

"VERITAS" YOUTH HUMAN RIGHTS MOVEMENT OF UZBEKISTAN
A FOLLOW-UP SHADOW REPORT TO THE UNITED NATIONS COMMITTEE
AGAINST TORTURE

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION
Conclusions and recommendations of the Committee against Torture
UZBEKISTAN

In November 2009 the UN CAT addressed the Government of Uzbekistan by a special letter and requested full response to the recommendations found in the paragraphs 5, 6, 7, 9, 10, 11, 14, 19, and 22 of the Committee's Observations and Recommendations on Uzbekistan adopted in November 2007 following the examination of the third periodic report of Uzbekistan. "Veritas" Youth Human Rights Movement of Uzbekistan has developed a follow-up shadow report on selected 9 (nine) recommendations from among thirty recommendations which arise from the United Nations Committee Against Torture on the third periodic report on Uzbekistan in November 2007 (CAT/C/UZB/3).

Paragraph # 5 - Prosecution of torture as an offence

While the Committee acknowledges the efforts made to amend legislation to incorporate the definition of torture of the Convention into domestic law, it remains concerned that in particular the definition in the amended article 235 of the Criminal Code restricts the prohibited practice of torture to the actions of law enforcement personnel and does not cover acts by "other persons acting in an official capacity" including those acts that result from instigation, consent or acquiesce of a public official and as such does not contain all of the elements of article 1 of the Convention.

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

Veritas comment on paragraph # 5:

Under the Uzbekistan Criminal Code, crimes involving torture are a separate category of offences. The amended article 235 of the Criminal Code (“Use of torture or other cruel, inhuman or degrading treatment or punishment”)¹, reads as following:

“The use of torture or other cruel, inhuman or degrading treatment or punishment, i.e. illegal exertion of mental or physical pressure on a suspect, accused person, witness, victim or other party to criminal proceedings, or on a convict serving sentence, or on close relatives of the above, by a person carrying out an initial inquiry or pre-trial investigation, a procurator or other employee of a law-enforcement agency by means of threats, blows, beatings, cruel treatment, victimization, infliction of suffering or other illegal acts in order to obtain from them information of any kind or a confession, or to punish them arbitrarily for action they have taken, or to coerce them into action of any kind:

shall be punishable by up to three years’ punitive attachment of earnings or deprivation of liberty

The same conduct, perpetrated:

- (a) *With violence such as to imperil life or health, or with the threat of such violence;*
- (b) *On any grounds stemming from ethnic, racial, religious or social discrimination;*
- (c) *By a group of individuals;*
- (d) *More than once;*
- (e) *Against a minor or a woman who is known by the culprit to be pregnant;*

shall be punishable by three to five years’ deprivation of liberty.

The conduct referred to in the first and second subparagraphs of this article shall, if it results in serious bodily harm or other grave consequences, be punishable by five to eight years’ deprivation of liberty and forfeiture of a specified right.”²

The definition of “torture” of art. 235 of the Uzbek Criminal Code does not conform to the definition of “torture” under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (articles 1 and 4). Indeed, the former is much more narrow³ with regard to the authors of torture. It rules out or omits torture which occurs “...at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. Thus, it does not qualify as a crime torture or similar ill-treatment which is used in other institutions, out of the boundaries of the criminal justice process, such as military,

¹ The UN Special Rapporteur on the issue of torture Mr. van Boven’s recommendation (b) addressed to the Uzbek Government states that “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.”

² Articles 17 and 88 of the CPC of Uzbekistan are meant to further strengthen the sanction of article 235 of the Criminal Code. According to those articles, an investigator, prosecutor, court (judge) has no right to humiliate the honor and dignity of a suspect or accused. Rights and legal interests of citizens shall be provided during collection, verification, and evaluation of evidence. The use of torture, violence, other cruel or degrading treatment is prohibited during collection, verification, and evaluation of evidence.

³ According to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment dated December 10, 1984 “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

psychiatric clinics, hospitals, penitentiary system, orphanage houses, houses for elderly people and etc.

Furthermore, the definition of torture in article 235 of the Criminal Code of Uzbekistan suggests torture or similar ill-treatment can be inflicted only on “*...a suspect, accused person, witness, victim or other party to criminal proceedings, or on a convict serving sentence, or on close relatives of the above*” . On the other hand, articles 1 and 4 of the Convention state torture or similar ill-treatment may be inflicted on any person, which refers not only to participants in the criminal procedure.

Concerning legislation, it should be noted that, apart from art. 235 of the Criminal Code, a number of legal provisions are relevant to the practice of torture and similar ill-treatment. The most notably are the following:

- Art. 26 part 2 of the Constitution prohibits torture and other cruel or degrading treatment.
- Art. 17 of the CPC establishes that no one can be subjected to torture, violence or other degrading human dignity treatment. In addition, art. 2 of the CPC obliges judges, procurators, investigators, inquirers, attorneys and all individuals participating in criminal procedures, to act in accordance with and fulfill all requirements of the Constitution of Uzbekistan.
- The CPC warns that any departure from full compliance to laws, for any reason, is a violation of the legality of criminal procedure and may lead to applicable responsibility including criminal sanctions.
- The Uzbek Supreme Court Resolution # 17 “On Practical Application by Courts of Laws ensuring the suspects and defendants the right to defense” provides an interpretation of “torture” that is consistent with the Convention against Torture and extends the scope of application to all “*public official or other persons acting in an official capacity*”.
 - Part 9 states: “*For the purpose of ensuring the suspect/accused, a genuine right to defense, in the event of detention of a person in compliance with the order envisaged in the Articles 221, 227 of the CPC, as well as in case of taking him/her into custody as a measure of prevention (Article 242 of CPC), the officials of an agency responsible for carrying out the criminal case are obliged to inform his/her close relatives, or at his/her request – to other persons about the whereabouts of their detention, while in regard to teenagers – also to his/her legal representative*”.
 - Part 18 reads: “*On Practical Application by Courts of Laws ensuring the suspects and defendants the right to defense*”, “*In compliance with law (Articles 17, 88 of the CPC) the inquirer, investigator, procurator, court (judge) have no right to humiliate the honor and dignity of the suspect/accused. Protection of the rights and legal interests of citizens should be ensured in collecting, checking and assessment of evidence. It is prohibited to apply torture, force, and any other brutal treatment humiliating human dignity in the process of collecting, checking and assessment of evidence*”.
 - Part 19 reads: “*Evidence obtained with the application of torture, force [harassment], threats, cheating, other severe treatment humiliating human dignity, other illegal measures, as well as with the violation of the right of the suspect/accused for defense, cannot be laid down as the basis for accusation. Inquirer, investigator, procurator, court (judge) are obliged to always ask persons delivered from detention about ways of treatment in the course of carrying out the inquest or investigation, as well as about conditions in custody. A thorough examination of pleaded arguments has to be conducted on each fact of application of torture in the course of inquest or investigation, including through carrying out forensic medical attestation [certification], and undertake both procedural and*

such other measures of legal nature on their results, right up to initiating a criminal case in regard to official persons”.

Although the interpretation provided in the Supreme Court Resolution is consistent with article 1 of the International Convention, this should now be incorporated in article 235 of the Criminal Code. Indeed, even if the State acknowledges that “*decisions by the Supreme Court have authoritative interpretation*”, it is evident that those remain a secondary source of law and courts are generally very reluctant to use them in practice. Therefore, the Uzbek Government should adopt without delay legislation in accordance with the definition of article 1 of the CAT.

Paragraph # 6 - Widespread torture and ill-treatment

The Committee is concerned at the

- a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative personnel or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;
- b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;
- c) Failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention; and
- d) Allegations that persons held as witnesses are also subjected to intimidation and coercive interrogation and in some cases reprisals.

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

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

Veritas comment on paragraph # 6:

- (a) Pursuant to the recommendation of the UN Special Rapporteur,⁴ the Uzbek highest authorities failed to condemn torture in all its forms and unambiguously declare that they won’t

⁴ Recommendation (a) of the UN Special Rapporteur on the issue of torture following his visit to Uzbekistan in December 2002 said the Uzbek authorities should publicly and unambiguously condemn practices of torture in all its forms from the highest levels.

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. Such condemnations and declarations were not made public through the national mass media.

The Uzbek Government argues that as recommended by Mr. Van Boven, torture in all its forms has been publicly condemned by representatives of all three branches of power in Uzbekistan. In March 2003, Mr. A. Kamilov, the State adviser to the President, announced during a meeting with representatives of the diplomatic corps and accredited foreign journalists in Tashkent that the Government intended to conduct a broad campaign against torture and other forms of cruel treatment. The Coordinating Council of Law-Enforcement Authorities (part of the Office of the Procurator-General) looked in May 2004 into the issue of strict compliance by law-enforcement officials with international obligations under the Convention against Torture. It discussed compliance with the law during the consideration of reports and complaints from citizens, and wrongful behavior on the part of law-enforcement and supervisory personnel. Senior management in the Office of the Procurator-General has also discussed the possibility of closer prosecutor supervision of the observance of citizens' constitutional rights during detention, criminal prosecution and remand in custody. Observance of the law within the internal affairs authorities, how to increase it, and the human rights situation were discussed at an extraordinary meeting of the senior management at the Ministry of Internal Affairs on 22 May 2003. One of the decisions reached was that no breach of the law in the conduct of internal affairs business and no infringement of human rights, however manifested - through the use of unauthorized methods of inquiry and investigation, i.e. torture, or otherwise - was tolerable. The decision draws especial attention to the need for greater attention to be paid to complaints relating to torture and unauthorized conduct on the part of law-enforcement personnel. A supplementary register for recording and monitoring the handling of such complaints has been set up.

We think that the above mentioned measures are far from explicit and clear condemnation torture in all its forms and unambiguous declaration that torture and similar ill-treatment by public officials and that those in command won't be tolerated. All of the occasions of discussions and so called "public condemnations" of all forms of torture to which the Uzbek Government is referring took place in closed door meetings which were not made public.

The Uzbek Government also fails to make public the information concerning the total number of convicted persons under article 235 of the Criminal Code, the total number of convicted agents of the law enforcement bodies among those convicted, how many appeals have been refused or no action have been taken on them because the facts of torture or other ill-treatment were not proved and so on. The extent to which operation of the rules in practice is monitored and subject to public scrutiny is not known. Official review bodies (regulators, public account bodies, governmental and quasi-governmental supervisory bodies), bodies otherwise involved with criminal justice (probation services, social welfare, child protection, rehabilitation centers for former prisoners, schools and etc.) as well as non-governmental bodies and academics – they all rely on detailed and reliable statistical information on how certain provisions of criminal justice are applied in practice. Such information in Uzbekistan is almost invariably for „internal use only” and not made available to the general public, or to outside bodies – or to such researches. If any such statistics are made available to outsiders, this is on entirely discretionary basis.

The Uzbek Government fails to ensure that all allegations of torture or similar ill-treatment are promptly, independently or thoroughly investigated by a body, outside the procurator's office, capable of prosecuting perpetrators.⁵

⁵ The UN Special Rapporteur on the issue of torture Mr. van Boven's recommendation (r) urges the Uzbek Government to "ensure that all allegations of torture or similar ill-treatment are promptly, independently or thoroughly investigated by a body, outside the procurator's office, capable of prosecuting perpetrators".

The government argues that article 13 of the new version of the Law “On Human Rights Commissioner of the Oliy Majlis (Ombudsman)” passed in August 2004 describes the powers of the Commissioner, which also include the right to consider complaints. Article 14 gives the Ombudsman the right to “hold meetings and conversations with detainees and persons in custody”, and to “petition the relevant authorities to call to account individuals whose actions have been shown to violate human rights and liberties”. There are safeguards for human rights while the Ombudsman is considering complaints. Article 19 of the Act states that “persons submitting complaints to the Commissioner and persons assigned by the Commissioner to collect and analyze information or make expert appraisals may not be subjected to harassment or other restriction of their rights for doing so”.

The curricula of the educational and training centers of the law enforcement agencies of Uzbekistan (Institute of the National Security Service, Academy of the Ministry of Internal Affairs, Training Center of the Prosecutor’s Office and Training and Qualification Center for Lawyers of the Ministry of Justice) include subjects on international human rights standards but not in particular prohibition of torture or other cruel, inhuman or degrading treatment and punishment in the practice of the law enforcement agents. While both basic training and post-qualification training for legal and other professionals working within the system is provided for, this training is still, in many ways, old-fashioned and understructured, and therefore ineffective. There is a need for further, continued post-qualification training of law enforcement professionals in international standards: at present, there is no effective institutional provision of such training. The institutional provision is not effective because the teachers of the educational institutions do not have enough knowledge and skills on international human rights standards in particular prohibition of torture.

In years 2000-2005 with the help of the international organizations represented in the country with broad mandates then [UNDP, OSCE, UNICEF, ABA/CEELI, Freedom House, ICRC and etc.] the Uzbek Government used to widely disseminate information and teaching materials on international human rights standards among the law enforcement officials, organize seminars and workshops for them and regularly send them to study tours to different western countries. But this is not the case in the situation after Andijan events [May 13-14 2005] because many international organizations have been shut down by the Uzbek Government while the mandate of the remaining were markedly cut down.

(b) After having amended article 235 of the Criminal Code, the Uzbek Government continued to introduce several legislative, administrative, judicial and other types of measures. They were regarded by the governmental officials and mass media- those which are controlled by the State- as promoting torture prevention and implementation of Uzbekistan’s international obligations under the CAT. However, the study we made on these measures demonstrated that most of them are not significant, have poor or almost no influence on the insufficiencies of the criminal justice system and are directed to achieve only superficial changes.

In 2004, the Uzbek Government stated that a law “On detention of persons suspected or accused of crimes” was drafted. The purpose was to define such persons’ legal status, their rights and obligations, the procedure governing their detention in pre-trial custody, the applicable conditions and procedures to conduct inspections, including civilian checks, and any element on the safeguard of detainees’ rights and freedoms.⁶ However, to date, such a law did not pass.

⁶ See Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the CAT.

In 2009 January the Uzbek parliament has adopted a law directed to increase the professional rights of the defence attorneys and their clients in the criminal justice system. Part of those rights, such as introduction of the Miranda rules, the right of the detainee to call his lawyer or relatives immediately after the arrest, the right of the defence attorney to meet his / her client who is held in the detention places and prisons without any hindrance by the law enforcement agencies, the right of the witness to a legal counsel. However, in practice most of those rights are not respected and observed by the law enforcement agencies responsible for investigation of crimes.

Starting from January 1st 2008 Uzbekistan introduced a new institute of criminal justice system “*habeas corpus*”⁷, i.e. from this moment the power of Public Procurator to sanction the application of a preventive measure in the form of pre-trial arrest has been transferred to courts on criminal cases. The question of introduction of institute of “*habeas corpus*” in Uzbekistan has long been on the agenda of many well-known international organizations.⁸ The similar calls have also been regularly made by the Uzbek human rights activists.

The analysis of new system of sanctioning the pre-trial arrest in Uzbekistan only for the first year after it has entered into force shows that situation with the rights of persons against whom a pre-trial arrest as a form of a preventive measure had been applied, has not changed in any way. Absolute technical unavailability of the courts on criminal cases to perform their new task with sanctioning pre-trial arrest was discovered, the influence of the Office of Public Procurator on the decision making process on sanctioning pre-trial arrest remains high till now. The introduced system of sanctioning pre-trial arrest cannot serve as a guarantee of protection of the detainees from possible physical and mental violence from the side of operative employees and investigators of law enforcement agencies. Moreover, the new system of sanctioning of pre-trial arrest has broken the international standard on minimal term of detention of the person without the official sanction and presentation of charges. Now to the former seventy two hours of such allowed unsanctioned minimal term of detention forty eight more hours of unsanctioned detention can be added if investigator or the Public Procurator is able to present necessary and sufficient justifications of such additional unsanctioned detention to the court.⁹

Part 2 of article (19) of the Resolution # 17 of the Plenum of the Supreme Court of the Republic of Uzbekistan from December 19th 2003 “On Practical Application by Courts of Laws ensuring the suspects and defendants the right to defence” reads:

“Investigator, pre-investigation inquirer, the Public Procurator, judge are obliged to always ask persons brought from custody how they were treated during the pre-investigation inquiry or investigation, and also about conditions in the custody. Every case of reported torture or other illegal methods of pre-investigation inquiry or pre-trial investigation should be carefully examined, including conducting forensic examination, and by the results of such examination relevant remedies including legal remedies and bringing the perpetrators to criminal charge should be provided”.

In 86 % of the cases studied by us the Public Procurator and judge who examined petitions of the investigators on application of pre-trial arrest as a preventive measure did not fulfill the above mentioned requirement of the Resolution of the Plenum of the Supreme Court and violated it.

⁷ “Habeas corpus” – Latin, a court decision authorizing pre-trial arrest of the detainee for the periods of pre-trial investigation and trial.

⁸ The UN Special Rapporteur on the issue of torture, the UN Committee against Torture, the UN Committee on Human Rights, the OSCE, international nongovernmental organizations American Bar Association and Human Rights Watch have regularly called the Uzbek Government to move the power of sanctioning pre-trial arrest from the Public Procurator’s office to courts.

⁹ Part 1 of article 226 of the CPC of the Republic of Uzbekistan in a new wording.

A guaranteed protection from torture and other forms of cruel, inhuman and degrading treatment and punishment for the detained suspect and accused is one of the overall objectives of the institute of “habeas corpus”. While examining the decision of the investigator on petition on application of pre-trial arrest as a preventive measure and petition on prolonging the term of pre-trial arrest the Public Procurator and judge should fulfill the requirements of article (19) of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan.

According to the Third Periodic Report of the Uzbek Government, “...in the interests of a thorough and high-quality legal defense of the detainees and suspects’ rights and liberties, the Central Investigation Department [of the MVD], in conjunction with the Uzbek Bar Association, drew up and introduced Regulations on the procedure for upholding detainees, suspects and accused persons’ right to a defense at the pre-investigative and pre-trial investigation stage so as to protect suspects’ and accused persons’ rights and interests, in particular at the initial stage of the investigation. These give detainees the right to counsel from the moment of the detention (i.e. not more than 24 hours after the detention is effected) and to have a confidential discussion. Accordingly, in every investigation department, there is a legal advice unit with lawyers, on call day and night, available to defend detainees’ rights and interests.” This measure was introduced in response to recommendations (m) the UN Special Rapporteur, Theo van Boven, addressed to the Uzbek Government.¹⁰

However, according to our study, these Regulations, signed between the Central Investigation Department of the MDV and the national Bar Association, were initially launched as a pilot project limited to the Tashkent city, the capital, and they never reached the provinces of Uzbekistan. To date, they do not operate anymore.

According to the official statements, the Uzbek Government lately set up new units within some State organs. There are in charge of prevention of human rights violations, including the issue of torture.¹¹

The State Report goes on mentioning that, in order to establish effective procedures for internal monitoring of agents’ behavior, and especially to eliminate recourse to torture and similar ill-treatment, “...the senior management in the National Security Service [the SNB] instructed all units, in 2003, in a written telegram¹², that in the event of violations by the Service staff of citizens’ legitimate rights, not only the culprits but also their unit commanders would be held

¹⁰ Recommendation (m) - “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”.

¹¹ For example, the State report mentions, “...pursuant to a Ministry of Internal Affairs [the MVD] decision, dated on May 22, 2003, Ministry Order No. 187 establishing a central commission on human rights observance was issued on June 24, 2003. Appended to the Order was a programme of action to promote regard for the law and ensure that internal affairs organs uphold human rights, and a draft plan for the further development and improvement of the Ministry’s penal enforcement system up to the year 2010. Pursuant to that Order, the central commission was set up under the chairmanship of the Deputy Minister of Internal Affairs. Instructions have been issued that the commission is to receive, for analysis and interpretation, monthly reports on local activities”- see State report §37, page 9. Further indications are included in the appendix # 2 to this report. There, the government states such new units under the organs of State were created in response to recommendation (g) of the UN Special Rapporteur, van Boven, “The Ministry of Internal Affairs and the National Security Service should establish effective procedures for internal monitoring of the behavior and discipline of their agents, in particular with a view to eliminate practices of torture and similar ill-treatment. The activities of such procedures should not be dependent on the existence of a formal complaint”.

¹² Telegram # 8III/074 of the chief of the National Security Service to all units reading that in the event of abuse of the citizen’s lawful rights by NSS officers not only wrongdoers but also the heads of the units will be held responsible for it. The Uzbek government argues that this telegram has established a regulatory framework for internal monitoring of the behavior and discipline of the agents of the NSS. By all means, the telegram of the chief of the NSS can’t establish or substitute a framework for internal monitoring of the behavior and discipline of the agents of the security service.

accountable".¹³ It should be mentioned that the Inspection of the National Security Service, a special unit within the SNB, is also authorized to accept individual communications on torture from alleged victims of torture, their lawyers, relatives and NGOs, if torture or similar ill-treatment was allegedly committed by the SNB inquiry officers or investigators. A new Department of Human Rights under the Ministry of Justice of Uzbekistan was created pursuing the same goal in 2003. In principle, it is allowed to receive individual complaints on alleged human rights violations cases, including alleged torture case.¹⁴

However, all of the above-mentioned three measures remain at the structural level. Ineffectiveness of those newly created units appears to be clear due to the following reasons:

- Those units operate on the basis of the rules and regulations that are rarely accessible to persons who might be affected by their activities – they are usually not published or otherwise made available to potential victims of human rights violations, their families, their lawyers and NGOs. For example, it is very difficult to assess the measures on establishing effective procedures for internal monitoring of the behavior and discipline of the MVD or SNB officials, by the Instructions of the senior managements of those two structures. The reasons are that (a) one normally won't have an access to such instructions, and (b) an instruction is not a law, it is more "an internal document"
- Lack of transparency and real public scrutiny in the activity of those new units
- Officials of those newly created units are overload with work– within these units, many positions are held by the law enforcement officials, who are simultaneously and permanently involved in other types of law enforcement job. Therefore, they regard his/her job within the units as a secondary one; in addition, traditionally -since the Soviet period-, in important State organs, working for those units, that is dealing with citizens' complaints and appeals, has been regarded as "not prestigious".

On February 24, 2004, the Uzbek Government created an Interdepartmental Working Group of the Government of the Republic of Uzbekistan on Prevention of Torture.¹⁵ This structure was set up in response to the recommendations of the UN Special Rapporteur, after his visit to Uzbekistan, in December 2002, and to the resolutions and concluding observations of the UN CAT on Uzbekistan. The Working Group is composed of representatives from different Uzbek State organs, which are related to the criminal justice system and law enforcement. The Working Group is far from being a representative body. Indeed, the Uzbek civil society only participates in a limited way, and is solely represented by pro-governmental institutions and GONGOs, such as the National Center for Human Rights, Tashkent Institute of Law, National Bar Association and Public Opinion Center "Ijtimoiy Fikr". In another hand, human rights groups and independent NGOs are completely left out from this group. The activity of the Working Group lacks transparency and regularity. Its work is limited to regular roundtable discussions between the representatives of different Uzbek law enforcement bodies. It is not a real governmental organ with decisions-making power. There is no criteria to evaluate the activity of this Working Group.

(c) and (d) The Uzbek Government failed to put in place an adequate system of reparation and rehabilitation to promptly give reparation to the persons when there is credible evidence that they were subjected to torture or similar ill-treatment.

¹³ Appendix # 2, Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the CAT.

¹⁴ Ibid.

¹⁵ The Working Group was created in pursuant to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan from February 24, 2004.

The government report states that the Criminal Procedural Code of Uzbekistan refers to articles 985-991 of the Civil Code of Uzbekistan. These provisions deal with the procedure for compensating victims of torture and of similar cruel treatment, for moral prejudice. This entitlement is laid down in a decision of the Supreme Court of April 28, 2000 : “*Some issues with the application of the law on compensation for moral prejudice*”. According to the government report, this question is also under consideration before the Interdepartmental Working Group, to monitor the observance of human rights by law enforcement agencies. It takes part of the plan of compliance with the Committee against Torture’s recommendations and with a view to improving the system for compensating or rehabilitating torture victims.¹⁶

No system for compensating or rehabilitating torture victims is set up. The reluctance of the Uzbek courts and other law enforcement bodies to recognize a fact as torture or as a similar ill-treatment and to state that testimonies or evidence someone obtained from torture is non-admissible, puts up huge barriers for creating a system of compensation and rehabilitation for torture victims. Rehabilitation centers in the administrative centers of each region and district provide assistance to former prisoners in employment, health and re-socialization issues, but do not address specifically the issue of post-torture rehabilitation.

Because the shadow report team do not receive responses to its written inquiries about the number of Uzbek law enforcement officers charged (and punished) with committing acts of torture or similar ill-treatment against persons, we could only rely on and comment official information of the third periodic report of the Government of Uzbekistan. The chart on the number of Uzbek law enforcement officers who were charged with committing torture, does not reveal the real situation.¹⁷ While calling it a “*chart on the number of officials brought to different types of responsibility (disciplinary, administrative and criminal) for committing torture and similar ill-treatment*”, the government report does not specify the types of responsibility and sanctions against the perpetrator. This allows us to conclude that Uzbek Authorities failed to bring the perpetrators of torture or of similar ill-treatment to responsibility. Our experience demonstrates that, still, in many cases, perpetrators of torture or of similar ill-treatment in Uzbekistan might only face disciplinary measures.

According to the National Security Service statistics, mentioned in the governmental report, over 490 million SUM were paid as damages in 2002; in 2003, it amounted to 850 million SUM and US\$ 450,000.¹⁸ It is not clear, from the State report, to what types of damages do those figures relate and whether they cover damages for the recognized victims of torture or similar ill-treatment.

During the reporting period, we could not find out the total number of recognized torture victims to whom it was given adequate reparation by the State, the total amount of money given out to the recognized torture victims as compensation or the number of recognized torture victims who were rehabilitated. There is no effective or practical system to redress for recognized victims of torture and no system for recognized and rehabilitated victims of torture to protect them from the revenge of perpetrators. The third periodic report of the Government of Uzbekistan mentions that in 2004, 14 officers of the Ministry of Internal Affairs were charged under criminal law with overstepping their official authority, abuse of power and extracting forced testimonies from other persons.¹⁹

¹⁶ See Appendix # 2, Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the CAT.

¹⁷ See Section 184 of the third periodic report of the Government of Uzbekistan to the UN CAT.

¹⁸ See Appendix # 2, Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the UN CAT.

¹⁹ See Section 185 of the third periodic report of the Government of Uzbekistan to the UN CAT.

Paragraph # 7

The Committee is also concerned at the numerous allegations of excessive use of force and ill-treatment by Uzbek military and security forces in the May 2005 events at Andijon which resulted, according to the State party, in 187 deaths and according to other sources, 700 or more, and in hundreds of others being detained thereafter. Notwithstanding the State party's persistent response to all allegations that the measures taken were in fact appropriate, the Committee notes with concern the State party's failure to conduct full and effective investigations into all claims of excessive force by officials.

The Committee is further concerned that the State party has limited and obstructed independent monitoring of human rights in the aftermath of these events, thereby further impairing the ability to obtain a reliable or credible assessment of the reported abuses, including ascertaining information on the whereabouts and reported torture or ill-treatment of persons detained and/or missing.

The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention. The Committee notes that the State party has not agreed to requests made to set up an independent international commission of inquiry into these events, as requested by the High Commissioner for Human Rights, endorsed by the UN Secretary-General and reiterated by the Committee on the Rights of the Child.

The State party should take effective measures to

- (a) Institute a full, effective, impartial inquiry into the May 2005 events at Andijon in order to ensure that individuals can lodge complaints and all persons responsible for violations of the Convention are investigated and brought to justice. In accordance with the recommendation of the High Commissioner for Human Rights and others, the Committee recommends that credible, independent experts conduct this inquiry in order to examine all information thoroughly and reach conclusions as to the facts and measures taken;**
- (b) Provide information to family members on the whereabouts and charges against all persons arrested or detained in connection with the Andijon events; and**
- (c) Ensure that military and security officials only use force when strictly necessary and that any acting in violation of the Convention are subject to review.**

Veritas comment on paragraph # 7:

The Uzbek government's position on instituting a full, effective, impartial inquiry into the May 2005 events at Andijon remains unchanged and unquestionable. The government doesn't want a new investigation into May 2005 Andijon events and has closed this page of the history at least for now. The government's conclusions on the May 2005 events were highlighted in 2006 January Parliamentary Commission report which concluded that the May 2005 Andijon events were not a peaceful demonstration of the local people but was a thoughtful international terrorist attack supported and planned from outside of Uzbekistan. The Uzbek government is still turning a deaf ear to all calls on launching a full and impartial inquiry into the May 2005 events in Andijon. The same tough position was again reiterated by the highest government delegations at different UN meetings during the last years (November 2007 UN CAT, March 2010 UN Human Rights Committee).

The Uzbek government hasn't also incorporated the International Minimal Standards on using firearms by the law enforcement agencies and state military into the national legislation.

Paragraph # 9 - Conditions of detention

While the Committee appreciates the information from the State party regarding surveys of detainee opinions regarding detention facilities, the Committee remains concerned that despite the reported improvements, there are numerous reports of abuses in custody, and many deaths, some of which are alleged to have followed torture or ill-treatment. Furthermore, only some of these have been followed by independent autopsies, and such investigations have not become a regular practice. The Committee is also aware of the concerns raised by the Special Rapporteur on torture regarding Jaslyk detention facility, whose isolated location creates conditions of detention reportedly amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives.

The State party should take effective measures to keep under systematic review all places of detention, and not to impede routine unannounced visits by independent experts including independent national and international bodies to all places of detention, including Jaslyk prison.

The State party should take prompt measures to ensure in all instances of death in custody, that it independently investigates and prosecutes those believed responsible for any deaths resulting from torture, ill-treatment or wilful negligence leading to any of the deaths. The Committee would appreciate a report on the outcome of the investigations where completed and where cases of torture were indeed found, as well as information about what penalties and remedies were provided. The State party should correct the reportedly poor conditions of places of detention, including through the application of alternative measures to imprisonment and the establishment of additional prison facilities as needed.

Veritas comments on paragraph # 9:

The shadow report team found out that persons accused and convicted for anti-state crimes [usually, religiously or politically motivated crimes] were subject to particularly rude conditions of detention and to harsh treatments. Religious or political prisoners, who are serving prison terms in the same prison facilities than other types of inmates, do not enjoy the same range of rights. Their rights, such as the right to correspondence and written communication with home or the right to receive food and other necessary hygiene items from home, are widely restricted. Letters and other written communications are widely censored and do very rarely reach the recipients. Food and hygiene items, addressed to the religious and political prisoners by their family and their friends, often do not reach them.²⁰

The religious and political prisoners, unlike other types of inmates, are annually forced by the prison authorities to write official letters of apologies to the name of the Uzbek people and the head of state. The prison authorities really often deprive them of their rights. They tend to easily blame religious and political prisoners of any breach of internal regulations and rules and to put them into isolated cells. This is a useful tool, in the hands of the Uzbek authorities, to control detainees release, which could be possible under annual amnesty acts. If a prisoner breaks internal regulations twice and more, he might not be eligible for amnesty. Other inauspicious practices are developed by groups of inmates who are willing to cooperate with the prison

²⁰ The shadow report team interviewed a group of parents of religious prisoners from different prisons of Uzbekistan, December 12-18, 2010, Tashkent, Uzbekistan.

administration. They are given official power and position, as members of squad. With the help of such squads, the prison authorities maintain a constant control over religious and political prisoners, stay informed about everything in the prison, and use them to build false criminal cases against the religious and political prisoners and to accuse them with breach of internal rules.

Detainees' family is not immediately informed about the detention of their relatives. The notification to the family and to representatives is not fixed in the protocol of detention - there is no such section in the official form of the protocol in Uzbekistan. Detainees do not undergo medical examination immediately after they arrive and before being placed in places of pre-trial detention. This is not part of the required procedural steps and it is neither registered in the protocol of detention. In breach of the Uzbek Criminal Procedural Code, investigators, prosecutors and judges do not ask detainees, suspects or accused about how he/she was treated during pre-trial detention. Detainee cannot have a prompt and immediate access to a legal counsel and to close relatives within 24 hours after the arrest. The national legislation does not provide provisions allowing unmonitored contact with legal counsel and relatives within the first 24 hours.

Discrimination against religious prisoners, in the enjoyment of their fundamental rights, by the prison administration is more than glaring. Religious prisoners, in comparison with ordinary prisoners, are strongly limited in their right to free correspondence with their relatives. Their letters are subjected to wide censorship by the prison administration.

Paragraph # 10 - Safeguards for prisoners

Notwithstanding the many fundamental changes by the State party in legislation regarding detention conditions, safeguards of detainees and related matters, the Committee is concerned by credible reports that law enforcement personnel secure and follow detailed internal regulations and procedures that are restricted for official use only and not made public or available to detainees or their lawyers. These rules leave many issues to the discretion of the officials. This results in claims that, in practice, detainees are not afforded the rights of access to a lawyer, independent doctor or family member. The Committee is concerned that these rules create conditions where abusive practices are sanctioned.

The State party should ensure in practice that each detainee can implement the right to access a lawyer, independent doctor and family member and other legal guarantees to ensure protection from torture.

Veritas comments on paragraph # 10:

According to the new law on changes and amendments to the Uzbek Criminal Procedural Code adopted in January 2009, the defense lawyer is entitled to a meeting with his / her client in case he / she presents the bar order to represent the client's case and bar ID.

How this right is implemented in practice?

For example: On June 07 2009 the defense lawyer arrived at Kibray district department of internal affairs (Tashkent region) and presented his written appeal addressed to the investigator of the investigation unit of the department of internal affairs. Under art. 53 of the Criminal Procedural Code the defense lawyer has asked to provide access to the following documents: an appeal of the victim of crime (in order to know the reason of opening a criminal case against his client), the testimonies of his client given until the moment the defense lawyer has joint the case (written testimonies, protocols of interrogations), a decision of the investigator on recognizing

the client of the defense lawyer as a suspect, a decision of Kibray district court on criminal cases on accepting the petition of the public procurator's body on applying the pre-trial arrest on G. The defense lawyer has also asked in his appeal to abstain from carrying out any investigation actions against his client in the absence of the defense lawyer. The lawyer has enclosed with his appeal the bar order. The investigator refused to accept the defense lawyer's appeal. The defense lawyer has approached the secretariat of the investigation unit and asked them to accept his appeal. Only after a 10 minute negotiation and insistence on the side of the defense lawyer the secretariat has agreed to accept the lawyer's appeal. The defense lawyer was refused to enter the building of the Kibray district department of internal affair which is barred with metal fences from all sides. At this moment G. – the defense lawyer's client has been kept in the temporary detention cell inside the building of the department of internal affairs. The lawyer has asked the police officers to let him get inside and meet his client at the temporary detention cell. He presented his bar ID and bar order on G.'s case. But the police officers refused to let the defense lawyer to enter the building to see his client saying only after the approval of the chief of the district department of internal affairs or the investigator the defense lawyer can get inside. At this moment the investigator has been in his office room inside the building where the defense lawyer didn't have access. He kept saying on the phone that he had some pressing issues to deal with and can't take the defense lawyer to see his client G. According to the police officers guarding the main entrance of the building the chief of the district department of internal affairs was out of office. The defense lawyer had to submit a complaint against preventing him of a meeting with his client through the secretariat of the district department of internal affairs. All these efforts took more than one hour. Then the defense lawyer has warned the police officers at the entrance of the building that he will have to complain against preventing him of a meeting with his client to the district public procurator's office. Only then the investigator came to meet the defense lawyer and took him to the temporary detention cell inside the building to see the detainee. The investigator has also entered the meeting room and intended to be present during the meeting of the detainee with his lawyer. Only after explanations of the defense lawyer that confidentiality of the meetings with the defense lawyer should be guaranteed which is also obligatory for the investigator the latter agreed to leave them alone.

Another case from the Uzbek lawyers' practice:

K. was summoned to Tashkent city public procurator's office in the capacity of a witness for 11:00 a.m. on August 11 2009. K. was told that she is called to be given a copy of the audit checking into the company for which she works. She came to the building of the public procurator on the appointed time. She has been told by the investigator of the public procurator's office to wait in the corridor. K. had to wait until 05:00 p.m. (6 hours) when she was told to call her lawyer in an hour. She wasn't told what she is accused of. The investigator has only mentioned the number of the article of the Criminal Code and allowed her to make a phone call. After that K. was forced to remain in the investigator's room. She wasn't even allowed to visit the lady's room. The investigator failed to explain to K. the charges on the basis of which she has been detained. K. was presented a copy of the decision on involving her into the criminal case in the capacity of the suspect only at 08:30 in the presence of the investigator and her defense lawyer. A copy of the protocol on detaining K. was also presented to her at the same time.

The charges against K. were brought under five articles of the Criminal Code. The investigator has failed to explain the charges against K. That was done by K.'s defense lawyer.

According to art. 226 of the Criminal Procedural Code and section 6 of Decree of the Supreme Court of Uzbekistan # 17 "On application of the pre-trial arrest as a preventive measure at the pre-trial stage" (adopted on November 14 2007) the time of arrest is counted from the factual moment when a person is brought to the police station or office of the other law enforcement agency. When the defense lawyer has asked K. about the exact time of arrest K. has clarified that

approximately beginning 05:00 p.m. she was restricted to move freely and was ordered to stay at one place. The defense lawyer has recommended K. to indicate 05:00 p.m. as an exact time of her arrest. Having heard such recommendation from the defense lawyer the investigator became furious and told K. not to listen to the recommendation of her lawyer. The investigator has added that “thanks to such positive recommendation of the defense lawyer the court shall soon approve the pre-trial arrest on K.”. Shocked still by the recent arrest K. has got into tears and asked her defense lawyer not to argue with the investigator as this might worsen her situation.

The above mentioned case story indicates that the investigator has tried to prevent the defense lawyer from providing an effective legal counsel to his client and at the same time tried to press the suspect so that she ultimately refuses to use the service of “the unwanted lawyer” because the lawyer started to immediately note the violations of the procedural norms in this case and reacted to such violations.

Moreover, by completing the protocol of arrest not from the factual moment of arrest of K. but waiting until the defense lawyer steps into the criminal case the investigator violated art. 225 of the Criminal Procedural Code: *“immediately after bringing the arrested person to the police station or a building of other law enforcement agency the officer on the duty or other officer of the law enforcement agency following the order from the chief of police or other law enforcement agency shall complete the protocol of arrest specifying: who, by whom, when, under which circumstances, on what bases underlined in the law, under what charges, at what time was brought to police station or a building of other law enforcement agency. This protocol shall be signed by the police officer or an officer of other law enforcement agency who shall check on the validity of arrest, the competent person who has carried out the arrest, the arrested person and witnesses of arrest”*.

Paragraph # 11 - Independent monitoring of places of detention

While noting the State party’s affirmation that all places of detention are monitored by independent national and international organizations without any restrictions and that they would welcome further inspections including by the International Committee of the Red Cross (ICRC), the Committee remains concerned at information received indicating that acceptable terms of access to detainees was absent, causing, inter alia, the ICRC to cease prison visits in 2004.

The State party should ensure that a fully independent monitoring of detention and other custodial facilities is permitted, including by independent and impartial national and international experts and non-governmental organizations in accordance with their standard methodologies.

Veritas comments on paragraph # 11:

Independent non-governmental investigators, including international NGOs, do not have a full and prompt access to all detention places - that is police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics – and as such have no means to monitor personal treatments and conditions of detention. The procedure for obtaining such authorizations is not clear at all.

The Government’s report states that the Central Penal/Criminal Punishment Department allows unhindered access to penitentiary institutions for the members of diplomatic corps, for international non-governmental organizations, for local nonprofit organizations and for the media (including foreign ones). Instructions about the organization of visits to penal institutions

are now available and on record at the Ministry of Justice. Uzbekistan is setting up a system that will open to civil institutions' representatives an access to penitentiary facilities. According to the State report, the Central Penal Correction Department would have produced a model agreement to govern access by nonprofit organizations to detention places.²¹ Please see enclosed a copy of "Instructions on the order of visits by the representatives of the diplomatic corp., international and local non-governmental organizations and mass media" approved under the Order of the Uzbek Minister of Internal Affairs of Uzbekistan on November 01, 2004.

This statement must be disallowed. The model agreement has never been made public or otherwise disseminated among the stakeholders. No system allows to representatives of the civil society an access to penitentiary facilities. The penitentiary system in Uzbekistan remains a closed system. Official review bodies (regulators, public account bodies, governmental and quasi-governmental supervisory bodies), any other bodies which are involved in the penitentiary environment (probation services, social welfare, child protection, schools and etc.) as well as non-governmental organisation and academics, all rely on detailed and reliable statistical information on how the penitentiary system operates in practice. Such information in Uzbekistan is, almost invariably, for „internal use only” and is not made available to the general public or to outside bodies (this is one of the obstacles in our research). Such statistics are made available to outsiders on an entirely discretionary basis. Having access to detention places, such as police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics, has become even more difficult since the Andijan events, in May 2005. The ICRC was denied access to prisons and other detention places in June 2005. At the time of this writing, the ICRC was still negotiating with the Uzbek Ministry of Foreign Affairs on this issue.

According to the Law “On Ombudsman”, the Ombudsman’s office visits all detention places, including police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics, in order to monitor treatment and conditions of detention. The Ombudsman is empowered with the authority to inspect, as he wants to, as necessary and without notice, any place of detention. The Ombudsman’s institution in Uzbekistan is fully dependent from the executive branch and its visits to detention places may not shed any light on the situation. Reports of the Ombudsman’s office upon visiting detention places, including conclusions and recommendations, are not made public. It is one of the reason why it is so complicated to follow up the recommendations of the Ombudsman’s office and its implementation by the Main Directorate for Penitentiary Institutions of the Ministry of Internal Affairs.

Paragraph # 14 - Closure of human rights and other independent organizations

The Committee is concerned at the information received about the intimidation, restrictions and imprisonment of members of human rights monitoring organizations, human rights defenders and other civil society groups and the closing down of numerous national and international organizations, particularly since May 2005. The Committee appreciates the information that Mutabar Tojibayava is eligible for amnesty, but remains concerned at the reports of ill-treatment and denial of fundamental safeguards regarding her trial and those of other civil society advocates and detainees.

²¹ See Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the CAT.

The State party should take all necessary measures to ensure that independent human rights monitors are protected from unjust imprisonment, intimidation or violence as a result of their peaceful human rights activities.

The Committee urges the State party to release human rights defenders imprisoned and/or sentenced because of their peaceful professional activities and to facilitate the reopening and full functioning of independent national and international human rights organizations, including the possibility of conducting unannounced independent visits to places of detention and confinement.

Veritas comments on paragraph # 14:

The Uzbek government has always been suspicious of the NGOs and other civil society actors (e.g. journalists, mass media, political parties, intelligentsia, etc.) and evaluated them through the prism of loyalty or disloyalty to the ruling political regime. It is only in countries like Uzbekistan NGOs including human rights groups are conditionally fall under two main categories: the so called pro-governmental NGOs or GONGOs which stick to the government proclaimed mainstream ideology and independent NGOs and human rights groups which point out to the problems and shortcoming in the government's policies.

Coming from such categorization the pro-governmental NGOs enjoy government funding, can easily get their state registration and legalization and are given a managed part in the government orchestrated promotion and protection of human rights. Those GONGOs the names of which are mentioned in the third periodic report (the Federation of Trade Unions of Uzbekistan, the *Makhalla* charitable foundation, the NGO Ecosan Services Foundation, the *Soglom Avlod Uchun* international foundation, the *Nuronni* foundation, the Centre for the Study of Human Rights and Humanitarian Law, the *Izhtimoi fikr* Centre for Public Opinion Studies, the Association of Judges of Uzbekistan, the *Tadbirkor ael* association of businesswomen, the National Chamber Lawyers, the Women's Committee of Uzbekistan, the Chamber of Trade and Industry of Uzbekistan, the Association of Women Jurists of Uzbekistan, the *Mekr* association of women's NGOs, the *Olima* women's union, the *Kamolot* youth movement, Art and Culture Fund Forum of Uzbekistan, *Sen Yolgiz Emassan* Foundation, etc.) are part of the government official propaganda machinery with the main task of picturing the Uzbek government as a government respecting and protecting human rights and freedoms. The pro-governmental NGOs in Uzbekistan have unhindered access to the national mass media.

Very small number of so called independent NGOs and human rights groups completely fall out of this process and face regular government harassment and persecution in their activities. In Uzbekistan the issues of NGOs and human rights groups are dealt by special departments of the secret service and police which are also in charge of combating terrorism threats. Uzbekistan has retained special departments of the secret service and police which during the Soviet times used to deal with the dissidents.

Independent NGOs and human rights groups have no access to the national mass media, their websites and emails are constantly blocked by the secret services. Most of them are not officially registered by the Uzbek government despite their numerous applications to the Uzbek Ministry of Justice requesting a state registration. Those of them which have luckily received state registration, in most cases under the intense pressure of international community (e.g. "Ezgulik" Human Rights Society of Uzbekistan, Independent Society of Human Rights Society), have to go through everyday struggle to keep their official status and still be able to conduct their day-to-day activities. The government retains a complicated and time-consuming reporting for the registered NGOs. A registered NGO has to report to the Ministry of Justice, tax authorities and national statistics department every three months. The government prevents independent NGOs from free assembly. A NGO which is planning to conduct any public event or gathering has to

report about this to the local branch of the Ministry of Justice enclosing a detailed program of the planned event with the participants' list. Under the Cabinet of Ministers of Decree # 56 from 2004 the Uzbek government prevents independent NGOs from receiving from their grant funds from the official bank accounts. In order to receive the grant funds from their official bank account the NGO to take its project proposal which is already approved by the donor to a special government commission under the bank for further "approval". Almost in all cases the NGOs are refused to receive their grant funds from the bank.

Starting from 2005 the Uzbek government has embarked on an obedient and easily manageable NGO sector. At that time the bulk of the Uzbek NGOs who enjoyed more or less freedom in their activities till then were either closed or forced to self-closure. The remaining NGOs were forced to join a newly created GONGO - the National Association of Non-Profit Non-Governmental Organizations of Uzbekistan (so called NANNOUZ). According to the third periodic report of the Uzbek government to the Human Rights Committee, the NANNOUZ currently has 330 members, embracing all aspects of the life of society and working in such areas as social support and on legal, women's, youth, environmental and other matters.²² In 2008 the government created under the Parliament a special Foundation for supporting NGOs and other civil society institutions. This Foundation will receive 4 % of the annual national budget of Uzbekistan. A special commission made up of the MPs, representatives of different government ministries and agencies will manage this Foundation, consider the grant applications submitted by the Uzbek NGOs and make decisions on them.

Since September 11, 2001 in a new security environment the Uzbek government resorted to even more curtailing of the professional rights of the human rights activists. In considering the types of measures taken by the Uzbek government in the name of security that have impacted the work of human rights defenders it is possible to identify the following broad trends.

- Counter-terror laws: The Uzbek government has renewed and increased use of pre-existing security or anti-terror legislation in ways that have been harmful to human rights defenders;
- Equating human rights defenders with terrorists: The Uzbek government have taken advantage of heightened public fears to undermine the credibility and reputation of human rights defenders by accusing them of giving aid and comfort to terrorists, or of being insufficiently patriotic at a time when the state is facing peril;
- Expedient manipulation of security language: In addition, the Uzbek government has sought political advantage from heightened security tensions by seeking to characterize a broad range of dissent or political opposition, including non-violent opposition as "terrorist" or potentially so, thereby justifying the limitation of basic rights and freedoms that are essential to the work of human rights defenders. Uzbekistan as a country that had pre-existing states of emergency became more comfortable in sustaining and prolonging them. Both local and international critics of such measures that systematically nullify rights protection found their positions weakened.

The Uzbek government continues its practice of putting NGO and human rights activists into jail for their criticism. In December 2008 Uzbekistan released two imprisoned human rights activists Dilmurod Mukhiddinov and Mamarajab Nazarov, and provided an authorization to Mutabar Tojiboeva, another human rights activist on conditional release, to leave the territory. This was hailed by the EU as one of the signs of progress in the human rights. But in the same month the Uzbek authorities have imprisoned two more activists - Agzam Turgunov and Solijon Abdurakhmonov - to more than 10 years under trumped up criminal charges.²³

²² CCPR/C/UZB/3, section 176.

²³ "EU / Uzbekistan", Agence Europe, December 17 2008

To date more than 20 human rights activists and independent journalists remain in prison for their criticism of the government policies. Here are the names of 9 of them whose health conditions are characterized as very critical and dangerous for their lives if they are not immediately released from the prison on humanitarian basis:

- Saidov Dilmurod Egamberdievich – Prison # 64/36 in Navoiy city, Navoiy region of Uzbekistan;
- Djumaev Yusuf Ollokulovich – Prison # 64/71 in Jaslyk settlement of Karakalpakstan Autonomous Republic of Uzbekistan;
- Karamatov Alisher Khursanovich – Prison # 64/49 in Karshi city, Kashkadaryo region of Uzbekistan;
- Farmonov Azamjon Turgunovich – Prison # 64/71 in Jaslyk settlement of Karakalpakstan Autonomous Republic of Uzbekistan;
- Khudaynazarov Abdurasul – Prison # 64/21 in Bekabad city, Tashkent region of Uzbekistan;
- Abdurakhmanov Soli Abduraimovich – Prison # 64/49 in Karshi city, Kashkadaryo region of Uzbekistan;
- Turgunov Azam Olimovich – Prison # 64/49 in Karshi city, Kashkadaryo region of Uzbekistan;
- Kholjigitov Norboy Abduravikovich – Prison # 64/49 in Karshi city, Kashkadaryo region of Uzbekistan;
- Mamatkhanov Ganikhon Dadakhonovich – Prison # 64/48 in Zarafshan city, Navoiy region of Uzbekistan.

It should be mentioned that those nine political prisoners have been subjected to torture and other types of ill-treatment during pre-trial investigation on their criminal cases and even after being replaced to prisons for serving their prison terms. In 2009 and 2010 the Uzbek authorities have released on humanitarian basis two political prisoners who has been in a critical health condition – Sanjar Umarov and Habibulla Akpulatov.

Paragraph # 19 - Violence against women

The Committee is concerned by reports of cases of violence against women including in places of detention and elsewhere and notes the lack of information about prosecutions of persons in connection with cases of violence against women.

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

Veritas comments on paragraph # 19:

There is no law addressing specifically acts of violence committed against women. More generally, the Criminal Code punishes different levels of bodily harm (Articles 97-112 of the Criminal Code).

Article 118 of the Criminal Code defines rape as sexual intercourse committed by force, threats, or abuse of a helpless person, and punishes it by a sanction of three to ten years of imprisonment. In the Criminal Code the act of “attempt of rape” is not considered a crime.

There is no definition of domestic violence in the Uzbek legislation. The Criminal Code does not consider domestic violence as a crime and does not explicitly prohibit it. The Family Code does not define domestic violence either, and, notwithstanding that the phenomenon is widespread in the country, more particularly in rural areas, the Government has not yet presented a draft law on domestic violence. Under its section “Crimes against Health”, the Criminal Code punishes physical violence and infliction of intentional serious bodily injury at Article 104, by a sentence of five to eight years of imprisonment. Articles 105 and 106 are applied in case of crimes against health for infliction of medium bodily injury (Art. 105) and trivial bodily injury (Art. 106 -107).

According to the Constitution, marriage is based on the full consent of both men and women. With regard to the forced marriages of girls, the Family Code and Civil Code of Uzbekistan allow females to marry at 16 years of age when there is a special approval of the local government. The age of full legal capacity and liability for physical persons is 18 years old, and the legal age to marry is 18 years old for both sexes.

Article 136 of the Criminal Code on “Compulsion of a woman into a marriage contrary to her will or not allowing a woman to marry according to her will” explicitly criminalizes forced marriages. The punishment ranges from a fine of up to 5 minimum wages to three years’ imprisonment.

Bride kidnapping is not explicitly considered as a crime in the Criminal Code, however, it is regulated by Article 137 on “Kidnapping” which provides for imprisonment from three to five years, or ten years in case the victim is a minor, or up to fifteen years with additional aggravating circumstances are found.

Article 103 of the Criminal Code recognizes as a crime the act of “bringing to suicide or attempt threat by cruel treatment or persistent degrading of honour and dignity of a person”. According to this article, someone who ill-treats a woman in order – for instance – to persuade her to get married against her will, and in so doing incites her to commit suicide, shall be condemned by a sentence of three to five years of imprisonment.

Uzbekistan’s current laws criminalize all forms of trafficking in persons (article 135 of the Criminal Code). Uzbekistan has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others and its Optional Protocol to Suppress and Punish Trafficking in Persons Especially Women and Children.

Under Article 190 of the Uzbek Administrative Code, women forced into prostitution can be punished by imprisonment²⁴. Often, after having been punished in other countries, women end up also serving sentences in Uzbekistan. Very often to avoid publicity, women will pay corrupted officials who threaten them with bringing their case before the courts in order to extort money.

Violence against women can take many forms, i.e. domestic violence, polygamy, forced marriage, rape, trafficking, forced prostitution and exploitation, forced sterilization and harassment at work place, and in many instances it may amount to torture or cruel, inhuman or degrading treatment.

²⁴ UN Report of the Special Rapporteur on violence against women, 2003 (E/CN.4/2003/75/Add.1, para. 1232).

On of the most widespread forms of violence against women in Uzbekistan is domestic violence. This form of violence is particularly difficult to tackle since it is a hidden phenomenon and there is strong resistance to address it as a human rights issue due to the perceived cultural and religious aspects that legitimize the perpetuation of women's inferior position and the use of violent practices against them. Such practices are often attributed to women's own (perceived) misconduct. Hence, women do not denounce frequent acts of domestic violence committed against them because they fear being excluded from society.

The Criminal Code does not prohibit forced sterilization and removal of reproductive organs. Allegedly, an internal (confidential) decree adopted by the Ministry of Health ordered the sterilization of women after their first or second pregnancy, and their reproductive organs to be removed. Removal of organs has also been carried out in the context of caesarean sections. Women who have undergone such removal of organs only found out about it only once they started noticing their loss of feminine characteristics. As a result, some have been abandoned by their husbands.

Uzbekistan has not officially adopted the “one-child policy”. However, the large number of cases of forced sterilization and removal of reproductive organs of women at reproductive age after their first or second pregnancy indicate that the Uzbek government is trying to control the birth rate in the country.²⁵

Forced marriages are quite frequent in Uzbekistan. The most tragic consequence of forced marriage is a woman's attempt to kill herself in order to escape it.

According to the statistics by the International Organization for Migration the most common destinations of trafficking of Uzbeks are Russia, South Korea, Kazakhstan, Turkey and the United Arab Emirates. Frequently, the women victims are tricked by men who promise them a job in another country. Traffickers are usually operating with the consent of corrupted police officials in charge of controlling the entry and the exit of people from the country, who turn a blind eye to the movement of these women across the border.

According to the survey of the “Izhtimoiy fikr” National Centre for Sociological Research, the main reasons why women leave Uzbekistan (whether by trafficking or as a result of labour migration) are poverty and economic hardship (52.0 % of the respondents) and unemployment (14% of the respondents). The respondents have also indicated reasons such as the perspective of earning more money and economic instability in Uzbekistan. These women can be divided in two types: women who know that they are taken abroad to work as prostitutes; and women who believe that they will get other employment (as waitress, nurse, baby-sitter, etc.) abroad and who are later victims of traffickers. However, there are no consistent statistics on this issue, the main obstacle being that many victims do not denounce the practice out of fear.

According to results of selective monitoring in eastern regions of Uzbekistan, every year between two and two thousand and five hundred women aged 18 to 32 years travel abroad to work as prostitutes. The principal Uzbek cities where the women are recruited are Samarkand, Tashkent, Ferghana and Bukhara; but most of them come from the countryside. They are sent to the Middle East countries, Turkey, Kazakhstan, and Russia. Although these girls or women leave their country to work in restaurants or hotels, once they have arrived they are deprived of their passports and forced into prostitution.

Arguably because of the influence of religion, a certain form of trafficking is often taking place in the region by forcing young girls into a polygamous marriage. These girls are chosen when

²⁵ Uzbekistan is the largest nation among the five Central Asian countries, with more than 29 million inhabitants.

still virgins by their future husbands and they enter arranged marriages with the parents' consent as second or third wives.

A law entitled *State guarantees to the equal rights and opportunities among men and women* has been drafted but has not yet been adopted. The state programme pursuant to this law will aim to reinforce social assistance and improve the conditions of work and life of women. A specific budget line will be created to fund this programme. However, lack of transparency and bureaucracy remain prevalent in the administration, which leads to the expectation that the programme may not reach its objectives.

Moreover, a gender expertise of the Labour and Family Codes has been conducted and recommendations have been made to improve the administrative and legal mechanisms of gender equality and change the stereotypes concerning the roles and behaviour of men and women. But very often such initiatives have a declarative character, and they lack means of implementation.

As to the role of State officials in order to prevent trafficking in persons, law enforcement agents are trained in the prosecution of human trafficking. However, the Coordinating Council for Fighting Crimes of Trafficking, created under the General Prosecutor's Office, is not efficient since information on its activities is not open to others and other law enforcement agencies lack effective schemes to urgently and efficiently share information on trafficking with this body.

According to a reliable source, women detainees, in particular Muslim women, in the jail known as KIN-7 (64/7) in Tashkent, are not allowed to practice their religion. According to Uzbek law and internal regulation of women detention centres, only female personnel can conduct body search and examination, but it is possible that male officials assist (observers, directors, etc). However, the Uzbek human rights groups have reported about at least three cases of rape of women detainees by the police officers in 2009 and 2010.²⁶

Although violence against women is a widespread phenomenon that requires special attention, no special mechanism to receive complaints for sexual violence, domestic violence or trafficking in persons was ever adopted by the authorities. In a context where a victim of gender-based violence is discouraged to denounce it because of pressure from her family or the police and because she risks social exclusion, the State has to adopt specific instruments to encourage women to complain. Moreover, it is frequent that the authorities, directly or indirectly, will disrupt the correct course of investigation into violations of women's rights.

As regards domestic violence, judges frequently advise women to solve their problems through methods of reconciliation and not before the court, even if there is evidence of violence. Cultural norms and traditions do not welcome open declarations concerning domestic violence, and the subject is never dealt with in the media. Equally, the police advise women not to submit complaints against their husbands, according to some statistics, this happens in 80% of cases.

To address the issue of domestic violence, the State should allow the divorce for women victims. However, the Committees of Mahalla²⁷, organized by the State (12,000 such entities exist in the country), who plays an important role, often blocks this access to divorce. Indeed, often women cannot divorce without an authorization from the Committee of Mahalla, which does not give the permission, even in case of evident beating.

In a minority of cases criminal legislation has been appropriately applied to punish domestic violence acts pursuant to Articles 104, 109 and 110.

²⁶ Reports by "Ezgulik" Human Rights Society of Uzbekistan, 2009 and 2010

²⁷ The local self-government entity

With regard to trafficking in women, the number of cases is unknown because of the absence of shelters for the women victims and the lack of victim protection mechanisms and guarantees of rehabilitation upon their return. Moreover, as mentioned above, the Uzbek Government often treats victims of trafficking as criminals for engaging in prostitution, hence there will be no rehabilitation whatsoever in these cases.

More generally, before the Andijan events in 2005, shelters for victims of violence were created by NGOs, in all regions of the Republic of Uzbekistan. However, almost all shelters were closed down after these events along with the NGOs that ran them. Currently, women can address the women's consultations where they can get psychological help, but they have to queue and the consultation has only a day-time schedule and does not provide shelters.

Paragraph # 22 - Non-refoulement

The Committee is concerned with the allegations it has received that individuals have not been afforded the full protection provided for by article 3 of the Convention in relation to expulsion, return or deportation from another country. The Committee is particularly concerned at reports of forcible return of recognised refugees and/or asylum seekers from neighbouring countries and the unknown conditions, treatment and whereabouts since their arrival in the State party, some of whom were extradited from neighbouring countries. Although the State party's representatives stated that there is no longer a need for the UN High Commissioner for Refugees to be present in the country, the Committee is concerned that nearly at least seven hundred recognised refugees are resident in the State party and are in need of protection and resettlement.

The State party should adopt a refugee law that complies with the terms of the Convention. The State party should invite the United Nations High Commissioner for Refugees (UNHCR) to return and to assist in providing protection and resettlement for the refugee population. It is encouraged to consider becoming party to the 1951 Refugee Convention and its 1967 Optional Protocol.

Veritas comments on paragraph # 22:

The State party hasn't adopted a refugee law. The State party hasn't issued an official invitation for the UNHCR to return to the country. According to our sources in the Uzbek MFA the State party is considering becoming a party to the 1951 Refugee Convention and its 1967 OP.

The State party is continuing with the policy of forcible return of recognized refugees and political asylum seekers from such countries as Kazakhstan, Russia, and China.