



# RAPID RESPONSE GROUP

## Implementation of the UN Convention against Torture

# Uzbekistan

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### Shadow Report UN Committee Against Torture

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## GENERAL SITUATION

### 1. Preliminary Observations on international obligations of Uzbekistan

Many credible reports show egregious human rights abuses in the criminal justice system in Uzbekistan, including arbitrary arrests and detentions, through extensive use of torture to obtain confessions and unfair trials leading to convictions based on such confessions. There is also a widespread use of the death penalty, and there are reports of torture and unfair trials even for capital punishment.

Uzbekistan is party to several UN Human Rights treaties. As such, several reports were examined by the UN Treaty Bodies which expressed their concerns over the violations of human rights. Recently, the UN Human Rights Committee, established under the UN International Covenant on Civil and Political Rights (ICCPR)<sup>1</sup>, and the Committee Against Torture, established under the UN Convention Against Torture (CAT)<sup>2</sup>, adopted Concluding Observations which reveal several subjects of concerns.

Uzbekistan was visited by the UN Special Rapporteur on Torture in 2002, who pointed the systematic use of torture in the country.<sup>3</sup>

Status of ratification											
	ICERD	ICCPR	OP 1 CCPR	OP 2 CCPR	CESCR	CAT	OPCAT	CEDAW	CEDAW OP	CRC	C C N a
Entry into force	28/10/95	28/12/95	28/12/95	No action	28/12/95	28/10/95	No action	18/08/95	No action	29/07/94	
Reporting cycle (D = due / S = submitted / E = examined)											
Initial Report	D 10/96 S 12/99 <sup>4</sup> E 08/00	D 12/96 S 07/99 E 03/01			D 06/97 S 04/04 E 11/05	D 10/96 S 02/99 E 11/99		D 08/96 S 01/00 E 01/01		D 07/96 S 12/99 E 10/01	
Second report	D 10/00 S 03/05 <sup>5</sup> E 03/06	D 04/04 S 04/04 E 03/05			D 06/10	D 10/00 S 11/00 E 05/02		D 08/00 S 10/04 E not yet		D 07/01 S 02/05 E 05/06	
Third report	D 10/08 <sup>6</sup>	D 04/08				D 10/04 S 07/05 E 11/07		D 08/04 S not yet		D 07/10 <sup>7</sup>	

1 See Concluding Observations of the HRC on Uzbekistan's Initial Report under the ICCPR, 26 April 2001 (CCPR/CO/71/UZB).

2 See the Conclusions and Recommendations of the CAT on Uzbekistan's Initial Report under CAT, 19 November 1999 (A/55/44, paras. 76-81), and on Uzbekistan's Second Periodic Report under CAT, 6 June 2002 (CAT/C/CR/28/7).

3 See the Report of the Special Rapporteur on the question of torture, Theo van Boven submitted in accordance with Commission resolution 2002/38, February 3, 2003, E/CN.4/2003/68/Add.2.

4 First and second report submitted jointly.

5 Third, fourth and fifth report submitted jointly.

6 Seventh and eighth report will be submitted jointly.

7 Third and fourth report will be submitted jointly.

## **2. Legal and Institutional Structure**

### **2.1. Legal provisions relevant to the practice of torture**

- **Domestication of the CAT and other international HR treaties:**

Before discussing the main features and default of the legal provisions of Uzbekistan with respect to torture, it is important to raise, as a preliminary comment, an issue which has direct consequences on the matters of this report : the status and the invocability of international HR treaties before the domestic Uzbekistan courts.

The Preamble of the Uzbek Constitution suggests that Uzbek legislation recognizes the supremacy of international law over national law. Indeed, it states that:

„The people of Uzbekistan ...recognizing the priority of generally recognized norms of international law ...adopt ...the present Constitution of the Republic of Uzbekistan...”

The Criminal Code and the Criminal Code of Procedure also contain provisions which suggest that international standards override national ones.<sup>8</sup>

However, in practice these provisions appear to have little or no effect because the Uzbek legal system may not be considered as a „monist” system in which „directly applicable” provisions of international laws would be directly applied by all domestic courts. Therefore, international treaties, ratified by the State, cannot be invoked before domestic courts. Because of weak knowledge and expertise and of poor tradition in using international human rights, lawyers do not invoke them while defending the client’s interests. Moreover, procurators and judges would be likely to cursorily dismiss such use of international norms in the domestic system, simply because they are not trained to this discipline and because it is much more convenient for them to base their judgement just on national standards.

### **2.2. Comments on the criminal justice system of Uzbekistan**

The criminal justice system in Uzbekistan is in many respects still based on the previous Soviet system. This means that it includes a thorough and lengthy pre-trial investigation, under complete control of the Procuracy. This is followed by a trial presided over by a judge, during which the case against the defendant is supposed to be fully examined in order to ascertain the whole, „objective truth”.

The system also suffers from a number of other structural problems: a lack of clear public rules – many rules governing important matters (such as a detainee’s access to a lawyer) are only included in the so called „internal”, unpublished regulations; excessive discretion; a general lack of transparency; a lack of professionalism from the law enforcement officials; a marked „automaticity” in the system – which means that, once caught up in the criminal justice process (arrested/suspected), persons are likely to be „prosecuted”, and, almost inevitably, to be convicted and sentenced; corruption.

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<sup>8</sup> Art. 1 (Criminal Law of the Republic of Uzbekistan) of the Criminal Code of the Republic of Uzbekistan says, „The Criminal Law of the Republic of Uzbekistan is based on the Constitution and commonly recognized norms of the international law and consists of this Code”. Art. 3 of the Criminal Procedural Code of the Republic of Uzbekistan says, „Criminal justice is accomplished in accordance to the laws in force during the time of inquiry, pre-trial investigation and trial irrespective of the place where the crime is committed, if other rules and order are not established by treaties and agreements signed by the Republic of Uzbekistan with other states.

- **Lack of transparency in the application of the decrees and other internal directives**

The CPC would appear to be very detailed, but many of its provisions are couched in very broad terms, or contain „escape clauses”. Furthermore, the application of these provisions in practice is subject to much more detailed rules and regulations. The „first-line” law enforcement officials tend to rely on these subsidiary rules and regulations rather than on the provisions of the CPC. Indeed, such officials seem to look almost exclusively at those rules and regulations rather than at the law, even in cases in which the statutory rules would appear to be clear. It remains that these rules and regulations are rarely accessible to persons other than the officials – they are usually not published or otherwise made available to suspects or their lawyers. For instance, this is the case for rules and orders of arrest/detention and for detention centres’ internal regime.

The fact that primary rules are unclear and vague, coupled with the secret dimension of secondary rules, means that the law is enforced, in individual cases, in a largely discretionary way. Investigators, custody and inquiry officers and procurators can and often do impose restrictions on certain rights – such as the right of access to a lawyer, or the right to medical attention – or respond to requests for formal actions – such as a request to interview certain witnesses, or to carry out certain tests, or indeed to release a person – in arbitrary way. Since the rules on which they base these restrictions and responses are not disclosed, such actions can hardly be challenged. At best, the actions of lower officials can be reviewed by senior officials – but it merely substitutes one’s discretion to another one. In all cases, before reviewing the alleged unlawful actions of lower officials, the senior officials, based on Law „On appeals of citizens”, sends the complaint to the concerned official and asks him to review it and respond to the author of the complaint (art. 8 of the Law).

No information on the rules’ monitoring or public scrutiny is available. Official review bodies (regulators, public account bodies, governmental and quasi-governmental supervisory bodies), other bodies which are involved otherwise with criminal justice (probation services, social welfare, child protection, schools and etc.) as well as non-governmental bodies and academics – are all relying 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 is not made available to the general public or to outside bodies – such as these researches. When such statistics are made available to outsiders, this is on an entirely discretionary basis. In the absence of reliable academic input and research, available statistics would remain uncertain and questionable. For example, even a close prisoner’s relative cannot obtain mere information about which prison his/her relative is serving the prison term. He/she has to come to the Main Directorate of Penal Institutions of the Ministry of Internal Affairs in Tashkent, to identify the person and to submit a written appeal asking for such information.

- **Lack of professionalism on the part of the law enforcement officials**

Qualification of too many professionals working in the criminal justice system in Uzbekistan is still very low. Judges, procurators and lower officials are underpaid and have no resource. Obviously this situation encourages corruption. While both basic and advanced education for legal and other related professionals is provided for, this training is actually, in many ways, outdated and understructured, and as such ineffective. It also fails to fully cover international legal standards, professional managerial capabilities and high ethical behaviour.

In addition, a serious problem arises from ordinary police officers. Indeed, their work methods rely excessively on confessions and statements from suspects. Rather than looking for forensic evidence and building up a case, they generally start with massive arrestations. They tend to „round up the usual suspects” or just arrest anyone who can be vaguely deemed suspicious because he was found near a crime. They use to beat them – most often severely – in order to extract statements and confessions – whether they are true or not. On the basis of such

evidence, the case can be built up. It results from political, terrorist or other sensitive matters even more abuses and widespread use of torture.

These abuses partly arise from the weakness of police forces. Several problems must be pointed out : the lack of professionalism in collecting and preserving evidence, on the scene of the crime and from witnesses; the insufficiencies in legal capabilities and training; the low qualification of ordinary officers and operatives; and the underdeveloped managerial capabilities of senior officers.

Investigations are carried out under diverse and separate authorities. As such, apart from the police (the MVD), the offices of the regional, city and district procurators, as well as the SNB, have their own investigation directorates.

Inquiry officers and investigators request the so-called „operatives”, i.e. lower-ranking personnel, to carry out operational activities such as searches or collecting of forensic samples. The multiplication of agencies having investigation powers and the multitude of officials from such different agencies, tend to make the criminal justice system untransparent. As a consequence, its supervision and its control appear to be problematic.

Investigators and inquiry officers are subject to the oversight of the procurators who have important autonomous functions in the criminal justice process. Within the criminal justice process, the task of procurators is a broad one: „...supervise the precise and uniform application of the laws of the Republic of Uzbekistan”.<sup>9</sup> In this context, procurators must seek the conviction that persons are actually guilty, but they must also ensure that no-one is prosecuted without due cause and that no innocent person is convicted. They have to ensure that every State organs acts scrupulously in accordance with the law and that the legal rules are applied equally, without fear or favour. The procurator is therefore not a party in the proceedings, as it is the case in the accusatorial common-law system.

In practice, the role of procurator raises problems. Indeed, procurators are closely linked to the executive branch since the Procurator General is appointed by the Head of state. In the context of the criminal justice process, they act too often as an arm of the Executive, more than as an independent quasi-judicial organ. In addition, problems of corruption are a commonplace. Since the procurators are, without doubt, the most powerful officials in the criminal justice process - in many ways, more powerful than judges- they are likely to be the main target of corruption attempts.

The Uzbek Constitution stipulates that the rights and freedoms of the citizens are inalienable and cannot be restricted by the courts. Moreover, every citizen has the right to challenge acts or decisions of any public authority before courts.<sup>10</sup> The Law on the Courts reinforces these principles by stipulating that the courts „...shall be entitled to implement the judicial protection of rights and freedoms of the citizens, provided for by the Constitution and other legislative acts of the Republic of Uzbekistan”.<sup>11</sup>

Contrary to Uzbekistan’s Constitution and to international law, crucial matters, which affect the individuals’ rights and liberty in the pre-trial phase of the criminal justice process, are not subject to judicial control. Under the law, the first involvement of the judiciary in the criminal justice process takes place at the very end of the pre-trial investigation. In practice, at this stage, the courts fail to rigorously examine allegations of ill-treatment, torture or other violations, from the accused, during the pre-trial phase. More generally, they fail to act in an independent and impartial manner.<sup>12</sup> One reason is that the appointment of judges, at all levels, is largely determined by the President. In addition, judges are appointed for a relatively short period, that

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9 See Article 33 of the CPC

10 See Articles 19 and 44 of the Constitution of the Republic of Uzbekistan.

11 See Article 2 of the Law on the Courts, December 2000.

12 This is in spite of the fact that article 4 of the Law on the Courts stipulates that “...judges shall be independent and ruled only by the laws” and that “...the judicial power in the Republic of Uzbekistan shall function independently from the legislative and executive branches, political parties and other public organizations”.

is only five years.<sup>13</sup> Although there are guarantees to protect judicial independence,<sup>14</sup> these are ineffective if judges know that they may not be re-appointed if they offend the Government.

There is a need to strengthen the *advokatura* (the bar), to make it more independent and better qualified to serve the clients' and justice's interests and to enhance their procedural rights and status in the criminal justice process. The current Law on Advokatura and the related Law on Guarantees of Advocates' Activities and Social Protection of Advocates do not sufficiently guarantee the professionalism, the independence and the integrity of the profession. On that topic, it may suffice to note three matters. Firstly, some lawyers are independent and willing to stand up for their clients' interests, while others, the so called „pocket-lawyers”, do not act in their clients' interests, but are involved in corruption matters with investigators and procurators. This phenomenon seriously undermines the integrity of the criminal justice process. Secondly, the lawyers' rights are, in many ways, effectively circumscribed by unpublished internal regulations and discretionary actions that inquiry officers and investigators managed. Such decisions are subject to appeal before higher officials and ultimately procurators, and not only to the courts.

For instance, on September 6, 2007, the senior investigator of Bukhara regional department of the National Security Service Oltiev ordered to seize the handheld recorder of a lawyer, Husan Mahubov, while he was having a meeting with his client Rustam Nozimov, in the pre-trial custody # 3 of Bukhara city. Furthermore, the investigator attempted several times to interrogate the lawyer H. Mahubov as a witness on the case and pressed him to testify against his client R. Nozimov. This behaviour clearly violates articles 4 and 6 of the Law „On guarantees of the activity of advocate and social protection of advocates” and art. 10 of Law „On Advocacy”.

### **3. Definition of Torture (articles 1-4)**

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”)<sup>15</sup>, 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;*

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13 See Articles 63 (1-4) and 63 (5) of the Law on the Courts.

14 See Articles 67-74 of the Law on the Courts.

15 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.”

*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.*<sup>16</sup>

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 narrow<sup>17</sup> 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, 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 an 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".

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16 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.

17 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.

- 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.

#### **4. Practice of Torture**

Torture is systematic in the criminal justice system of Uzbekistan. Our studies<sup>18</sup> have demonstrated that the majority of cases of torture occurs during the first 72 hours of pre-trial detention. It means that they take place before official charges are taken and measures of restraint decided by the investigating body. During this period the detainees are usually held incommunicado.

For the vast majority of the population in Uzbekistan, the risk of being subject to torture or similar ill-treatment increases if a person is from a poor group of the society and cannot pay his / her way out of the detention through bribing his perpetrators. Thus, corruption among the

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<sup>18</sup> In April-May 2007 during a two-month, in-country, research effort on the torture situation in Uzbekistan was conducted. The shadow report team and its partners carried out individual interviews with alleged torture victims, their relatives, attorneys, human rights activists, law enforcement agents.

inquiry officers and investigators and poverty of the vast majority of the population are reasons why torture and similar ill-treatment still is pervasive in Uzbekistan.

However, in cases perceived as being politically motivated, the length of incommunicado detention is much longer. Moreover, in cases politically motivated or related to religious fundamentalism and extremism, the chances for a detainee to buy himself / herself out of criminal charges, that is also from torture and similar ill-treatment, seem very low. In such cases, torture and ill-treatment often continue in the prison, even when the victim was found guilty and sent to serve a prison term.

The most common methods of torture and ill-treatment include:

- Beating, sometimes using rubber clubs, plastic bottles filled in with water or sand or metal or wooden sticks
- Suffocation with gas masks or plastic bags, sometimes using gas-lighters or detention in gas chambers
- Burning the hair on the body or parts of the body with lighters
- Cutting or damaging parts of the body with a knife or similar objects, pretend to cut the face with a knife
- Rape or sexual harassment
- Shackling and binding
- Deprivation of food or sleep
- Denial of access to bathroom facilities
- Denial of medical services
- Pressure by detaining family members and relatives on trumped-up administrative or criminal charges
- Serious threats, including threats of criminal charges or murder to the detainee or family members
- Denial of space and time for accomplishing prayers and follow other religious services
- Instigating physical harassment and attacks between inmates against each other

The following examples of torture and similar ill-treatment clarify the situation in Uzbekistan:

<b>Cases studies</b>
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**Case study # 1:** The following young residents of Urgutsk region were arrested by the representatives of Samarkand oblast Department of Internal Affairs in April 29, 2006:

1	Akhadov	Gafur	Gulamovich
2	Aliyev	Dzhamshid	Amriyevich
3	Usupov	Azam	Rakhimbayevich
4	Ekubov	Rofe	Nazhmiyevich
5	Ibodullayev	Azam	Hikmatullayevich
6	Dadamirzayev	Ibrokhim	Akhmadzhanovich
7	Batyrov	Ilkhom	Rakhmanovich
8	Gaphurov	Sobir	Uktamovich

Each person was charged with a violation of the following articles of the Criminal Code: article 159 (Encroachment on the constitutional status of the Republic of Uzbekistan), 244-1 (Production and distribution of materials against public security and public order), 242 (Organizing a criminal association), 165 (Extortion), 189 (Violation of trading and servicing rules), 190 (Practicing business without a license), 209 (Official forgery).

In April 29, 2006 after warrantless searches conducted in the house and the work place (trading posts) of the eight alleged victims and their families, about 20 people were taken to the Samarkand oblast Department on Internal Affairs. The arrested people were kept there during 3

days without registration. The officers in charge of the arrest also violated article 225 of the Uzbek Criminal Code, since they did not require law enforcement agents to immediately record the following information: the names of the arrested, the names of those who undertook the arrest, when the seizure took place, and other details about the arrest. From the arrest, the eight young men were not allowed to consult the attorneys who were hired by their parents. Notwithstanding, three days later, on May 1, 2006, state attorneys were appointed.

Employees of the Samarkand oblast Department of Internal Affairs tortured and used other illegal interrogation methods to extract false evidence and confessions from the eight prisoners and their family. Every detainee was subjected to torture; three examples demonstrate the nature and the extent of abuses.

G. Akhadov was arrested on April 29, 2006 at 5 p.m, although the arrest was officially recorded on April 30. Policemen beat his heels with a baton, sent electric shocks through parts of his body and drove in needles under his nails. Mr. Akhadov fainted several times during his examination. A forensic medical examination recorded that the injuries and bruises throughout his body and under his eyes -still noticeable 6 months after the interrogation- resulted from "falling off a mulberry tree". Policemen tortured Mr. Akhadov until he signed a criminal confession. One year later, Mr. Akhadov kept demonstrating extreme anxiety when he is questioned about these events.

G. Akhadov was accused of association with Sherzod Aminov, an alleged member of "Hizb Ut-Tahrir". The latter was convicted on March 18, 2004, a short time before G. Akhadov was released from the prison. They did not have time or the opportunity to meet. Several members of the local community, an RRG representative, claimed with certainty that none of the arrested, including Mr. Akhadov, were ever associated with a religious extremist organization.

Another detainee from the Urgutsk region, D. Aliyev, was arrested at 4 p.m. on April 29, 2006, at his work place. Policemen beat him with a baton on his heels and throughout his body. They also tortured him with electric shock. The forensic medical examination explained the injuries and bruises on his body were "the results of falling from the roof". When he refused to sign a confession, the detectives threatened to throw him out of the third floor window of the Department on Internal Affairs and register his death as suicide "during an effort to escape". Finally, Mr. Aliyev signed the confession.

A. Usupov was arrested at 4 p.m. on April 29, 2006 in his store. The police report of the arrest dated from May 1, 2006. He was also tortured. His feet and his whole body were still covered with bruises six months after the interrogation. The Forensic medical examination indicated that "the bruises on the body of the defendant resulted from falling from a hill". The trauma of this torture was such that Mr. Usupov urinated several times in his pants, during his trial.

A. Usupov was accused of association with a local resident, Nizam, who allegedly introduced children to religiously extremism "Hizb Ut-Tahrir" teachings. Nizam was recently imprisoned. Mr. Usupov claimed that he visited him twice for prayer study. When A. Usupov learned about Nizam's alleged ties with "Hizb Ut-Tahrir", he stopped the visits.

Our interviews in and around Urgutsk pointed that 28 out of 40 witnesses claimed that they were tortured or subjected to other cruel, inhumane or humiliating methods during their interrogations. The convicted persons' relatives were interrogated without their consent, in violation of article 116 of the Criminal Code of the Republic of Uzbekistan. Their testimonies were also made in violation of the clauses 3-3 b, c, d, e of the Resolution from Plenum of the Uzbek Supreme Court as of September 24, 2004 № 12 "On some issues of application of the criminal law, on admissibility of evidence". Although the RRG collected evidence of multiple violations, three examples demonstrated the pattern of abuses from law enforcement officials.

A. Latipov, a 14-year-old witness, was arrested on April 29, 2006, while he and his mother, Gulchekhra Aliyeva, were in the store of G. Akhadov. The police report dated his arrest on May 3, 2006. He was interrogated alone, without the presence of his attorney, his parents or his teachers. Latipov was beaten on his head and heels with a baton, causing contusions on his head and severe bruising on his body. He was pressured to confess that his uncle, D. Aliyev, taught him extremist prayers. As a result of his traumatic experience, A. Latipov does not remember when and under which circumstances he signed the false testimony against his uncle.

The witness Rakhilya Aliyeva was also victim of various humiliations and to torture. While she was completely naked, she was beaten with a baton until she fainted. She only came to after being doused with water. While she was into a semi-coma, she overheard the policemen who were wondering if she was still alive. R. Aliyeva does not remember when and under which circumstances she signed the testimony they wrote on her behalf. She was forced to sign a document in which she promised to keep "the secrecy of the investigation". It also included a disposition forbidding official complaints.

Another witness, Gulchekhra Aliyeva, arrested on April 29, 2006, was beaten with a baton on her heels, and forced to sit before 15 to 20 people, while she was only wearing underwear. She does not remember when and under which circumstances she signed a false testimony against G. Akhadov. Aliyeva claimed she was forced to take the pledge, on paper, to keep "secret the investigation". She also had to sign a commitment not to file complaints with any organization. She was threatened to more severe punishment if she did not honor her pledges.

**Case study # 2:** On March 27, 2007, around 8:00 pm, Bahodir Abduzhabbov, an Inspector at the Fergana city Internal Affairs Department (FCMI), approached Mr. Shokhrukh Ismoilov at the latter's computer store, on Hasanov Street. He asked Mr. Ismoilov to copy pornographic material onto a DVD disk. Upon Mr. Ismoilov's refusal, Mr. Abduzhabbov struck his head, verbally insulted him and threatened to return later for retaliation.

At about 9:00 am the following day, on March 28, Mr. Abduzhabbov and five local policemen came back to Mr. Ismoilov's work place in a "Damas" vehicle. The group asked him to come with them to the FCMI. As he refused, the policemen began to assault him inside the store. Because the noise could have attracted the attention of the surrounding businesses –that is potential witnesses - the policemen twisted Mr. Ismoilov's arm and lead him to their car. On the way to the FCMI, Mr. Ismoilov managed to yell, through the car window, the destination to an acquaintance, who later informed Mr. Ismoilov's father. On route, the policemen continued to hit him in the head and the bust.

Upon arriving at FCMI, the policemen led him to a room on the fourth floor. They then completely stripped him, handcuffed him and beat him during almost one hour. The beating primarily consisted in punching his face and stomach as well as kicking his legs, head and stomach. They also caught him by the arms and legs and threw him to the floor. Because of the beatings, he suffered from acute nausea. Finally, the policemen released him but threatened him with further reprisal.

Mr. Ismoilov had great difficulties to return to his computer store where his father and many of the witnesses were waiting. Mr. Ismoilov was severely injured and he crawled to his father who drove him to the Fergana regional Bureau of Forensics. There, he was refused entry on the basis of the lack of official directive (in Uzbekistan, forensic professionals only conduct examinations with the permission and upon official directive from a governmental agency). Other relatives drove Mr. Ismoilov to the regional medical center, where he was immediately accepted for emergency treatment.

Mr. Ismoilov's father filed an official complaint with the head of the FCMI later, on that same day. This official appeared to him as having little inclination to take remedial action against his

subordinates. Therefore, on March 29, Mr. Ismoilov's father filed an official complaint, jointly with a shadow report team member, with the Ferghana City Procurator's Office (FCP). The complaint asserted that twelve Fergana City policemen violated articles 206 (Exceeding Statutory Authority) and 235 (Application of Torture and other Harsh, Inhumane, or Degrading Forms of Punishment) of the Uzbek Constitution through the detention and the beating of Mr. Ismoilov. The FCP officers accepted the complaint but opposed to recognize the alleged violation of Article 235; Article 206 only kept under consideration.

On the same day, the FCP asked for a forensic test to assess the causes and the severity of the bodily injuries. The concluding report, attached to the forensic analysis, showed that Mr. Ismoilov's ill-treatments were directly responsible for the following health complications: brain contusions, concussion and tissue damage around the head, the face, the neck, the chest, the arms and the legs. The examination concluded that Mr. Ismoilov was in stable condition.

At the time of this written submission, the shadow report team, together with Mr. Ismoilov's lawyer, are attempting to prosecute the policemen for having violated Articles 235 (cited above), 234 (Illegal Detention under Duress) and 205 (Abuse of Authority). The main accused are Mr. Abduzhabbov, Azizhon Soliyev, the Criminal Investigation Officer, Ulugbek Mirzaakhmedov, Akmalzhon Komilzhonov, and FCMI staff members. According to human rights activists, at the time of writing, a criminal case against the officers of Ferghana City Interior Department was opened and about to be heard before the Court.<sup>19</sup>

**Case study # 3:** Ikrom Yakubov was detained back in January 2006. He was charged with aggravated murder (article 97 part 2 of the Criminal Code of Uzbekistan) by the Djomboy District Interior Department and District Procurator. The investigators alleged that I.Y. murdered his former girl-friend's husband, to take revenge. I.Y. was put in the district police pre-trial detention custody where he was severely beaten. The district police also charged five of his relatives, including his father M.Y. They were locked up in neighboring detention cells, within the district police premises. Moreover, the Procurator brought in Ikrom's mother and threatened to detain her if I.Y. did not confess the murder. Finally, he was obliged to confess the murder. To date, he remains in the investigation custody of Samarkand Regional Interior Department. Samarkand Regional Court on criminal cases is hearing his case. Djomboy District Interior Department, the District Procurator and the Samarkand Regional procuratura are actively pressing I.Y.'s lawyer and family to give up.<sup>20</sup>

**Case study # 4:** The following case illustrates that politically motivated cases of torture and similar ill-treatment happen in prison and not only in pre-custodial facilities. On October 5, 2006, Ulugbek Haydarov, an outspoken Uzbek human rights activist and independent journalist from the Djizzakh region, was sentenced to six years of imprisonment for „extortion” (article 165 of the Criminal Code of Uzbekistan). Right after arriving to the penitentiary facility # 64/29 in the Navoi region of Uzbekistan, U.H. had to undergo a first series of torture by a group of inmates called „gady”<sup>21</sup>. These inmates are known for cooperating with the prison administration and are given some official authority over other fellow inmates. The „gady” ordered him, and several other new inmates, to sit on knees during several hours with the hands behind the head. Inmates who could not bear such exercise were severely beaten, especially with fist and kick, by the „gady”. U.H. was forced to sit down on his back, with his shoes off, while both feet were pulled forward. The „gady” beat him under the feet with rubber clubs, almost twenty times. In addition to the immense pain, it resulted that the bones of U.H.'s feet got fractured. U.H. was forced to go up to the third floor and come back, moving exclusively in a sitting position (such a treatment is called „gusiniy shag” in Russian or „duck-walking” in the prison). U.H. and some other inmates were also forced to sit down and stand up, while the „gady” was counting, about one hundred times, without stopping. Their eyes had to be closed and their hands to be pulled

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19 Interview with a human rights defender from Ferghana city, April 28 2007.

20 Information on I.Y.'s case was provided by “Veritas” Human Rights Movement and I.Y.'s lawyer.

21 „shit” in English

forward. While counting, the „gady” continued to beat them on the head and the body with plastic bottles filled with sand or water.<sup>22</sup>

**Case study # 5:** On March 1, 2007 at 9:30 pm, Abyamitov Server was detained in his house, in the Yangiyul district of Tashkent region, by Rustam, an operative officer of Mirzo Ulugbek district of Tashkent city, followed by an unknown operative and a police driver. His relatives were told he would be lead to Tashkent for an interrogation as a witness on a criminal case. At about 10:30 pm, A.S. was brought to one of the rooms of Mirzo Ulugbek district Interior department. He was hand-cuffed and asked to sit on the concrete floor, next to the heating system of the room and near an open window. He had to remain in this position until the following day (until 3:00 pm). A.S. was denied access to bathroom facilities, food and warm clothes. He was interrogated during more than 5 hours. The investigators pressed him and asked him to provide testimonies against two suspects he allegedly knew. He was threatened to be charged with complicity with these suspects. One of the suspects, who was unknown from A.S., was brought to the room. Then, he was severely beaten by the operative from Mirzo Ulugbek district Interior Department, with the fist, to the face and the body. After this, the investigator pressed again A.S. and demanded to testify against the two suspects. But after having spent long hours on the concrete floor, near the open window, A.S. had a kidney disease.<sup>23</sup>

The Uzbek CPC prohibits witness' arrest and detention. After the detention of A.S., the inquiry officers of Mirzo Ulugbek Interior Department failed to fill in a protocol of detention and to explain procedural detainee's rights to A.S. While this report was being prepared, A.S.'s public defender and lawyer asked Mirzo Ulugbek District Procurator to open a criminal case against unlawful actions of the inquiry officers from the Mirzo Ulugbek District Interior Department.

**Case study # 6:** Mr Rakhimov was born in 1970. He has higher trade school education and is a married father of two teenage girls. Rakhimov worked on agricultural machines reconstruction plant in the Samarkand region.

On April 13, 2005, at 7:00 am, S. Rakhimov left to work, in the “Geofizikov” village, near the Samarkand airport, but did not come back. The next day, on April 14, 2005, his mother, Hosiyat Sharipov, went to his workplace to know the reason why he was missing. She met the plant manager, Garick Lee, who explained: "Yesterday, at 3:00 pm, since your son Sanzhar was drunk, I asked him to get away from the plant." Lee's boss claimed that Sanzhar injured him to the head, with a concrete tray. They had to call an ambulance and to carry him to the hospital. A tall Tajik/Uzbek speaking policeman, with gold teeth, added: "I came to the office, and saw that Sanzhar's head was injured and that blood flowed." Another policeman stood silently, just listening to his colleague. According to the guard factory, Sanzhar crawled on all fours around the plant, screaming. He added that his shoes and clothes could be picked up from the dressing room.

The factory director told Sharipova that her son was in serious condition at the intensive care department of neurosurgery, at the hospital emergencies. According to the hospital admissions' desk, an unknown patient (S. Rakhimov) was brought on April 13, 2005, at 8.45 pm. He was unconscious and in critical condition. What occurs between 3.00 pm, that is the time he was hurted, and his admission to the hospital at 8.45 pm, remains unknown.

On April 16, 2005, the victim's parents made a verbal request to the Samarkand Office of Internal Affairs for investigating on the issue. Two policemen, an inspector and his assistant, went to the hospital and observed that the victim was unconscious and in extremely critical condition.

Three days after, during the night of April 16-17, 2005, Mr. Rakhimov died.

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<sup>22</sup> Information was derived from written confessions of U.H. published by him after he was released.

<sup>23</sup> Information on A.S.'s case was provided by his public defender.

The body of S. Rakhimov was subjected to a forensic expert for autopsy. The examination concluded that "... the death of Mr. Rakhimov was the result of a closed cranial-cerebral injury, a fractured clavarium, hemorrhaging over and under the skin and tissue in the brain. It was also observed bruises on the epileptoid temple of the head, the occipital region of the head, the nose, the neck, the left shoulder joint, on the outer and inner surface of the left shoulder and left elbow joint, on both hands and wrists, the fingers, the heel; bone bruises on the head, on the outside corner of his left eye, left shoulder, both thighs, right ankle area; addendum wound on the parietotemporal head left; soft tissue bleeding in the head and left rhomboideus area; fracture of bones and on the base of the body. "

Moreover, two additional studies from the forensic medical department reads:

*"Conclusion: it was noted a fracture of the right and left parietal, occipital bone, as the result of not less than five blows (three on the right and two skull bones on the left skull bone), as put in evidence by signs of repeated trauma with two line fractures and rupture of the left skull bone with signs of re-exposure. Thus, the fracture forms follows from the impact with a blunt solid body with a dominant flat surface."*

*"Internal organs study found bleeding in the brain, necrosis, oedema. [Also found] liver swelling, hemorrhaging in the kidneys, swelling, bleeding in the pancreas, and so on. "Rakhimov Sanzhar's clothing was damaged or ripped in a way that matched the injuries (yarns and fabrics crushed and unevenly cut), suggesting he had been dragged on asphalt.*

The re-appointed commission confirmed that S. Rakhimov was killed. According to the investigation, he may have been injured because of the assault with the tray, of the drop from a certain height and the move after having been injured. In addition, the expert commission determined that these wounds, of course, caused the death.

A new criminal investigation was initiated on November 7, 2006 due to the failure of the first one to identify a perpetrator.<sup>24</sup> Investigations showed a clear intent to conceal the cause of Mr. Rakhimov's death. Since April 26, 2005, more than five investigators have been involved in the case.

Since the death, the victim's mother has repeatedly attempted to involve every law enforcement organ. She has received 59 form letters in response, which effectively demonstrates that no one even read them, and none of the complaints were ever followed-up. Official response just ignored the merit of these issues.

Only one action was taken by A. Muhammadiev, who is the investigator from the Samarkand Regional Procurator in charge of the investigation into S. Rakhimov's death. Indeed, he re-appointed a commission for forensic examination, from the Main Forensic Bureau within the Uzbekistan Ministry of Health. Whereas the three previous forensic conclusions argued that the victim's death resulted of injuries someone caused, the experts from the Uzbek Ministry of Health claimed that a falling on concrete tray killed S. Rakhimov :

"In this case, with regards to the tray design (three dimensions, a small width and depth) and assuming that his fall was significant, the injuries on the face, the knees (part) and the heels are secondary and may be due to the secondary impact, that is when the tray hit the body." These experts concluded that, from a height of 70 cm, a person may fall, break his skull into 5 parts and suffer from more than 70 injury points on his body, including his heels.

The shadow report team believes that the final forensic examination was appointed in order to protect those who are actually responsible for S. Rakhimov's death. Since no perpetrator can be named, the criminal case may be suspended.

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<sup>24</sup> The criminal investigation was initiated on April 26, 2005, that is 13 days after the victim succumbed to the fatal injuries, and was based on Article 104 §3D of the Criminal Code: "premeditated grievous bodily harm".

The preliminary investigation pointedly ignored the following vital issues:

- Where was Mr. Rakhimov from 1:00 to 8:41 on the day he was brought to the hospital? He never left his workplace, but none among the five investigators took time to examine a number of critical questions: did someone see him (where and when)? Did he have lunch (with someone)? Did he drink too much? Did he go somewhere? with someone? and when did he come back?
- A testimony from an ambulanceman, H. Elibaeva, revealed important information. Indeed, he explained that, when he asked S. Rakhimov what happened, the latter answered that a policeman, named Laziz, beat him. The doctor S. Berdymuradova confirmed this element. However, the investigators estimated it irrelevant. Moreover, H. Elibaev and S. Berdymuradova testified that Commander Laziza Narzieva approached them and demanded they kept silent about that. Despite the threat of dismissal and imprisonment from the Commander, H. Elibaev made a “02” phone call to the Interior Ministry to inform that policeman L. Narziev beat S. Rakhimov. She also wrote it on the ambulance records.

It should be noted that it is dangerous in a country like Uzbekistan to convey facts about torture and similar ill-treatment, to criticize such practices and to identify the alleged perpetrators. Victims of torture, their families, human rights activists, journalists and involved lawyers face huge pressure and are subject to constant persecutions.

## **5. Legislative, administrative, judicial and other measures on torture prevention (\*article 2)**

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.<sup>25</sup> However, to date, such a law did not pass.

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 pretrial 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.”<sup>26</sup> This

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25 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.

26 Ibid §104, page 19 and §197, page 32

measure was introduced in response to recommendations (m) the UN Special Rapporteur, Theo van Boven, addressed to the Uzbek Government.<sup>27</sup>

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.<sup>28</sup>

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 telegram<sup>29</sup>, 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 accountable".<sup>30</sup> 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.<sup>31</sup>

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

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27 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".

28 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".

29 Telegram # 8ш/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.

30 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.

31 Ibid.

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.<sup>32</sup> 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.

## **6. The State's jurisdiction regarding the facts of torture and cruel treatment (articles 6, 7, 8, 9 and 10)**

### **Comments on article 6 :**

Art. 6 of the CAT prohibits the use of evidence obtained by recourse to torture or similar ill-treatment. Part 2 of art. 88 of the Criminal Procedural Code of Uzbekistan prohibits law enforcement bodies to extract self-incriminating testimonies, explanations, conclusions and to carry out experimental actions or to prepare and provide necessary documents by the use of force, threats, lies and other illegal measures. Art. 88 of the CPC also prohibits law enforcement agents to carry out actions which could be dangerous for persons' life and health and degrade their dignity and honor.

The Uzbek CPC, that is the main law for the criminal justice system, does not explicitly rule out the legality of evidence obtained through torture or similar ill-treatment.

However, part 19 of the Supreme Court Resolution # 17, states, "Evidence obtained with the application of torture, force [harassment], threats, cheating, severe treatment against human dignity or other illegal measures, as well as in violation of the right of the suspect or accused, cannot be used as a basis for accusation. Inquirers, investigators, procurators and courts (judges) have to ask freed persons about the treatment they received during the inquest or investigation, as well as about conditions in custody. A thorough examination on each allegations of torture must be conducted. It includes forensic medical attestation [certification] and both procedural and legal measures, such as initiating a criminal case against official persons".

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<sup>32</sup> The Working Group was created in pursuant to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan from February 24, 2004.

It should be noted that the Supreme Court Resolutions have only recommendatory force for state organs in Uzbekistan and is not a law.

### **Comments on articles 7, 8, 9 :**

It should be mentioned that movement of Uzbek population, including Uzbek journalists, who work for international mass media, members of the Uzbek democratic political opposition and human rights activists, has increased since the Government of Uzbekistan suppressed a demonstration in Andijan city, in May 2005. The Uzbek Authorities have linked human rights activists, Uzbek opposition and independent journalists to the “organizers” and “sponsors” of the Andijan uprising and launched wide repression on civil society activists.

The following cases show the example of persons who were extradited to the Uzbek Authorities whereas they were asylum seekers. Since the Andijan events, the Office of the UN High Commissioner for Refugees (UNHCR) has registered hundreds of Uzbeks as refugees in Kyrgyzstan. They mostly have been relocated to third countries. Apparently, European countries have been quiet welcoming; efforts to relocate refugees to the United States or Canada have occasionally bogged down due to lengthy security checks. While waiting for relocation, Uzbek refugees in Kyrgyzstan are under constant threat of abduction and forced repatriation, since Uzbekistan’s security services are believed to be actively searching them.

Deportations from Kyrgyzstan of official asylum-seekers seem to have stopped, whereas fugitives, who lack such status, have no protection. For example, Otabek Mu’minov was hidden in Osh during the two years following the Andijan events, without approaching the UNHCR or Kyrgyz migration Authorities. He was arrested and eventually deported to Uzbekistan in June 2007. Another example is the case of Muqimjon Mamadov, a 38-year-old native of Osh who lived in Uzbekistan in the 1990s and was briefly detained after being accused of membership in the banned Islamist organisation Hizb ut-Tahrir. He left Uzbekistan to Osh in 2004, where he lived quietly until May 30, 2007. On that day, he was arrested by Kyrgyzstan’s State Committee for National Security (GKNB), apparently at the behest of Uzbek Authorities, which requested his extradition. He was held incommunicado during weeks before finally being released on August 9. Human rights activists believe the number of those who, like Mu’minov and Mamadov, remain in Kyrgyzstan without seeking official status is probably very low. However, some remain afraid to formalize their presence to the authorities and to be repatriated by force.

Uncertainty surrounds the fate of Uzbeks who fled the country. Ukraine extradited ten asylum-seekers on February 14, 2006, including some who were believed to have witnessed the Andijan events.<sup>33</sup> Dozens out of the 196 Andijan refugees who reached the United States returned back home, to the cost of the Uzbek Embassy, allegedly because of homesickness and on the basis of promises from the Government that they would not be harmed. Even if refugee life’s stress and loneliness may have been the deciding factor for returning, coercion is thought to have been used against them or, perhaps, against their relatives in Uzbekistan. Concerns were even more maintained with the mysterious deaths of two Uzbek refugees in the United States while they attempted to stay.<sup>34</sup>

It is impossible to get information about the persons who are sent back or to guarantee their safety. The main international organisation that might be able to do so, the UNHCR, was forced to close its Uzbekistan office in March 2006.<sup>35</sup> On another hand, relatives of those who are abroad

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33 See Memorial Human Rights Center (hereinafter “Memorial”) press release, February 16, 2006. Memorial is a Russia-based human rights group, [www.memo.ru](http://www.memo.ru).

34 25-year-old Olimjon Sobirov, a native of Andijan, died in his sleep in September 2006 in the U.S. state of Idaho. Later that month, 30-year-old Samarqand native Zahidjon Mahmudov died in similar circumstances. “V SShA pri strannykh obstoiatel'stvakh skonchalis' dve andizhanskikh bezhentsyev” [In the USA two Andijan refugees have died in strange circumstances], [Ferghana.ru](http://Ferghana.ru), October 6, 2006.

35 [Uznews.net](http://Uznews.net), citing anonymous sources in Andijan, reported that returnees are required to report to the police daily, are not allowed to make phone calls or use the internet and must regularly express regret in public hearings for “foolishness” in allowing themselves to be “duped” by Uzbekistan’s enemies.

are closely watched by the local neighbourhood (*mahalla*) committees, making it impossible for them to join up with their family abroad.

The fate of fugitives in Russia causes other concerns. Since Moscow got closer to Tashkent, a number of accused extremists have been subject to detention and potential deportation, including:

Muhammadsolih Abutov, who is native of Turtkul, in the Autonomous Republic of Qaraqalpaqistan, was arrested for religious extremism in 1996 and sentenced to seven years in prison, though he was not released until 2004. He went frequently to Kazakhstan for work and decided to move to Russia after the security services. He started looking for a place to live in January 2007. He was arrested on June 13, 2007, shortly after he approached the Civic Assistance Committee (*Grazhdanskoe sodeistvie*), a Russian human rights organisation, while he was asking advice on applying for refugee status. That organisation consequently thought that its offices and employees may be under surveillance.<sup>36</sup>

- Abdulaziz Boymatov, who is native of Namangan province, left Uzbekistan for Russia in 1997, following the arrests of several relatives on charges of religious extremism. In 1998, the Uzbek Government announced he was wanted for “infringing on the constitutional order”. An extradition request was denied in 2006. He was finally arrested on April 25, 2007 in the Sverdlovsk province. According to the Civic Assistance Committee, police from Namangan then requested local Russian officials to assist extradition what they apparently agreed to.<sup>37</sup>
- The “Ivanovo Uzbeks”: Following the Andijan events, fifteen ethnic Uzbeks in the Russian city of Ivanovo were arrested at Uzbekistan’s request on the charge of helping to fund the uprising. One was extradited to Uzbekistan after having fled to Ukraine; thirteen ones applied, unsuccessfully to the refugee status in Russia and faced potential extradition. On March 5, 2007, twelve were freed from detention and registered with Russia’s Federal Migration Service (FMS), which required them to leave Russia within one month. However, they were not allowed to leave due to the lack of Uzbek exit stamps on their passports.<sup>38</sup> In May 2007, the Ivanovo FMS office denied the group the right to seek refuge in Russia; their lawyers filed a case before the European Court for Human Rights in Strasbourg.<sup>39</sup>
- Yashin Jurayev, who is native of Tashkent, was arrested in Uzbekistan, in October 2004, on charges of forming a banned religious organisation. He was fined and freed in January 2005. Fearing a second arrest, he went to Russia. On January 26, 2007, he was arrested outside a mosque in Moscow. The Civic Assistance Committee said the arrest was likely to be at the request of Tashkent Authorities. Jurayev applied to the FMS for refugee status in March 2007 but was turned down.<sup>40</sup>
- Rustam Mu’minov, an accused member of Hizb ut-Tahrir, was detained near Moscow in February 2006. The prosecutor general’s office rejected the requests for his extradition to Uzbekistan in September 2006. Apparently, since he was not feeling safe anymore, he appealed to the UNHCR for refugee status and asked the Civic Assistance Committee for assistance. On October 17, 2006, while visiting this organisation’s office, he was arrested for not having the proper residency permits<sup>41</sup> and was deported one week later to Uzbekistan, despite an appeal to the European Court for Human Rights.<sup>42</sup> On March 15, 2007, he was sentenced to five and a half years in prison for having infringed upon the constitutional order and

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36 See June 19, 2007 press release by Memorial, available at [www.ferghana.ru](http://www.ferghana.ru).

37 See April 28, 2007 press release by Memorial, available at [www.memo.ru/2007/05/03/0305072.html](http://www.memo.ru/2007/05/03/0305072.html).

38 “‘Ivanovskikh uzbekov’ ne vypuskaiut iz Rossii bez razreshenii Uzbekistana” [The “Ivanovo Uzbeks” are not being allowed to leave Russia without Uzbekistan’s permission], Ferghana.ru, March 30, 2007.

39 See May 31, 2007 press release by Memorial, available at [www.memo.ru/2007/06/05/0506073.html](http://www.memo.ru/2007/06/05/0506073.html).

40 See January 27, 2007 press release by Memorial, available at [www.memo.ru/2007/01/30/3001071.html](http://www.memo.ru/2007/01/30/3001071.html), and Elena Rabinina, “Posle Andizhana: Polozhenie uzbekskikh bezhentsev na territorii Rossii prevratilos’ v permanentnyi ekstrim” [After Andijan: The situation of Uzbek refugees in Russia turned into a permanent extreme], Ferghana.ru, May 31, 2007.

41 See October 7 and 23, 2006 press releases by Memorial.

42 “Grazhdanin Uzbekistana Rustam Muminov deportirovan na rodinu” [Uzbekistan citizen Rustam Mu’minov were deported to his homeland], Ferghana.ru, 25 October 2006.

for membership in a banned organisation.<sup>43</sup> Following a protest from the European Court for Human Rights, Russian officials investigated and subsequently fined a low-ranking migration official with 35,000 roubles (\$1,380).<sup>44</sup>

The fate of those fugitives and asylum seekers who were deported and extradited back to Uzbekistan remain unknown to date. The Uzbek authorities try to isolate them from any contact with lawyers, family members, journalists and human rights activists.

### **Comments on article 10 :**

Training, given by educational centers of law enforcement agencies in 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) includes the study of international human rights standards but not specifically of the issue of torture or other cruel, inhuman or degrading treatment and punishment in the practice of law enforcement agents. While both basic and higher training to legal and other professionals is provided, this training still must be updated and structured in order to improve its efficiency. There is a strong need for further higher training of law enforcement professionals in international standards: currently, no effective institutional training is provided. The teachers do not have enough knowledge and skills in international human rights standards, and in particular, about the prohibition of torture.

Between 2000 and 2005, with the support of international organizations which were represented in the country and empowered with broad mandates [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, to organize seminars and workshops and to regularly send them to study tours to different western countries. The situation has been far more different since the Andijan events [May 13-14, 2005] because many international organizations have been ruled out by the Uzbek Government while the mandate of the remaining ones has been markedly cut down.

## **7. Considerations on the Republic of Uzbekistan rules, instructions, methods and practice of interrogation, detention conditions and treatment of the arrested and detainees (article 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.<sup>45</sup>

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43 "Uzbekistan: ekstradirovannyi iz Rossii R. Muminov osuzhden na 5,5 let" [R. Mu'minov, extradited from Russia, has been sentenced to five and a half years], Ferghana.ru, March 15, 2007.

44 See May 25, 2007 press release by Memorial, available at [www.ferghana.ru/](http://www.ferghana.ru/).

45 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.

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.

### **Detention conditions and treatment of religious and political prisoners**

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. For example, Surat Qodirov, a religious prisoner held in prison facility 64/51, has put numbers to each of the letter he sent. As such, he lets know his mother how many letters he has sent to her and which letters were seized by the prison authorities and not sent. Food and hygiene items, addressed to the religious and political prisoners by their family and their friends, often do not reach them.<sup>46</sup>

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 administration. They are given official power and position, as members of squad. With the help

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46 The shadow report team interviewed Mamura Qodirova, the mother of a religious prisoner Surat Qodirov, who is now held in prison facility 64/51 in the Koson district of Kashkadarya region, September 12, 2007, Tashkent, Uzbekistan.

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.<sup>47</sup>

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.

### Case studies

Muqaddas Shohidova, Umida Jumaeva and Mamura Qodirova - mothers of religious prisoners<sup>48</sup> who are serving currently their terms in prison 64\51 in the Kosonsoy district of the Kashkadarya region (south of Uzbekistan), recently approached the RRG.

Their sons:

(1) Dilshod Shohidov: born in 1974, married, two children. He was condemned 4/5 years ago to 12 years of imprisonment. The sentence was finally reconsidered and his prison term was lowered to 8 years by the Mirabad district court of Tashkent city. He was charged for allegedly commission of crimes, in breach of articles 169 - theft - and 244-1 – preparation or distribution of materials containing threat to public safety and public order – of the Criminal Code. According to his mother, material evidence against him were planted – while the road police stopped his car and searched in, the stolen stuff and the religious leaflets would have been put in the vehicle.

(2) Murod Jumaev: born in 1978, single. In 2000, he was charged with the commission of crimes, in breach of articles 159 - encroachment to the constitutional order of the Republic of Uzbekistan - and 244-1 (as specified above) of the Criminal Code. He was sentenced to 15 years of imprisonment by the Yunusabad District Court of Tashkent city;

(3) Surat Qodirov: born in 1975, single. He was charged with the commission of crimes, in breach of articles 159 (as specified above) and 244-1 (as specified above) of the Criminal Code and sentenced to 7 and a half years of imprisonment by the Sobir Rakhimov District Court of Tashkent city.

The mothers visited several times their sons at the prison. According to them, their sons, as well as other religious detainees, are regularly subjected to cruel, inhuman and degrading treatments. The RRG pointed the most characteristic examples of such treatments against religious prisoners. In our opinion, this also takes place in other prisons in Uzbekistan.

For example, Dilshod Shohidov was severely punished for the letter he wrote to his mother, in which he told her about the detention conditions. The operative officer of the prison, Abror Pardaev, found this letter while searching in the D. Shohidov's cell. He got furious and, together with the prison warden, removed D. Shohidov to another cell where there were several prisoners D. Shohidov did not know. A. Pardaev ordered these prisoners to "Pack him!". In the

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47 The shadow report team interviewed Muqaddas Shahidova, Umida Jumaeva and Mamura Qodirova, mothers of religious prisoners from prison facility 64/51 in Koson district of Kashkadarya region, September 12, 2007, Tashkent, Uzbekistan.

48 The term "a religious prisoner" is applied by the RRG to any person convicted of being a member in a religious-extremist organization, which is recognized as such by the Government of Uzbekistan and prohibited on the territory of the country .

prison slang, it means “to severely beat or cripple a person”. As these prisoners refused to meet A. Pardaev’s orders, the latter removed D. Shohidov to another cell where he ordered him to undress. Under A. Pardaev’s order, three unidentified prisoners then violently beat him. They used their fists and kicks to hit him on the head, on the face and on various parts of the body. Shortly after this, on August 2<sup>nd</sup>, 2007, he was wrongly charged with the violation of prison rules and put into an isolation cell.

The case of D. Shohidov confirms that prisons in Uzbekistan still, informally, maintain the so-called “pressing cells” (known in Russian as “press-khata” – RRG). They are used to discipline prisoners’ “misconduct”. The recourse to “pressing cells” violates international standards as well as the Criminal Execution Code of the Republic of Uzbekistan.

M. Jumaev was harshly punished for having filled a complaint on the absence of adequate drinking water in the prison. According to religious prisoners, in prison 64\51, all religious detainees are incorporated in group # 8. M. Jumaev, in the written complaint he addressed to the prison chief, drew attention to the fact the prison administration deprived, on purpose, to prisoners of group # 8, access to normal drinking water. As a consequence, many of them become sick, suffer from dysentery and are physically very exhausted because of this health condition. M. Jumaev’s complaint was transferred by the administration of the prison to the operative officer of the prison, Shomurod Rajabov. He, with another operative officer, A. Pardaev, summoned M. Jumaev and threatened him.<sup>49</sup>

According to M. Jumaev, on August 1<sup>st</sup>, 2007 at night, 12 prisoners from group # 8, including him, were taken from prison 64/52, in the Kosonsoy District of the Kashkadarya region, to the pre-trial custody # 3 of Bukhara city, in the Bukhara region. All these religious prisoners were held in these detention facilities during ten days and were harshly beaten by the officers of the custody. One of the prisoners, from the settlement Nazarbek of the Tashkent region, named “Bakhrom”<sup>50</sup>, suffers from serious trauma and is now in a serious condition. On August 11, 2007, the 12 prisoners were came back to the prison 64/51 in the Kosonsoy District of the Kashkadarya region.

Relatives of religious prisoners also informed us on torture and ill-treatment against newcomer religious prisoners who, since their arrival, have been held separately from other prisoners. For example, one of the religious prisoners, recently transferred from Tovoksoy prison (Tashkent region) to prison 64/51, was subjected to severe beating by operative officer Sh. Rajabov. In August 2007, this prisoner attempted committing suicide, in order to avoid torture, by cutting his veins. Unfortunately, RRG did not find this prisoner’s name.

The prison 64/51’s administration makes any effort not to apply annual amnesty acts for persons serving prison terms to religious prisoners. Like other detention centres, prison 64/51 has recourse to a widespread method: they are charging prisoners with breaches of prison internal rules and placing them in isolation cells, as a punishment. For example, religious prisoner Gayrat Aripov who was expected to be released from prison in October 2007, was falsely charged with infringement of internal rules and put three times in the isolation cell.

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. For example, the above mentioned religious prisoners, S. Qodirov, M. Jumaev and D. Shohidov, began to number the letters they send in order to check which of the letters were delivered to their recipients and which of them were intercepted by the prison administration.

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49 Sh. Rajabov has told to prisoner M. Jumaev: “Here I am your God! I take all the decisions! I will clean my back with your complaint!.

50 RRG could not find out his family name.

In comparison with ordinary prisoners the religious prisoners are forced and pressed to write official apology letters addressed to the President and Uzbek people and ask to pardon them for what they have committed. For example, S. Qodirov, on demand of the prison administration, wrote an official letter of apology he addressed to the President and people of Uzbekistan, at the beginning of August 2007. Then, the operative officers of the prison still tried to convince him to cooperate with secret services. He was asking for sharing the information on other "suspected" members of religious extremist organizations. Even if they promised to release him before the end of the prison term if he accepted, he finally disagreed. S. Qodirov's mother, Mamura Qodirova, visited the prison 64/51 on September 15, 2007. However, she was informed that, since September 12th 2007, S. Qodirov has been placed in the isolation cell for infringement to prison internal rules. M. Qodirova finally managed to meet his son during a couple of minutes. S. Qodirov just had time to inform his mother that the operative officers of the prison tried to convince him to give an interview for a special TV program, in which religious prisoners bring official apologies to the President and people of Uzbekistan and express regret from what they did. S. He told his mother he refused to do so. M. Qodirova was told that her son would be released from the isolation cell on September 27. On October 1<sup>st</sup>, 2007, she came, once again, from Tashkent to prison 64/51 to meet her son. She was informed that S. Qodirov was again put into isolation cell for repeatedly having violated the prison internal rules and would be released from there, only on October 11. M. Qodirova is convinced that the prison administration purposefully put her son into isolation cell in order to prolong his prison term.

Religious prisoners are very strongly limited in the right to receive grocery and other goods from their relatives. Very often, goods, brought for such prisoners by their relatives, do not reach them. In addition, everyday, the prison administration takes group # 8 to the prison canteen to eat at the end of the service, when it remains little or nothing to eat.

## **8. The right to redress (article 14)**

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.

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.<sup>51</sup>

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

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<sup>51</sup> 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.

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.<sup>52</sup> 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.<sup>53</sup> 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.<sup>54</sup> According to the information we have, no state official was charged under art. 235 of the Criminal Code of Uzbekistan (Torture) after this article was amended - the term “torture” was included into, in 2003.

## **9. Non-admissibility of testimonies, obtained under torture and prohibition that statements made under torture being used as Evidence (article 15)**

In 2003, the UN Special Rapporteur against torture recommended the Uzbek Government to take legal, administrative and other measures to ensure in practice absolute respect for the principle of inadmissibility of evidence obtained by torture in accordance with international standards. The Code of Criminal Procedure of Uzbekistan does not directly secure neither a clause of non-admissibility of these kind of testimonies nor the prohibition of statements made under torture.<sup>55</sup>

In December 2003 and September 2004, accordingly, two Resolutions of the Supreme Court of Uzbekistan were adopted. Those Resolutions explicitly established non-admissibility of testimonies obtained under torture. The Supreme Court Resolution # 17 from December 2003 mentions that evidence obtained by torture, force, threats, deceiving, and other cruel or human dignity degrading treatment or any other illegal means, as well as in violation of the rights of the suspect, cannot represent the basis of an accusation. Moreover, under this Resolution, inquirers, investigators, procurators and judges must ask a person released from pre-trial detention about how he/she was treated, including what were the detention conditions. Each statement of a person who was brought out of a place of pre-trial detention about application of torture or other illegal methodologies of inquiry or investigation must be thoroughly investigated, including checked through conducting of forensic conclusion, and upon the results of such

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52 See Section 184 of the third periodic report of the Government of Uzbekistan.

53 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.

54 See Section 185 of the third periodic report of the Government of Uzbekistan.

55 See Articles 88 and 92-94 of the Criminal Procedural Code of Uzbekistan.

investigation procedural and other legal actions should be taken, including a decision on opening a criminal case against the responsible officials.<sup>56</sup>

Unfortunately, none of these is followed in practice. Furthermore, contrary to what is asserted by the State party, these Resolutions are seen as a secondary source of law in Uzbekistan and are not legally binding for the State bodies and agents. It is therefore necessary that the national legislation itself be amended to explicitly prohibit statements made under torture.

## 10. Death penalty

Uzbekistan maintains death penalty. After a series of legal reform which also influenced the Uzbek Criminal Code, the list of crimes which are punished by death penalty was reduced to the following: terrorism (art. 155) and murder under aggravated circumstances (part 2 of art. 97). Under current legislation, the death penalty cannot be applied to men over the age of 60, to women, or to individuals under the age of 18.

A presidential decree from 2005 stipulated that, starting from January 2008, Uzbekistan would abolish death penalty and substitute it with life imprisonment. On June 30, 2007, the Uzbek Parliament Oliy Majlis approved a law "On making some changes and additions to some legislative acts of the Republic of Uzbekistan in accordance with the abolition of death penalty".

We consider it as a very positive step though we think the following problems related to death penalty remain and need immediate solution, including the abolition of death penalty:

- A moratorium on death penalty was not imposed and the Uzbek Courts continue passing sentences of capital punishment.
- Detention conditions for inmates convicted to death penalty remain catastrophic and greatly endanger their health and personal security. They suffer from malnutrition, they are formally deprived of the right to receive food and medical supplies from their relatives and they have limited right to meet their family. .
- Pursuant to Cabinet of Ministers' decision No. 239-33 of May 5, 1994, "Protection of Uzbek State secrets", the date when and the place where a death penalty would be executed are categorized as State secrets and are kept completely confidential. This rule can also be found in article 140 of the Code of Criminal Procedure. This causes immense pain over the convicted's relatives.
- Abolishing death penalty on the territory of Uzbekistan, the Law "On making some changes and additions to some legislative acts of the Republic of Uzbekistan in accordance to abolition of death penalty" establishes unjustifiably long term for being allowed to fill complaints on the life-imprisonment and long-imprisonments sentences. According to this Law, life prisoners can file such complaint only 25 years after he/she started serving the term, and prisoners sentenced to long imprisonment can file such complaint only 20 years after the starting of the prison term. We think life prisoners and prisoners sentenced to long imprisonment should be granted the right to file such complaints each year.

A very special point of concern is the execution of the death penalty while an individual communication was accepted by the Human Rights Committee under the 1st Optional Protocol to the ICCPR. The situation is even more serious since it was proven that in most of the cases accusation were actually based on self-incriminating testimonies, obtained under torture or similar ill-treatment. The following Uzbek citizens sentenced to death penalty were executed

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<sup>56</sup> See Section 19 of Resolution # 19 of the Supreme Court of Uzbekistan.

despite their individual communications were under consideration in the HRC and despite the HRC request to Uzbekistan for withholding the execution:

- Ulugbek Eshov – was executed on September 13, 2001. The relatives were not informed about the execution. The individual communication of U. Eshov was registered in the HRC, ref. # 1164/2003.
- M. Ismailov and I/ Babajanov were executed in May 2003. Their relatives were not informed about the execution date. Their individual communications were registered in the HRC, ref. # 1162/2003/
- Azamat Uteev was executed on May 7, 2003. His individual communication was registered on January 7, 2003, ref. # 1150/2003.
- Azizbek Karimov Akhmadjonovich was executed on August 10, 2004. His individual communication was registered on June 3, 2004, ref. # 1294/2004.
- M. Mirzaev was executed (the shadow report team was not able to find out the exact date of execution), his individual communication was registered under the ref. # 1170/2003.
- Sunnatov was executed (the shadow report team was not able to find out the exact date of execution), his individual communication was registered under the ref. # 1282/2004.

It should be noted that after the presidential decree “On abolition of death penalty”, the Supreme Court of Uzbekistan started reconsidering some sentences on death penalty cases and changed in certain cases capital punishment into 20 year-imprisonment. The death penalty sentence with regard to the following persons was reconsidered by the Supreme Court and changed into 20 year- imprisonment:

- 1) A. Kornetov; 2) A. Abror; 3) N. Karimov; 4) E. Gugin; 5) F. Karaev; 6) I. Karimov.

## **11. Is the State party willing to make declarations recognizing the Convention’s articles 21 and 22?**

During the reporting period the State-party did not make declarations recognizing the CAT’s articles 21 and 22. The State-party mentioned in its report that the Ministry of Foreign Affairs is working on that issue.<sup>57</sup>

Section 22.1 of the National Action Plan on Implementation of the Convention against Torture sets a deadline for recognizing the CAT’s competences under articles 21-22 of the Convention as of year 2005.<sup>58</sup>

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<sup>57</sup> Please 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.

<sup>58</sup> See section 210 of the third periodic report of the Government of Uzbekistan.

## **WOMEN'S RIGHTS SITUATION**

### **1. General Background on the Status of Women**

Women's human rights violations are widespread in Uzbekistan. This is due to a large extent to the inferior role they continue to occupy in Uzbek society, with a patriarchal culture and the prevalence of religious rules that put them in a marginal position and give them limited possibilities of remedies. The lack of gender equality in all levels of society does not allow women's full participation in private and public life.

Gender-based violence takes on diverse aspects. Many women, especially in the rural areas, are victims of domestic violence, rape, forced marriages, trafficking, forced sterilization and removal of reproductive organs, and discriminatory treatment in prison. Frequently, cases of violence are not prosecuted because the families and society in general will see women as being guilty of misbehaviour instead of seeing them as victims. Moreover, public agents, such as judges and police officials, who should protect women, do not consider certain practices as violations of their fundamental rights.

### **2. Relevant Legal Background on Women's Rights**

Article 18 of the Uzbek Constitution states that all citizens shall have equal rights and freedoms, and that before the law everyone shall be equal regardless of sex, race, nationality, language, religion, social origin, conviction, individual and social status. Moreover, Article 46 provides that "Women and Men shall have equal rights".

Concerning women's rights in the family and their right not to be forced into marriage, article 63§2 affirms that "Marriage shall be based on the willing consent and equality of both parties". Moreover, several other articles affirm the equality between husband and wife with regard to their rights and duties within marriage and towards the children. Forced marriage is considered illegal according to the Article 53 of the Family Code. Articles 2, 3, 4, 9 and 19 state the equal rights of men and women in family relations.

Article 3 of the Law on Guarantees of Electoral Rights of Citizens provides that all citizens of the Republic of Uzbekistan enjoy equal electoral rights, without any distinction based on origin, nationality, social status, race, nationality, sex, education, language, religion and occupation. The same principle is expressed in the Law on Elections of members of the "Oliy Madjlis" (Parliament of Uzbekistan). Article 3 states the all citizens have equal electoral rights, regardless of sex.

### **3. Criminal Legislation (Article 4 CAT)**

#### **3.1. Legislation with regard to gender-based and sexual violence**

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).

### **3.2. Legislation on forced marriages**

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.

### **3.3. Prohibition of the incitement to commit suicide**

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.

### **3.4. Legislation on trafficking in women**

There is no definition for the trafficking of women in the Criminal Code. Uzbekistan’s current laws do not criminalize all forms of trafficking in persons, although Article 135 of the Criminal Code provides that the crime of involving persons in sexual exploitation schemes shall be punished either by fine, going from one hundred to two hundreds minimal monthly wages, by correctional labour for up to three years, or by up to eight years of imprisonment. Uzbekistan has ratified the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, but not 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 imprisonment<sup>59</sup>. Often, after having been punished in other countries, women end

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<sup>59</sup> UN Report of the Special Rapporteur on violence against women, 2003 (E/CN.4/2003/75/Add.1, para. 1232).

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.

*Ms. N. Djuraeva from Samarkand, born in 1981, was deported from the United Arab Emirates in 2006, and was forced to pay the inspector who had threatened her to bring the case to court for prostitution.*

#### **4. Practice of Torture and Ill-treatment of Women**

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.

##### **4.1. Domestic violence**

One 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.

*Nafisa, a 35 year-old woman who lives in Akhunbabaev, a village in Pakhtakor district of Jizzakh region, has been the victim of domestic violence for the last fourteen years. Her husband used his fists to beat her, beatings happened each month. She told the shadow report team that her husband beat her so hard that she lost her teeth. The beatings also happened when Nafisa was pregnant, and as a result she lost the baby and ended up in the hospital. She was again severely beaten when she was waiting for her second baby, and her face was covered with bruises. Nafisa finally went to her parents for help, but her father refused to take her to a doctor, saying that she was the only one to blame for inciting her husband to beat her.*

##### **4.2. Forced sterilization**

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.<sup>60</sup> 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.<sup>61</sup>

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<sup>60</sup> The shadow report team was told by a group of doctors in Andijan main regional hospital that sterilization and removal of reproductive organs of women after pregnancy was ordered by a confidential decree of the Ministry of Health which was based on the category of confidential decrees of the Government of Uzbekistan.

<sup>61</sup> Uzbekistan is the largest nation among the five Central Asian countries, with more than 26 million inhabitants.

Three cases of removal of reproductive organs have been documented by the NGO "Women Forward":

1) *Mrs Farida Raimova, from the Andijan, Marhamat area, was sterilized in the Regional hospital of Marhamat area after she had given birth to her fourth child.*

2) *Mrs Gulnoza Babahodzhaeva, from the city of Andijan (Street Voronova), Andijan area, was sterilized in the Surgical Branch of the City Hospital after the birth of her two twins.*

3) *Case of Mrs Azimova Nasiba from the Samarkand area (Okdaryo). She had two operations in Samarkand. On the third one, she arrived with her husband at the Tashkent in the State Medical Institute. She went there to have an operation, but was deceived into having sterilization. She then became very similar to a man. Her voice became rough and she began to grow a beard and a moustache. As a result, her husband left her and her children.*

#### **4.3. Forced marriages and incitement to commit suicide**

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.

*In May 2003 Nigora, 19 years old, from Denau, district of the Surkhandarya region, was forced by her parents to marry the son of a relative. From the beginning she opposed the decision but her parents refused to listen to her. Nigora threatened she would commit suicide if her parents did not change their decision. As a consequence, she was severely beaten by her father, who slapped her and used his belt to beat her. Nigora's mother and her older sister also bullied her everyday and pressed her into the marriage. At the end, she was forced into marrying the man against her will, and after seven months the marriage ended in divorce.*

*As in the previous case, Jamila, 24 years old, from Chiroqchi district in the Kashkadarya region, was also forced by her parents to marry one of her relatives. She refused to marry him and as a consequence was repeatedly beaten and bullied by her family. Three days before the wedding, Jamila committed suicide by drinking vinegar. She died in the hospital in August 2004.*

#### **4.4. Trafficking in women**

According to the statistics by the International Organization for Migration<sup>62</sup> 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.

*In 2004, the representatives of a firm selling cosmetics visited one city school and asked girls with a certain profile to apply for the position of retailers. They were attracted to the guaranteed good salary and*

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<sup>62</sup> IOM Report, *Fertile Fields: Trafficking in Persons in Central Asia*, 2005.

*the possibility of a future career. N.D. was one of the girls who accepted this proposition and started to work on her free time. Her parents were very glad since she earned some money and the firm was holding its promise. Once she graduated from school, her superior from Navoi offered her a one-year internship in Bishkek. She accepted the offer, as she had always dreamt to enter the American – Kyrgyz University in Bishkek. Consequently, she went there in 2006, and sent regularly letters and money to her family. However, one day her family received a phone call from the Hospital of Tashkent which requested that they take their daughter home: N.D. had been diagnosed with HIV, hepatitis B and inanition. She was brought home by her father and it was later discovered that from 2005 to August 2007 N.D. had been working as a prostitute in Almaty. Letters to her parents had been dictated to her and the money sent to the family came from the firm. Once the company decided that she was no longer profitable, she was paid one last time and then thrown away. According to her story, she crossed illegally the border (like hundreds of her compatriots) and was hospitalized in Tashkent.*

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

#### **4.5. Violence against Women by police officials**

##### Case of Ms. Faizova<sup>63</sup>

*Ms. R. Faizova was arrested without a warrant in Tashkent. The reason given for the intervention was an operation called « Tozalash » (« Cleaning »). According to a witness, Ms. Kh. Khassanova, police officials entered into the apartment, and took her to the police station without any explanation.*

*As she had evident bodily injuries, the police argued that during the transportation of Ms. Faizova, she made an attempt to escape and fell down. Ms. Faizova stated that instead those serious bodily injuries were inflicted by policemen (M. Normatov, V. Poliakov, K. Kazakhbaev, B. Azimov, A. Khodjaev). According to her, a policeman started to splash some liquid on the ground and after this she felt bad. While she was losing her consciousness she felt that the policeman injected something into her left leg. After this he threw her on the ground which resulted in a serious trauma of her head, fracture of her left shoulder and other bodily injuries. But she cannot recall why she has thermal burns on her right hand.*

*According to a medical examination, those bodily injuries were recognized as very serious and life-threatening. Those injuries may have been inflicted by using feet and hands.*

*Even though Ms. Faizova approached the competent authorities to complain about the policemen's actions, in particular infliction of torture, her complaints were not taken into consideration, and the case was filed. On 10 September 1995 she addressed about the same complaint to the prosecutor's office of Tashkent city. The criminal case was closed on 20 December 1995 on the basis of Article 83, par. 1 of the Criminal Procedure Code on "Grounds for rehabilitation". She approached several times the prosecutor's office for revision of the case.*

*R. Faizova did not approach the Court, because according to the law, she cannot approach the court directly, but only after a final decision of the prosecutor. This case was closed before the final decision, and she did not have an opportunity to defend her rights and interests before the court.*

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<sup>63</sup> Documented by the Tashkent City Bar Association.

## **5. Measures to Prevent Torture of Women (Articles 2 and 10 CAT)**

### **5.1. Effective legislative, administrative, judicial and other measures to prevent acts of torture (Article 2.1)**

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.

### **5.2. Education and Information (Article 10.1)**

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.

## **6. Detention Conditions (Article 11 CAT)**

In a report presented to the UN Human Rights Committee in 2005<sup>64</sup>, OMCT reported that according to a reliable source, women detainees, in particular Muslim women, in the jail known as KIN-7 (64/7) in Tashkent, were not allowed to practice their religion.

Currently, OMCT does not have additional information on women's detention conditions. 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).

## **7. Investigation, Remedy and Redress (Articles 12 to 14 CAT)**

### **7.1. Investigation and Remedy (Articles 12 and 13)**

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.

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<sup>64</sup> *State Violence in Uzbekistan, Part II: Violence against Women*, p. 99-100. Available at [http://www.omct.org/pdf/procedures/2005/s\\_violence\\_uzbekistan\\_2\\_2005\\_eng.pdf](http://www.omct.org/pdf/procedures/2005/s_violence_uzbekistan_2_2005_eng.pdf)

## a) Domestic violence cases

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 Mahalla<sup>65</sup>, 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.

*1) In the city of Hazarast, Khorezm region, a man was brought to justice for infliction of trivial bodily injury which caused temporary illness to his wife (dislocation of the right hand) for more than 6 days. He was condemned in May 2007 to correctional labour for one year, pursuant to Article 109 of the Criminal Code of Uzbekistan.*

*2) In another case that took place in the city of Mubarek, Kashkadarya region, Article 110 of the Criminal Code was applied (Systematic Battery/Tormenting) and the husband was punished in October 2006 with a sentence of imprisonment of two years in the prison 64/42. His wife is still complaining about permanent headaches related to concussion of the brain resulted of permanent shocks to the head.*

*3) In the Ishtykhan region of Samarkand oblast, a criminal case was initiated following a complaint by a young woman against her husband in January 2007. The husband was sentenced to 5 years of imprisonment pursuant to Article 104 of the Criminal Code, but the woman had to leave the region with her two children because of the lack of understanding of people surrounding her.*

Despite these responses, most domestic violence cases remain unsolved as illustrated by the story of Shahodat, mother of three children, in a rural region of Uzbekistan (Saryassiya district, Surkhandarya region), in December 2005.

*I have a bad memory because my husband beat me on the head. I have no memory anymore. He gave me head trauma. I did not tell anyone that he beat me. I did not go to the Committee of Mahalla. I told my parents, and they went to him and said that he should stop. They asked him to stop. For a year we were happy, nothing happened...then he started beating me again.*

*He started beating me on the head, and I grabbed his hands and tried to stop him. I begged him not to beat me - and not to hit me on the head. He beat me on my head even more with his fists. He beat especially the left side of my head.*

*At that time, my head was spinning, and I saw spots before me. I lost consciousness, and I cannot remember what happened to me. My brother took me to the doctor. They gave me three shots, after which I felt a little better. But I got worse again, and they took me back to the hospital. I told them that my husband beat me. They said that they would call the police. The police did not come to the hospital even though the doctor told them what had happened. I was in the hospital for seven days.*

*Finally, someone came and said that a police official from the local police station was supposed to come to hear my story. But no one came.*

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<sup>65</sup> The local self-government entity.

## **b) Impunity for acts of harassment**

In a case of sexual harassment in the workplace, an employer coerced a woman employee into having a liaison with him. In 2005, Dilfuza Turaeva committed suicide by hanging because of the harassment she was subjected to by the director of an Uzbekistan – India joint pharmaceutical enterprise called “Gufik Avicenna”, D. Mirzakhodjaev. Despite complaints from her parents, the Bukhara Prosecutor’s Office has failed to prosecute the employer.

## **c) Criminalization of trafficking victims**

Concerning the issue of prostitution, according to Article 190 of the Administrative Code, a woman engaged in prostitution risks a fine, in case of her first incrimination, and criminal prosecution in case of second arrest. The punishment makes no difference whether women engaged voluntary or involuntary in prostitution. Usually women are prosecuted upon their return.

## **7.2. Rehabilitation (Article 14)**

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<sup>66</sup>, 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.

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<sup>66</sup> See general section of OMCT and RRG’s Shadow Report to CAT.

## CHILD'S RIGHT SITUATION

### 1. Overview of the child rights situation and general framework regarding violence, including torture or other cruel, inhuman or degrading treatment against

Child status and rights are undermined under many occasions in Uzbekistan. Violations of the international obligations of the Government of Uzbekistan under the CAT towards children come from different forms of violence and ill-treatment.

### 2. International and national legislation on child protection

#### 2.1. Relevant international law to which Uzbekistan is party

The Uzbek government ratified the Convention on the Rights of the Child (hereinafter the CRC) on 29th June 1994. The CRC entered into force for Uzbekistan on July 29<sup>th</sup> 1994. The Government did not ratify the two Optional Protocols to the CRC.<sup>67</sup>

Uzbekistan has signed and ratified the main UN human rights standards, most of which contain provisions on child rights.<sup>68</sup>

#### 2.2. National law

National law protects children through very general principles: support and care for the children by the parents and the State and the society (article 64 of the Constitution) and protection of childhood by the State (article 65 of the Constitution). This is clearly insufficient to fully comply with international relevant standards among which the CAT and the CRC (article 37).

As previously mentioned, article 26 al. 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. In addition, article 44 ensures the right to "appeal any unlawful action of state bodies, officials and public associations." Those provisions apply to all persons in Uzbekistan, including children.

According to the Plan of the Legislative Chamber of the Uzbek Parliament *Oliy Majlis* for the years 2005-2009, the "Law on guarantees of the rights of children" should have been adopted in March 2006. This law is not still passed. The Uzbek Parliament was also discussing a draft law on the rights and welfare of children in Uzbekistan. To date this law is also not passed yet.

On January 15<sup>th</sup> 2007 the Unit of the Uzbek Cabinet of Ministers on social issues adopted the "Action plan for providing children's welfare in Uzbekistan".

Institutionally speaking, the child protection system in Uzbekistan is poorly organized. There is no special ministry, either State committee or agency on childhood specifically dealing with children's issues.<sup>69</sup> Ministry of Culture and Sport, Ministry of Labour and Social Protection of the

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<sup>67</sup> OP on the involvement of children in armed conflict and OP on the sale of children, child prostitution and child pornography.

<sup>68</sup> Please see a chart of the status of ratification of main international human rights treaties by Uzbekistan in Section I of the shadow report.

<sup>69</sup> There are NGOs (national NGOs and national sections of international or regional NGOs) which carry out activities regarding youths and children but many are actually GONGOs because they directly accomplish governmental actions and programs; some are financed by the government.

Population, Ministry of Public Education, Ministry of Higher and Middle Education, Ministry of Health have programs or services in charge of children's issues, but there is no centralized and effective coordination between them. At the local level, Mahalla committees partly address child rights issues through "modelling the moral and spiritual atmosphere in the family, and the upbringing of the young generation", by intervening in family conflicts, providing advice on parenting and proper behaviour for children.

An Office of the Ombudsperson that may receive and deal with complaint on violations of children's rights exists.

### **2.3. Definition of the child**

General age of majority:

In conformity with the international law (particularly 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 18. It may be lowered in exceptional circumstances by decision of the *hokimiyat*, a local government, but limited to one year (article 15 Family Code).

Minimum age for child labour:

According to article 17 of the Labour Code, the minimum age for working 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 committed where the age may be lowered to 14 or even 13 years old.

Sexual intercourse:

Age of sexual consent is 16 years old.

## **3. Definition of torture against children**

The information given on the general part regarding the definition of torture in the legislation and its interpretation by the Supreme Court are similar for adults and children. There is no case-law concerning a specific interpretation of torture or other cruel, inhuman or degrading treatment when the victim is a child.

## **4. Criminal legislation: particular rules that may apply to child victims and corporal punishment**

The legislation framing the prohibition of torture is the same for adults and children. Indeed, article 26 part 2 of the Constitution and relevant provisions of the Criminal Procedure Code (articles 17, 22, 88, 215, 270) and especially article 235 of the Criminal Code on the prohibition of torture or other cruel, inhuman or degrading treatment as well as article 44 of the Constitution on the right to complain in case of unlawful action of state bodies apply to all individuals including children.

In addition to this first level of legislation referring explicitly to torture or other cruel, inhuman or degrading treatment, including the extraction of statements by using illegal treatment and the use of acts that may endanger the life and health of a person, the Criminal Code contains provisions about acts of violence against children that may amount to cruel, inhuman or degrading treatment: 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 known to be under 16 years of age shall be punishable.

But these acts are only some specific aspects of child violence and are not comprehensive nor covered systematically by the definition of torture or other cruel, inhuman or degrading treatment or punishment. Real protection of the child needs an effective prohibition and definition of torture against children with aggravated penalties according to the age of the victim when it is committed by state agents or private individuals.

## **5. Practice: occurrence of violence against children that may amount to torture or other cruel, inhuman or degrading treatment and lead to the State responsibility**

Responsibility of the State party for acts of torture or other cruel, inhuman or degrading treatment for absence of due diligence

### **5.1 Violence against children in the family**

The issue of the family culture is mostly identified by the issue of social culture. The most common family model considers children (as well as wives) subject to the father's authority. There is a common feeling in the Uzbek society according to which the severity and strictness of the father, that might sometimes amount to cruelty, is necessary to the education. Such concept of the family contributes to abusive behaviours by fathers that undoubtedly lead to violence against children both in the family and the society.

Although there is no official data on domestic violence and sexual abuse within the family, there are reports that latent violence used by parents towards their children is a common problem in Uzbekistan. Parents recognize that they use corporal punishment to control their children. Traditional means of parental education (like using corporal punishment, threat, coercion, etc), clearly not complying with international law,<sup>70</sup> still persists in Uzbekistan and no action has been taken by the government to prevent these occurrences. Uzbekistan is accountable to this situation because it fails to protect children against this kind of violence which is really destructive to child development. In rare cases when the victim or a relative complain to the police, it does not pay much attention to the violation considering it as a private matter that should be solved privately. Moreover, as it is mentioned below (about articles 13 and 14 of the CAT), there is no existing mechanism to grant remedy and redress to child victims.

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<sup>70</sup> In its General Comment n°8 (2006) on The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment, the Committee on the Rights of the Child "defines "corporal" or "physical" punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. (para.11) Corporal punishment and other cruel or degrading forms of punishment of children take place in many settings, including within the home and family, in all forms of alternative care, schools and other educational institutions and justice systems - both as a sentence of the courts and as a punishment within penal and other institutions - in situations of child labour, and in the community. (para.12) See also the World Report on Violence Against Children by Paulo Sergio Pinheiro, chapter 3 Violence against children in the home and family, pages 45 to 107.

Some cases of family violence against children follow below:

→ Sharofiddin was the fifth son in the family of Rajabovs from Kitob district of Kashkadarya region. Based on the consent of his parents at the age of four Sharofiddin (born in 1992) was given to an uncle as an adopted son. During his childhood at uncle's house Sharofiddin was constantly bullied by two sons of the uncle Bakhrom and Bakhodir. They have regularly beaten him in order to force him to do the housework. On May 23<sup>rd</sup> 2004 the uncle's cow died and the two sons told their father it was Sharofiddin's fault that the cow died. The uncle has severely beaten Sharofiddin on the head, face and body using the wooden stick, his fists and feet. Sharofiddin had bruises on several parts of his face, body and legs. He left his uncle's house for his parents' house. In a week the uncle came to the house of Sharofiddin's parents, promised not to embarrass Sharofiddin again and convinced Sharofiddin to return with him. Sharofiddin said "No", but his parents forced him to follow his uncle. Neither Sharofiddin, nor his parents complained to the police on the behavior of the uncle. Two days after Sharofiddin returned to his uncle, the uncle have again severely beaten him to the head with the wooden stick because he has left his home and complained to his parents. Sharofiddin's head started to bleed and he was hospitalized to the district central hospital. When Sharofiddin came out of hospital his parents have taken him home and refused to send him to his uncle's house. Neither Sharofiddin nor his parents informed police about the beatings again.<sup>71</sup>

→ In November 2005, Gulbakhor, a 14 years old girl, from Asaka town of Andijan region, was severely beaten by her father after one of her male classmates called her home number several times in a row. Every time the father picked up the phone instead of daughter and the boy classmate asked him to call his daughter. The father strictly questioned his daughter why the young man was calling her. She said she doesn't know. Then the father started beating her daughter on her face with his palms. Gulbakhor hit the wall with her forehead and lost her consciousness. She was taken to the nearest clinic where the doctors said she has received brain concussion. Gulbakhor told about this incident to her friend at school who reported about this case to one of the activists of the local branch of women's NGO. The women's NGO approached Gulbakhor at school and documented the case. Gulbakhor was offered to file a complaint on this case – she refused.<sup>72</sup>

## **5.2. Child labour**

Uzbekistan retains forced child labour in different forms: child labour in picking the cotton harvest, child labour in the family household and involving children in cleaning of the local neighbourhood of an educational facility or a living place. Two aspects are presented in this report: the conditions of cotton picking and child migrants working in neighbour countries.

### **a) Children forced to pick the cotton under inhuman conditions**

#### **Modalities of child labour in the cotton fields: exploitation of children**

Each year approximately from mid September to mid or late November, secondary school and academic lyceum pupils (approximately from 6-7<sup>th</sup> grades and up, minimal age 13-14 years old, even tough there are reports that children as young as 9 may work in the cotton fields), college and university students are involved to cotton picking. Some children are also required for sowing in spring in addition to harvesting in autumn which may lead to miss school for 16 weeks.

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<sup>71</sup> The shadow report team interview with Sharofiddin and his father, April 2007.

<sup>72</sup> The shadow report team interview with a woman rights activist in Asaka town, Andijan region, May 2007

The official rate of payment for 1 kilo of cotton is 64 Uzbek sums (approximately \$ 0.05 US cents). Children forcedly involved in the cotton picking are not paid for their labour. The children are told the payment for the picked cottons are withheld for food which is given to the children during their stay in the cotton fields.

### **Labour conditions amounting to inhuman treatment**

The working and living conditions of children involved in cotton picking and the way this process is organized makes exploitation of the child labour in cotton picking equal to inhuman treatment.

#### *The work in the cotton fields:*

Each child is obliged to pick 50 kilos of cotton every day if it is the first harvest. For the second harvest, the daily obligation of cotton picking is 30 kilos. This is a very hard objective for a child to accomplish daily.

Many children become sick due to the harsh conditions of work, the pesticides, etc. In addition, this situation is worsened due to the fact that children have very limited access to the medical services. A medical assistant is attached to every camp where children are located. But this person has not enough medical qualification to render first-hand qualified medical service to the children and in practice the medical assistant rarely visits the camp where children are located. He is not provided with necessary medicines in proper amount. There is no system of regular medical check up of the state of health of the children in the cotton fields. If a child gets ill in the cotton field he is not allowed to inform his family and go home until his health dramatically deteriorates.

Moreover, accidents are not rare because the norms of technical safety of organizing the work process for the children in the cotton fields are not fulfilled. No protection and prevention mechanisms are worked out to safeguard the children from falling into different accidents and technical emergency situations. Teachers are forced to stay with the children in the cotton fields but they can not guarantee safety of the children from different technical accidents.

#### *Living conditions of children during the period they are picking cotton:*

During the harvesting period, the children have rest in the class rooms of the schools in the villages where they are located. Every child has to take his own bed with him otherwise they sleep on the cold floor. There are no heating premises in the places the children sleep. Every class-room usually serves 30 girls or boys. Boys and girls are kept separately. The waking time for children in the cotton field is 5 or 6 o'clock in the morning, and time for going to bed is 9 or 10 o'clock evenings.

Children use cold water to wash themselves and their clothes. In many places children do not have access to clean drinking water and use water from open channels. Sometimes children have to go to the houses of the local people to take shower. Having access to a shower with hot water in the houses of the local people is 500 Uzbek sums (approximately \$ 0.5 US).

The food children are given in the cotton fields is very poor even though they are given food three times a day.

Children are cut off from any entertainment means in the cotton fields. They don't have access to TV-sets, radio or other devices. They do not have access to books. However, children are not prohibited to bring those items with themselves.

## Responsibility of the State

The Uzbek government usually argues that the children have volunteered for cotton picking because the cotton is a national wealth. The only way of exemption from being forcedly involved in the cotton picking is obtaining a written allowance of the district or city hospital's or doctors' council. People who do not want their children to go forcedly to the cotton fields often buy such written allowance of the doctors through bribing them.

Because of the conditions of the work in picking up the cotton by involving children and the way the work is organized by the Uzbek authorities we consider that the State of Uzbekistan has full responsibility regarding this practice which, according to the circumstances, could be qualified as cruel, inhuman or degrading treatment.

*Uzbekistan is responsible for not complying with the international rules on child labour:*

While the Uzbek government has taken legislative measures to protect children from economic exploitation and from performing 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 or physical, mental, spiritual, moral or social development, it failed to take administrative, social and educational measures to ensure the implementation of the existing legal norms. For example, article 8 of the "Law on basis of the state policy on the youth of the Republic of Uzbekistan" and article 241 of the Labour Code, it is prohibited to exploit children or involve them in performing 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 or physical, mental, spiritual, moral or social development. The similar obligations of the Uzbek government are also stipulated in the relevant articles (particularly 32) of the Convention on the Rights of Child. Uzbekistan has not ratified the International Labour Organization's conventions relating to child labour (particularly ILO Convention n° 182 on the Worst forms of child labour, 1999).

*Uzbekistan is responsible because its public administrations are involved in the cotton production:*

Many regional administrations routinely use children to help meet central government-imposed quotas for annual cotton production. The attitude of the authorities which know about the use of children and do not act to protect them or which sometimes organise the cotton harvest and employ children should be considered a situation happening "with the consent or acquiescence of a public official or other person acting in an official capacity".

Independent researches and inquiries by medical personnel shows that after the cotton harvest season, half of them are sick. The following cases illustrate this situation:

➔ In September 2006 two school kids from Djomboj district of Samarkand region F. and I. were hit by a train near the cotton field. The boys were among the school children. Early in the morning they woke up and went to the railway near the camp where they were based. They wanted to watch the approaching locomotive. They were standing on the railway and were hit by the locomotive. One of them died at the place, another one was hospitalized with serious traumas to the district hospital. The complaints of the parents and some Uzbek human rights defenders were studied by the Djomboj procurator's office and the office of the Procurator General. At the time of the writing there were no results of the investigation of this case.<sup>73</sup>

➔ Students of Andijan Hydroland Improvement College were taken to the territory of "Mashal" collective farm of Markhamat district in September 2003. They were forced to go to the fields and pick cotton even during rainy days of October 2003. They slept in the barracks without

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<sup>73</sup> The case material was provided by "Veritas" Youth Human Rights Movement of Uzbekistan, May 15th 2007, Tashkent, Uzbekistan.

window-glasses with no heating system and hot water. Only during September-October 2003 20 students of the college out of 100 became ill and were allowed home in the critical state of health. On October 15<sup>th</sup> 6 students refused to pick cotton. They played football in the school stadium. Soon on that day they were summoned by college director Abdumalik Razzakov. The director offended the students with degrading words and threatened them with expelling from the college. After that as a punishment the director ordered to students Shokir Mamadaliev, Arsen Seitmuratov, Farkhad Tursunov, Erkin Turakulov, Botir Muhiddinov and Azizbek Giyasov to cut fire wood in the yard of the college. Those students at behest of the director were deprived of food that day. In five days Botir Muhiddinov had to return home because of sharp pains in kidneys. He was hospitalized because of inflammation of kidneys.<sup>74</sup>

→ In September 2006 all students of Jizzakh city pedagogical college were taken to the cotton picking. Before taking the students to the cotton fields the college administration forced the students to sign a statement which said each student is going to the cotton picking on his / her own will, they were not forced to do this by anybody and they want to help their Motherland. This was reported to the shadow report team by a human rights activists in Jizzakh city.

→ Khafiza Kudratova is a school girl from Yakkabog district of Kashkadarya region. She is 16 years old. In September 2004 together with other school-kids she was taken to a farm # 39 in Koson district – 120 kilometres far from her home, to pick cotton. In an interview with a human rights activist she mentioned: “We don’t have even a normal drinking water. I pick cotton starting from September 14<sup>th</sup> and haven’t taken a shower ever since. Every day I have to pick 50 kilos of cotton. I don’t like the food here. For breakfast they give us only tea with sugar and bread. We take hot meal only for lunch and dinner, but it comes without meat”.<sup>75</sup>

→ In September 2006 M. Djalilova, born in 1993, a student of Bukhara Tourism College, threatened with expulsion from the college by the college administration has to check out from the hospital earlier after she had a surgery with appendicitis. She could not finish a post-surgery medical treatment and fainted in the cotton field. M. Djalilova was again hospitalized after this.

→ Sh. Bakhramova, born in 1992, a student of Economics College of Bukhara city, after an attack of gastritis in the cotton field was allowed to go home for receiving medical treatment. Soon after this under the pressure of the college administration she had to return to the cotton field.

→ Kudrat Khodjaev, born in 1992, a student of Economics College of Bukhara city, under the threat of expulsion from the college had to go to the cotton field soon after he had hepatitis in summer. He fainted in the cotton field and hospitalized. The doctor’s examination of K. Khodjaev has shown that he had caught toxic poisoning from the cotton chemicals in the field.

In the last three cases the complaints of the parents to the governmental structures (regional departments of public education) were left without results.

## **b) Child migrants working in neighbour countries**

In 1/3 (one third) of the families in Kashkadarya, Bukhara and Khorezm regions, there are at least one child who travels abroad as a migrant worker, especially to the Russian Federation and Kazakhstan.

These child migrants are around 15-16 years old. The majority (60-65%) gets on the jobs on equal positions with the adults and usually accomplish such hard jobs as porter of cargoes in

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<sup>74</sup> The shadow report team interview with a youth activists from Andijan city, the name is kept anonymous as the interviewee wished, April 2007, Andijan, Uzbekistan.

<sup>75</sup> Interview with Karshi human rights defender, April 2007, Karshi, Uzbekistan.

the markets, cleaners, assistants to construction masters. Others may continue their education at foreign or national schools.

Only one third of child migrants work on the basis of a legal labour contract. Merely speaking they work beyond the framework of the labour legislation in accepting country. Conditions of hiring of children are regulated by so-called suppliers of such workers from Uzbekistan, from the accepting party in the Russian Federation or Kazakhstan, and also direct employers. As a matter of fact, it is more favourable to both sides to employ the child than the adult. Because by virtue of age and experience a child worker is more accommodating, manageable, does not tend to create problems for the employer in the form of requirements of due payment of wages or improvement of living conditions.

Child migrants are not subjected to frequent and harsh treatment per se every day. But their labor and living conditions pose many threats to their lives and personal security. As 95 % of them are in illegal status as labor migrants they can not rely on a variety of social benefits and legal protection granted to an ordinary worker by the labor contract. Therefore, it becomes much easier for the employers to treat their employees cruelly and inhumanely with impunity. Child labor migrants live in 20-50 person groups in small places (rarely apartments with a heating system and hot water, more often barracks). They become victims of the raids of the local police units and migration police because most of them do not have temporary resident status. During such check-ups and raids the child migrants are usually detained by the local police and even sometimes extorted money. Those of them who cannot provide with the required amount are usually taken to the local police station and locked up in a cell, and sometimes mixed with adults.

Another threat for the Uzbek child migrants on the territory of the Russian Federation is an increasing discrimination against foreigners in Russia. Many labour migrants including child migrants face immanent threat of becoming victims of the beatings and cruel treatment of the local nationalistic groups.

### **5.3. Sexual violence and exploitation**

#### **a) Sexual violence**

Legal age of sexual consent is set at 16 years old (article 128 of the Criminal Code). In addition, the Criminal Code clearly forbids sexual abuse, child prostitution, exploitation and child pornography in various articles. Article 118 Criminal Code states that the 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 of the Criminal Code, and also in this article heavier punishment applies to the perpetrator depending on the age of the victim. In case the victim is younger than 14 years old, the sentence constitutes 15 to 20 years imprisonment.

#### **b) Sexual exploitation**

Article 135 of the Criminal Code 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 reference made to a higher punishment in case a minor has been trafficked. Article 130 of the Criminal Code 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.

Uzbekistan has a child prostitution problem, but no official data are available to assess its proportions. 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 is some information relating to young women who 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.

Street children are particularly engaged in prostitution. The State provides modest relief to these children in terms of programs for shelter and food. They have consequently been compelled to find other means to survive. An unofficial estimate expressed that there are about 1500 street children in Uzbekistan. One of the major obstacles in the fight against trafficking for the sex trade has been internal corruption, for example, bribes taken by customs and border guards.

#### **5.4. Responsibility of the State party for acts of torture or other cruel, inhuman or degrading treatment perpetrated by state bodies and agents**

##### **a) Violence by law enforcement agents**

There are many reports from NGOs of cases of violations of children's rights (particularly to be protected from torture or other ill-treatment) by law enforcement officials as well as by the administration of different educational establishment.

##### **b) Violence at School**

###### **Case:**

On November 2, 2006, a 15-year old school boy at one of the secondary schools of Gizhduvan district of Bukhara region has attempted to complaint about the regular beatings of his teacher to Gizhduvan district Internal Affairs Department. In his official complaint the school boy has asked to open a criminal case against the teacher. However, the police refused to open a criminal case against the teacher saying the case was too insignificant.

#### **6. Measures of prevention: training**

There is no systematic and permanent education and training of law enforcement officials, including the police and judges to deal with children and the protection of their rights. Possible initiatives come rarely from the Uzbek authorities and, when they exist, are ad hoc. For instance, the UNICEF has recently discussed with the Uzbek government the issue of organizing study-tours for the Uzbek judges to foreign countries in order to learn the foreign experience with juvenile justice. The Uzbek government was also considering introducing a new subject on juvenile justice at Tashkent State Law Institute. However, until now, it seems that nothing concrete, effective and stable to protect children's rights when they are in conflict with the penal law and particularly to prevent acts of torture or other ill-treatments.

## **7. Particular legislation and measures of implementation applicable to the treatment of children deprived of their liberty**

### **7.1. Introduction on the juvenile justice system**

A genuine juvenile justice system as prescribed by international relevant standards does not exist in Uzbekistan. There are only some particular rules integrated in the general system of criminal law. There are no specific courts with the 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 the general jurisdiction.

The government is working with the UNICEF on the draft law on juvenile justice. While finalizing the drafting of the present report in October 2007, this law is not still passed in Uzbekistan. Besides that, the UNICEF has proposed to the Uzbek government creating a specialized court for juvenile justice in Uzbekistan but the Uzbek government did not respond to this proposal yet.<sup>76</sup>

#### **a) 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 CC also sets 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 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 crimes;
- the minimum age of criminal responsibility for all other crimes is 16 years old.

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 adolescents of 13 or 14 years of age risk harsh penalties.

#### **b) Legal sanctions that may be taken against a child offender**

The first paragraph of article 86 of the Criminal Code states that: "When inflicting a penalty on 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 salary),
- penitentiary/correctional works,
- arrest<sup>77</sup> (from 1 to 3 months),
- deprivation of liberty.

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<sup>76</sup> This information is available on the Uzbek ministry of justice's website.

<sup>77</sup> Arrest is a punishment like deprivation of liberty with particular conditions that are stricter and harsher.

A minor may be sentenced to correctional works if s/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, bearing in mind that it should be close to the minor's home.

## **7.2. Grounds and time limit of detention**

Minors are detained on the same grounds as adults. 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 of the Criminal Procedural Code and "in exceptional cases, when charged with a crime intentionally committed that may be followed by imprisonment for a term exceeding five years, and when other preventive measures may not provide for the proper behavior of the defendant" (article 558 of the Criminal Procedural Code). The maximum time period for pre-trial detention is three months (article 245 of the Criminal Procedural Code) but can be extended by 5 months by the regional public prosecutor, by 7 months by deputy general prosecutor of Uzbekistan and by 9 months by the general prosecutor of Uzbekistan (possibly amounting to an ultimate maximum of 12 months).
- 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:

to those who committed crimes between the ages of 13 and 16 years old, the duration of deprivation of liberty is up to 10 years and, in case of especially serious crimes, up to 12 years;

to those who committed crimes at the age of 16 to 18 years old, the duration of deprivation of liberty is up to 12 years and, in case of especially serious crimes, up to 15 years.

## **7.3. Places of detention**

As mentioned in the precedent paragraph, deprivation of liberty can happen before or after the conviction.

Before the conviction, children can be sent into investigation solitary confinement cells that are on police premises.

Following conviction, juveniles shall be detained in educational colonies, separately from adults. Educational colonies are divided into 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.

## **7.4. Conditions of detention**

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 a strong impression that conditions of detention are not in accordance with international standards. This is reinforced by the existence of cases of unregistered detentions.

**a) Separation from adults**

Despite that the law requires children to be kept separately from adults (articles 228 and 558 of the Criminal Procedural Code), this is generally not the case. This often leads to negative influence on the child's behaviour or abuse by adult inmates.

**b) Living conditions and treatment of child detainees**

In police premises, the cells are overcrowded, have insufficient lighting, no ventilation, and no heating. Children are frequently abused.

Educational colonies are known to be poor in Uzbekistan; particularly they are overcrowded (contrary to adults, children do not have the right to a single room, after having committed especially grave crimes).

According to the results of confidential conversation with an inspector on minors of Karshi city, in 2006 – 2007 more than 23 children were placed in centres of temporary detention of the police station, of whom 19 children were aged less than 13, others less than 15, and only for 4 of them the rule of presence of parents and teachers was respected.

*Testimony of a boy detained in the Zangiota colony:*

*They are around 50 children living in the same room. They have to clean their room themselves. The food is monotonous and most of the children complain of being constantly hungry. Every Saturday, priests from the Orthodox Church visit the colony. At first these visits were accompanied by the officials of the colony, then after the priests gained their trust, the officials*

*left the children alone with visitors from the church. However, Muslim children are not allowed to pray daily.*

*When asked about privacy, the interviewees did not know the meaning of this concept. The common bedroom is equipped with 50 beds with a bedside table by each one. There are no rooms with locks and no other possibility for privacy. Furthermore, the written communications of the juvenile prisoners are subjected to official censorship. If the administration dislikes the content of a letter it will not be delivered.*

*According to the interviewee, most of the children in the colony were tortured during investigations. In the case of the interviewee, he was threatened by militia officers with physical violence if he would not take the blame for a murder which took place in January 2003. There were other boys who were more badly tortured. The interviewee stated that militia officers tried to avoid leaving any signs of torture on the body during his detention. For example, they placed two books on his head and proceeded to beat the books with a hammer. Also one boy was reportedly put in a safe and then militia officers hit the safe with metallic sticks.*

*In the colony, it was reported that one boy who forgot to iron his trousers was forced to put his own trousers on his face in front of everyone as punishment. Beatings are also regular. And as punishment the prison administration frequently uses labor duties. Forced labor is widely used in juvenile prisons, which shows a clear contradiction to the UN Rules on the Protection of Juveniles Deprived of their Liberty.*

*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.*

*Children are also frequently placed in solitary cell called "karcer". This cell contains a chair made of concrete and the bed is locked to the wall. At night, a guard is supposed to come and unlock the bed. However, there are reports that this has not happened. The temperature in this*

*cell during the winter is colder than outside. Administrators of juvenile prisons constantly beat children and use obscene language in their regard.*

## **7.5. Infringement of basic legal safeguards during child arrest or detention**

### **a) Legal procedure applicable**

In the absence of a real juvenile justice system, there is at least Chapter 60 of Section 13 of the Criminal Procedural Code which states principles with respect to criminal proceedings regarding minors during the investigation, when juveniles are arrested and in police custody, when they are brought 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 of the Criminal Procedural Code). And the maximum time period for police custody is 72 hours (the same time period for adults and children). One of the main legal guarantees is the legal representation and/or assistance. The legal representation is mandatory during all the stages of the procedure in cases involving juveniles - questioning, accusation, hearing, etc. (articles 549 and next of the Criminal Procedural Code). The minor can retain the defence counsel of her/his 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 of the Criminal Procedural Code).

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 of the Criminal Procedural Code). Before the trial, measures of restraint may be imposed on juvenile suspects. The minor will then be committed under the supervision of parents, guardians, curators or heads of specialized juvenile institutions (article 555 of the Criminal Procedural Code). If the juvenile may not remain at the place of a 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. Another measure of restraint could be pre-trial detention but only in exceptional cases according to the law (and even the practice).

### **b) Practice**

Cases of arbitrary arrest and detention without grounds are regularly reported. Motivation for arrest and detention is often lacking. 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.

In addition, it is not rare that some basic guarantees are infringed during the different stages of the proceedings. Regarding the right to a legal assistance, a legal counsel can be provided in case the juvenile cannot afford one. However, in practice, lawyers are reluctant to defend children because the State only remunerates them with 600 sums (approx. 0,5 USD) for protecting children. 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.

### **Cases:**

→ In January 2007 in Khazorasp town of Khorezm region the chief of the local neighborhood police station O. B. Matniyazov have interrogated minor K. Olimov, 14 years old, without the presence of his parents and a teacher. The interrogation lasted for five hours as a result of which K. Olimov have testified against his friends who were suspected of theft. K. Olimov was forced to testify against his friends through psychological pressure used by the police agents who threatened him with imprisonment if he did not give the names.

→ On September 11 2007 two minors U. Khalilov and B. Karimov, both 14 years old, from Jizzakh region of Uzbekistan, were stopped by the police in Mirzo Ulugbek subway station in Tashkent city. The police told them they should follow to the police station in order to check their personal identities. In the police station both U. Khalilov and B. Karimov were interrogated for 6 hours. They were threatened with imprisonment and beatings during interrogation. As a result, the minors confessed in committing petty theft. The police did not call their parents or guardians to be present during the interrogation but only after the confession.

Moreover, Commissions on Minors' Affairs and prevention inspectors which are in charge of prevention of juvenile delinquency and should act towards children in need of care, children with antisocial conducts, and deal with the rights and interests of children and rehabilitation of children socially marginalized mainly work in partnership with the mahalla committees. This remains a very rudimentary structure which, contrary to its primary purpose, is easily subject to abuses. In this framework, arbitrary arrests and incommunicado custody are frequent. Torture and other cruel, inhuman or degrading treatment or punishment is not rare.

## **8. Remedy and redress granted to child victims**

Despite article 67 of the Family Code<sup>78</sup> that allows a child of 14 years old and up to file a complaint 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 which thus remains pure theory. Moreover, there is no information about appropriate contacts in case of abuse, and abuse "help-lines" do not exist within the country.

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. State agencies dealing with children prefer not to interfere in family matters and seldom resort to deprivation of parental rights in cases of violence against children (articles 83-94 of the Family Code).

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<sup>78</sup> Article 67 of the Family Code (The right of the child to protection) reads as follows:

The child shall have the right to protection of his rights and legitimate interests.

Protection of the rights and legitimate interests of the child shall be carried out by parents (or persons replacing them), and in the cases stipulated by the present Code, by organ of trusteeship and guardianship, the public procurator and court.

The minor recognized according to the law completely capable before achievement of his majority, shall have the right to carry out independently the rights and duties, including the right to protection.

The child shall have the right to protection against abuses from his parents (or persons replacing them).

At infringement of the rights and legitimate interests of the child, including at non-performance or an inadequate performance by parents (or one of them) of duties to educate, upbringing the child or at abusing of parental rights, the child shall have the right to address independently the organ of trusteeship and guardianship, and upon achieving the age of fourteen years – address the court.

Persons who knew about a threat on the life or health of the child, about infringement of his rights and legitimate interests, shall be obliged to inform the organ of trusteeship and guardianship at place of actual residence of the child. Upon receiving such information the organ of trusteeship and guardianship shall be obliged to take necessary measures for protection of the rights and legitimate interests of the child.

## **RECOMMENDATIONS**

### **Recommendations on the general situation:**

#### **Statute of the international instruments in the domestic legislation:**

1. The Supreme Court should issue a binding ruling giving effect to the Preamble of the Constitution [and similar provisions in the Criminal Code, the CPC and other Uzbek laws], according to which international law prevails over domestic law. The Supreme Court should, in this ruling, instruct the lower courts [all lower courts] to always consider the compatibility of any action or inaction on the part of any official, and/or of any rules or procedures, with the international obligations of the Republic of Uzbekistan.
2. "Internal" rules, guidelines, instructions and regulations which affect the criminal justice process should be made public and accessible, at least to the legal profession.

#### **Incrimination of torture in the domestic legislation:**

1. The State party should appropriately incriminate the acts of torture and include a definition of "torture" in the Criminal Code fully consistent with the definition of Art. 1 of the CAT.
2. Criminal investigations should only be carried out by the Ministry of Internal Affairs (i.e. police). Other agencies, including the National Security Service, should be able to submit information to the police, and should work with the police but they should not themselves be responsible for investigations. In the same manner, the Prosecutor's Office should not have its own, independent investigating competence. The main role of the Prosecutor's Office in the criminal proceedings should be to prepare a case for trial after the pre-trial investigation, and to represent the State at trial.

#### **Safeguards for detainees:**

1. The State party should stop the practice of requiring detainees to write a letter "explaining" the reasons for their arrest and the circumstances of arrest, immediately after they have been taken to a police station and before they have had any chance to see a lawyer, as both undermine their right to a fair trial and can be used to cover up improper police actions.
2. A protocol of detention should fix an actual time of arrest of a detained person, not the time when he was brought to the IVS. This rule should be stipulated in the Criminal Procedural Code. The Code should also stipulate the right of the person arrested to call his relatives as soon as possible after the arrest.
3. The State party should ensure that all persons detained are guaranteed the right to contact their families and have immediate access to independent medical doctor and legal counsel from the very outset of their deprivation of liberty.
4. All persons admitted to a pretrial detention custody should immediately upon admission be subject to a routine medical examination. The doctors in charge of these examinations should be under the responsibility of the Ministry of Health. They should be given in-depth, proper training in forensic matters, and in particular in how to detect injuries and trauma resulting from torture and similar ill-treatment. They should record any allegation of physical and mental ill-treatment together with any sign and symptom found in a medical report. They should retain their own copy of this record, and include another copy in the single custody record.

5. When a lawyer comes to a police station at the request of a detainee or at the request of relatives of a detainee, he should be given immediate access to the detainee without first having to obtain written confirmation that he is acting for the detainee and without a need for permission from the inquiry officer or investigator. It should at this stage suffice that the lawyer identifies himself as an advocate properly admitted to the Advokatura.
6. Only a judge should be permitted to order pre-trial detention [*habeas corpus* institution is entering into force in Uzbekistan in January 2008]. If the judge orders that a person be kept in pre-trial detention that person should be transferred to a SIZO [pre-trial detention facility] within 24 hours: it should not be lawful to continue to detain such a person in a cell of temporary detention [IVS] beyond this time.
7. A special Law “On experts conclusion” should be adopted. This law should secure the right of the defense to independently request experts conclusions on relevant matters. This new rule should be stipulated in the Criminal Procedural Code.
8. The State party should take necessary steps to reduce the number of persons in pretrial detention as well as the duration of such detention. The pretrial investigation should be carried out within a reasonable period of time.
9. The clause in Art. 7 of the Law “On guarantees of advocate’s activity and social protection of advocates”, which stipulates the right of an advocate to receive a written confirmation of his access to the case, should be annulled.
10. Part 1 of Art. 52 of the Criminal Procedural Code should be amended according to part 2 of Art. 8 of the Law “On guarantees of advocate’s activity and social protection of advocates”, which stipulates the right of an advocate to receive copies of the materials of a case.
11. Take effective measures to adopt a law on access to free legal aid in order to ensure appropriate protection and access to the legal system for persons without resources

Detention and places of deprivation of liberty:

1. Comprehensive individual and statistical information should be compiled as a matter of routine on all aspects of the Uzbekistan criminal justice system. General statistics and analyses should be published on a regular basis. The detailed data should also be made available to *bona fide* national and international researchers. Uzbekistan should be given support in the development of mechanisms and methodologies for the compilation and analysis of such statistics from international experts with specific experience in statistics relating to police and criminal justice matters. (Already requested by the HRC in 2001 and 2005 (CCPR/CO/71/UZB – paragraph 21 – not implemented)
2. CCTV camera systems should be installed in police stations, and in all custodies of pre-trial detention to monitor who visits a detainee, or what happens in the corridors and stairwells of the station. The screens should be visible at all times to the duty officer.
3. Officials of the General Prosecutor’s Office should significantly increase the number and thoroughness of their inspections of police stations and pre-trial detention custodies. They should regularly report in detail on those visits. These reports should be made public.
4. Improve conditions in prisons and pre-trial detention centres and establish system allowing for unannounced inspections of those places by credible impartial investigators, whose findings should be made public. (Already requested by the CAT in 2002 (CAT/C/CR/28/7 – paragraph 6 – not implemented).

#### Training:

1. All professionals involved in the criminal justice system in Uzbekistan [judges, procurator/prosecutor, investigators, inquiry officers and lawyers] should be thoroughly trained, on an on-going basis, on international human rights law.
2. The *Advokatura* [the Bar] should be reinforced so as to be more in line with the proposals contained in the *Draft Law on the Advokatura*, to make it more independent and better qualified to serve the interests of clients, and of justice at large, and to enhance its procedural rights and status in the criminal justice process generally.

#### Investigations and impunity:

1. Allegations of torture or ill-treatment should be systematically investigated by the appropriate (and independent) body. Any official involved should be suspended until the end of the investigation.

#### Protection of witness:

1. A summons to appear as a witness, issued to someone who is already formally recognized as a suspect, or who should be so recognized, is unlawful and therefore invalid, and any information obtained from such a person under questioning should be inadmissible in evidence against him because it was unlawfully obtained. This should be enacted in the Criminal Procedural Code.
2. Consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected. Measures specific to the protection of witnesses such as "Witness incognito" should be established and be stipulated in the Criminal Procedural Code.
3. The Criminal Procedural Code should stipulate the right of the witness to have access to a lawyer /legal counsel during interview and other procedural measures requiring his participation.

#### Compensation and rehabilitation of victims of torture:

1. An effective and simple system for redress and rehabilitation of the recognized victims of torture should be established.
2. A program for the protection of the recognized victims of torture from the perpetrators should be established.

#### Use of evidence obtained through torture:

1. The State party should enact in its domestic legislation that any statement which is established to have been obtained as result of torture shall not be invoked, either directly or indirectly, as evidence in any proceeding.

## **Recommendations on women's rights situation :**

### **Legal measures**

1. Adopt a comprehensive Law on domestic violence, including psychological violence.
2. Adopt a Law on trafficking in women giving a definition of trafficking according to the UN Convention for the Suppression of the Trafficking in Persons. Ratify the UN Optional Protocol to Suppress and Punish Trafficking in Persons.
3. Revoke the legal provision in the Administrative Code (Article 190) allowing for the criminal prosecution of victims of forced prostitution.
4. Revise Uzbek legislation on violence against women, inter alia by introducing in the Criminal Code the crime of attempted rape and bride kidnapping and by providing for ex officio prosecution of sexual violence, trafficking and domestic violence.
5. Set up mechanisms of legal support and protection to the victims of domestic violence and trafficking, and promote them among women and professionals.

### **Training**

1. Organize training for police officials in charge of receiving women victims of violence in order to make them aware that rape, domestic violence and trafficking are considered as crimes under the law and avoid their dissuading women victims of domestic violence from denouncing the families and companions.
2. Organize training for lawyers, in order to allow them to assist victims of domestic violence and other forms of gender-based violence.
3. Involve local NGOs in the design and conduct of training programmes on gender-based violence.
4. Introduce a compulsory course on the problems of gender-based violence in the curricula of medical institutes and police academies. This course should provide training on the administrative handling of victims' testimonies and first aid actions.

### **Other measures**

1. Promote gender equality at all levels of society.
2. Ensure legal support, protection and rehabilitation to women victims of violence in all its forms in order to persuade them to denounce the violence suffered.

## **Recommendations on child's rights situation :**

The NGOs recommends the State of Uzbekistan to:

### **Child abuse and neglect :**

1. Adopt specific legislation on domestic violence, particularly providing a definition of domestic violence and consider domestic violence as a criminal offence;
2. Carry out effective public-awareness campaigns and adopt measures to provide information, parental guidance and counselling with a view, inter alia, to preventing violence against children;
3. Carry out systematic training and awareness campaigns at the national and local level addressed to all professionals working with and for children, as well as the Mahalla Committees on prevention of ill-treatment and neglect of children within the family, in schools and in institutions;
4. Establish an effective system for the reporting of child abuse and neglect and provide training for professionals working for and with the children on how to receive, monitor and investigate complaints in a child-sensitive manner, and how to bring the perpetrators to justice;
5. Ensure access to counselling for all victims of violence as well as assistance for their recovery and social reintegration.

### **Corporal punishment :**

1. Prohibit corporal punishment by law in institutions and the family and ensure that legislation is properly enforced in schools and institutions, and complied with in the family;
2. Carry out public education campaigns about the negative consequences of ill-treatment of children in order to change attitudes about corporal punishment, and promote positive, non-violent forms of discipline in schools, in institutions and at home.

### **Torture and other forms of ill-treatment :**

1. To undertake systematic training programmes at the national and local level, addressed to all professionals working with and for children (see paragraph 18 (b)), and the Mahalla Committees, on prevention of and protection against torture and other forms of ill-treatment;
2. To investigate the allegations of torture and ill-treatment of persons under 18, and take all measures to bring the alleged perpetrators to justice;

### **Economic exploitation/child labour :**

1. To take all necessary measures to ensure that the involvement of school-age children in the cotton harvesting is in full compliance with the international child labour standards, inter alia in terms of their age, their working hours, their working conditions, their education and their health;
2. To ensure regular inspection of the harvesting practice to monitor and guarantee full compliance with international child labour standards;
3. To establish control mechanisms to monitor the extent of all other forms of child labour, including unregulated work; address its causes with a view to enhancing prevention; and, where

children are legally employed, ensure that their work is not exploitative and is in accordance with international standards;

**Sexual exploitation and trafficking :**

1. Train law-enforcement officials, social workers and prosecutors on how to receive, monitor and investigate complaints, in a child-sensitive manner;
2. Increase the number of trained professionals providing psychological counselling and other recovery services to victims;
3. Develop preventive measures that target those soliciting and providing sexual services, such as materials on relevant legislation on the sexual abuse and exploitation of minors as well as on education programmes, including programmes in schools on healthy lifestyles.

**Juvenile justice :**

1. Establish juvenile courts staffed with appropriately trained professional personnel;
2. Take all measures to ensure that detention, including pre-trial detention, is used only as a measure of last resort, and not in the case of status offences;
3. Ensure that persons under the age of 18 in custody are separated from adults;
4. Take urgent measures to improve the conditions of detention of persons under the age of 18, and bring them into full conformity with international standards;
5. Strengthen recovery and reintegration programmes and train professionals in the area of social recovery and social reintegration of children;
6. Introduce training programmes on relevant international standards for all professionals involved with the administration of justice;