

EXPERT WORKING GROUP (EWG), TASHKENT, UZBEKISTAN**FREEDOM OF RELIGION OR BELIEF IN UZBEKISTAN**

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The Expert Working Group (EWG) is a non-governmental, non-commercial network of independent experts in Uzbekistan who focus on studying how law and public interests affect each other. The EWG's main objectives are to: monitor and analyze trends in the interaction of law and public interests; raise public awareness of the meaning of ongoing legal reforms; assist in establishing a local expert community and independent policy groups; and help stimulate free debate and discussion on ongoing reforms among the general public.

This Working Group is invited to examine mechanisms for the investigation of complaints of torture and/or ill-treatment, with a focus on places of detention under police authority. I would like to share our view of how still the risk of torture and/or ill-treatment remains significant during the early stages of detention, and then for some categories of inmates even in prisons in Uzbekistan.

Torture and similar ill-treatment in criminal justice system remained rampant in Uzbekistan during the reporting period. Consistent and numerous allegations concerning systematic use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative personnel or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings continued. Despite introduction of *habeas corpus* beginning 1 January 2008 credible reports that torture and similar ill-treatment commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular access to legal counsel, have been recorded. Evidence obtained under torture have been continuously accepted as a main type of proofs. Except the Resolutions of the Uzbek Supreme Court outlawing evidence obtained under torture no explicit legal ban on the use of such evidence has been introduced. In 2004 Uzbekistan amended article 235 of the Criminal Code in order to incorporate the definition of torture of the Convention against torture into domestic law. However, the definition in the amended article 235 of the Criminal Code restricts the prohibited practice of torture to the actions of law enforcement personnel and does not cover acts by “other persons acting in an official capacity” including those acts that result from instigation, consent or acquiesce of a public official and as such does not contain all of the elements of article 1 of the Convention.

The Uzbek authorities have continued to deny registration and investigation of allegations of torture in the criminal justice system arguing that alleged victims are thus trying to avoid punishment for crimes they have committed. Only on a limited number of cases when an appeal or complaint reporting on facts of torture or similar ill-treatment was officially registered the authorities tend to open criminal cases under articles 205-206 (Abuse of power and official authority), but not under article 235 (Use of torture and other cruel, inhuman and degrading types of treatment and punishment) of the Criminal code. Allegations of torture and similar ill-treatment are not investigated by a fully independent body in Uzbekistan. Such allegations are still handled by the same bodies which have perpetrated torture and similar ill-treatment.

Torture is systematic in the criminal justice system of Uzbekistan. Our studies 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 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.

Overview of the criminal justice system:

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.

- 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 arrests. 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*”.¹ 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 organ 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.² 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*”.³

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.⁴ 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 is only five years.⁵ Although there are guarantees to protect judicial independence,⁶ 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.

¹ See Article 33 of the CPC

² See Articles 19 and 44 of the Constitution of the Republic of Uzbekistan.

³ See Article 2 of the Law on the Courts, December 2000.

⁴ 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”.

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

⁶ See Articles 67-74 of the Law on the Courts.

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 courts⁷.

Definition of torture in the national legislation

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")⁸, reads as following:

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

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

The same conduct, perpetrated:

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

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

*The conduct referred to in the first and second subparagraphs of this article shall, if it results in serious bodily harm or other grave consequences, be punishable by five to eight years' deprivation of liberty and forfeiture of a specified right."*⁹

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 narrower¹⁰

⁷ See http://www.omct.org/pdf/UNTB/2007/UZB_report_UN_CAT_11_2007_eng.pdf for specific cases/examples

⁸ 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."

⁹ 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.

¹⁰ 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,

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 another 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.

Legislative, administrative, judicial and other measures on torture prevention

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.¹¹ However, to date, such a law did not pass.

According to the Third Periodic Report of the Uzbek Government to the UN CAT, “...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 Ministry of Internal Affairs], in conjunction with the Uzbek Bar Association, drew up and introduced Regulations on the procedure for upholding detainees, suspects and accused persons’ right to a defense at the pre-investigative and pre-trial investigation stage so as to protect suspects’ and accused persons’ rights and interests, in particular at the initial stage of the investigation. These give detainees the right to counsel from the moment of the detention (i.e. not more than 24 hours after the detention is effected) and to have a confidential discussion. Accordingly, in every investigation department, there is a legal advice unit with lawyers, on call day and night, available to defend

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.

¹¹ 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.

detainees' rights and interests.”¹² This measure was introduced in response to recommendations (m) the UN Special Rapporteur, Theo van Boven, addressed to the Uzbek Government.¹³

However, according to our study, these Regulations, signed between the Central Investigation Department of the MIA 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.¹⁴

The State Report goes on mentioning that, in order to establish effective procedures for internal monitoring of agents' behaviour, and especially to eliminate recourse to torture and similar ill-treatment, “...the senior management in the National Security Service [the NSS] instructed all units, in 2003, in a written telegram¹⁵, 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”.¹⁶ It should be mentioned that the Inspection of the NSS, a special unit, 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 NSS 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.¹⁷

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:

¹² Ibid §104, page 19 and §197, page 32

¹³ 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”.

¹⁴ For example, the State report mentions, “...pursuant to a Ministry of Internal Affairs [the MIA] 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”.

¹⁵ Telegram # 8/074 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.

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

¹⁷ Ibid.

- 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 MIA or NSS officials, by the Instructions of the senior managements of those two structures. The reasons are that (a) one normally won't have an access to such instructions, and (b) an instruction is not a law, it is more “an internal document”
- Lack of transparency and real public scrutiny in the activity of those new units
- Officials of those newly created units are overload with work– within these units, many positions are held by the law enforcement officials, who are simultaneously and permanently involved in other types of law enforcement job. Therefore, they regard his/her job within the units as a secondary one; in addition, traditionally -since the Soviet period-, in important State organs, working for those units, that is dealing with citizens' complaints and appeals, has been regarded as “not prestigious”.

On February 24, 2004, the Uzbek Government created an Interdepartmental Working Group of the Government of the Republic of Uzbekistan on Prevention of Torture.¹⁸ 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.

The State's jurisdiction regarding the facts of torture and cruel treatment

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 honour.

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,*

¹⁸ The Working Group was created in pursuant to the Decree of the Cabinet of Ministers of the Republic of Uzbekistan from February 24, 2004.

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”.

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

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.

Considerations on the Republic of Uzbekistan rules, instructions, methods and practice of interrogation, detention conditions and treatment of the arrested and detainees

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 non-profit 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 non-profit organizations to detention places.¹⁹

¹⁹ 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 organization 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.

Redress for victims of torture

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.²⁰

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

²⁰ 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.

torture victims. Rehabilitation centers in the administrative centers of each region and district provide assistance to former prisoners in employment, health and re-socialization issues, but do not address specifically the issue of post-torture rehabilitation.

Because the shadow report team do not receive responses to its written inquiries about the number of Uzbek law enforcement officers charged (and punished) with committing acts of torture or similar ill-treatment against persons, we could only rely on and comment official information of the third periodic report of the Government of Uzbekistan. The chart on the number of Uzbek law enforcement officers who were charged with committing torture, does not reveal the real situation.²¹ 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\$ 450,000.²² 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.²³ 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.

Non-admissibility of testimonies, obtained under torture and prohibition that statements made under torture being used as evidence

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.²⁴

In December 2003 and September 2004, accordingly, two Resolutions of the Supreme Court of Uzbekistan were adopted. Those Resolutions explicitly established non-admissibility of

²¹ See Section 184 of the third periodic report of the Government of Uzbekistan to the UN CAT.

²² See Appendix # 2, Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the UN CAT.

²³ See Section 185 of the third periodic report of the Government of Uzbekistan to the UN CAT.

²⁴ See Articles 88 and 92-94 of the Criminal Procedural Code of Uzbekistan.

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 investigation procedural and other legal actions should be taken, including a decision on opening a criminal case against the responsible officials.²⁵

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.

September 30 2009
Warsaw, Poland

²⁵ See Section 19 of Resolution # 19 of the Supreme Court of Uzbekistan.