

## Appendix # 1

### Legal and institutional framework for human rights in Uzbekistan

Status of ratification of international human rights treaties by Uzbekistan

Reporting cycle (D = due / S = submitted / E = examined)

	Entry into force	Initial report	Second report	Third report
<b>ICERD</b>	28/10/95	D 10/96, S 12/99 <sup>1</sup> , E 08/00	D 10/00, S 03/05 <sup>2</sup> , E 03/06	D 10/08 <sup>3</sup>
<b>ICCPR</b>	28/12/95	D 12/96, S 07/99, E 03/01	D 04/04, S 04/04, E 03/05	D 04/08
<b>OP1 CCPR</b>	28/12/95			
<b>OP2 CCPR</b>	No action			
<b>CESCR</b>	28/12/95	D 06/97, S 04/04, E 11/05	D 06/10	
<b>CAT</b>	28/10/95	D 10/96, S 02/99, E 11/99	D 10/00, S 11/00, E 05/02	D 10/04, S 07/05, E 11/07
<b>OP CAT</b>	No action			
<b>CEDAW</b>	18/08/95	D 08/96, S 01/00, E 01/01	D 08/00, S 10/04, E not yet	D 08/04, S not yet
<b>CEDAW OP</b>	No action			
<b>CRC</b>	29/07/94	D 07/96, S 12/99, E 10/01	D 07/01, S 02/05, E 05/06	D 07/10 <sup>4</sup>
<b>CRC OP1</b>	No action			
<b>CRC OP2</b>	No action			

### Preliminary Observation of international obligations of Uzbekistan

There are many credible reports of egregious human rights abuses in the criminal justice system in Uzbekistan, including arbitrary arrests and detention, through extensive use of torture to obtain confessions, unfair trials leading to convictions based on such confessions. Uzbekistan has been condemned for such abuses in strong terms by the UN Human Rights Committee established under the UN International Covenant on Civil and Political rights (ICCPR) and the Committee Against Torture established under the UN Convention Against Torture (CAT). Uzbekistan was visited by the UN Special Rapporteur on Torture in 2002 who found the practice of torture in the country as systematic.<sup>5</sup>

International obligations of Uzbekistan derive from many different scopes: treaties (including ICCPR and CAT), other instruments, OSCE commitments, case-law, commentaries, etc. The rules and practices relating to the situation with torture and similar ill-treatment in Uzbekistan are intricate. The Uzbekistan Criminal Procedure Code (CPC) contains almost 600 articles,<sup>6</sup> is supplemented by many additional rules and regulations (although many of these rules and regulations are not publicly accessible) and in many respects relates to other laws.

<sup>1</sup> First and second report submitted jointly.

<sup>2</sup> Third, fourth and fifth report submitted jointly.

<sup>3</sup> Seventh and eighth report will be submitted jointly.

<sup>4</sup> Third and fourth report will be submitted jointly.

<sup>5</sup> See the Report of the Special Rapporteur on the question of torture, Theo van Boven submitted in accordance with Commission resolution 2002/38, 3 February 2003, E/CN.4/2003/68/Add.2.

<sup>6</sup> The CPC has 581 numbered articles, but one article (art. 497) in fact consists of 18 articles (art.497-1 to 497-18), added later, making for 598 articles in all.

Uzbekistan acceded to a number of international human rights treaties which contain provisions and guarantees impacting directly on the situation with torture. The most important of these treaties are the UN International Covenant on Civil and Political Rights (1966) and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984).

Both treaties were ratified by Uzbekistan on 28 September 1995; they entered into force with respect to Uzbekistan on 28 October and 28 December of that year respectively. It should be stressed that the matters stipulated in these treaties had to be complied with *in full* at least from those dates. Unlike its sister-treaty (the International Covenant on Economic, Social and Cultural Rights or ICESCR), the ICCPR is not to be gradually implemented but is to be fully adhered to by any State ratifying it from the date on which it enters into force for that State. This must urgently result in the bringing into line of the Uzbekistan Criminal Procedure Code – and of the practices under the CPC – with these international instruments.

When acceding to the CAT Uzbekistan did not make declarations under art. 21, recognizing the CAT's competence to receive interstate complaints, and art. 22, which would authorise the CAT to receive individual complaints from alleged victims of torture in Uzbekistan.

Uzbekistan is a member State of the Organization for Security and Cooperation in Europe (OSCE). The obligations deriving from the ICCPR and CAT are furthermore strongly reinforced by a lot of OSCE commitments. Unlike the treaty obligations arising from ratification of the ICCPR and CAT, the OSCE commitments are not as such legally binding. However, this does not mean that they are not binding at all. Non-compliance (or partial or defective compliance) with the OSCE commitments, which in many aspects reiterate and reaffirm the above mentioned treaty obligations, therefore entail violations of a State party's political obligations.

All the above mentioned documents are available in Russian while most are moreover included in Uzbek in various compilations prepared and distributed by the National Human Rights Center of Uzbekistan.

### **Legal provisions relevant to human rights**

Before discussing the main features and defects of the legal provisions of Uzbekistan relevant to the practice of torture it is important to note a preliminary issue which has a direct bearing on the matters addressed in this report: the status and invocability of international legal rules and standards in the domestic Uzbekistan courts.

The Preamble of the Uzbek Constitution suggests that the Uzbek law gives precedence to international law over national law by stating 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 CPC also contain provisions which suggest that international standards override national ones. However, in practice these provisions appear to have little or no effect: they are seen as mainly of an inspirational nature, as an expression of a desire on the part of the legislator to conform to international standards. They do not appear to result in Uzbekistan adopting truly „monist” system in which „directly applicable” provisions of international law are directly applied, by all domestic courts and indeed given supra-statutory status in the domestic legal system. They do not even appear to lead to international standards being invocable in the domestic courts (as can be done, and often is done, in the vast majority of European states, including Russia). In Uzbekistan, defence lawyers do not invoke these provisions in court to challenge practices which arguably contravene international standards, and procurators and judges are not equipped to respond to such appeals and would be likely dismiss them cursorily.

While the monist approach cannot provide a remedy to resolving all problems (it cannot create institutions where these do not exist, for instance), the Uzbekistan legal provisions in question could be

used as a means to resolving many conflicts between domestic Uzbekistan law and practice and international standards to which Uzbekistan has signed up.

A number of Uzbek legal provisions are relevant to the practice of torture and similar ill-treatment. The most notably are:

- Art. 26 part 2 of the Constitution prohibits torture and other cruel or degrading treatment
- Art. 235 of the Criminal Code of Uzbekistan establishes criminal sanctions for subjecting a person to torture or similar ill-treatment by a law enforcement official
- 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 also all individuals participating in criminal procedures, to act in accordance with and fulfil all requirements of the Constitution of Uzbekistan.
- The CPC warns that any deviation from full compliance and fulfilment of laws for any reason constitutes a violation of the obligation of legality of criminal procedure and may lead to applicable responsibility including criminal sanctions.
- According to part 18 of the Uzbek Supreme Court Resolution # 17 from 19 December 2003 “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 9 of the above mentioned Resolution of the Uzbek Supreme Court 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 19 of Supreme Court Resolution # 17 says, “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”.

### **Criminal justice system of Uzbekistan**

Criminal justice system in Uzbekistan is in many respects still based on the previous Soviet system. This means that there is a thorough and lengthy pre-trial investigation, under complete control of the Public Prosecutor’s Office, followed by a trial presided over by a judge, during which the case against the defendant is again supposed to be fully examined in order to ascertain the whole, „objective truth”. In other words the trial is not limited to a contest between two parties, prosecution and defence with the judge largely acting as master of procedure only. It also means that as in all traditional inquisitorial systems the accused is largely an object of the investigation, especially pre-trial.

The criminal justice system also suffers from a number of other structural defects: a lack of clear, public rules – with many rules governing important matters (such as a detainee’s access to a lawyer) being contained in so called „internal”, unpublished regulations; excessive discretion; a lack of transparency generally; a lack of professionalism on the part of the law enforcement officials; a marked „automaticity” of the system – which stands for a working assumption on the part of officials that persons once caught up

in the criminal justice process (as arrestees/suspects) should continue to be „processed”, with the result almost inevitably being conviction and sentence; corruption.

The CPC would appear to be very detailed, but many of its provisions are couched in very broad terms, or contain „escape clauses” couched in such terms. Furthermore, the application of these provisions in practice is subject to a great many more detailed rules and regulations. The „first-line” law enforcement officials operating the system tend to rely more on these subsidiary rules and regulations rather than on the provisions of the CPC. Indeed, such officials tend to look almost exclusively at those rules and regulations rather than at the law, even in cases in which the statutory rules would seem to be clear. Crucially, these rules and regulations are rarely accessible to persons other than the officials operating under them – they are usually not published or otherwise made available to suspects or defendants or their lawyers. Such unpublished rules do not constitute „law” in the sense in which that term is used in international human rights instruments (e.g. ICCPR): under those instruments, rules can only be considered „law” if they are (a) sufficiently precise and (b) readily accessible to the persons affected and their lawyers.

The vagueness of the primary rules, coupled with the secrecy of the secondary rules, means that the way in which the law is enforced in individual cases is largely discretionary. Investigators, custody and inquiry officers and procurators can and often do impose restrictions on the certain rights – such as the right of access to a lawyer, or the right to a medical examination – 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 fashion. Since the rules on which they base these restrictions and responses are not disclosed, such actions are well-nigh impossible to challenge. At best, the actions of lower officials can be reviewed by more senior officials – but the latter merely substitute their discretion for the discretion of their inferiors.

The lever at which operation of the rules in practice is monitored and subject to public scrutiny is not known. Official review bodies (regulators, public account bodies, governmental and quasi-governmental supervisory bodies), bodies otherwise involved with criminal justice (probation services, social welfare, child protection, schools and etc.) as well as non-governmental bodies and academics – they all rely on detailed and reliable statistical information on how certain provisions of criminal justice are applied in practice. Such information in Uzbekistan is almost invariably for „internal use only” and not made available to the general public, or to outside bodies – or to such researches. If any such statistics are made available to outsiders, this is on entirely discretionary basis. In the absence of reliable academic input and research the reliability of any statistics that might be made available would furthermore remain in doubt.

The quality of too many of the professionals working in the criminal justice system in Uzbekistan is still too low. Judges, procurators and lower officials are underpaid and under-resourced, which encourages corruption. While both basic training and post-qualification training for legal and other professionals working within the system is provided for, this training is still, in many ways, old-fashioned and under-structured, and therefore ineffective. It also fails to fully cover international legal standards, professional managerial capabilities and high ethical behaviour.

A serious problem arises in respect of ordinary police officers and operatives. The force relies excessively on confessions and statements from suspects. Rather than first looking for forensic evidence, and focussing on building up a case before making arrests, there is a tendency to „round up the usual suspects” or just arrest anyone deemed vaguely suspicious who is found near a crime, beat them – often most severely – to extract statements and confessions – true or otherwise – and proceed to build a case on the basis of such evidence. In political, terrorist or otherwise sensitive cases, there is even more abuse, and even more widespread use of torture. These abuses are, in part, caused by the weaknesses of the force: by the lack of professionalism in preserving and collecting of evidence at the crime scene, and from witnesses; by the insufficiency of forensic capabilities and training; by the low quality of ordinary officers and operatives; and by the underdeveloped managerial capabilities of more senior officers.

There is in the criminal justice system as operated in Uzbekistan at present a marked „automaticity”. The system appears to operate on the basis of assumption that a person, once arrested should be detained and charged; that a person, once charged should be sent for trial; and that a person, once sent for trial should

be found guilty. This automaticity is strongly re-enforced by the way in which law enforcement officials were assessed: if a person who had been arrested was subsequently released without charge, this would be regarded as a seriously „bad indicator” with regard to the work of the officer who arrested the person and etc. down the way along the system. It is clear that the percentage of persons who are released without charge is minimal; that the percentage of persons charged who are not sent for trial is nil or very close to nil; and that acquittals are an extreme rarity.

Corruption is widespread in the organs and agencies in the criminal justice system of Uzbekistan. Judges and procurators, lower officials and lawyers are all underpaid and under-resourced. Reform of the CPC on paper will not work as long as corruption within the criminal justice system is not addressed. A particular form of corruption within the body of advocates is the phenomenon of „pocket advocates” – that is of advocates who act, not in the interests of suspects or accused, but in corrupt cohort with inquiry officers, investigators and procurators.

Pre-trial criminal justice system in Uzbekistan involves a range of different investigating- and prosecuting officials, belonging to a number of different organs of State. The most important of those organs are the Public Procurator’s Office, the Ministry of Interior (or MVD), and the National Security Service (or SNB). The ordinary uniformed police fall under the MVD. Which official, from what organ, is in immediate charge of a pre-trial investigation depends on the nature of the case and kind of offence under investigation, and on the stage of the investigation. In broad terms, the Public Procurator’s Office is mainly involved in the pre-trial process in a supervisory capacity – but its tax fraud investigation branch is more directly involved in cases related to tax, and procurators may also otherwise take a more immediate interest in a case, if the case raises serious or sensitive issues (e.g. murder). SNB deals with crimes against the State and other cases touching on matters of national security or raising sensitive political issues (e.g. terrorism or Islamic fundamentalism, corruption, organized crime and narcotics). The MVD deals with ordinary criminal cases.

Inquiry officers belonging to inquiry agencies are in charge of the initial preliminary investigation or any reported offences. Apart from the MVD (police) there are also inquiry agencies in the Public Procurator’s Office tax fraud investigation branch and in the SNB; and there are further inquiry agencies in some other organs of State, such as the military, the penal system and the fire-brigade (which also fall under the MVD), customs, and border guards (which falls under the SNB).<sup>7</sup> Each inquiry agency can initiate a criminal case if the matter in question falls within its jurisdiction; if the matter does not fall within its jurisdiction, it must pass the case on the inquiry agency of the organ within whose jurisdiction the case does fall.<sup>8</sup>

Investigations are carried out under the authority of separate officials, investigators, belonging to investigation directorates. Again apart from the police (the MVD), there are also investigation directorates in the offices of the regional, city and district procurators, as well as in the SNB.

Inquiry officers and investigators make use of so-called „operatives”, i.e. lower-ranking personnel, to carry out operational activities as directed, such as searches or the collecting of forensic samples. The large number of different agencies with investigation powers, and the multitude of officials from such different agencies, tend to make the criminal justice system not transparent, with unclear lines of supervision and control.

Investigators and inquiry officers are subject to the oversight of the procurators who also 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 of all who are guilty, but they must equally ensure that no-one is prosecuted without due cause, and that no innocent person is convicted. And they must ensure that all organs of State involved act 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

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<sup>7</sup> Art. 38 of the CPC.

<sup>8</sup> Art. 39 of the CPC.

<sup>9</sup> Art. 33 of the CPC.

proceedings, arraigned against the other party, the defendant, as is the prosecutor in the accusatorial common-law systems.

There are problems with the role of Public Procurator's Office. In practice, procurators are closely linked to the executive branch power. In the context of the criminal justice process too, the Public Procurator's Office still acts too often as an arm of the Executive that as an independent, quasi-judicial organ. In addition there is a problem of corruption. Since the procurators are without doubt the most powerful officials involved in the criminal justice process, more powerful in many ways than judges, they are most likely to be the main target for attempts at bribery or other forms of corruption.

The Uzbek Constitution stipulates that the rights and freedoms of the citizens are inalienable and can be restricted by the courts, and that every citizen has the right to challenge acts or decisions of any public authority in court.<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 both Uzbekistan's own constitutional provisions and to international law – crucial matters affecting the liberty and other rights of individuals in the pre-trial phase of the criminal justice process are not subject to contemporaneous judicial control. Under the law as it stands, the first involvement of the judiciary in the criminal justice process is at the very end of the pre-trial investigation. In practice, at this stage, the courts fail to rigorously examine allegations that the accused was ill-treated or tortured, or otherwise denied his or her legal rights, in the pre-trial phase; and that more generally they fail to always act in the independent and impartial manner.<sup>12</sup> One reason for that is that the appointment of judges at all levels is largely determined by the President, and that they are all appointed from the relatively short period of five years only.<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 interests of clients, and of justice at large, and to enhance their procedural rights and status in the criminal justice process generally. 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, independence and integrity of the profession. Here it may suffice to note three matters. Firstly, while there are independent advocates, willing to stand up for their clients' interests, there are also so called „pocket-advocates”, who act not in the interests of their clients, but in corrupt cohort with investigators and procurators. This phenomenon seriously undermines the integrity of the criminal justice process. Secondly, the rights of advocates are in many instances effectively circumscribed by unpublished, internal regulations and discretionary actions by inquiry officers and investigators which are subject to appeal to higher official and ultimately procurators, not to the courts only. Thirdly, there is a need for further, continued post-qualification training of advocates, also in international standards: at present, there is no institutional provision of such training.

It is not the purpose of this document to address all the wrongs in State institutions in Uzbekistan. However, the above-mentioned issues must be taken into account in any review of the legal and institutional framework of the human rights situation in Uzbekistan.

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<sup>10</sup> Articles 19 and 44 of the Constitution of the Republic of Uzbekistan.

<sup>11</sup> Art. 2 of the Law on the Courts, December 2000.

<sup>12</sup> This is in spite of the fact that art. 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”.

<sup>13</sup> Articles 63 (1-4) and 63 (5) of the Law on the Courts.

<sup>14</sup> Articles 67-74 of the Law on the Courts.