finally the guilt of Sabirov and Khakimov was proved and they were convicted to different terms of imprisonment”,¹⁵⁹ but there were no actions with respect to the Mahalla members who assisted in the scene, although according to the CAT definition of torture, they can be held responsible for acts of torture.

In February 2003, police arrested 15-year-old Ravshan Tozhiev on allegation of theft. At the Yunusabad District Police Station, an officer approached Tozhiev’s mother and reportedly demanded the equivalent of 600,000 sums (approx. \$ 545). When she refused, Tozhiev was taken into another room, where he was allegedly tortured. After an hour, his mother was brought into an adjoining office, where she could hear her son’s screams; she then agreed to pay. One month later, another officer demanded another 500,000 sums (approx. \$ 454) to secure Tozhiev’s release. The mother then took the case to the Tashkent City Procuracy, which investigated the allegations of police brutality and corruption. In May one of the officers was sentenced to 7 years’ imprisonment for attempted bribery but no charges were brought on the accusations of police brutality. In June, Tozhiev, who had been released on a suspended sentence, was re-arrested on charges of stealing a necklace. When his mother arrived to the police station, she found marks showing ill-treatment on his body. Authorities later harassed the mother and threatened to arrest her, implying retribution for her successful complaint regarding police mistreatment of her son.¹⁶⁰

On May 1, 2004, Oleg Mironov was arrested for murder when he was 16 years old. He was taken to the Sabir Rakhim district police department in Tashkent. The police did not formally inform his mother. His mother received a phone call from an unidentified caller telling where her son was. His mother saw him the day after his arrest. Oleg had a

159 LAS case collection 2004.

160 Country Report on Human Rights Practices 2003, Uzbekistan, US Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm>.

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broken thumb, cigarette burns, burns under his chin and had been beaten with a baton. He told his mother that he had also been subjected to suffocation with a gas mask and a bag on his head and that the officers put the legs of a chair on his toes and then sat on the chair to smash his toes. Officers had also threatened to rape him and threatened his family. He was convicted for murder.

The following incidents occurred on 3 April 2004. Alisher A. (born 1986) and Zafar Z. (born 1991)¹⁶¹ were living with relatives in Tashkent while attending school. Their parents lived in another city. At 7pm on 3 April, 4 people came to the apartment and searched it. They seized some books in Arabic and then took the boys to an SNB department in one of the districts in Tashkent. The boys were taken to separate rooms. Alisher was handcuffed to a chair and his shirt and belt were removed from him. One officer (who had come to the apartment) said “you asked for my ID, here it is.” and he hit Alisher on the sides of his head with the heel of his hand. He tried to make Alisher talk [about the subject of the investigation, who was a relative of Alisher’s]. Another officer beat Alisher on his legs and bare shoulders with his own belt and then hit him in the lower back with his fists. In the next room Alisher heard Zafar. Officers were telling Zafar to talk but the boy answered that he did not know what to say. He heard a loud noise as if Zafar were thrown against the wall. One of the officers extinguished his lit cigarette on Alisher. A third officer came in, drunk, and strangled Alisher three times until he lost consciousness each time. The officers beat him in the head. A fourth officer beat Alisher on the legs with a bar and chain. They told him to write a statement and threatened to put him in prison and warned him not to make any phone calls as they would listen to his phone.

161 They are relatives. The boys families did not want their names published. These are pseudonyms.

5. Children in conflict with the law: Juvenile justice system

5.1. Legal framework

One can consider that a juvenile justice system does not exist as such in Uzbekistan. There are only some particular rules integrated in the general system of criminal law. There are no specific courts having jurisdiction to judge criminal cases involving minors. Juvenile offenders also suffer from a lack of procedural safeguards. Moreover, there are no special departments of investigation and cases involving children are dealt with by general jurisdiction. Judges, law enforcement officials, lawyers and all other judicial or para-legal personnel lack adequate training regarding the specific rights and needs of children in conflict with the law.

Commissions on Minors' Affairs are in charge of prevention of juvenile delinquency and should act towards children in need of care, children with antisocial conducts, and deal with rights and interests of children and rehabilitation of children socially jeopardized. Commissions on Minors' Affairs work under the management of the Tashkent hokimiyat, under the Council of ministers of the Republic of Karakalpakstan or under the Council of ministers of the Republic of Uzbekistan. Those Commissions assign prevention inspectors. They represent the police and one of their duty is the prevention of juvenile delinquency. Unfortunately, the law does not require from those inspectors to have minimum appropriate knowledge and skills in child rights issues. They mainly work in partnership with the Mahalla committees.

This remains a very rudimentary structure which is easily subject to abuses. In this framework, arbitrary arrests and incommunicado custody are frequent. As previously told, torture and other cruel, inhuman or degrading treatment or punishment are not rare.

5.1.1. Minimum age of criminal responsibility

According to article 97, paragraph 1 of the Criminal Code (CC) a person is criminally liable from the age of 16 at the moment of the commission of a crime. But the next paragraphs set up lower ages according to which a person under 16 years old can be criminally responsible:

- a minor can be considered as criminally liable from 13 years old but only

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on the condition that she/he has committed a crime with premeditation and aggravating circumstances;

- from the age of 14, a minor can be liable in case of serious crimes¹⁶²;
- the minimum age of criminal responsibility for all other crimes is 16 years old.¹⁶³

The variety of ages is a source of confusion and instead of protecting the minors, it can lead to abuse according to the way the law is implemented by the judge. Indeed, the age is lowered according to the seriousness of the crime and that often means that young adolescent of 13 or 14 risk to be sentenced to harsh penalties.

5.1.2. Law protecting children in conflict with the law

a) Procedure

In absence of a real juvenile justice system, chapter 60 of the Section 13 of the Code of Criminal Procedure (CCP) however elaborates principles with respect to the criminal proceedings regarding minors, i.e. persons aged under 18 years old, during the investigation, when juvenile are arrested and in police custody, when there are before the court/judge and during the trial.

The maximum duration of the questioning by the police cannot exceed 6 hours per day, excluding a necessary meal break of an hour (article 553 CCP). And the maximum time period for police custody is 72 hours.

One of the main legal guarantees is the legal representation and/or assistance. The legal representation is mandatory during the proceeding in cases involving juveniles - questioning, accusation, hearing, etc (articles 549 and next CCP). The juvenile has the right to the presence of a legal representative when the sentence is being pronounced (article 551 CCP). The juvenile has a right to a legal assistance from the moment he/she is first questioned by the police agents or by the judge: the minor can retain the defence counsel of her/his

162 Juveniles who have turned 14 are liable under sections 97(1), 98, 104-106, 118, 119, 137, 164-166, 169, 173 (2 and 3), 220,222, 247, 252, 263, 267, 271 and 277 (2 and 3) of the Criminal Code.

163 <http://www.right-to-education.org/home/index.html>

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choice but if he/she does not, a defence counsel can be retained by his/her representative(s), the inquiry officer or the court (article 550 CCP). During the time the minor is questioned by the police, he/she can ask for the presence of a teacher or a psychologist (article 554 CCP).

Before the trial, measures of restraint may be imposed on juvenile suspects. The minor will then be committed under supervision of parents, guardians, curators or heads of specialized juvenile institution (article 555 CCP).¹⁶⁴ If the juvenile may not remain at place of former residence, he/she may be committed to a specialized juvenile institution by resolution of investigator, authorized by the prosecutor, or by finding of court.¹⁶⁵ Another measure of restraint could be pre-trial detention but only in exceptional cases.¹⁶⁶

b) Sanctions

The first paragraph of article 86 of the Criminal Code states that: "When inflicting a penalty to a juvenile, a court being guided by general principles of inflicting penalty, shall take into account the level of juvenile's development, conditions of his life and fostering, the reasons of commission of a crime, as well as other circumstances influencing on his personality."

If the minor is deemed responsible of having committed an offence, he/she is punishable of:

- fines (from 2 to 20 months of salaries),
- penitentiary/correctional works,
- arrest (from 1 to 3 months),
- deprivation of liberty.

164 Article 236 CCP sets up the purposes of and grounds for applying measures of restraint: "Measures of restraint shall be applied for the purpose of preventing the evading of a defendant from inquiry, pre-trial investigation and trial, suppressing further criminal activities of defendant, preventing his attempts made to impede establishment of the issues and securing the execution of a sentence. A ground for imposing a measure of restraint in the form of custody may be sufficient grounds to believe that the defendant will flee from inquiry, pre-trial investigation, or trial for only the reason of dangerousness of the offence he has committed."

165 Article 557 of the CCP.

166 See section 7 on deprivation of liberty.

A minor may be sentenced to correctional works if he is able to work. If the minor uses working, he will carry out the correctional works with his employer. If not, the judge will decide where the minor should carry out the correctional works, having in mind that it should be close to the minor's home.

Conventional conviction may replace correctional works or deprivation of liberty. According to article 72 of the Criminal Code, the conventional conviction may last from 1 to 3 years. For the minor, it consists in repairing damage, working or carrying out studies. During the conventional conviction, the minor should inform the representatives of the Ministry of internal affair who monitor of any modifications in his/her life.

Uzbek law does not apply capital punishment to juvenile offenders under 18, for whom the most severe form of punishment is long-term imprisonment which cannot exceed 15 years for a crime of special gravity.

5.2. Practice

It is not rare that some basic guarantees are infringed during the different stages of the proceedings.

Regarding the right to a legal assistance, also a legal counsel can be provided in case the juvenile cannot afford, but in practice lawyers are reluctant to defend children because the state only remunerate them with 600 sums (approx. 0,5 USD). In addition, lawyers are often informed last-minute of the details of the case. It exists also doubt as to whether the right to the presence of a psychologist, pedagogue is ever applied.

The principle of presumption of innocence is also often violated. Indeed, children and their representatives carry the burden of proving lies with the accusation.

In addition case of arbitrary arrest and detention without grounds are regularly reported. Lack of motivation for arrest and detention often lacks. Moreover, infringements of the terms of custody, fabrication of false guilt evidences incidences of bribery, falsification of charges, harassment of the offender's family and torture at the arrest and interrogation phases are also common.¹⁶⁷

167 See the case of Ravshan Tozhiev in section 6 on Torture.

Furthermore, the Uzbek society is built on the Mahalla system in which the community and the families are associated. The Mahalla functions as a social regulator. Numerous incidences of domestic violence and other family issues are solved within the Mahalla communities. Due to the importance of the Mahallas, cases of juveniles transgressing the law are also dealt with by the Aksaka (head of Mahalla). However, there is no information or statistics on how these issues are resolved. Involving the community into children in conflict with law issues could be a good idea particularly in terms of rehabilitation, as it is already used in other countries. However, this kind of process needs to get government's support and management, and the persons involved should be made aware of children's rights and of the particular, and often vulnerable, situation when they are in conflict with the law. These are several conditions that still lack in Uzbekistan.

5.3. Deprivation of liberty

5.3.1. Legislation: grounds for detention and premises

A juvenile can be deprived of his/her liberty before the trial and after the conviction to a detention sentence:

- *pre-trial detention*: a juvenile will only be detained awaiting trial only in the framework of article 236 CCP¹⁶⁸ and “in exceptional cases, when charged with the intentional crime commitment that may be followed by imprisonment for a term exceeding five years, and when other preventive measures may not provide the proper behaviour of the defendant” (article 558 CCP). The maximum time period for pre-trial detention is three months (article 245 CCP) but can be extended of 5 further months by the regional public prosecutor, of 7 months by deputy general prosecutor of Uzbekistan and of 9 months by the general prosecutor of Uzbekistan.
- *post-conviction detention*: in this case, the detention period cannot exceed 15 years when the person who committed crime(s) was between 13 and 18 years old. There are differences according to the age of the juvenile offenders:

168 Article 236 of the Code of Criminal Procedure set up measures to prevent that the accused person escapes or is a danger for the society, etc.

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(1) to those who committed crimes at the age from 13 to 16, the duration of deprivation of liberty is for up to 10 years and, in case of especially serious crimes, up to 12 years;

(2) to those who committed crimes at the age from 16 to 18, the duration of deprivation of liberty is for up to 12 years and, in case of especially serious crimes, up to 15 years.¹⁶⁹

Minors are detained on the same grounds as adults. Detention is possible on both administrative and criminal grounds.

Juveniles shall be detained in educational colonies, separately from adults. Educational colonies are divided in two parts: colonies of “total regime” and colonies of “intensified regime”. Colonies of “total regime” receive minors that have been convicted for a petty offence or a serious crime for the first time and girls being recidivists. Colonies of “intensified regime” receive boys that have been convicted as recidivist for intentional offence. Moreover, according to article 124 of the Penal Code, juveniles aged under 16 shall be detained separately from those over 16 (article 124 CC).

5.3.2. Practice

In its last concluding observations, the Committee on the Rights of the Child was concerned about insufficient information in the area of juvenile justice, and particularly about deprivation of liberty.¹⁷⁰

Until today it has been difficult (to not say impossible sometimes) to accurately assess the situation in juvenile detention centres and colonies. Foreign delegations have not been granted access to these institutions, although in some cases arrangements were made but cancelled last minute. This has created the strong impression that the conditions of detention are not in accordance with international standards. This is reinforced by the existence of cases of unregistered detentions.

As previously mentioned deprivation of liberty can happen before or after the conviction.

¹⁶⁹ Article 86 Criminal Code.

¹⁷⁰ Concluding observations of the Committee on the Rights of the Child : Uzbekistan, CRC/C/15/Add.67, 07/11/2001, point 69.

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Before the conviction, children can be sent into investigation solitary confinement cells that are placed into police premises. Despite law requires children to be kept separately from adults (articles 228 and 558 of the Criminal procedure Code), they are generally kept with adults. This often leads to negative influence on the children's behaviour or in abuses from adult inmates. Those cells are overcrowded, have insufficient lighting, no ventilation, and no heating.

Since the last CRC's concluding observations, the situation has hardly improved. Basically, since the last CRC report, there is little improvement regarding pre-trial detention of children. When the child is arrested, judges now mostly let him/her stay at home until the court hearing. There is a current trend according to which pre-trial detention of juveniles is decreasing.

After conviction juveniles could be sent to colonies. Such facilities are known to be poor in Uzbekistan: they are overcrowded (contrary to adults, children do not have the right to a single room, after having committed especially grave crime).¹⁷¹ Very often children are confined in cells together with adults¹⁷² despite the express interdiction of the Code of Criminal Procedure. People are mistreated, and numerous die (reasons?). Hence, one suggests that torture of children in prisons and colonies is common. Children are abused by elder detainees or forced to prostitution.

The following information come from the testimony of a boy detained in the Zangiota colony.

They are around 50 children living in the same room. They should clean their room themselves. The food is monotonous therefore, most of the children complain for the constant feeling of hungriness. Every Saturday priests from the Orthodox Church visits the colony. At first times these visits were accompanied by the officials of the colony, then after the gaining the trust the officials left children alone with visitors from the church. However, for Muslim children conducting daily prayer is prohibited.

171 UN Study on Violence Against Children, Response to questionnaire received from the Government of the Republic of Uzbekistan, UZ/UN/04-134.

172 Regarding the separation from adults, there is no difference between boys and girls. There is only one colony for women in Uzbekistan and girls are detained with female adult inmates.

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When asked about the privacy interviewee did not know the meaning of this concept. The common bedroom is equipped with 50 beds and bedside table by each. There no lock rooms and no other possibility to ensure privacy. Furthermore, official censorship exists towards written communications of juvenile prisoners. If the administration dislikes the content of the letter, this letter will not be delivered.

According to LAS interviewee most of the children in colony were tortured during the investigation. Militia officers threatened the interviewee with the physical violence if he would not take the blame for the murder, this happened in January, 2003. There were other boys who were more badly tortured. Interviewee stated that militia officers try not to leave any sign on the body of the detained while torturing. For instance they can put 2 books on the head of the detained person and beat over the books by the hammer. Also one boy was put in the safe and then militia officers hit the safe with metallic sticks.

Once one boy forgot to iron his trousers and as a punishment he was forced to put the shit on his face in front of everybody. Beatings are regular. As a punishment prison administration frequently use labour duties.

Forced labour is widely used in juvenile prison which shows clear contradiction to the UN Rules on the Protection of Juveniles Deprived of their Liberty. Children are placed in solitary cell called karcer. This cell has an imitation of chair from cement concrete and bed locked to the wall. In the night the guard is supposed to come and unlock the bed, there are cases when guard does not unlock the bed. The temperature in this cell during the winter times is colder then outside. Administration of juvenile prisons constantly beat children and use obscene language to children.

6. Child sexual abuse, exploitation, prostitution and trafficking

6.1. Legal framework

Uzbekistan has not yet signed the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

Legal age of sexual consent is set at 16 years old and prescribed by article 128 CC which asserts that sexual intercourse with a person under the age of sixteen is punishable. In addition, the Criminal Code clearly forbids sexual abuse, child prostitution, exploitation and child pornography in various articles. Article 118 CC states that rape of a person who was obviously less than 18 years old shall be punished with imprisonment for 10 to 15 years (paragraph 3) and the rape of a person who was obviously less than 14 years old shall be punished with imprisonment for 15 to 20 years (paragraph 4). Other forms (considered as unnatural and forced) of child sexual abuse are punishable under article 119 CC, and also in this article heavier punishment applies to the perpetrator the younger the victim. In case the victim is younger than 14 years old, the sentence constitutes 15 to 20 years imprisonment.¹⁷³

Article 135 CC prohibits sexual exploitation “or any other exploitation by deceit” and involves aggravated consequences for the perpetrator in case the victim is a juvenile. It is apparent that child prostitution also falls under this definition. The same article also prohibits trafficking outside the borders of Uzbekistan and assigns to it a higher punishment. However there is no references made to a higher punishment in case a minor has been trafficked.

Article 130 CC concerns the production and dissemination of obscene objects (to persons under 21). The amendment of the article, which took place on August 29 2001, replaced the wording ‘pornographic things’ with ‘obscene objects’ and therewith expanded the scope of activities covered by article 130. In addition, the sentences prescribed have been slightly increased by the amendment.

In 2003, the Government drafted comprehensive trafficking legislature, which has not yet entered into force. In March 2004 the Ministry of Internal Affairs

¹⁷³ This text was adopted after an amendment of Article 119 on the 29.8.2001. Previously paragraph 4 also included capital punishment.

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created an Anti-Trafficking in Persons Unit under the Criminal Investigation Division. The government has actively worked with NGOs and OSCE to combat trafficking through training of law enforcement and the protection of victims.

6.2. Practice

Uzbekistan has a child prostitution problem, but no official data are available to assess its proportion.¹⁷⁴ According to anecdotal reports from NGOs, the number of Uzbek children who are trafficked into prostitution abroad is growing. Traffickers most often target girls aged between the ages of 11 to 16, but boys are also trafficked. There are information according to which young women are forced to move to the Persian Gulf, Malaysia, South Korea, Thailand, Turkey and Western Europe for the purpose of prostitution. Many young prostitutes come from poor rural areas and deteriorated families. There are cases when parents, for profits or just in despair, sell their young daughters into sexual slavery. In large cities such as Tashkent and Samarkand, newspaper advertisements for marriage and work opportunities abroad as dancers or waitresses in private nightclubs or restaurants are often connected to traffickers. Some local officials, operating on a relatively small scale, were reportedly helping women to obtain false passports in order to travel to Dubai to work as prostitutes.¹⁷⁵

Especially street children have been engaged in prostitution practices. The state provides modest relief to these children in terms of programmes for shelter and food. They have consequently been compelled to find other means to support themselves. An unofficial estimate expressed that there are about 1500 street children in Uzbekistan.¹⁷⁶ One of the major obstacles in the fight against trafficking for sex trade has been internal corruption, i.e. bribes taken by customs and border guards.¹⁷⁷

174 Supplementary NGO Report on the implementation of the Convention on the Rights of the Child in the republic of Uzbekistan, Tashkent, 2001, p. 33.

175 Uzbekistan. Country Reports on Human Rights Practices, Bureau of Democracy, Labour and Human Rights, US Department of State, March 31, 2003.

176 Supplementary NGO Report on the implementation of the Convention on the Rights of the Child in the republic of Uzbekistan, Tashkent, 2001, p. 20.

177 Country Report on Human Rights Practices 2003, Uzbekistan, US Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm>

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Sale of children is a new shocking phenomenon in Uzbekistan for some years. In Samarkand province women from rural regions sell their children in markets. Thus, a market salesgirl testified to have seen two eighteen-year old women with babies in their hands appeared in the market. They approached salesmen proposing to buy their babies for about \$5 US per baby. The women refer to their misery to justify themselves. On receiving the money for the babies, they immediately disappeared.

In 2002 Sakhil Khodzhaev, the Chairman of the Society of Invalids of Samarkand region, witnessed a woman on one of the flea markets of Samarkand called "Distant Camp", who first wanted to sell, and then simply proposed to give for free two children under 7 years old. She explained that her husband had died, and she could not feed the children. Khodzhaev helped the woman to put the children to the orphanage. Single mothers from rural areas are the first to get rid of their children because of a higher unemployment rate in the rural area in comparison with the city and miserable wages which are never paid in time.¹⁷⁸

7. Child labour

Article 77 of the Constitution specifically prohibits forced or bonded labour, including by children. Article 77 of the Labour Code establishes that the minimum working age is 14. Work may not interfere with studies for those under the age of 18.¹⁷⁹ Uzbekistan is not party to ILO Convention 182 on the worst forms of child labour, but is bound by overlapping obligations through the 1930 Convention on Forced Labour No.29, to which Uzbekistan acceded on 13 July, 1992. The Ministry of Labour is the principal office responsible for enforcing child labour laws.¹⁸⁰

In the face of these prohibitions, forced labour does occur in practice. Due to poor conditions, children in rural areas often work during the harvesting

178 Artour Samari, IWRP, 20 March 2003.

179 When school is in session:

Children 14-16 10 hours a week

Children 16-18 15 hours a week

When school is not in session:

20 hours a week

30 hours a week

180 Country Report on Human Rights Practices 2003, Uzbekistan, US Department of State: <http://www.state.gov/g/drl/rls/hrrpt/2003/27873.htm>

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season. School-children are recruited on a large scale for the cotton-picking campaign. Some work in cotton plantations with pesticides which are very dangerous for children's life. Children pick cotton sitting on their knees, with their backs bent down, what results in the limitation of children's height. In the bargain, living conditions in the fields are squalid, children suffer from malnutrition. In these conditions, many children fall ill or even die.

Authorities themselves insist on the economic necessity to employ children for the harvest. They pay 36,000 sums for one tone of cotton gathered by children, and more than 41,000 sums if it is picked by a combine. In the main time, local and regional politicians deny children's forced labour in the fields. Thus, Akhadzhon Isakov, the head of the Rishtant region, claims that only adults are mobilized to work in the fields, mainly the staff of companies and organizations. Others insist that children work voluntary out of patriotism and sense of obligation to their homeland.

At the beginning of the season, Mamlakat Ishamova, the director of a school in the Zarbdarsk region of Dzhizaksk province, obtained an order from Nizom Usmanov, the deputy director of Khokima region, that she must mobilize 169 schoolchildren to the cotton field. She objected, after asking whether there is any written instruction from Khokima region in this matter, and asked to send to the cotton a smaller number of children. But Nizom Usmanov, was inexorable, stating that he does not need the disobedient director. On the next day, Mamlakat Ishamova sent 150 students to the harvest. Immediately, anguished messengers from hokimiyat appeared at school and ordered to write the letter of resignation promptly.

Kadyrova, the deputy chief of the Center of Human Rights Initiatives of Samarkand (CHRI), confirmed the deaths of eight school and university students while picking cotton over the passed two years. But "criminal proceedings have never been initiated. It is not permitted to send ill children home or to hospital, there is total indifference to their health".

The former UK ambassador to Uzbekistan also expressed his concern on the issue and stated that: "The widespread use by the state of forced child labour in the cotton harvest also should be highlighted further. This is one area [where] I would like to see the UN take a much more active role."¹⁸¹

181 UZBEKISTAN: Interview with Craig Murray, former UK ambassador (http://www.irinnews.org/report.asp?ReportID=44215&SelectRegion=Central_Asia&SelectCountry=UZBEKISTAN).

8. Violence, abuse, neglect and maltreatment

8.1. Child suffering within public premises

In this section public premises cover all kind of institutions where children could be placed for any purpose such as orphanage, children's homes, institutions for disabled children, detention centres, etc. Most of them are closed environment and this fact increase the risk of violence as well as the risk that the violence is not reported. The discipline is very strict. In the children's homes, there are only 2 educators for 30 children, and in institutions for disabled children, there is only 1 educator for 10 children. NGOs report forced labour in these premises.

8.2. Child abuse within the family

Although there are no official data on domestic violence and sexual abuse within the family, it is not a secret that latent violence used by parents towards their children is a common problem in Uzbekistan. Concerning corporal punishment, 37% of parents recognise that they use corporal punishment to control their children.¹⁸² Traditional means of parental education still persists in Uzbekistan and, partly due to the closed Mahalla system, no action has been taken by the government to prevent these occurrences.

Children have a right to complain in case of ill-treatment by relatives. However despite article 67 of the Family Code that allows a child from 14-year old to file a suit against his/her parents/guardians if the later do not respect his/her child rights, it is very rare that children report being abused. Many children are unaware of their rights and their possible protection. Moreover, there is neither information about appropriate contacts in case of abuse, nor "hot lines".

Support and reinsertion of victims are also very poor: sexually abused girls are often sent to detention centres in order to cover up the family abuser instead of being protected.¹⁸³ State agencies dealing with children prefer not to interfere in family matters and seldom run to deprivation of parental rights because of violence towards children (articles 83-94 of the Family Code)¹⁸⁴.

182 <http://www.unicef.org/uzbekistan/protection.html>

183 US State Department, section Children.

184 NGO report, p. 18.

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In the absence of any official statistics, some cases are reported by NGOs and the media:

Uzbek NGO Orzu reported the case of F., a 10th-grade schoolgirl in a Tashkent school. After the death of her father, F.'s brothers forced her to wear a "khidzhab" (headscarf) even at school. Since the 7th grade, F.'s "khidzhab" and sadness made her stay out of girls of her age. She confessed that her brothers forced her to wear "khidzhab" and did not allow her to communicate with the boys in her class. Once they locked her alone in a room for nine days, because F. had dared to tell them that she did not want to wear a "khidzhab". Her mother herself obeyed her sons, and she could not protect her daughter from the behavior of her sons. Sometimes F. did not go to school, because the traces of beatings were too obvious¹⁸⁵.

"Zerkalo" newspaper described a case occurred in the Syrdar province. "Being intoxicated, Maruf M., an inhabitant of the Akaltynsk region, raped his 14-year-old stepson. As a result the boy died. The rapist was convicted for sexual assault in accordance with article 119 of the Criminal Code - satisfaction of sexual needs in unnatural way using violence, threats or taking advantage of the helplessness of the sufferer¹⁸⁶".

The case law testifies to a societal pattern of domestic violence initiated by stepmothers against their stepchildren, often coupled with ignorance, if not connivance, of the father. Thus, in one family in Dzhizak, the stepmother was constantly teasing and beating her stepdaughter. In the end, the latter poured herself with kerosene and burned herself in front of the stepmother¹⁸⁷.

185 [JRC], electronic journal, No 6, 2004.

186 E. Usmanov, the judge of Syrdar provincial criminal court, R.Begaliyev, the assistant to the attorney of the Syrdar Province, Infanticide, Zerkalo, 11 (196), 14-15 March 2003, p. 4.

187 The report of a scientific research project, the "Inventory of Protection of Women's and Children's Rights Legislation and Elaboration of Recommendations Concerning Modifications to the Criminal, Administrative, Criminal Procedure and Family Codes of the Republic of Uzbekistan", SOROS, 2002.

Recommendations

General Recommendations

The coalition of NGOs recommends that:

1. The State authorities should ensure the implementation of the recommendations already adopted by international and regional human rights treaty bodies.

Right to life

2. The government should ensure the right to life by conducting the necessary investigations to identify, try and punish those responsible for extrajudicial deprivations of life and disappearances.
3. The government should ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Prohibition of torture

4. The State authorities should amend Article 235 of the Criminal Code in order to be fully consistent with Article 1 of the CAT.
5. The government should ensure the full implementation of the recommendations adopted by the UN Special Rapporteur on Torture.

Detention

6. The Criminal Procedure Code should be reviewed to bring it into line with international norms and standards. In particular, current legislation should be modified to ensure:
 - the possibility of lodging complaints regarding acts of the investigation, including registration to an independent judicial body or authority;

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- the control of the legality of detention by a judicial body within a short period after detention;
 - the possibility of questioning the legality of the detention during preliminary investigation. The possibility of the judicial appeal of actions and decisions limiting rights and liberties of citizens must be effected in compliance with the procedure such as *habeas corpus*.
7. The right of detainees to be examined by a doctor of their choice and to demand certification by a qualified forensic practitioner on their own preference of eventual injuries suffered should be legislatively secured.
 8. The government should ensure that all personnel involved in the custody, detention, interrogation and treatment of detainees are trained with regard to the prohibition of torture and ill-treatment.
 9. The government should introduce a detailed register or personal card of each detainee confined under guard that must be kept in personal file of each detainee, where following acts shall be noted: time of detention (arrest) and time delivering of the detainee to the law enforcement agency; time of declaration of detainee's rights; detected signs of any bodily injuries and if not than confirmation of their absence; time of notification to family and other relative persons of detention of the person (detention, arrest, placing to medical organization); time of visits of the detainee (arrested) by an attorney, investigator; time of food provisions; time of transfer to another place of confinement.
 10. The government should allow for effective public monitoring and control of places of detention (IVS), places of custody (SIZO), and places of imprisonment (ITU), by adopting an appropriate legislation (For instance: Law on Public Control over Places of Detention and Law on Public Control over Places of Imprisonment/Penitentiary Establishments) and by allowing independent NGOs to monitor and control confinement areas.
 11. The government should introduce alternative measures to the traditional punishment of imprisonment.
 12. The government should create rehabilitation centers working under program of rehabilitation justice.

Independence of the judiciary

13. Real independence of judges and judiciary system must be secured by:
 - transferring the power to nominate judges from the President to the Parliament;
 - introducing the life time term for judges;
 - providing a reasonable and worthy wages to judges including material and logistic support;
 - securing that judges can not be transferred from one position to another, either higher or lower, without their consent;
 - introducing the jury system.
14. The power to issue or confirm measures which result in restrictions of rights and liberties must be transferred from the Prosecutors to the Courts.
15. Laws on “the Ministry of Interior” and “On National Security Service” where powers of these bodies and their personnel are to be described in details must be adopted.
16. Penitentiary organizations operating under the competence and umbrella of the Ministry of Interior and the National Security Service must be transferred to the Ministry of Justice.

Rights of witnesses

17. The current Uzbek criminal procedure legislation should be amended to ensure the right of witnesses to a lawyer (the right to be interrogated with presence of lawyer).

Fair trial guarantees

18. Defendants must have an unlimited access to all case files during preliminary investigation. Any legally grounded denial of presenting such files by an investigator to a defendant must be checked by a judge during court trial.

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19. Defendants must have the right to make photocopies of all case records and files. Such files must be provided in due time in order for defendant to have time to prepare defense before trial.
20. Defendants must have the right to conduct their own investigation as non-governmental investigator, which would include, but not limited to speaking with witnesses and other investigative procedures, without being accused in interference into state investigation.
21. Provisions allowing judges to return cases for additional investigations during court trials or at the end of trials should be abolished.
22. The Criminal Procedure Code should be amended in order to mandate individual participation of a prosecutor or his representative in court trials and to terminate the case in case of absence of prosecutor or his representative at court trials, as judges should not act as prosecutors, which is the case now.
23. Judges should carefully question the accused in case of his waiver from legal defendant if the accused clearly understands the law and possible consequences and on his ability to defend himself in the court.
24. Article 443 of the Criminal Procedure Code should be revised and amended to ensure equal treatment by the court of evidences collected by both prosecution and defendants. Judges must learn all potential evidences depending on its relation to the court.
25. Current Criminal Procedure Code should allow defendants to submit a petition during pre-trial proceedings on permissibility of evidences and on exclusion of those testimonies gained by torture or other unlawful actions. If defendant or the accused reports on cases of torture, the prosecution should be obliged to investigate all reported cases of torture.
26. In case of verdict of non-guilty there should be no right to reopen the case. Such right should be restricted in all other cases as well.

Complaint, investigation and punishment

27. The government should ensure prompt, impartial and full investigations into all allegations of torture and ill-treatment, and establish an independent body with the authority to receive and investigate all complaints of torture and other ill-treatment by officials.

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28. The government should take all necessary measures to eliminate impunity for public officials responsible for torture and cruel, inhuman or degrading treatment.

Reparation

29. The government should take measures to ensure the right of victims of torture to fair and adequate compensation, and establish programmes for their physical and mental rehabilitation.

Recommendations with regard to women

1. While the coalition of NGOs is conscious of the serious economic problems that Uzbekistan is currently facing, it believes that the government has not taken adequate steps to ensure that the economic climate does not have an adverse impact upon the human rights of the population. Besides, the revival of the patriarchal ideology has led to a decrease in the status of women. The coalition of NGOs is particularly concerned by the situation of girls and women as the result of cutbacks in spending on welfare, social status, health and education.
2. Women and girls in Uzbekistan reportedly suffer from violence and other forms of discrimination largely as a result of entrenched socio-cultural attitudes that work to perpetuate male dominance. For this reason, the coalition of NGOs would call upon the government to initiate far-reaching educational and training programmes addressed to the general public as well as to relevant public officials at all levels.
3. The status of women in Uzbekistan is clearly influenced in large measure by the prevailing human rights situation in the country. Although there is a need for additional legislation on domestic violence, equal rights and equal opportunities and migration, it is not the absence of an adequate legal framework that has acted as an obstruction to the promotion and protection of human rights in Uzbekistan. It is rather a lack of necessary political will, resources and training to adequately enforce the law both for officials, population and journalists.

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4. There is not enough recent official data on the socio-economic situation in Uzbekistan, especially on the level of poverty, real value of unemployment and corruption as well as on the widespread violations of other economic, social and cultural rights such as the drastic cutbacks in the provision of medical care, welfare protection, education and informal labor market. A growing number of violations of civil and political rights have also been observed and according to information provided by NGOs and internet free sites, there has been an alarming increase in the number of cases of domestic violence, illegal migration, and prostitution.
5. The coalition of NGOs remains concerned by the fact that there are no official statistics available concerning the rates of violence against women. The government of Uzbekistan kept the measures aimed at decreasing women NGOs' opportunities to do research to be undertaken in this area and hit back at them for information that they gave to international organizations on the real situation of women, and more particularly on the violence against women.
6. The coalition of NGOs is deeply concerned by the fact that violence against women, in particular domestic violence and trafficking, remains prevalent in Uzbekistan. There is an urgent need to adopt effective legislation and policy to prevent and combat all forms of violence against women and girls including through the development of training and awareness-raising campaigns targeting public officials at all levels as well as the general public. Efforts must be made to ensure that all relevant public officials, especially law enforcement agents and members of the judiciary are given adequate training in national, regional and international standards for the promotion and protection of the human rights of women.
7. The coalition of NGOs would recommend that the government adopt specific legislation for the purposes of preventing and punishing domestic violence, also legislation on labour migration and interstate agreements about participation of labour source of Uzbekistan at labour market neighboring countries.
8. Trafficking in women remains a serious problem in Uzbekistan and the coalition of NGOs would urge the government to make a binding commitment to preventing and combating trafficking by ratifying the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organized Crime. The coalition of NGOs would also urge the govern-

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ment to consider using the Recommended Principles and Guidelines on Human Rights and Human Trafficking (UN Doc. E/2002/68/Add.1) as adopted for the development of a comprehensive legislative and policy response to the issue. Cross-border cooperation should also be increased in this area either through the auspices of regional organisations. Facilitating the access of women to viable employment and training opportunities is an essential step in the fight against trafficking. The conditions of women working in the informal sector should be improved through the introduction of legislation that would guarantee working conditions in accordance with internationally accepted labour standards. Moreover, the coalition of NGOs would urge the Uzbek government to actively combat complicity by the police and other law enforcement officials in the trafficking.

9. The government should develop appropriate services to support and assist to victims of domestic violence and trafficked women and additional support should be provided to non-governmental organisations working with women who have been trafficked.
10. The coalition of NGOs is concerned by the different ages of marriage for girls and men as established in the Family Code of Uzbekistan and it would call upon the government to amend the Code so that the legal age for marriage is raised to 18 years for both women and men.
11. The coalition of NGOs also notes with concern that polygamy in Uzbekistan exists and that it often goes unpunished. The coalition of NGOs would recommend that the government of Uzbekistan enforce the prohibition on polygamy in criminal law and that this law be amended so that it applies to all cases of multiple simultaneous marriages, regardless of whether these are contracted through civil or religious procedures, and irrespective of whether the wives live in the same household.
12. The coalition of NGOs is concerned about the fact that rape is a private action crime whereby criminal proceedings can only be initiated after a written complaint from the victim. As a consequence, rape enjoys a high rate of impunity. The Tashkent Women Resource Center and OMCT would recommend that the Government of Uzbekistan amends the criminal code to change the crime of rape into an ex officio crime.
13. The coalition of NGOs is concerned about the high incidence of torture and ill-treatment at the hands of law enforcement officials in Uzbekistan. Women family members of political and religious prisoners are particularly

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vulnerable to threats, arbitrary arrests and violence perpetrated by state officials. Some are placed under administrative detention where they are at high risk of torture, including sexual violence.

14. Of further concern is the fact that the perpetrators of these acts of violence against women reportedly enjoy impunity. The coalition of NGOs would urge the Uzbek government to ensure that all acts of torture and ill-treatment in detention are appropriately investigated, prosecuted and punished and that the victims are provided with adequate reparations.
15. Finally, the coalition of NGOs would insist upon the need for the Government to fully implement all of the provisions of the Convention for the Elimination of All Forms of Discrimination Against Women, the Beijing Rules and Platform Action and the Declaration on the Elimination of Violence Against Women as these instruments provide detailed protection for girls and women against violence in the family, in the community and at the hands of State officials.

Recommendations with regard to children

The coalition of NGOs recommends that:

Human Rights violations towards children

1. While welcoming the responses of the Uzbek government to the UN Study on Violence Against Children's questionnaire, the government of Uzbekistan should provide however more information to the Human Rights Committee on the issue of violence against children and particularly when it is committed by state agents.

Torture and other cruel, inhuman or degrading treatment or punishment

2. The Uzbek authorities should effectively implement the prohibition of torture and other cruel, inhuman or degrading treatment or punishment against children in all circumstances and set up aggravated sanctions when the victim is a minor.

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3. The relevant Uzbek authorities should facilitate the proceedings so that a child victim of torture and other cruel, inhuman or degrading treatment or punishment can easily lodge a complaint against the perpetrator.
4. The government of Uzbekistan should allow the control/visit/monitoring by independent organs of all premises where children may be deprived of their freedom.
5. The authorities of Uzbekistan should order a thorough and impartial investigation into the circumstances of each case of torture or and other cruel, inhuman or degrading treatment or punishment in order to bring those responsible to trial and apply the penal and/or administrative sanctions as provided by law; and guarantee that adequate reparation is provided to the child victim.

Juvenile Justice system

6. The Uzbek Parliament should set up one age below which children shall be presumed not to have the capacity to infringe the penal law, in compliance with article 40.3 (a) of the Convention on the Rights of the Child.
7. Uzbekistan should create a juvenile justice system with suitable proceedings protecting the rights of the child in conflict with the law and notably with trained personnel (from the arrest to the rehabilitation following a possible detention) and swift procedures. The procedural guarantees, among others, include the presumption of innocence, the right to protection, the right to medical and psychological examination, the right to refuse to give testimony against oneself, the right to the submission of evidence, the right to summon and question witnesses, the right to appeal.
8. Uzbekistan should set up a specific juvenile court system with respect to the particularity and vulnerability of the situation of a child in conflict with the law, from the prosecution to the hearing and possible appeal.
9. Uzbekistan should improve and reorganise the juvenile prison system in compliance with article 37 of the Convention on the rights of the Child and according to the particular vulnerability of the child detainee.
10. Uzbekistan should organise the cooperation between national actors of the juvenile justice system and the Makhalla system, keeping in mind the best interest of the child as well as the particular vulnerability of the child in

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conflict with the law, and in compliance with the relevant international standards (Riyadh Guidelines and Beijing Rules).

11. Uzbekistan should effectively implement the right to legal, medical and psychological assistance during the proceedings involving a child offender (for instance through appropriate payment and training).

Deprivation of freedom

12. Uzbekistan should only use deprivation of liberty with respect to children in conflict with the law only as a measure of last resort and for the shorter possible duration.
13. Uzbek Parliament should adopt measures allowing the supervision of the institutions responsible for the care of children, including detention centres.
14. Uzbek authorities should improve the conditions of detention in compliance with international standards and according to the particularity of the child; organise the separation from adults, between girls and boys and pre-trial detained and convicts.

Child exploitation

15. Uzbekistan should address the fight against child sexual exploitation (trafficking and prostitution) at national and regional levels in cooperation with neighbouring countries, NGOs and relevant UN agencies.
16. Uzbekistan should protect the child from economic exploitation and any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health and development.
17. Uzbekistan should become party to the international legislation preventing child economic exploitation (ILO Convention n° 182 on the worst forms of child labour and ILO Convention n° 138 on the abolition of child labour).
18. The relevant Uzbek authorities should organise sensitisation campaigns on the danger of child labour on health, education, etc.

Annexes

Annex 1

Information on Domestic Violence and Governmental Reaction in Uzbekistan

In the national report to the United Nations Committee on the Elimination of Discrimination against Women (CEDAW/UZB/102/2000 p.28), the adoption of “a number of organizational and practical measures for violence prevention” is announced. However, the activity of the executive organs of the government and the Women Committee is reduced to the premarital education of upper classes students in secondary school. This education bears discriminatory nature, since the training programme is reduced to “training of girls to the family life” and is based on the “traditions”.

The activities of 10 crisis centres in the regions of Uzbekistan supported during 2000-2003 by the Institute of Open Society - Fund of Soros (IOO-FS), ended their activities as the result of the absence of contribution, with the exception of the NGO “Oydin Nuri” (Bukhara). These NGOs and projects were supported by IOO-FS in Uzbekistan, which in 2004 did not pass re-registration according to the decision No.56 of the Cabinet of Ministers of the Republic of Uzbekistan.

The decision about the creation of a crisis centre for women refugees in the city of Kibray in Tashkent region by the Tashkent Provincial Committee of Women ended unsuccessful because of the absence of financing, although the preparatory work had drawn the attention of the executive organs and law-enforcement agencies. So in the country there is no single refuge for victims of violence and for their social rehabilitation.

According to the information of the grass-root NGO the Society of “Mehr”, a hot line worked within the framework of their activity. In 2003 there were more than 1700 calls, more than 70% concerned violence against women and girls. In the statistics of the hot line it is noted that forms of violence include: beating by hands and by other objects, threat, psychological pressure, prohibition of the visit of relatives and friends, humiliation of merit, ribaldry, financial violence and limitations of the nourishment of the wife and children, excessive work in the household and tendance of cows, coercion to the fulfilment of the expensive rites, reproaches because of insufficient dowry,

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polygamy, violence from the side of the relatives of husband, coercion for distorted forms of sex.¹⁸⁸

In Uzbekistan the studies about the situation of domestic violence bear irregular nature, and are conducted mainly by the grass-root NGO, which can't overstretch to the entire country. Similar researches conducted by the academic institutes avoid and do not concern "inconvenient" problems because of the fear of the authorities. Therefore, the most complete studies in this region proved to be study by UNIFEM, which expressed preoccupation in connection with an increase in the violence in Uzbekistan. This country is nominated as the most vulnerable country in the region with respect to domestic violence.¹⁸⁹

According to this study, as a result of the investigation in the entire country, 1000 men revealed, that one fourth of the investigated underwent the threats of punishment, obtained refusal from the visit of relatives and friends, as well as from going home; one fifth was the victim of physical violence (beating by hands and objects from the side of the parents of husband and his relatives); one sixth confronted with the prohibition of her husband and his relatives to learn or to work; each sixth underwent sexual solicitations in public places, at work and the studies; each participant noted that she suffered from psychological violence, interference with personal life from the side of relatives; one eighth mentioned her financial dependence, when she had to give the earned money to mother-in-law, and the humiliation, when she requested to secure money for her personal expenditures.¹⁹⁰

The study of Gulnara Sabirova from the hotline of NGO "Ishonch" in Fergana has noted the regular cases of infringement of the property rights of women and children from divorce, when the separated woman cannot obtain her deserved portion of property and especially the dwelling, and she was forced to return to her parents place together with the children, which became the reason of different forms of violence already from the side of her relatives. The researcher also observed the cases, even when the judicial sentence confirms the right of the woman and her children to the ownership of the dwelling, however, in practice this right cannot be realized.

188 The Interview with Naimoy Kholmukhomedova, the Chairman of the NGO the Society "Mehr", Dec. 2004.

189 *Communicative Strategies of NGOs for the Elimination of Violence Against Women in Central Asia*, UNIFEM, 2003.

190 Muyassar Maksudova, We Ourselves Have to Build Our Homes, "Pravda Vostoka", No. 218, 12 November, 2003.

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The media, the majority of which are located under government control, strengthened the public opinions, which facilitate violence in the family. The newspaper “Oila va jamiyat”, the organ of the Committee of Women of Uzbekistan, which has one of the highest print editions in the country, is the propagandist of the ideal of “eastern woman” within the framework of tradition, and special emphasis in the proposed materials laid on patience and subordination of women to patriarchal standards, which contributes to the appearance of female-readers with low self-appraisal and a feeling of the superiority of man. The media defines marriage and service to the family as the basic purpose of women, and the spirit of sacrifice, patience, refusal of her rights in name of the retention of family presents as the best features grownup Uzbekistan women.¹⁹¹

The word “violence” has never been mentioned in a single article. The journalists, who have a different view on violence, equal this word with punishment. For example, a woman journalist from the newspaper “the Truth of the East” was discharged in 2003 because of her article on the violence against women, which irritated the Committee of Women.¹⁹² The media categorize the questions of family and women to the affirmed policy of training girls for the family life, and they propagandize the model of the behaviour of women corresponding to the patriarchal stereotypes. Thus, the policy of the government is directed toward the external prosperity of the family, toward the reduction of divorce rate, but not to the protection of the rights of its members. This policy of ignoring and covering violence, in the final analysis, contributes to an increase in the violence against women, rather than to the education of the family and society in favour of strengthening women’s. Thus, the government does not carry out its international obligations.

According to the information from the Society of Legal Aid (OPP), 2327 women referred to them during 1998-2004, face to face-1525, by phone-802, of them 75 cases concerned girls, and 35 elder women.¹⁹³

Important role in spreading of domestic violence *kal'im* plays (bride-money paid by fiancé), practice which gives pretext to spouse family treat woman as a slave. Amount of money paid for future wife varies from 200 to 1000 dollars

191 Marfua Tikhtakhodjaeva, Natalia Bushueva. Gender censorship at Uzbek media. Collection # 3: Image of women at Central Asia Media. CIMERA, 2002.

192 Media sustainable Index. Uzbekistan. USAID-IREX, 2003, p. 8.

193 The Interview with Nozima Kamalava, Chairman of the NGO “Society of Legal Aid” (OPP), Jan. 2005.

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in national currency depending on region. On the top of it future husband side disburse marriage festivities and provides furniture and accommodation for future family. It is considered that wife should submit her totally to her spouse and new family. Disobedience is condemned by the society and *mahalla*. Revival of *kal'im* and increasing of its money equivalent is correlated with growth of domestic violence.

When contacted by women in case of domestic violence, local branches of self-government /*mahallal*/ are preventing women from appealing to legal justice in the name of “family honor”. *Mahalla* are preventing publicity thus promoting domestic violence and making efforts to reconsolidate families by sacrificing women safety, they deprive women of legal rights on property in case of divorce thus preserving polygamy and premature marriages. Acts of violation of women rights are multiplying due to men impunity (polygamy, domestic violence). When suicide is committed as a result of domestic violence, *mahalla* are trying to protect man by accusing woman of impatience, disobedience or frivolity. Pro-State women comities expected to provide judicial and social help do recommend patience in the name of family salvation [11]24.

Due to economical dependence from the male members of the family, women are more likely subjected to discrimination and economic violence as women's unpaid work is considered their duty but not their contribution to family wealth. Economical dependence of women is source of tolerance of women (first wife who have few children) to polygamy of their husbands. Women are pushed to low-paid spheres of labor market as agriculture, education, health care, social service. Even academic circles don't recognize no remunerated domestic labor of women to be a source of inequality. Increasing amount of no remunerated work leads to lower women salaries (or their absence) as well as to lack of competitiveness on labor market and limits women access to economic resources. Society doesn't admit the fact that woman actually allows higher men's salary by the gratuity of her labor; if woman doesn't take care of children and elders, do housekeeping job it is not possible. Women are suffering steady underestimation of their contribution to economy, low self-esteem and do have subordinated position.

Labor segregation to great extend is responsible for maintaining of discrimination and violence 23[9]: women are employed (mainly on subordinated positions) in such traditionally law paid areas as education 72.5%, medical treatment 75%, social service 47% and agriculture 43.5%.

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According to the information from an NGO and independent journalists, the number of suicides as the result of the domestic violence has increased, the official data in the country are confidential, but only in Samarkand region in 2002, the number of suicides reached 20 people within 4 months, according to the information of the NPO “Tumaris”, in the Republic of Karakalpakstan within 2 months in 2003, 12 people committed suicide.¹⁹⁴

According to official data, in the first 4 months of 2002, 322 women committed suicide with 12 criminal cases and only in 2 cases the culprits were summoned.

According to the data of the Procurator of the Republic of Uzbekistan the quantity of women, who attempted suicide in 2001-2002 were composed of 1150. Among them 610 cases happened with the fatal outcome including 223 cases of self-immolations. The victims of suicides were wives, sisters, daughters, daughters-in-law, stepdaughters. A quantity of the murder of women owing to jealousy, family quarrels and other quotidian reasons within this period composed 286 cases. From year to year the quantity of suicides is on the rise.¹⁹⁵

Case

20-year-old woman inhabitant of khishrau Settlement of Samarkand region of Surayo Kholikova in February 2002 committed suicide, hanging. Before this she hung two of her daughters 2-year-old Shakhoda and 1-year-old Shakhzoda. According to their father, the main reason for the death of Surayo laid in economic difficulties in the family and intolerable conditions in the family of her husband.¹⁹⁶

As the result of domestic violence and low level of nourishment, many women and children in Uzbekistan suffer from anemia: 60 % of women from 15 to 40 years old, 61 % of children up to 3 years old, which is the highest throughout CIS. In the ecologically not favorable and crisis regions this index is still higher.¹⁹⁷

194 The Interview with Zulfiya Shamuradova, Chairman of the NGO “Tumaris”, Jan. 2005

195 This exclusive material was prepared by the Working Group of the Procurers of Uzbekistan, and was presented on one of the seminars on the problems of women in 2003.

196 Bobomurod Abdullaev, *The Cases of Suicide Increased in Uzbek Women*, IWPR, May, 2002.

197 Material of Human Rights Activists in Samarkand.

Annex 2

Information on Forced Labor in Uzbekistan

The adults and children of the provinces, regions, and cities and villages of Uzbekistan are yearly assigned to the cotton harvesting during harvest-time, except for the population in Tashkent. The students of colleges, persons and provincial Institutes of Higher Education, including those, who pay their education, and also pupils, are also required to participate in the harvest of cotton. According to the data of the Center of Human Rights Initiatives of Samarkand City, in Samarkand region, the request for schoolboys from 14 years old, and also for students to the fields began in first half of September of 2003. The women and children, demanded to work in the cotton field, were forced to settle in the temporary barracks, built in cotton layers, where there was no facilities—neither heat, nor hot water, nor normal nourishment, but only hard labor from the dawn to the complete darkness.¹⁹⁸

From 1 October 2003, the local authorities in the entire country ordered all governmental and private enterprises, establishments and organizations, including the *mahalla* committees and secondary schools, to send 5 people each to cotton harvest for 10 days. Otherwise, the organization must pay 60,000 local currency. In the Pap region each family was required to sign paper with the obligation to gather a specific quantity of cotton (Same orders were each year).

According to the inhabitant of the Pap region Munavar Kadirova, the impudence of the local officials does not have boundaries. “Although I have on my hands an infant, the representative of *mahalla* committee and the staff of the police forced me to sign the paper, promising that I and my family should gather 300 kg of cotton. Where I should send my child? My daughter has already fell ill at the cotton field, but there is no money to medicines”, she speaks with indignation.¹⁹⁹

Mamlakat Ishanova, the director of No.3 school in the Zarbdar region of Dzhizak province, in the beginning of cotton harvest obtained an order from the deputy director of local administration region, Nozima Usmanova, that she must mobilize 169 schoolchildren to the cotton field. She objected, after

198 Material of Human Rights Activists in Samarkand.

199 Ibid.

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asking whether there is any written instruction from Khokima region in this matter, and asked to send to the cotton a smaller number of children. But Nozima Usmanova was inexorable, stating that he doesn't need disobedient director. On the next day, Mamlakat Ishamova send 150 students to the harvest and let the ill and the week go home. Immediately, anguished messengers from local administration appeared at school and ordered her to write the letter of resignation promptly.²⁰⁰

In Uzbekistan the evaluation of the reality of human rights in the sphere of labour has serious difficulties in connection with the growing scale of shady economy. Unofficial working relations exist in the registered firms and enterprises as well, where wages are distributed in the "envelopes" to unregistered home-workers by the owners and especially those, who achieved expansion of business even in Soviet times at the markets for informal work force. Mardikor market (market of farmhands - day laborers) grows as a result of the deterioration of the official labor market, lack of remuneration and non payment of wages. The presence of the shady labor market is the indicator of the low demand of labor resources from the official market for labor, centralized establishment of the level of wages in Uzbekistan, and also the unfavorable situations of the enterprises. Those, who occupied the shady labor market, are subjected to huge risks: they become the victims of exploitation, forced labor and human trafficking.

According to the data presented in the report of the World Bank, as a result of the investigation carry out in 2003, the delay of salary composed 27% of those, who worked in the state-owned, joint-stock and private enterprises, in agriculture—54%, construction—34%, in industry—21%. Moreover, the low-paid workers, among whom the majority is women, working in the agriculture sector suffer the most from the delays of wages.²⁰¹

The official statistics don't reflect the real situation of unemployment among women, and for them it is increasingly difficult to find a job at the official labour market. Therefore, their inflow in the informal labour market grows. According to the data of the Centre For Guaranteeing One-Working-Day in

200 Ulug'bek Khaydarov, Uzbek Schoolchildren and Students at the Cotton Harvest, IWPR, Nov, 2003.

201 World Bank, Uzbekistan, *Living Standard Assessment* (LSA), Policy to Improve Living Standards, 2003,

http://www.wds.worldbank.org/servlet/WDSCContentServer/WDSP/IB/2003/06/17/0001600016_20030617131238/Rendered/PDF/259230UZ.pdf

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Keles (a bordering zone of Tashkent region), at the late 80s and the beginning of 90s, when this mardikor market appeared, they proposed only men for work, then in 2004 the portion of women here reached 62%. The markets for informal labour grew in the bordering regions of Uzbekistan, and there locate four *Mardikor* markets on the boarder with Kazakhstan: two in Tashkent region; one in Andizhan region on the Kirgizstan boarder, one in Khorezm region on the Turkmenistan boarder. The latter has its specificity, in which the day labourers attend the large market for daily business, and charwomen actually provide sexual services to the employers and labor-receivers. Such markets exist also in all large cities, e.g. in Tashkent there are several such markets, where in reality internal migrants resort to for work, but in the boundary markets the labour compose not only of people from all regions of the country, but also from adjacent Tajikistan.

The deterioration of economic conditions gave to a sharp drop in the standard of living, and unemployment led to an increase in the motivation of migration in the population. According to the opinion poll, carry out by Women's Resource Centre, in Tashkent only 13% of those investigated do not desire constantly or temporarily to leave outside the country in order to improve their living conditions or to earn money for the family.²⁰²

202 Dilorom Pulatova, "Trade in Human—Risk of Labor Migration", Collection of Articles in *Women of Central Asia*, Special Issue, Women's Resources Centre, Tashkent, 2003.

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HUMAN RIGHTS COMMITTEE

EIGHTY-THIRD SESSION

21-22 MARCH 2005

**CONSIDERATION OF REPORTS SUBMITTED
BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

LIST OF ISSUES

**CONCLUDING OBSERVATIONS
OF THE HUMAN RIGHTS COMMITTEE:
UZBEKISTAN**

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**List of issues**

*LIST OF ISSUES TO BE TAKEN UP IN CONNECTION WITH THE CONSIDERATION OF THE SECOND PERIODIC REPORT OF UZBEKISTAN
(CCPR/C/UZB/2004/2)*

Constitutional and legal framework within which the Covenant is implemented. Right to an effective remedy (art. 2)

1. Please indicate what procedures are in place for the implementation of the Committee's Views under the Optional Protocol. Please indicate what concrete actions were taken following the Committee's Views adopted in respect of the State party in 2004.
2. According to the information before the Committee, a large number of persons sentenced to death were executed, in spite of the fact that they had petitioned the Committee under the Optional Protocol, and in relation to whom the Committee had issued a request under rule 86 of its rules of procedures not to carry out the execution, pending consideration of their cases by the Committee. Please provide full and updated information with regard to the current situation of all prisoners sentenced to death whose communications are pending before the Committee. Please provide information on the steps taken by the State party to prevent such executions in the future.

Equality between the sexes and non-discrimination (arts. 3 and 26)

3. What steps does the State party plan to take to increase the percentage of women in political life and in official positions, especially decision-making positions (CCPR/C/UZB/2004/2, para. 56, table 1)?
4. According to information before the Committee, domestic violence against women is widespread. What legal and protective measures are available to women to deal specifically with domestic violence and abuse of women? What follow-up was given to the recommendation on this matter made by the Committee after considering the State party's initial report in 2001?

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Derogations (art. 4)

5. Please specify how the requirement of non-derogation from the rights listed in article 4, paragraph 2, of the Covenant is being guaranteed in the law of the State party in the event that a state of emergency is declared (ibid., para. 61).

Right to life (art. 6); freedom from torture, treatment of prisoners and other detainees (arts. 7 and 10)

6. The crimes punishable by the death penalty have been reduced since the consideration of the initial periodic report (ibid., paras. 68 to 72); has the number of executions been reduced accordingly? Please provide detailed information on the number of executions that have been carried out, the number of prisoners facing the death penalty, the grounds for their conviction, and the number of individuals sentenced to death whose sentences have been commuted, since the consideration of the initial report.
7. Please explain whether the State party intends to modify its practice of carrying out executions in secret, without informing the condemned persons and their families of the date of execution or revealing the location of the burial site of the executed persons.
8. A number of detainees have reportedly died in custody, and there are allegations of persons being tortured to death in detention facilities by security officials. Please indicate the steps taken to investigate such deaths, punish those responsible, and pay compensation to victims.
9. The Committee has before it numerous reports of torture allegedly committed by members of the police and security services. The Special Rapporteur on the question of torture of the Commission on Human Rights has stated that torture and similar ill-treatment is systematic. Please furnish statistics on the number of complaints specifically in relation to alleged acts of torture and ill-treatment by State officials, and on investigations, criminal prosecutions and punishments arising from them (ibid., paras. 90 to 92, and 197 to 198).
10. What concrete steps have been taken to follow up the recommendations of the Special Rapporteur on the question of torture? In particular, please provide details of the specific legislative and other measures which comprise the national plan to combat torture. How does the plan ensure that

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all allegations of torture will in future be fully investigated by an independent body?

11. Does the State party intend to adopt regulations explicitly prohibiting expulsion, return or extradition to States where there is compelling evidence to suggest that a person may be tortured (ibid., para. 170)? What measures have been taken with respect to the Committee's recommendation in paragraph 13 of its concluding observations on the initial report (CCPR/CO/71/UZB)?
12. Please provide details about conditions of detention in prisons, including details on levels of hygiene, food and medical care. How does the State party ensure that all persons deprived of their liberty are treated with humanity and respect for their dignity, in accordance with the Standard Minimum Rules for the Treatment of Prisoners? In particular, please comment on allegations that conditions in the Jaslyk prison in Karakalpakstan remain inhumane, that temperatures vary from minus 10° C in winter to 50° C in summer, and that in 2002, two inmates were tortured to death by prison officials.

Security of the person and protection from arbitrary arrest (art. 9)

13. What is the current status of proposals to reduce the length of time that a suspect may be held in custody from 72 to 48 hours, and to remove the penitentiary system from the control of the Ministry of Internal Affairs (ibid., para. 126)? Would the latter apply to the pre-trial detention centres and to the correction colonies?
14. Please elaborate further on the steps undertaken in relation to the institution of *habeas corpus*, and advise of any concrete plans to introduce judicial supervision of detention (ibid., para. 132).

Freedom of movement and right to leave and to return to one's country (art. 12)

16. Please elaborate on how the requirement to obtain an exit visa in order to leave the country is considered compatible with the State party's obligation under article 12.

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**No expulsion of aliens without judicial guarantees (art. 13)**

16. Please indicate the remedies available, in conformity with article 13 of the Covenant, to persons who face forced removal from Uzbekistan on the grounds that they present a threat to the security of the State or to public order, or on grounds of terrorism.

Right to a fair trial (art. 14)

17. Judges are appointed by the President for a renewable term of five years. Please comment on how this practice is considered compatible with the notion of an independent judiciary, and on whether there are any proposals to amend these provisions as recommended by the Committee in its concluding observations on the initial report.
18. Prosecutors may resort to a variety of investigative techniques without having to apply to a magistrate for permission. Defence counsels have few, if any, investigative resources. Please explain how this is considered to be compatible with the principle of equality of arms protected by article 14, paragraph 1, of the Covenant.
19. There are six different bodies responsible for counter-terrorism. Please indicate what guarantees are enjoyed by persons suspected of terrorist offences. At what moment after their arrest or detention are they brought before a judge or other officer authorized to exercise judicial power? For how long may their detention be prolonged by decision of the investigating officer, a prosecutor, or a judge? At what stage do such persons have access to legal representation?
20. Please provide further details concerning the concept of terrorism as defined in the Act on Combating Terrorism of 15 December 2000. What are the criteria used to classify an act as a terrorist act, and which courts are competent in this respect?
21. According to information before the Committee, as part of efforts to combat terrorism, several persons have been found guilty on the sole basis of confessions obtained under torture while they were held in custody, and, in that context, other persons have been tried together in summary trials: what is the situation in this respect?

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN**Freedom of religion (art. 18)**

22. Please advise whether the Law on Freedom of Conscience and Religious Organization requires that religious groups and congregations be registered, and that religious services be conducted only by registered religious organizations. Please provide information on the criteria that still exist for registration, and explain how any such limitations are considered to be compatible with article 18, paragraph 3.
23. Please comment on reports that Muslims who practise their religion outside of Government-controlled institutions face harassment by the authorities, and that there are some 6,000 individuals imprisoned for crimes relating to the peaceful expression of their religious beliefs.

Right to freedom of expression, assembly and association (arts. 19, 21 and 22)

24. Journalists have reportedly been put under pressure by State officials. Please provide information on the number of journalists arrested, prosecuted, charged or sentenced to fines and prison terms in relation to their professional activities.
25. Please comment on allegations that the authorities have refused to register political parties and intimidated a number of members of opposition parties. Has the State party revised its laws in relation to the registration of political parties, in accordance with the recommendations of the Committee following consideration of the initial report?
26. What criteria apply to the registration of a non-governmental organization? What financial and other controls are placed on the activities of non-governmental organizations? Please provide details on (a) the number of non-governmental organizations which have been denied registration and the principal grounds of denial, and (b) the number of persons arrested or punished in this relation. What follow-up was given to the recommendation in relation to non-governmental organizations made by the Committee after considering the State party's initial report in 2001?

Rights of the child (art. 24)

27. Please provide information on the situation of children held in custody, and advise what steps have been taken to implement the Committee's

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recommendation on this question in the concluding observations on the initial report.

Dissemination of the Covenant and the Optional Protocol

Please indicate what steps have been taken to disseminate information on the submission of the second periodic report and its consideration by the Committee, as well as on the concluding observations adopted by the Committee after considering Uzbekistan's initial periodic report (paragraph 29 of the Committee's concluding observations on the State party's initial report).

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

1. The Human Rights Committee considered the second periodic report of Uzbekistan (CCPR/C/UZB/2004/2) at its 2265th, 2266th and 2267th meetings (CCPR/C/SR.2265-2267), on 21 and 22 March 2005, and adopted the following concluding observations at its 2278th and 2279th meetings (see CCPR/C/SR.2278 and 2279), on 31 March 2005.

A. Introduction

2. The Committee welcomes the timely submission of Uzbekistan's second periodic report which was prepared in accordance with the Committee's guidelines, and notes the written replies to the list of issues and the replies to the Committee's additional questions. It also notes the follow-up information provided by the State party on the concluding observations on its initial report.

B. Positive aspects

3. The Committee notes with appreciation the positive effect of legal reform in the area of criminal law on the overall number of remand prisoners and convicted persons serving their sentences.
4. The Committee notes with interest that, following the 2004 revision of the Act on the Parliamentary Ombudsman (1997), the Ombudsman's institution is now operational and receives numerous complaints each year. The Committee encourages promotion of the work of this institution.
5. The Committee welcomes the State party's invitation to national non-governmental organizations "to participate actively" in current discussions on Criminal Code reform.

C. Principal subjects of concern and recommendations

6. The Committee recalls that in several cases, the State party has executed prisoners under sentence of death, although their cases were pending before the Committee under the Optional Protocol to the Covenant and requests for interim measures of protection had been addressed to the State party. The Committee recalls that in acceding to the Optional Protocol, the State party recognized the Committee's competence to receive and examine complaints from individuals under the State party's jurisdiction. Disregard of the Committee's requests for interim measures constitutes a grave breach of the State party's obligations under the Covenant and the Optional Protocol.

HUMAN RIGHTS VIOLATIONS IN UZBEKISTAN

The State party should adhere to its obligations under the Covenant and the Optional Protocol, in accordance with the principle of *pacta sunt servanda*, and take the necessary measures to avoid similar violations in future.

7. The Committee is concerned about the lack of information on criminal cases and convictions, including the number of prisoners sentenced to death, grounds for conviction and the number of executions (Covenant, art. 6; see also paragraph 6 of the Committee's concluding observations on the State party's initial report).

The State party should supply data on the operation of its criminal justice system and provide information on the number of prisoners sentenced to death and executed since the beginning of the period covered by the second periodic report. The State party should in future publish such information periodically and make it accessible to the public.

8. The Committee remains concerned about information before it that when prisoners under sentence of death are executed, the authorities systematically fail to inform the relatives of the execution, defer the issuance of a death certificate and do not reveal the place of burial of the executed persons. These practices amount to a violation of article 7 of the Covenant with respect to the relatives of the executed persons (Covenant, art. 7).

The State party is urged to change its practice in this regard, in order to comply fully with the Covenant's provisions.

9. While it has noted with interest that in 2003 the Supreme Court of Uzbekistan handed down a judgement pursuant to which the provisions of national law relating to torture must be read in the light of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee remains concerned at the apparently narrow definition of torture in the State party's Criminal Code (art. 120) (Covenant, art. 7).

The State party should amend the relevant provisions of its Criminal Code in order to avoid misinterpretation not only by the judiciary, but also by its law enforcement authorities.

10. The Committee is concerned about the continuing high number of convictions based on confessions made in pre-trial detention that were allegedly obtained by methods incompatible with article 7 of the Covenant. It also notes that, while on 24 September 2004 the Plenum of the Supreme Court held that no information obtained from a detained individual in violation of

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the criminal procedure requirements (including in the absence of a lawyer) may be used as evidence in court, this requirement is not reflected in a law (Covenant, arts. 7 and 14).

The State party should proceed with the necessary legislative amendments to ensure full compliance with the requirements of articles 7 and 14 of the Covenant.

11. The Committee is concerned about allegations relating to widespread use of torture and ill-treatment of detainees and the low number of officials who have been charged, prosecuted and convicted for such acts. It is a matter of further concern that no independent inquiries are conducted in police stations and other places of detention to guarantee that no torture or ill-treatment takes place, apart from a small number of inquiries with external participation quoted by the delegation (Covenant, arts. 7 and 10).

The State party should ensure that complaints of torture and/or ill-treatment are examined promptly and independently. Those responsible should be prosecuted and punished in accordance with the seriousness of the crime committed. All places of detention should be subject to regular independent inspection. Provision should also be made for the medical examination of detainees, in particular persons held in pre-trial detention. The use of audio and video equipment in police stations and detention facilities should be considered.

12. The Committee is concerned that there is no law governing expulsion of foreigners from Uzbekistan and that expulsion and extradition are regulated by bilateral agreements, which may allow for the expulsion of aliens even if they may be subjected to torture or ill-treatment in the receiving country (Covenant, arts. 7 and 13).

The State party should adopt the necessary norms to prohibit the extradition, expulsion, deportation or forcible return of aliens to a country where they would be at risk of torture or ill-treatment, and should establish a mechanism allowing aliens who claim that forced removal would put them at risk of torture or ill-treatment to file appeals with suspensive effect.

13. The Committee is concerned that the provisions of the Constitution on states of emergency and related laws do not explicitly specify, or place limits, on the derogations from the rights protected by the Covenant that may be made in emergencies, and do not guarantee the full implementation of article 4 of the Covenant (Covenant, art. 4).

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The State party should review the relevant provisions of its domestic law and bring them into line with article 4 of the Covenant.

14. The Committee considers that the length of custody for which a suspect may be held without being brought before a judge or an officer authorized to exercise judicial power - 72 hours - is excessive (Covenant, art. 9).

The State party should ensure that a judge reviews all detentions to determine if they are legal and that all cases of detention are brought before a judge for that purpose, in conformity with the provisions of article 9 of the Covenant.

15. The Committee notes that while under domestic law individuals have access to a lawyer at the time of arrest, this right is often not respected in practice. Those accused of criminal acts should receive effective assistance from a lawyer at every stage of the proceedings, especially in cases where the person is liable to the death penalty (Covenant, arts. 6, 7, 9, 10 and 14).

The State party should amend its legislation and practice to allow a person who has been placed under arrest to have access to a lawyer from the time of arrest.

16. The Committee remains concerned that the judiciary is not fully independent and that the appointment of judges has to be reviewed by the executive branch every five years (Covenant, art. 14, para. 1).

The State party should guarantee the full independence and impartiality of the judiciary by guaranteeing judges' security of tenure.

17. The Committee remains concerned that the administration of pre-trial detention centres, prison camps and prisons fail to conform to the provisions of the Covenant (Covenant, arts. 7, 9 and 10).

The State party should give priority to its review and reform of the administration of the penal system.

18. The Committee is concerned about the lack of information on acts that may be qualified in the legal order as "terrorist acts" (Covenant, arts. 2, 6, 7, 9 and 14).

The State party should define what constitutes "terrorist acts" and ensure that its legislation in this matter complies with all the guarantees provided in the Covenant, in particular articles 2, 6, 7, 9 and 14.

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19. The Committee is concerned that the State party requires an “exit visa” from its nationals for their travel abroad, and in particular that representatives of non-governmental organizations who were refused an exit visa were thereby prevented from attending meetings on human rights issues (Covenant, arts. 12 and 19).

The State party should abolish the requirement of an exit visa for its nationals.

20. The Committee is concerned about persistent reports that journalists have been harassed in the exercise of their profession (Covenant, art. 19).

The State party should adopt appropriate measures to prevent any harassment or intimidation of journalists and ensure that its legislation and practice give full effect to the requirements of article 19 of the Covenant.

21. The Committee remains concerned about the legal provisions and their application that restrict the registration of political parties and public associations by the Ministry of Justice (Covenant, arts. 19, 22 and 25; see also paragraph 23 of the concluding observations on the initial report).

The State party is requested to bring its law, regulations and practice governing the registration of political parties into line with the provisions of articles 19, 22 and 25 of the Covenant.

22. The Committee notes that the provisions of the Freedom of Conscience and Religious Organizations Act require religious organizations and associations to be registered in order to be able to manifest their religion or belief. It is concerned about *de facto* limitations on the right to freedom of religion or belief, including the fact that proselytizing constitutes a criminal offence under the Criminal Code. The Committee is also concerned about the use of criminal law to penalize the apparently peaceful exercise of religious freedom and the fact that a large number of individuals have been charged, detained and sentenced and that, while a majority of them were subsequently released, several hundred remain in prison (Covenant, art. 18; see also paragraph 24 of the concluding observations on the initial report).

The State party should take steps to ensure full respect for the right of freedom of religion or belief and ensure that its legislation and practices conform fully with article 18 of the Covenant.

23. While noting with interest information provided by the delegation that a system of compensation for women who are victims of domestic violence is already in place in parts of the State party, the Committee remains concerned about the prevalence of domestic violence in Uzbekistan (Covenant, arts. 3, 7

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and 26; see also paragraph 19 of the Committee's concluding observations on the initial report).

The State party should take suitable practical measures to combat this phenomenon, including through public awareness and education campaigns.

24. The Committee regrets that even though the Criminal Code prohibits polygamy, the phenomenon persists, violating women's dignity. It is also concerned about the practice of kidnapping young women to force them to marry, which resurfaced after the State party's independence (Covenant, arts. 3, 23 and 26).

The State party should ensure that the relevant provisions of its Criminal Code are fully implemented, so as to put an end to the practice of polygamy. It should combat the practice of forced marriages of kidnapped women.

25. The Committee notes that child labour is still widespread in Uzbekistan, in particular in the commercial and agricultural sectors and the cotton industry (Covenant, art. 24).

The State party should stop the practice of sending schoolchildren to pick cotton and take effective measures to combat child labour.

D. Dissemination of information about the Covenant (art. 2)

26. The Committee sets 1 April 2008 as the date for the submission of Uzbekistan's third periodic report. It requests that the State party's second periodic report and the present concluding observations be published and widely disseminated in Uzbekistan, to the general public as well as to the judicial, legislative and administrative authorities, and that the third periodic report be circulated for the attention of the non-governmental organizations operating in the country.
27. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should submit within one year information on the follow-up given to the Committee's recommendations in paragraphs 7, 9, 10 and 11 above. The Committee requests the State party to include in its next periodic report information on its remaining recommendations and on the implementation of the Covenant as a whole.