

## DENIAL OF JUSTICE IN UZBEKISTAN

An assessment of the human rights situation and national system of protection of fundamental rights

A project coordinated by OMCT-Europe and the Legal Aid Society

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*The present Report is the result of an 18 months' project financed by the EU and aiming at capacity building of the Uzbek civil society and in particular of human rights NGOs. Its content, aim and structure were jointly decided by a drafting committee made up of 6 human rights activists from different backgrounds, and based upon material received from the Uzbek human rights organisations, carrying out a difficult job in the sphere of human rights protection, as well as from publications of leading international human rights organisations pertaining to Uzbekistan, such as Human Rights Watch (HRW), the International Crisis Group (ICG), and others.*

*It is an attempt to reflect on a wide range of problems related to human rights violations in Uzbekistan in different areas of social, societal and political life, focusing on the main violations of civil and political rights, as well as to undertake a brief review and critical analysis of the Uzbek legislation regulating human rights protection issues, in particular its effectiveness and capability. Last but not least, the Report presents general conclusions and a list of recommended steps for the Government of the Republic of Uzbekistan to take in order to improve the current human rights protection situation in the country. The recommendations embrace the legislative and practical issues pertaining to the realisation of civil and political rights in the Republic of Uzbekistan. They are not exhaustive and may serve only as a starting point for future reforms in the respective branches of Uzbek legislation.*

*We hereby express our acknowledgement and gratitude to all those who took part in the preparation of this Report and hope that it will have a positive influence on the human rights situation in Uzbekistan.*

## FOREWORD

The present Report aims at contributing to the drawing and assessment of an objective picture of the situation developed so far in the Republic of Uzbekistan in the sphere of realisation and protection of civil and political human rights, law enactment practices of the state organs, current state of affairs in law enforcement organs, legislative framework and procedural rules within the present judicial system.

The Report contains a detailed review and an array of facts concerning the compliance by state organs of the Republic of Uzbekistan with international obligations assumed through the ratification of the International Covenant on Civil and Political Rights on September 28, 1995.

In the first section, the human rights situation analysis and description of facts concentrate on the main inalienable civil rights determined by the Covenant, including the situation of vulnerable groups. Each civil right is reviewed *inter alia* from the point of view of the national legislation and enforcement thereof and of the compliance, in practice, with the principles of democracy building and international standards as determined by the international documents ratified by the Republic of Uzbekistan.

Secondly, an analytical review of the judicial system as well as of other law enforcement organs and human rights protection instruments is performed, in order to provide a global analysis of the national judicial and human rights protection systems.

Finally, the Report presents general conclusions and a list of recommended steps for the Government of the Republic of Uzbekistan to take in order to improve the current human rights protection situation in the country, in compliance with the national Constitution and international norms. The recommendations embrace legislative and practical issues pertaining to the realisation of civil and political rights in the Republic of Uzbekistan. They are not exhaustive and may serve only as a starting point for reforms in the respective branches of Uzbek legislation.

The present Report bases its analysis on cases that have been litigated by defence lawyers and activists and have become known to national and international non-governmental organisations.

# CONTENTS

<b>Introduction</b>	<b>4</b>
Human rights and international law in the Uzbek legal order	5
Economic situation	6
<b>Section 1: human rights situation assessment in Uzbekistan</b>	<b>8</b>
<i>1. civil and political rights</i>	8
a) the right to life	8
b) unlawful arrest and detention	9
c) the right to defence	11
d) prohibition of torture and ill-treatment	12
e) freedom of speech	16
f) freedom of association: the critical situation of NGOs	18
g) freedom of movement	20
<i>2. the situation of vulnerable groups</i>	22
a) rights of the child in the criminal process	22
b) women rights in the criminal process	25
c) local organs of self-governance or self-arbitrariness?	26
<b>Section 2: human rights protection mechanisms at the national level</b>	<b>28</b>
<i>1. lack of independence of the judiciary</i>	28
a) lack of independence of the courts and judges	28
b) role of the Constitutional and Supreme courts	29
c) the charge of Procuracy	31
<i>2. bodies of the Ministry of Interior</i>	33
<i>3. the Ombudsman and the National Human Rights Centre</i>	34
a) the Ombudsman	34
b) the National Human Rights Centre	35
<b>Section 3: conclusions and recommendations</b>	<b>36</b>

## INTRODUCTION

The Republic of Uzbekistan obtained its independence on September 1, 1991 as a result of the desintegration of the Soviet Union. This was followed by the first liberal reforms of the Soviet legislation, which at first were characterised by conservative compromises and then by reactionary retreats.

For more than a year after the independence of Uzbekistan, the old Constitution – the Constitution of the Uzbek Soviet Socialist Republic adopted in 1976 - remained effective. At the 11<sup>th</sup> Session of the Supreme Soviet of the Republic of Uzbekistan of the 12<sup>th</sup> Convocation, on December 8, 1992, a new Constitution was adopted. From the time of its adoption, the Fundamental Law of the country underwent considerable changes relating to the powers of the Parliament of the Republic and some powers of the President.<sup>1</sup>

At present, the President of the Republic of Uzbekistan is Islam Karimov. Having occupied this position since 1991, his term was extended until 2000 by means of referendum in 1995, but this was not counted as his second term.<sup>2</sup> On January 9, 2000, as a result of presidential elections, Islam Karimov was elected for a second term, raising 93.5% of the votes. The reactions of many international organisations to this extension and the following 2000 presidential elections were extremely negative.<sup>3</sup> Many foreign observers questioned the legitimacy of the conducted presidential elections due to numerous gross violations and lack of democracy, providing a generally negative evaluation of the results of these elections. The OSCE in its press release indicated that “with all respect of OSCE/ODIHR to the unique cultural traditions and history of Uzbekistan, OSCE remains a community of democratic values shared by 55 member states. These values were formulated in the Copenhagen Document of 1990 and demand, as a minimum, that elections be held on an alternative basis. Presidential elections in Uzbekistan do not answer this obligation and OSCE/ODIHR could not find justification to send an observation mission for these elections”.<sup>4</sup>

Pursuant to the Constitution, Uzbekistan is a Presidential Republic with a supreme state representative organ, a unicameral Parliament called Oliy Majlis, which exercises legislative power. As a result of the 2002 national referendum, the Parliament was transformed into a bicameral body consisting of the Legislative Chamber and the Senate. The same referendum extended the term of the President from five to seven years.<sup>5</sup>

Pursuant to Article 1 of the Constitution, Uzbekistan is a sovereign democratic republic. Relevant provisions of the Constitution proclaim orientations towards the development of private property and open market economy. The principle of separation of powers into legislative, executive and judicial was also stipulated by the Constitution.<sup>6</sup> However, real separation of powers never took place. Everything is regulated and controlled by the executive

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<sup>1</sup> The amendments were adopted pursuant to the Law of the Republic of Uzbekistan No. 989-XII of December 28, 1993 and the Law No. 470-II of April 24, 2003.

<sup>2</sup> Article 90 of the Constitution determines that one can be President for no more than two terms.

<sup>3</sup> The representatives of the U.S. Administration did not recognise the voting results, stating that “The electors of Uzbekistan did not have a choice”. Neither the U.S.A. nor the Organisation for Security and Co-operation in Europe (OSCE) sent their observers to the January 2000 Referendum.

<sup>4</sup> See [http://www.osce.org/news/show\\_news.php?id=136](http://www.osce.org/news/show_news.php?id=136).

<sup>5</sup> The seven years term of Presidency entered into force upon the results of the elections to the Legislative Chamber and formation of the Senate pursuant to the Resolution of the Oliy Majlis 470a-II “On the mechanism of enactment of the Law of the Republic of Uzbekistan “On the Introduction of amendments and additions into the Constitution of the Republic of Uzbekistan” of April 24, 2003.

<sup>6</sup> Article 11 of the Constitution of 8 December 1992 with amendments, <http://www.gov.uz/apru/library/consru.htm>

power represented by the government and chaired by the President. Judicial and legislative branches of power do not have real powers and are under rigid control of the executive.

### **Human Rights and International Law in the Uzbek Legal Order**

In the Preamble, the new Constitution declares its commitment to human rights, democratic principles and primacy of international legal norms. The Constitution determines that “Democracy in the Republic of Uzbekistan shall be based upon common human principles, according to which the highest value shall be the human being, his life, freedom, honour, dignity and other inalienable rights”.<sup>7</sup> Individual rights and freedoms, political, economic and social rights as well as guarantees for protection of these rights are compartmentalised into separate chapters. 23 articles or 18% of the whole volume of the Constitution (128 articles), are dedicated to human rights provisions. These articles contain generally accepted norms on the provision and protection of basic individual rights and freedoms, such as the right to life, freedom and personal inviolability, protection from infringement of the honour and dignity, freedom of conscience, freedom of speech, freedom of ideas and convictions as well as other rights.<sup>8</sup> These articles also contain provisions prohibiting torture, cruel treatment, violence, arbitrary arrest and incarceration, forced labour as well as the right to legal defence and public judicial process. It is necessary to point out that these provisions are of a relatively general and declarative nature, many of them having referential norms. Moreover, many specific rights are simply missing. For instance, the Constitution does not determine the right to adequate housing, the right to go on strike or other specific rights, which are reflected in international covenants and conventions ratified by Uzbekistan. Nevertheless, by virtue of ratification of these international documents, Uzbekistan has committed itself to undertake all necessary measures to give them an adequate effect within its jurisdiction.

After attaining independence and being recognised as such by the international community, Uzbekistan joined the Universal Human Rights Declaration on September 30, 1991.<sup>9</sup> As of present, Uzbekistan has signed and ratified the majority of international covenants, treaties and framework conventions regulating relations in the sphere of human rights protection at the international level. By doing so, Uzbekistan assumed certain obligations with regard to the observance of the provisions of these international acts. The ratifications include the International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup>, the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>11</sup>, the Convention Against Torture and other cruel, inhuman and degrading treatment and punishment (CAT)<sup>12</sup>, the International Convention on the Elimination of all forms of Racial Discrimination (CERD)<sup>13</sup>, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>14</sup> and the Convention on the Rights of the Child (CRC)<sup>15</sup>.

On September 28, 1995, Uzbekistan ratified the Optional Protocol to ICCPR that determines the procedure for individual complaints from private persons. Nevertheless, it has not yet

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<sup>7</sup> Article 13 of the Constitution of 8 December 1992 with amendments.

<sup>8</sup> Section Two of the Constitution also guarantees the right to property (Article 36), the right to work and free choice of employment, and protection from unemployment (Article 37), the right of association in professional unions and political parties (Article 34), the right to paid vacation (Article 38), the right to social protection (Article 39), the right to qualified medical help (Article 40), the right to education (Article 41), the right to holding meetings, conventions and demonstrations (Article 33).

<sup>9</sup> Resolution of the Supreme Soviet of the Republic of Uzbekistan No. 366-XII.

<sup>10</sup> Ratified on September 28, 1995.

<sup>11</sup> Ratified on September 28, 1994.

<sup>12</sup> Ratified on September 28, 1995.

<sup>13</sup> Ratified on September 28, 1995.

<sup>14</sup> Ratified on July 19, 1995.

<sup>15</sup> Ratified on June 29, 1994.

recognised the competence of the CERD and the CAT Committees to consider similar individual complaints as determined by Article 14 of CERD and Article 22 of CAT, nor signed the Optional Protocol of CEDAW regarding the recognition of the competence of its Committee for the submission and examination of individual complaints from individuals and groups.

Finally, Uzbekistan has still not signed the Second Optional Protocol of the ICCPR regarding the abolition of the death penalty, nor the Convention on the protection of Migrant Workers and their families (MWC).

The problem is that the State, under the disguise of representative organs of all three branches of power, whose constitutional responsibility is to guarantee and protect human rights, does not observe and largely violates the provisions of both the national Constitution and the international conventions that Uzbekistan has ratified since its independence.

### **Economic Situation**

The economic situation in Uzbekistan demands cardinal revision of the entire socio-economic policy of the State. Uzbekistan is the most populated republic in comparison to other Central Asian republics and Kazakhstan. It was the third most populated republic and the sixth largest as per occupied territory (447.400 sq. km) in the times of the Soviet Union.

Having an enormous economic potential with a population of 25.5 million people, of which 56% are under 25, enjoying a strategic geographical location within the centre of the Central Asian region and an initial absence of external debts, Uzbekistan has, over the years of independence, not been able to make use of its potential for becoming an economically solid state in the region. On the contrary, the economic situation has been gradually deteriorating, mainly due to unprofessional state administration and major mistakes in the socio-economic policy. All this has resulted in a situation of legal nihilism, whereby the laws are largely violated and the decisions of executive organs and state officials on the whole stand above the laws, bringing about a large number and diverse forms of violence and abuse of power. So-called reforms over the years of independence have brought about high levels of poverty among the population, massive unemployment and related development of the informal labour market, corruption of state officials, lower levels of social guarantees, growing income gap and inequality, and, as a result of these, massive outflow of citizens abroad in search of earnings as well as for permanent residence.

Despite the fact that there are certain market elements in the economy of Uzbekistan, for instance private property of means of production, the prevalence of command-administrative methods of economic regulation and a centralised system of distribution of strategic commodities, together with violations of private property rights on the part of the State as well as all-round interference of the state into the economy of the country, make the latter a pseudo-market with characteristic elements of the socialist system of production.

The pseudo-market nature of the system demonstrates itself in the sphere of state administration. The approach of the state organs, especially those of taxation and law enforcement, to new market relations bears socialist nature, characterised by violation of rights and freedoms and rigid command-administrative methods contrary to the interests of the society and individual, but to the benefit of the State.

The reforms reinforced and highlighted a number of problems related to the inability of the state to carry out true market reforms with due consideration of the interests of all social constituencies. The evidence of that is a high poverty rate, especially in remote regions of the country. According to the World Bank and UNDP data for 2002, about 72% of the population

in rural areas of the Republic are defined as extremely poor.<sup>16</sup> At present the minimal monthly salary totals a mere 6,530 soum (about 6.5 USD). According to the European Bank for Reconstruction and Development (EBRD), the average real income of employees in Uzbekistan amounts to about 40 USD a month compared to 55USD in Kyrgyzstan and 120USD in Kazakhstan.<sup>17</sup> In Uzbekistan, neither the average statistical minimum living standard nor the size of the minimum consumer goods basket is calculated.

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<sup>16</sup> UNDP “Growth and Poverty Reduction in the Next Decade, report to the Government of Uzbekistan” 2004 Chapter 3 “Poverty and Inequality”

<sup>17</sup> ICG Report “Failure of Reform in Uzbekistan: Ways Forward for the International Community”, March 11, 2004.

## **SECTION 1. HUMAN RIGHTS SITUATION ASSESSMENT IN UZBEKISTAN**

*This part of the Report contains instances of the most severe cases of civil and political rights violations within the jurisdiction of the Republic of Uzbekistan that have become known to international and national human rights organisations. Each considered right is reviewed under three angles: state of play of the national legislation, enforcement and compliance in practice, and, grouped in the last section, recommendations in the legislative field in order to bring the practice in compliance with international requirements.*

*The issue of women and children's rights violations deserves a report of its own. In this report however, it will only be touched upon to the extent relevant to the general scope of this report, in particular to underline the specificity of their situation. The situation of civil society bodies such as mass media and non-governmental non-profit organisations is reflected upon and analysed from the point of view of human rights, freedom of speech, freedom of association and the right to complain against the actions and decisions of state organs and officials.*

The human rights situation in Uzbekistan is still rather problematic. Human rights violations can be divided into two categories. The first one includes violations committed against members of religious organisations considered as terrorist groups and independent Muslim groups<sup>18</sup>, human rights defenders groups or opposition parties, or against well-known journalists whose activity has been publicised. Another category is the violation of human rights of larger groups of the population including women and children, especially in the provinces of Uzbekistan. Such violations concern, *inter alia*, farmers protesting against local corruption, entrepreneurs whose goods or enterprises have been confiscated and ordinary people who try to assert their rights and interests before the authorities; they generally affect the most vulnerable groups of society i.e. the socio-economically marginalised sectors of the population.

Among the numerous human rights violations, the most widespread are torture, arbitrary arrests, restrictions of freedom of speech and of freedom of conscience. The machinery of suppression, restriction and violation of fundamental rights and freedoms is mainly made up of the very same law enforcement organs that should be protecting human rights.

### **1. Civil and Political Rights**

#### ***a) The Right to Life***

According to the Constitution, the right to life is an inalienable right of every person. Attempting on somebody's life is the gravest crime.<sup>19</sup> This provision determines that no one, including the court, may restrict the right to life, and considers this right as an inalienable right, *de jure* prohibiting death penalty by the State. However, *de facto* death penalty exists in Uzbekistan and is sanctioned by courts pursuant to the Penal Code.

In the post-Soviet region only two countries – Uzbekistan and Byelorussia – apply death penalty as a punishment. As a result of many years of pressure from international organisations on this issue, President Karimov made a recent statement regarding the possible abolition of the death penalty and prior establishment of a moratorium, made at a journalists' briefing after the speech of the President at the 16<sup>th</sup> Session of Oliy Majlis of the Second Convocation.

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<sup>18</sup> The specific issue of discrimination against independent Muslim groups and related religious freedom are not in the scope of this report. For further information see in particular the HRW report "Creating enemies of the state, Religious persecution in the State" 2004

<sup>19</sup> Article 24 of the Constitution.



*“Iskander Khudaiberganov was extradited on February 5, 2002 from Tajikistan and kept in custody centre (SIZO) of the Uzbek Ministry of Interior (MVD) and National Security Service (SNB), where he was subjected to torture by beating with a rubber club, beating with a chair on kidneys and head. He was charged with terrorism, attempt on the life of the President, conspiracy with the purpose of overthrowing the constitutional order, and subversive activity. In the course of investigation he was basically deprived of legal assistance, and the sentence was grounded on his own confessions obtained under torture. The court ignored all evidences of torture and sentenced Khudaiberganov to capital punishment. As a result of the submission of an individual complaint to the U.N. Committee on Human Rights, the execution of the sentence with regard to Khudaiberganov was suspended.<sup>20</sup> However, Khudaiberganov is still in custody at this date.*

In Uzbekistan there are cases of arbitrary and unlawful deprivation of life. Although there is a lack of confirmed information about political murders, three different cases were reported in May and December 2003, where detainees died in custody apparently as a result of torture.<sup>21</sup> The Bureau on Democracy, Human Rights and Labour of the U.S. Department of State reviewed in details the death circumstances of Orif Ershanov, Kamoliddin Jumaniyazov and Otamaz Gaforov in its report on human rights records in the world in 2003.

In many cases (including death penalty), families are not notified of the death of the relative until the burial of the body, thus depriving them of the mere possibility of conducting an independent forensic examination.<sup>22</sup> Consequently, rumours about deaths in custody as a result of violence are spreading, but cannot be proved. Not a single death, which was caused partially or entirely by torture or other violence, has been officially assigned to the real causes. In the above mentioned cases, authorities denied any use of physical coercion and ascribed the deaths to heart attack (Gafarov), high blood pressure (Ershanov) and suicide (Jumaniozov).<sup>23</sup>

In addition, inhuman conditions of detention lead to the development of grave diseases such as tuberculosis, hepatitis and AIDS among the suspects, defendants and convicts, which in several cases lead to lethal outcomes.

#### ***b) Unlawful Arrest and Detention***

Grounds for procedural arrest are determined by Article 221 of the Criminal Procedure Code (CPC)<sup>24</sup> of the Republic of Uzbekistan and are quite broad. Procedural arrest can take place prior to opening a criminal case and after it. In the latter instance the resolution of the inquiry officer, investigator, procurator or court ruling is sufficient. Pre-trial arrest may last up to 72 hours from the moment of arrival of the detainee to militia or other law enforcement organ. Pursuant to the CPC, before the expiry of the pre-trial detention period and upon availability of grounds, the person may be involved in the case as a defendant and a restriction measure should be determined in his regard.

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<sup>20</sup> LAS case No.50, petition to UNHCHR filed under reference: G/SO 215/51 UZBE (28)

<sup>21</sup> Report on human rights practices in the countries of the world over 2003, Bureau of democracy, human rights and labour, US dept of State, February 25, 2004

<sup>22</sup> Each case of death in custody is investigated by a forensic doctor that issues conclusions regarding the causes of the death.

<sup>23</sup> Report on human rights practices in the countries of the world over 2003, Bureau of democracy, human rights and labour, US dept of State, February 25, 2004

<sup>24</sup> Criminal Procedure Code of the Republic of Uzbekistan entered into force on April 1, 1995 with amendments.

In exceptional cases and upon the *procurator's*<sup>25</sup> sanction, up to ten days of custody may be used as a restriction measure with respect to the suspect, within which period he must be charged. Otherwise the restriction measure shall be cancelled and the person shall be released from custody.

The situation analysis as well as citizens' and detainees' complaints have revealed a number of human rights violations at the stage of judicial process. Parts of the violations are embedded in the criminal procedure legislation, which is aimed at prosecution rather than objective examination. For instance, due to the fact that the list of exceptional grounds for incarceration prior to charging is not determined by the CPC, detentions without justification have become regular practice. Other violations occur due to the infringement of the law by law enforcement inquiry officers, who lack conscientiousness and act with the connivance of their superiors. It is necessary to adopt the necessary legislative measures to eliminate the possibility of ill-faith officers ignoring the law.

One of the most common restriction measures applied by law enforcement is incarceration in custody<sup>26</sup>, which undermines the concept of presumption of innocence. Article 242 of the CPC encloses a list of crimes whereby the defendant can be put in custody upon the grounds of a mere danger of commitment of the presumed crime. Thus, the guilt of the person is presumed long before the issue is established by a court decision. Such unconstitutional approach entails the same kind of unlawful consequences.

Incarceration in custody during the investigation is frequently used in order to coerce the person to testify. There is one more facet to this problem. The longer the person is kept in custody during the investigation, the more difficult it is to acquit him. As a rule, in such cases the court would issue a sentence that determines a term equal or near to the one already spent in custody to justify the abusive application of custody at the investigation stage. Taking a person into custody at pre-trial stage, hence, predetermines and conditions the attitude of a judge deciding whether the accused is guilty or not.

Another typical violation of the law is the practice of maintaining the person in custody after the sanction has expired. Often more than a month passes from the time of expiry to the time of prolongation of the sanction. Frequently, other techniques are used to defer the official starting date of detention, such as:

- Keeping the detainee in the militia cars or other places for long periods of time before he is brought to the relevant militia department, in order to defer the moment of official documentation of arrest and detention.
- Documenting the suspect as a detainee in the administrative proceedings in order to defer the time of documenting the real arrest and detention.
- The suspect is levied an administrative sanction whereby he is detained for 15 days upon a light administrative offence, while “working” on the criminal charges against him.

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<sup>25</sup> The *Procuracy* is a specific organ inherited from the Soviet system that includes but is not limited to Prosecution functions (see chapter 2 for details) and should not be confused with the Prosecutor as traditionally understood in western legal systems.

<sup>26</sup> Pursuant to Article 242 CPC “Incarceration in custody as a restriction measure shall be used in cases of premeditated crimes, for which The Penal Code determines more than 3 years of imprisonment and in cases of crimes committed through carelessness, for which the Penal Code determines more than 5 years of imprisonment. In exceptional cases this restriction measure can be applied in cases of premeditated crimes, for which the Penal Code determines punishment of not more than 3 years of imprisonment and crimes committed through carelessness, for which the Penal Code determines punishment of not more than 5 years of imprisonment”.

Among the mass violations committed in arrest and detention and at the inquiry stage of investigation, the use of violence and violation of the right to legal defence are the most frequently occurring gross violations.

### *c) The Right to Defence*

Pursuant to Article 24 of the CPC, *“The suspect, the accused or the defendant is eligible to defence. The right to defence is guaranteed by the responsibility of the inquiry officer, the investigator, the procurator, or the court to advise the suspect, the accused or the defendant of his rights and take measures towards providing him with a real possibility to use all means and ways determined by law for the defence against the charges brought against him”*.

The right of the defendant to defence implies the **aggregation** of all procedural rights determined by law for disproving the charges brought against him or for mitigating the liability. First of all, a citizen under prosecution has the right to know what charges or what suspicions are brought against him. Knowing this, the person decides by himself whether he should need the services of a defence lawyer or maintain defence on his own.

However, the first obstacle is the lack of a legal culture among the detainees, owing to the fact that inquiry and investigation organs do not inform them of their rights and that courts do not pay any attention to that circumstance.

In practice, inquiry and investigation organs, while interrogating a person involved in a case as a suspect or defendant, “forget” to advise this person of his citizen’s right not to give testimonies. Then, in the course of interrogation he is given a form to sign, which says that the person under interrogation has been advised of his rights. Furthermore, any reference to the citizen’s lack of knowledge of the law remains ungrounded because his signature is everywhere it is required to be.

Similarly, while interrogating close relatives of the suspect or the defendant as witnesses, ill-faith investigators “forget” to inform them of their right not to testify against close relatives. However, when making them sign the testimony, they obtain the needed confirmation that the interrogated person was advised of his procedural rights.

These violations considerably infringe a person’s right to defence as well as undermine the concept of presumption of innocence, as the confessions and testimonies of the interrogated persons are subsequently used as the basis of the indictment instead of facts and evidences. Concerning the presumption of innocence, this concept is only declarative as in reality the prosecution, as a rule, wins over the defence in the course of the criminal investigation (see also chapter 2).

The task of rendering professional legal assistance to the citizens of Uzbekistan is entrusted to a college of lawyers (advocates). In cases determined by law, legal assistance is provided for free. However, the right to choose the manner of defence is frequently violated from the very first moments of the investigation. In most cases the defence lawyer is not allowed to see the defendant, and before he attains the possibility of providing the defendant with qualified assistance, the prosecutor often manages to obtain the testimonies required for the prosecution, frequently under torture (see following point).

«During the blast in one of the houses in Bukhara on March 28, 2004 a person who used to work at the same firm as Bakhodir Karimov, died. The next day, March 29, 2004, about 30 people in civil clothes broke into Karimov's house and conducted a non-sanctioned search. Failing to find anything suspicious, they took the Karimov brothers to the Department of Interior of Tashkent City. The two brothers were severely beaten in order to have them testify against each other. Bakhodir Karimov was beaten and strangled with a gas mask by the law enforcement officer. They fastened his hands to his feet with handcuffs, after which they threw him with all his weight on the coccyx, threatened to rape him and tried to push a club through his anus. The lawyer of the Legal Aid Society was not allowed to see Karimov for 4 days, and was only able to take on the case 53 days following the arrest. Over those 53 days Karimov was denied effective defence counselling and all interrogation reports and relevant documents were signed by an unknown lawyer. At the first meeting, Karimov appeared with bruises all over his body; therefore a forensic examination was requested, but it was never carried out. Independent experts from the Red Cross and Red Crescent Society were involved, but under various pretexts they were not allowed to see Karimov. Subsequently, the case was qualified as an economic crime with a sentence of 3 months of reformatory works».<sup>27</sup>

The role of the *advocatura*, or the defence lawyers, who are entrusted by the State with the function of providing comprehensive quality legal assistance to defendants, remains extremely limited. Mainly, a lawyer in Uzbekistan plays the role of an intermediary between the investigator, the *procurator* and the judge in their relations with his client (a suspect or defendant) at all stages of the criminal and judicial process. Within this professional body, a sort of a caste of “pocket advocates”, “offered” to the defendants under the insistent pressure from the investigators, has emerged. Because of the absence of a jury system in Uzbekistan, lawyers are deprived of any influence in the court, whereas the state prosecutor always finds a common language with the judge. Concretely speaking, it means that the prosecutor provides an electronic version of indictment to the judge for him to copy-paste it into the verdict. This practice is well known in professional circles.

Finally, involvement of the suspect in the capacity of witness, especially in group cases, is widely used by the investigation organs at the stage of inquiry and preliminary investigation to obtain evidence against the witness himself. The witness is advised of his liability for false testimony, but as such does not have the right to legal assistance. He is obliged to convey all information including self-incriminating information. There have been cases where such “witnesses” have been charged during the court hearing and then involved as defendants.

#### ***d) Prohibition of Torture and Ill-Treatment***

Article 1 of the Convention Against Torture provides the following definition of torture: “**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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”.

After numerous statements made by the Legal Aid Society regarding the lack of definition of torture in the Uzbek legislation, the Parliament adopted a Law on August 30, 2003 “On

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<sup>27</sup> interview by the Legal Aid Society, September 2004.

amendments and additions to some legislative acts of the Republic of Uzbekistan”<sup>28</sup>, providing a new edition of Article 235 of the Penal Code<sup>29</sup> whereby torture shall be considered a crime. Article 235 of the Penal Code (further on, PC) contains the following definition of torture and other cruel, inhuman and degrading treatment or punishment, “... unlawful *psychic or physical influence on the suspect, the accused, the witness, the victim or other participant in the criminal process or the convict serving a sentence, or their close relatives, by means of threats, causing blows, beating, torturing, causing suffering or other unlawful actions committed by an inquiry officer, investigator, procurator or other employee of the law enforcement organs or penal institutions, with the aim of obtaining any kind of information, confession of committing crimes, arbitrary punishments for committed actions or forcing to commit any kind of actions*”(emphasis added).

The term “unlawful” was adopted by mistake and caused a great deal of confusion in the interpretation of that word by national as well as foreign human rights organisations and lawyers. As a result of these confusions, an explanation was adopted by the Supreme Court,<sup>30</sup> stating that the courts of the Republic of Uzbekistan have to use for their guidance the definition of “torture” provided in Article 1 of the Convention Against Torture, which has primacy over national legislation.

The maximum term of imprisonment in accordance with the Penal Code for committing such unlawful actions is eight years.

The CPC also prohibits judges, *procurators*, investigators, and inquiry officers to use violence or torture in criminal proceedings: “*The judge, the procurator, the investigator and the inquiry officer shall respect the honour and dignity of persons participating in the case. No one shall be subject to torture, violence, other cruel or degrading treatment. It is prohibited to commit actions or issue decisions which degrade the honour and dignity of a person, cause spreading information about his private life, endanger his health, cause him physical and moral suffering without grounds*”.<sup>31</sup>

The CPC also contains other provisions prohibiting the use of violence, threats, torture or other unlawful measures at any stage of the criminal process.<sup>32</sup>

### Practice

At present, torture is the most acute and painful problem for Uzbekistan. The majority of international human rights organisations’ reports on Uzbekistan abound in cases of violence and torture by local law enforcement agents against detainees and convicts. The majority of these allegations are trustworthy because they come from people who directly experienced or witnessed such unlawful actions. In principle, the state has started recognising certain cases of torture against prisoners and detainees, blaming militia and security officers who lack conscientiousness and do not abide by the law. However, the government insists that torture in Uzbekistan is not systematic.

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<sup>28</sup> This Law entered into force on November 1, 2003.

<sup>29</sup> Penal Code of the Republic of Uzbekistan.

<sup>30</sup> The explanations of the Supreme Court have a mandatory power over lower instance courts pursuant to the Law “On Courts” No. 162-II of December 14, 2000.

<sup>31</sup> Article 17 CPC.

<sup>32</sup> Article 22 of the CPC prohibits harassment of the defendant, the accused, the suspect, the victim, the witness or any other person involved in a case, with the intention of obtaining testimonies by way of violence, threats, infringement of their rights or other unlawful measures; Article 88 of the CPC prohibits the use of methods threatening the life and health of persons, degrading treatment during the process of prosecution and harassment with the intention of obtaining testimonies, explanations, conclusions, carrying out investigative experiments, preparing and issuing documents or objects by means of violence, threats or other unlawful means.

As a result of the November 2002 mission to Uzbekistan of the U.N. Special Rapporteur on Torture, Theo van Boven, his detailed Report concluded that torture in law enforcement organs and prisons is of a “systematic” nature. M. Van Boven provided 22 recommendations to the government for the prohibition of the said practice.<sup>33</sup>

The government’s response to the U.N. Report was evasive. By February 2004, according to public information, only one recommendation had been partially implemented.<sup>34</sup> an amendment was introduced in the Penal Code strengthening the punishment for torture.<sup>35</sup> Due to the fact that liability of the officials for torture practices is routinely ignored, it is barely possible that such change may bring about positive results (see also chapter 2 on the judicial system).

Violence is especially widespread during arrest and detention; it is customary to hear that beating occurred because the detainee showed resistance. Many detainees and prisoners try to document body injuries and some of them manage to do that, but even such measures do not lead to anything. Law enforcement officers automatically regard the fact of being arrested or detained as an evidence of a person’s guilt, the latter thus “deserving” being beaten – and it should be presumed to be lawful.

It is not a secret that the overwhelming majority of people confronting law enforcement officers have information on the use of torture and violence in their regard. It is characteristic that these unlawful methods, which are crimes in themselves, remain unpunished. There is enough evidence to suppose that leaders of local law enforcement organs do not clearly realise what is going on behind the barbed wire. Hence, they cannot adequately and with due speed react to the occurrence of unlawful acts in the institutions under their supervision.

Even in cases where all signs of violence and torture are evident as well as the fact that the confessions were obtained under torture, as a rule, no one is held liable. The following case is only an illustration of such a situation, and similar cases abound.

*“Ruslan Rakhimov, a 23-year-old electrician, was arrested and detained during the night of 29 to 30 January 2004 together with 17 other people, and taken to the Department of Interior of the Yunus-Abad district of Tashkent City, under the suspicion of the murder of Yakshigulov Ildar Nailevich. From 29 to 31 January 2004, the district Department of Interior officers, including Ruzmatov Ravshan Juraevich, beat Ruslan Rakhimov and Gainulina who was arrested and detained under the same suspicion. Militia officers put a gas mask on Rakhimov and obstructed the flow of air. During the interrogation Gainulina was threatened with rape. Unable to bear the pain, Rakhimov signed a confession stating that he had a quarrel with Yakshigulov on the night of January 28 to 29, 2004, after which Gainulina and Smirnova beat him and, as Gainulina and Smirnova testified under torture, Rakhimov allegedly took Yakshigulov home by taxi. With the exception of Rakhimov, all the detainees were set free in 2.5 days without documenting their detention. Rakhimov was charged with murder, Gainulina was charged with failing to report the crime, and their detention was documented as of 31 January 2004. During the court hearing in the Yunus-Abad district court of Tashkent City,*

<sup>33</sup> U.N. Human Rights Committee, “Report of the Special Rapporteur on Torture Theo van Boven, submitted in compliance with Committee resolutions No. 2002/38, doc. E/CN.4/2003/68/Add.2”: on February 3, 2003, See [www.unhchr.ch](http://www.unhchr.ch)

<sup>34</sup> ICG Report “Failure of Reform in Uzbekistan: Ways Forward for the International Community”, March 11, 2004.

<sup>35</sup> The Law of the Republic of Uzbekistan No. 535-II “On amendments and additions to certain legislative acts of the Republic of Uzbekistan” of August 30, 2003. However, according to some experts this does not yet meet the U.N. recommendations, which require that the text “be fully corresponding to Article 1 of the Convention Against Torture and other cruel, inhuman and degrading treatment or punishment and maintained by an adequate liability”. Interview of ICG with Allison Gill, Human Rights Watch, Tashkent, February 2004, in ICG Report, “Failure of Reform in Uzbekistan: Ways Forward for the International Community”, March 11, 2004.

*from March till May 2004, they denied their confessions, testifying that they had been given under torture, a fact that could be confirmed by two witnesses. Witnesses Gauss and Ochilov, also subjected to arbitrary arrest and detention together with Rakhimov, confirmed that they had heard screams for help from the neighbouring rooms. But the court refused to accept complaints of torture, recognising as evidence of guilt the confessions of Rakhimov and Gainulina obtained under torture. Complaints against torture submitted by the lawyers of the defendants on 7 April 2004 were declined by the court on the grounds of being premature. Rakhimov was sentenced to 5 years of imprisonment for murder without aggravating circumstances. The appellate commission of Tashkent City Court on criminal cases ignored all evidence of Rakhimov's innocence and violation of his procedural rights, and upheld the decision without amendments".<sup>36</sup>*

Law enforcement officers usually torture by applying physical abuse, which includes beating with fists, clubs, and other objects, suffocation by means of a gas mask or plastic bags, torture with electric current, burning, causing cutting injuries by sharp objects, sexual abuse and denial of food and water. In addition, victims report having been beaten with cloth sacks or plastic bottles filled with sand, after which there are not as many bruises as when beaten in another manner. In addition, victims report that militia department officers, while beating, target at the waist in the area of the kidneys, which helps avoid marks on the face and hands but may seriously damage internal organs.

Thus, after reviewing the situation in Uzbekistan in the sphere of the use of torture by law enforcement officers, it is possible to conclude that **these cruel and unlawful methods are used everywhere, systematically, on a large and massive scale.**

#### Root-causes of torture

In addition to numerous violations and related impunity on the part of the law enforcement organs in Uzbekistan, there are other root-causes of the widespread practice of torture in Uzbekistan.

First, there is a problem of legal ignorance of the population, especially in remote provinces and districts. The practice shows that the level of legal culture among the Uzbek population is unacceptably low, although “**not knowing the law does not release one from liability**”. The majority of citizens start studying the Penal Code and the CPC while in custody. One therefore tends to accept violence as inevitable and not to complain or file a case because of a lack of trust in the national judicial system (see chapter 2).

Finally, the majority of those who are subjected to violations during the investigation and judicial process do not know how to make a complaint against certain unlawful actions, to whom and in which form to write such a complaint, and how to back it up with the necessary evidence. Therefore, after failing to receive an adequate reaction from the local *procurator's* office, as a rule, they start writing to the *Procurator General's* office, NGOs, mass media, the President and, rarely, to international organisations. Legal illiteracy of the population is one of the problems leading to numerous violations, including torture, by the law enforcement organs.

Another root cause of torture is related to the socio-economic situation in Uzbekistan. The majority of unlawful actions by the law enforcement organs in the form of torture or other abuse, unlawful and arbitrary arrests and detention are aimed at the poor and impoverished groups of the population, which constitute the majority of the population of Uzbekistan. First, most of the judicial cases are common law cases involving persons from the socio-economically disadvantaged groups of society. Moreover, the reason for using torture with

<sup>36</sup> Collection of OMCT urgent appeals on Uzbekistan: Case UZB 100904 and UZB 100904.1

regard to such groups is the fact that poor people hardly know their rights guaranteed by national as well as international law, because the level of legal ignorance among that group is the highest. Second, the poor strata of the population do not have the means to pay for the services of qualified lawyers. Public defenders, appointed by the State free of charge, lead such cases with reluctance due to the lack of remuneration or financial incentive; the public defender have to devote a lot of time to fill up all the necessary papers to receive a miserable sum of money paid by the state for such services. Last but not least, fear of falling in disgrace or even of retaliation will discourage them to take up cases of human rights violations.

### *e) Freedom of Speech*

At present, freedom of speech appears to be the other most urgent, painful and unresolved problem in Uzbekistan. Pursuant to the Constitution, freedom of speech is an inalienable right and defines the extent of openness, humanisation and democracy in the Uzbek society.

The Constitution proclaims Uzbekistan to be a democratic state, which implies the availability of the guaranteed and exercised civil human rights and freedoms. Among the political rights and freedoms of citizens, freedom of speech holds a special place, being one of the most important constitutional human rights. However, historical experience shows that freedom of speech has never been accessible to people living in Uzbekistan, neither under the Soviet Union nor before that. And today Uzbek authorities do not recognise in practice the right of the individual to freedom of speech, albeit guarantees in the Constitution, laws and other legal acts, while independent mass media is needed to control the observance of human rights and the functioning of the state organs.

#### Legal framework

As in many other States, freedom of speech and unrestricted expression of opinions are associated with freedom of information, i.e. the right of each individual to seek, receive, transfer, produce and spread information by lawful means. In theory, such rights suppose common accessibility, openness and reliability of the provided information, awareness of citizens of the activity of state organs, NGOs, local self-governance organs, the right to request information, documents etc. from organs and organisations, and the responsibility of organs and organisations to provide the requested information pertaining to their activity if these data are not state or commercial secrets.

Every individual may exercise his right to obtain and spread information by means of mass media, which shall be the main, but not the only means of realisation of this right. Receipt and spread of information shall be possible through interpersonal communication as well as through meetings, gatherings, exhibitions, festivals, clubs, etc. The necessary condition for that is that all these actions are exercised on a legal basis and within the limitations determined by international instruments, the Constitution and other laws.

Article 67 of the Constitution of Uzbekistan determines that mass media shall be free and function in accordance with the law, as well as bear responsibility for the reliability of the information in the manner established by law. The same article bans censorship. Moreover, a special law<sup>37</sup> was adopted to regulate the activity of the mass media. In particular, Article 4 of the Law on Mass Media determines:

*“In the Republic of Uzbekistan the censorship of mass media is inadmissible. No one shall have the right to request preliminary consent prior to the publication of communication or materials as well as amending the texts or entire elimination thereof from publication (broadcasting)”.*

Abolishment of censorship is a considerable step towards rule of law as well as the most potent guarantee for freedom of speech.

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<sup>37</sup> Law of the Republic of Uzbekistan “On Mass Media” of December 26, 1996 with amendments



However, its abolishment does not mean universal unrestricted and absolute freedom of speech. The law stipulates a number of restrictions on the freedom of speech and information. It is associated with the concept that “freedom” is frequently understood as an entire lack of restriction and not as a “perceived necessity”. This would not be possible because unlimited freedom of certain persons means violation of the rights of others, which is not allowed by the Constitution – *“Realisation of human and civil rights and freedoms of individuals should not violate lawful interests, rights and freedoms of other persons, the State or society”*.<sup>38</sup>

The Constitution guarantees the freedom of thought, speech and opinion: each person has the right to seek, obtain, or disseminate any information, “with the exception of the information detrimental to the existing constitutional order or other restrictions determined by law”. Freedom of thought and expression may be limited by law due to considerations of state and other secrets. In conjunction with this, it is necessary to note that the ICCPR, which has been ratified by Uzbekistan, contains an exhaustive list of restrictions on the freedom of expression of one’s opinion.

### Practice

However, in practice it is virtually impossible to exercise one’s freedom of speech in Uzbekistan. Alongside total control over all existing mass media in Uzbekistan by the State, there is an internal *de facto* censorship whereby the mass media Editor-in-chief controlled by the State decides which topics and whose opinions will be released. If a certain theme or publication criticises the government policy or the President, such publication will never be approved by the Editor-in-chief. The same is true with regard to the programmes of the Uzbek television, in particular the news programmes. In addition, a journalist who prepares critical material, as a rule, becomes subject to repression by the law enforcement organs. Consequently, one of the well-known journalists of Uzbekistan, Ruslan Sharipov, was convicted to imprisonment upon fabricated charges.<sup>39</sup> In short, mass media functioning in Uzbekistan is all pro-governmental or controlled by the government. Journalists confide this in private only and are forced to write praising articles about the government and the policy of the President.

In conjunction with that, it is not possible for the representatives of NGOs or private persons to express themselves in the Uzbek mass media. In addition, the right of the editorial board to decline “uncomfortable” material brings to naught all attempts of an individual to enjoy his constitutional right to free communication of information; and makes him depending of the editorial board.

Last but not least, frequently, ungrounded denial to provide information is justified with technical reasons, such as unreasonable classification of documents as secret. More and more often information, which the law directly prohibits to classify, becomes classified. Of special concern are conflicts caused by restriction of access to judicial information. Judges prohibit journalists to sit in the open judicial process, violating the Constitution and other normative acts which determine that judicial hearings in all courts of Uzbekistan are open with rare exceptions, such as protection of state secrets and commercial information, the secrecy of child adoption, etc.

It is however also necessary to point out some positive steps undertaken by the State in the sphere of freedom of speech. During 2002, considerable changes took place in the sphere of freedom of speech, in conjunction with the retirement in May of the main censor of Uzbekistan – Erkin Kamilov, who headed the Department of State Secrets Protection under the State Committee of Press of Uzbekistan. Other decisive steps followed in the middle of

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<sup>38</sup> Article 20 of the Constitution

<sup>39</sup> Observatory Urgent Appeals, case UZB002/0503/OBS025, UZB002/0503/OBS025.1, UZB002/0503/OBS025.2

May 2002, when the Department of State Secrets Protection, i.e. the organ of mass media censorship and control of journalists, was abolished. That organ had been *de facto* carrying out state censorship despite the provisions of the current Constitution. Nevertheless, according to the information of the Committee to Protect Journalists, at the same time as the abolition of the preliminary censorship, the authorities warned the editors-in-chief of newspapers, magazines, radio and television that they would be held liable should undesirable materials appear in press or on air. As a result of that, self-censorship increased and rendered the abolition of State censorship meaningless. The editors who fall in disgrace are fired and threatened with revocation of their licenses, as was the case with the Editor-in-chief of the radio station “Grand”, Alo Khodjaev, in May 2004. Alo Khodjaev over the time of his work, managed to carry out a number of projects dedicated to international legal documents and opened interactive discussions with participation of lawyers and other specialists, human rights defenders, victims of lawlessness and the public.<sup>40</sup>

In short, the unwritten rules reigning in the world of mass media in Uzbekistan as well as the pressure from the state organs on mass media are far from being conducive to the establishment of public control, transparency and responsibility of the state before society. Mass media and freedom of speech play an extremely important role in the establishment of democracy and civil society. Without them and without their effective and independent activity, supported by an independent judicial system, it is difficult to imagine a democratic development now and in the future. This is aggravated by the attempts to control and limit freedom of action of critical NGOs by means of so-called administrative rules. Indeed, a resolution of the Cabinet of Ministers N°275, adopted on June 11, 2004, requires all NGOs to obtain licenses from the authorities to print any publication or brochure. It is most likely that any publication that would not please the authorities would not get this licence and would put the NGO concerned under scrutiny and pressure from the Uzbek Government. This has major implications on the capacity of NGOs to keep Uzbek citizens informed of social events and tensions and is an obvious obstacle to freedom to seek information.

#### *f) Freedom of Association: the Critical Situation of NGOs*

Activities of non-governmental non-profit organisations (NGOs) are regulated by various normative legal acts including laws of direct effect. The Law “On non-governmental non-profit organisations”<sup>41</sup> is the main law that regulates NGOs activities, including international NGOs carrying out activities in Uzbekistan. Article 4 of the Law on NGOs prohibits the interference of state organs and their officials in the activities of an NGO.

Due to the lack of effective mechanisms of citizens’ rights protection against the arbitrariness of law enforcement organs and other state organs, the NGO movement has acquired a new direction of activity, namely, the gathering of individual citizens into rights protection groups, forming specific non-governmental bodies of civil society. Thanks to the carelessness of the “power structures”, they managed to gain access to the Annual Summit of the European Bank for Reconstruction and Development (EBRD) held in Tashkent in May 2003, and for the first time ever raised publicly the problems related to the democratic development of Uzbekistan. As a result of that, many international organisations were able to gain access to unbiased information pertaining to the state of affairs in the Republic of Uzbekistan and even revise their position vis-à-vis the progress made by Uzbekistan in its declared movement towards democratic values. The EBRD set a one-year term for the Government of Uzbekistan to improve the human rights situation, putting forward a number of tasks and requirements.

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<sup>40</sup> Interview of the Legal Aid Society.

<sup>41</sup> Law of the Republic of Uzbekistan No. 763-I “On non-governmental non-profit organisations” of April 14, 1999 with amendments.

Upon the expiry of this term, the EBRD did not find any substantial progress on the respective tasks and changed its financial and investment policy in relation to Uzbekistan, refusing to finance any state organisation. The U.S. Department of State followed the same example, freezing the technical assistance to Uzbekistan worth of 18 million USD, as a result of the failure of Uzbekistan to improve its human rights and democratic record.

Since then, due to the strengthening role of Uzbek NGOs sponsored by international charity funds in the CIS countries, the Government of Uzbekistan has tightened its control and complicated the registration and activities procedures for local NGOs. By February 2005, the government had granted registration to merely two more human rights groups – the Independent Human Rights Organisation of Uzbekistan (NOPCHU) and Ezgulik, which finally attained registration in March 2003 after two denials in the previous year. Both registrations were conducted after strong international pressure.<sup>42</sup>

Pursuant to the current Uzbek legislation, local NGOs as well as representations and branches of foreign NGOs are required to register with the Ministry of Justice. In practice, before March 1, 2004, the representations and branches of foreign NGOs as well as their foreign staff used to receive accreditation through the Ministry of Foreign Affairs, in accordance with an order established by a Government resolution.<sup>43</sup> Indeed, although the Law on NGOs before the amendments of 2004 did envisage the registration of foreign representations with the Ministry of Justice,<sup>44</sup> *de jure* it did not establish the mechanism of registration of such representations and did not provide them a legal entity status. Therefore, the foreign NGO representations had to undergo an accreditation procedure with the Ministry of Foreign Affairs. The Uzbek legislation did not envisage any control on the part of the state organs over the activity of the representations of foreign NGOs accredited with the Ministry of Foreign Affairs.

In December 2003, the Ministry of Foreign Affairs notified accredited representations of foreign NGOs that international NGOs would have to undergo re-registration with the Ministry of Justice before 1<sup>st</sup> of March 2004. As of this date, only diplomatic representations, missions of governmental, inter-governmental and inter-state organisations shall be accredited with the Ministry of Foreign Affairs. By abolishing the accreditation of foreign NGO representations with the Ministry of Foreign Affairs, equalising their status to that of local NGOs and imparting them the rights of the Uzbek legal entity, the government acquired the possibility of controlling the activities of foreign NGO representations in Uzbekistan through the Ministry of Justice and other state organs, as well as exercise pressure on the critical international NGOs. As a result, the Uzbek representation of the Soros Foundation Open Society Institute was denied re-accreditation.

Despite the pressure exercised by the government in 2003, there was an increase of activity of civil society groups including several conferences of opposition groups and meetings of human rights defenders. Some of them went without obvious interference on the part of the authorities, but in the majority of cases, authorities persecuted the conference participants and sometimes denied permission to conduct meetings. For instance, the government prohibited

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<sup>42</sup> ICG Report, “Failure of Reform in Uzbekistan: Ways Forward for the International Community”, March 11, 2004.

<sup>43</sup> The order of accreditation of diplomatic missions, consular missions of foreign states, representations of international organisations and their staff under the Ministry of Foreign Affairs of the Republic of Uzbekistan adopted by the Resolution of the Cabinet of Ministers No.207 of May 8, 2001. This order was overridden pursuant to the Resolution of the Cabinet of Ministers No.543 of December 11, 2003.

<sup>44</sup> Article 31 of the Law “On NGOs” of April 14, 1999 before the introduction of amendments.

the civil society group “Mothers Against Death Penalty” (MADP) to conduct a one-day conference on the topic, which was supported by OSCE and the Embassy of Great Britain.<sup>45</sup> As a consequence, other restrictions were introduced to establish greater control by the State over NGOs’ activities in Uzbekistan:

- Pursuant to the Resolution of the Cabinet of Ministers No. 15 of January 13, 2003, an organisation has to receive a special permission to conduct a meeting with more than 100 participants, which is a substantial restriction on the freedom of association. Moreover, as mentioned before, an NGO must receive a special permission for the publication of any bulletin.
- According to NGO leaders, in December 2003 the National Security Service (SNB) created a special NGO monitoring and control department, in particular to control the NGOs’ contacts with international organisations.
- The Resolution of the Cabinet of Ministers No. 56 of February 4, 2004 appointed two state banks – the “Asaka” bank and the National Bank of Uzbekistan – to service the legal and physical entities of the Republic of Uzbekistan that are beneficiaries of technical assistance, grants and humanitarian aid. It also introduced a state statistical reporting system on the financial means of technical assistance, grants and humanitarian aid of international, foreign governmental and non-governmental organisations (free assistance). Similarly, in January 2004 the tax inspection agency created a new department of monitoring of grants and other NGO funds.<sup>46</sup> Some NGOs have already encountered difficulties because banks now need special permission of the Central Bank to issue the received grant money to the beneficiary NGO.<sup>47</sup>
- A decree, effective since May 27, 2004, imposes re-registration of all Women NGOs with the Women’s Committee, a governmental body, but without stipulating the criteria determining a “Women NGO”.

Last but not least, regular cases of intimidation and harassment, including violent dispersal of peaceful demonstrations as well as false charges against defenders are reported, such as against the peaceful demonstration organised in November 2004 by the Human Rights Society of Uzbekistan (HRSU), during which members of the association were threatened and beaten,<sup>48</sup> in particular its President Mr. Tolib Yakubov.<sup>49</sup> A peaceful demonstration of farmers in Djizak was similarly repressed in October 2004.<sup>50</sup>

### ***g) Freedom of Movement***

Freedom of choice of a residential location and freedom of movement as stipulated in the Universal Declaration of Human Rights are reflected in the Constitution of the Republic of Uzbekistan. Pursuant to Article 28 of the Constitution, *“The citizens of the Republic of Uzbekistan shall be eligible to free movement on the territory of Uzbekistan, entry to and exit from the Republic of Uzbekistan with the exception of restrictions determined by law”*.

Such restrictions as, for instance, the presence in the passport of an obligatory “propiska”, confirming the fact of permanent residence of a citizen on a certain administrative territory are established by respective decrees of the President and other normative acts.<sup>51</sup> After the

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<sup>45</sup> ICG Report, “Failure of Reform in Uzbekistan: Ways Forward for the International Community”, March 11, 2004.

<sup>46</sup> *Idem*

<sup>47</sup> *Ibid*

<sup>48</sup> see Observatory Open letter to the Uzbek authorities, 28/10/2004

<sup>49</sup> see Observatory Urgent appeal UZB 001/1204/OBS 092

<sup>50</sup> see Observatory Open letter to the Uzbek authorities, 28/10/2004

<sup>51</sup> President’s decree No. YII-500 “On the endorsement of the Regulations on the procedures of examination of issues related to citizenship of the Republic of Uzbekistan” of November 20, 1992, and regulations “On the

February events of 1999 various normative acts were adopted, whose aim was to impose restrictions on the term of stay in the city of Tashkent for persons without the Tashkent *propiska*.<sup>52</sup> Any person living in Uzbekistan, including foreign citizens, who has a residence permit for Uzbekistan and wants to apply for residence registration in the capital of the Republic, has to obtain a special resolution of the Commission under Hokimiyat (local authority) of Tashkent City for permanent residence registration in Tashkent. The Commission is made up of representatives of the law enforcement organs of Uzbekistan (MVD and SNB), the government and hokimiyats. In practice, the Commission was established in order to control and regulate the flow of people coming from the provinces of Uzbekistan to the capital and to reduce the level of urbanisation even if such citizens have real estate in Tashkent. The Institute of Propiska exists from the times of the Soviet Union and is a source of large incomes for the corrupt officials providing these authorisations. This is why they so fiercely impede the abolition of propiska in the Republic.

Before major events in Tashkent such as “Navruz” holiday, elections, Independence Day, etc., law enforcement bodies conduct a total wipeout of people without the Tashkent propiska. The militia organs conduct door-to-door rounds, levying fines for the “unlawful” residential status of citizens; some of the so-called “non-Tashkent residents” are forcefully taken into custody for eviction (internal deportation) from Tashkent City to the places of their permanent residence. Forceful eviction upon the grounds of violations of the passport regime (lack of Tashkent propiska in the passport) is a legally endorsed practice, against which complaints to any judicial organs would deem useless.

In Uzbekistan there is also a special control over the exit of citizens from the Republic, which is motivated by the improvement of the passport system and orderliness of entry and stay on the territory of the Republic of Uzbekistan of foreign citizens and persons without citizenship. Restrictions on the exit from the country, introduced by the government in 1995, consist of the need to obtain permission from the Ministry of Interior (MVD) to exit the country for a period of two years.<sup>53</sup> To obtain such permission, a citizen of Uzbekistan submits an application to the relevant organs of MVD. Each application regarding the departure abroad and the enclosed personal particulars are checked in the information centres of the MVD and National Security Service. It is necessary to emphasise that the permission itself is of no significance for the law enforcement organs: no one can guarantee that a person obtaining such permission will not violate the law and depart later on. Besides that, a request for permission as well as other useless administrative barriers create favourable grounds for the flourishing of corruption amongst public servants.

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procedures of examination of issues related to the citizenship of the Republic of Uzbekistan” endorsed by President’s Decree No.YII-500.

<sup>52</sup> See President’s Decree No. ??-2240 “On the improvement of the passport system” of February 29, 1999, Standard Regulations on special commissions under the Council of Ministers of the Republic of Karakalpakstan, hokimiyats of the provinces and city of Tashkent, and “on the examination of issues related to residence permits for foreign citizens, including citizens of CIS countries, persons without citizenship and their permanent registration on the territory of the Republic of Uzbekistan” endorsed by the Resolution of the Cabinet of Ministers No.178 of April 16, 1999.

<sup>53</sup> “The order of exit from the country for the citizens of the Republic of Uzbekistan” (Annex No. 1) endorsed by the Resolution of the Cabinet of Ministers No. 8 of January 6, 1995.

Instructions “On the procedures of issuance by the organs of interior of the Republic of Uzbekistan of the permission to exit the country by the citizens of the Republic of Uzbekistan” were registered by the Ministry of Justice under No. 760 on July 1, 1999.

## 2. The Situation of Vulnerable Groups

As previously mentioned, generally speaking, it is mainly the socio-economically disadvantaged strata of the society that is most likely to suffer violations of its fundamental rights, in particular the prohibition of torture and ill-treatment and fair access to justice. While such a subject deserves a separate report, we decided to limit this report by focusing on the major difficulties faced by vulnerable groups, in particular children and women, in the judicial system.

The situation of vulnerable groups has not improved since Soviet times and the status of women and children is a clear illustration of certain ignorance showed by state officials and a reluctance of the State to address these issues.

### *a) Rights of the Child in the Criminal Process*

By ratifying the Convention on the Rights of the Child (CRC) on December 6, 1992, the Republic of Uzbekistan assumed an obligation to observe all its provisions and bear the responsibility for that before the international community. Nevertheless, in practice there are still a great deal of problems and shortcomings at the legislative level.

The use of child labour, some cases of child trafficking, the use of violence and torture against children and lack of special normative acts regulating the rights of children are bright examples of inconsistency between the current legislation and international documents in this sphere.

Children treatment is far from adequate and not all categories of children are protected equally. Refugee children, disabled, street children, children in prison (and those that have been released) do not enjoy the same access to educational and health facilities as 'normal' children. Disabled children are particularly vulnerable. There is an exceptionally high number of disabled children in Uzbekistan and they receive far from sufficient support. The relief payments are low and made available only until the age of 16. It is thus not without surprise that disabled children are often seen begging in the streets. There are also cases where disabled children successfully pass their admission exams but are not admitted to schools for some unknown reasons.<sup>54</sup>

### Legal framework

Over more than 10 years from the moment of ratification of the CRC, national legislation in the sphere of juvenile justice has practically not changed. In particular, rights and interests of minors in procedural law are not protected in a comprehensive and due manner. Even at the governmental level it has been pointed out that the work of the organs of Interior of certain provinces with regard to minors is unsatisfactory.<sup>55</sup>

In the system of law enforcement organs, there is a special department dealing with minors' issues, i.e. the Inspection on the Issues of Minors (further on, IDN), which is part of the Ministry of Interior (MVD). A similar department on minors' issues is to be found in the *Procurator's* office. It is necessary to note that since 2001, according to the new concept of work with the Youth developed by the Academy of the Ministry of Interior, the IDN departments of Tashkent City's MVD bodies (with the exception of the province departments) have been abolished, and the IDN functions transferred to the local inspectors and institutes of self-governance, the Mahallas. In our opinion, such suppression of specialised departments,

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<sup>54</sup> Uzbekistan, Supplementary NGO Report, 2001, p. 4, 20, 26,  
<http://www.crin.org/docs/resources/treaties/crc.28/Uzbekistan.pdf>

<sup>55</sup>“Narodnoye Slovo” (*People's Word* Newspaper) No. 113 of June 9, 2001 “In the Procurator's Office of the Republic of Uzbekistan”

which are directly engaged in the problems of minors, has had negative consequences for the entire national juvenile system, because the local self-governance institutes do not know the specificity of the work with minors.<sup>56</sup>

More precisely, minors' issues are dealt with in the system of local self-governance organs (Mahallahs), by special commissions under hokimiyats – “Commissions on minors' issues”, which co-ordinate the activity of the local self-governance organs, educational establishments and other institutions responsible for the engagement of youth in socially beneficial labour, education, prevention of delinquency and crime among them.

As a result of the unsatisfactory work of these commissions at all levels, a Resolution of the Cabinet of Ministers No. 360 “On Strengthening the activity of the “Commissions on the issues of minors” was adopted on September 21, 2001, and provided a critical evaluation of the situation vis-à-vis rights and lawful interests of minors in Uzbekistan. This resolution endorsed the composition of a specialised governmental commission under the Cabinet of Ministers as well as a series of regulations on the commissions on minors' issues. Unfortunately, no public data is available on the impact of this rather formal measure.

When reading this report one should be aware that the information available on the situation of state violence against children is highly limited. The last examination of the situation of children's human rights in Uzbekistan by the Committee on the Rights of the Child underlined the “insufficient information and awareness” in several issues relating to children, such as juvenile justice and violence in general. The Government of Uzbekistan indeed still seems reluctant to provide any type of statistical information or grant access to information or institutions.

#### Arrest and detention of minors

Pursuant to the legislation of the Republic of Uzbekistan, there are no special requirements for the arrest and detention of minors. Minors are arrested and detained upon the same grounds as adults. In addition to the administrative arrest and detention for delinquency applicable both to adults and minors as determined by the Code of Administrative Liability, there is a procedural arrest and detention for criminal offences. Sanctions for administrative misdemeanours committed by minors are mainly limited to fines but are practically not used. Although the CPC contains some rules regarding the involvement of minors in criminal proceedings, they are of limited nature. There are no special courts or separate codes on juvenile delinquency. The consequences of such legal vacuum are harsh treatment of minors involved perforce in the criminal prosecution.

According to surveys among detained minors and their lawyers,<sup>57</sup> cases of gross violations of the established order of arrest and detention are regularly reported, in particular:

- arbitrary arrest and detention without grounds;
- lack of explanation of reasons for arrest and detention;
- violation of the timeline for writing reports on arrest and detention or total lack of such reports;
- presence of two reports with different dates;
- use of torture (psychological and physical duress on adolescents with the purpose of obtaining suitable testimonies);
- inhuman, degrading treatment of minors by law enforcement organs;
- violation of the terms of custody for detained minors;

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<sup>56</sup> “Analysis of the practice of administration of justice with regard to minors in the Republic of Uzbekistan”, 2001, Legal Aid Society.

<sup>57</sup> “Analysis of the practice of administration of justice with regard to minors in the Republic of Uzbekistan”, 2001, Legal Aid Society.

- fabrication of guilt evidences by operative officers in order to carry out arrest and detention;
- fabrication of procedural documents of arrest and detention;
- use of “qualified attested witnesses” at the time of arrest, who “accidentally happen to be” with the same operative officers while conducting various procedural actions in different days and time of the day;
- late notification or total absence of notification of the persons and organs stipulated by law (*Procurator*, relative adults, guardians, organs of trustee and guardianship) on the arrest and detention;
- “obtaining” statements and explanations from adolescents without the presence of the persons determined by law (legal representatives, teachers, psychologists, lawyers) and use of such documents as evidence;
- incarceration in cells of the district departments of Interior together with adult suspects and defendants;
- total lack of advice on the rights of the detainee determined by law and non-provision of such rights;
- providing excessive evidence and overcharging the policy of “being on the safe side” to eliminate a possibility of returning the case for additional investigation;
- non-provision of an effective right to defence of the minor from the moment of arrest and detention, frequently accompanied by the use of “pocket advocates” as well as non-observance of conditions of custody;
- professional incompetence of certain law enforcement officers.<sup>58</sup>

An example of outrageous violation of the rights of the child and the CPC is the case of the seventeen-year-old A'zam Sharipov, who was detained on June 6, 2001 by the Chilanzar District Department of Interior under the following circumstances:

*“A'zam Sharipov was an apprentice learning to make keys. His work place was near the bus stop of the Chilanzar Trade Centre. One day two persons approached him and without presenting their identities complained about the quality of a key made at the same place earlier. Upon the persistent demands of the individuals, A. Sharipov followed them and found himself in the Chilanzar District Department of Interior (RUVD) of Tashkent City, where he was detained for 30 hours. In the RUVD he was charged with the theft of a “Mercedes” car, murder of the owner of the car and insinuated complicity to drug dealing, and was demanded to sign a testimony. A. Sharipov could not say anything, because he had nothing to do with these charges. After that they started beating him with hands and legs on his ribs, hips, calves, head, stomach, beating him with a wooden stick on his soles, tied thumbs of hands, squeezed and beat, put a gas mask on him, impeding the breathing, intimidated him that in case he did not confess to the charges brought against him drugs would be planted on him. The boy was denied food, drink and sleep, and during the time he was kept in RUVD he was only let out once to use the toilet. He could not complain to anyone, because he was held incommunicado, no one was allowed to see him, his requests for a lawyer were ignored, and he was not taken to an investigator. Unable to bear such suffering, he jumped out of the window in a state of utter despair. He was taken to the hospital by a criminal investigation officer, who later was convicted under Article 103 (leading to suicide), 206 (position abuse), 235 (forcing to testify) of the Penal Code. Only after his leg was amputated was a criminal case opened and A. Sharipov recognised as a victim”.<sup>59</sup> Recently, the Legal Aid Society filed a lawsuit on behalf of A'zam Sharipov for the compensation of the material damage caused by the acts of torture.*

<sup>58</sup> “Analysis of the judicial practice with regard to minors in the Republic of Uzbekistan”, 2001, Legal Aid Society.

<sup>59</sup> Interview of the Legal Aid Society with A'zam Sharipov of October 8, 2001, “Analysis of the judicial practice with regard to minors in the Republic of Uzbekistan”, 2001, Legal Aid Society.



## ***b) Women's Rights in the Criminal Process***

Women's rights are a topic for a separate complex research, touching upon urgent issues of a deplorable state of affairs in the gender policy, disdainful attitude to women's gender, employment problems and maternity status, domestic violence and suicide practices. As previously mentioned, we will only touch upon the main specificity of women's rights violations, mainly linked to their social status, while they are of course also suffering the same violations referred to previously.

In today's Uzbek society, women are suffering from violations of their rights to a greater extent than men, regardless of the declaration on gender equality that exists in the 1992 Uzbek Constitution. The reason for this is more likely to be a social phenomena of the post Soviet Uzbekistan than the deficiency of legislation: firstly, a general lack of respect of legislation inherited from the Soviet State, and secondly the growth of patriarchal ideology and its increasing role in society due to the restoration of religion norms. Gender inequality is interpreted as a vital part of national culture, opposed to the expansion of western gender equality with its "perverse" influence on "tender and modest, highly moral-oriented women". Early marriages, polygamy, domestic violence are interpreted as woman protection, or otherwise as a punishment she deserved for not respecting patriarchal patterns of behaviour. Writers, politicians, cultural workers and the media are pointing at the low level of understanding of gender equality in society among law enforcement agents and members of the judiciary. For example, judges have no gender sensitive training.<sup>60</sup>

The most oppressed in this sense are the wives of political prisoners and prisoners under charges of fundamentalism and religious fanaticism. Having become witnesses of lawlessness and victims of the Uzbek justice system, these women try to knock at the doors of the law enforcement organs to find justice and, upon realising the uselessness of it, start speaking out about their experience or become initiators of women's protests and pickets. The simple fact of being relatives to suspects or prisoners may also lead to violations of their rights, for example when called to testify as witnesses.

*"Fatima Mukadirova, 63, was detained by the organs of the Interior of Tashkent City upon suspicions of storing extremist literature. These charges were totally false as she was in fact arrested and detained because of her son M. Avazov, who was convicted for belonging to religious groups and died in the prison of Jaslyk (Karakalpakstan) in August 2002, after having been beaten and immersed in boiling water. She was arrested and detained as a revenge for repeated demands to investigate causes of her son's death. In February 2004, she was convicted to six years of imprisonment. The Appellate Division of Tashkent City Court on criminal cases resolved to impose a fine on her and to release her from the courtroom just before the visit to Tashkent of the U.S. Secretary of Defence, Donald Rumsfeld."*<sup>61</sup>

More generally, women are facing the same risks as men in terms of methods of inquiry and investigation used on a systematic basis in the criminal justice system and preliminary investigations, i.e. violations of their basic freedoms, right of defence and to be protected from torture and ill-treatment, very often with a specific pattern of sexual nature.

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<sup>60</sup> Gulnara Sabirova Monitoring of observing the rights of women at divorces processes at civil country of Fergana district, NGO "Ishonch-OCSE", Fergana 2002 p.5.

<sup>61</sup> Sewell Chan, "Uzbekistan releases a critic of the government: the action coincides with Rumsfeld's visit to the capital", *The Washington Post*, February 25, 2004, p. 20. Authorities denied any connection between the two events.

*“Tatyana Morozova, 30, was suspected of the murder of her husband. In February 2003, she was taken to the Department of Interior of Tashkent City despite her having an alibi. The interrogation lasted for several days. To her refusal to sign a confession and a guilt plea, some procurator started beating her on the face. The suspect held all her strength together because she had nothing to do with the murder. Only the fact that the real murderers turned up saved her from inevitable punishment. Before her release from the investigation cell (SIZO), T. Morozova was forced to sign a statement that she was subjected to good treatment, although the investigator told her that no one would even look for her because she was a total orphan and no one would notice her disappearance.”<sup>62</sup>*

Last but not least, women are under a particular social control via the local self-governance organs, the Mahallas.

### *c) Local Organs of Self-governance or of Self-arbitrariness?*

Local self-governance organs in Uzbekistan are the Mahalla Committees, established in each Mahalla or community on a territorial basis. Pursuant to Article 1 of the Law “On self-governance organs of citizens” in the new edition of April 14, 1999, self-governance of citizens, of which the Mahalla is part of, is an independent activity of citizens for resolving issues at local level based on their interests, historical specificity of development as well as national and spiritual values, local customs and traditions.

The powers of the Mahallas were strengthened with the transfer of part of the state organs’ power to the self-governance organs of citizens. In conjunction with that, a new edition of the Law “On self-governance organs of citizens” was adopted. Article 7 clearly determines that “organs of self-governance of citizens shall not be part of the organs of the state power”. However, in practice the Mahalla is subordinated to the executive power (city, district or province khokim) that endorses the membership composition of the committee and pays a salary to the chair of the Mahalla.

The State policy allots a key role to the Mahalla Committee in preserving families at any cost. In fact, Mahalla Committees act as courts on family issues and deny the battered wives a permission to file a divorce, making them return home to their violent husband and sometimes family-in-law. The mentality of the Mahalla does not permit the concept of defending the oppressed family members against the husband, leading to violations of the law and of the right to defence. For instance, according to Gulchekhra, a 30-year-old woman, she was repeatedly beaten by her father-in-law, but when she requested help from the Mahalla Committee “Turk Kurgon” of the Yunus-Abad district of Tashkent City, the Committee members only shamed her for “letting the dirt out of the house” and told her to be more “tolerant and condescending to the old and sick person”.

*“With the endorsement of the state organs, Mahalla Committees continue interfering not only with families where marriages are officially registered in accordance with law, but also in common-law marriages.<sup>63</sup> Thus, Matluba Pulatova, 33, was summoned on February 10, 2004 to the Mahalla Committee of the Sabir Rakhimov District of Tashkent City for the reconciliation with her “husband”, who constantly beat her because she did not want to live with him and register the marriage despite the fact that they had two children. In the Mahalla Committee, the entire blame for the dysfunctional family was put on Pulatova without disciplining her husband Olim Mansurov. The Mahalla Committee ignored the situation and*

<sup>62</sup> Interview of the Legal Aid Society, January 2004.

<sup>63</sup> i.e. cohabitation without official state registration and recognition.

*consequently, when Mansurov was drunk, he continued “to administer his own justice”, eventually resulting in him cutting his wife’s throat before the eyes of the 7-year-old daughter and the 60-year-old mother of the victim. It is a sad fact that the court, while issuing a sentence with regard to Mansurov, did not issue any court ruling condemning the gross violations committed by the Mahalla”.<sup>64</sup>*

Another example is the special protest and incomprehension caused by actions committed by the “respectable” dwellers of the Tutzor Mahalla of Tashkent City.

*“Under the suspicion of theft and in the presence of 5 members of the Mahalla Committee, a 50-year-old criminal recidivist citizen, Abbas Sobirov, and his 40-year-old brother-in-law, Murod Khakimov, tortured 14-year-old Farkhod Saliev in order to force him to confess a house theft of one of the Mahalla dwellers. Despite the fact that the adolescent totally denied his participation in the crime and pleaded that this issue be dealt with by the law enforcement organs, Sobirov and Khakimov did not bother to notify the parents of Saliev or the inspection on minors’ issues. Having detained the child for more than 8 hours, they used a piece of a rubber hose as a means of obtaining confessions, which was pushed up the anus of the child, as a result of which the child developed peritonitis. Not a single participant of this outrageous arbitrariness acted as a witness against the criminals. On the contrary, they testified that the victim slandered “a decent person”. This Mahalla Committee was composed of several persons in prestigious positions. Finally the guilt of Sabirov and Khakimov was proved and they were convicted to different terms of imprisonment”,<sup>65</sup> but there were no actions with respect to the Mahalla members who assisted in the scene, although according to the CAT definition of torture, they can be held responsible for acts of torture.*

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<sup>64</sup> LAS case collection 2004.

<sup>65</sup> LAS case collection 2004.

## **SECTION 2. HUMAN RIGHTS PROTECTION MECHANISMS AT THE NATIONAL LEVEL**

The following review of the judicial system and other law enforcement organs and human rights protection instruments is performed in order to provide an analysis of the law enforcement practices in the sphere of human rights and not from the point of view of an institutional research of the national system of justice.

As of present, Uzbekistan remains *de facto* a state with authoritarian regime, where repressive methods known from the times of the Soviet Union are exercised in order to suppress any kind of dissent, freedom of speech and opposition, through the use of law enforcement bodies as a repressive machinery of enormous scale and strength. These agencies are governed by the maxim that interests of the government and State have higher priority than universally accepted human rights and freedoms, although the Constitution declares that democracy in the Republic of Uzbekistan shall rest on the principles common to all mankind, according to which the ultimate value should be the human being, his life, freedom, honour, dignity and other inalienable rights<sup>66</sup>.

### **1. Lack of Independence of the Judicial System**

The reform of the criminal justice and execution of punishment systems, as well as of the whole law enforcement system, is a complex and difficult problem for any society. In Uzbekistan, this problem is so big that the state is simply not able to cope with its law enforcement functions. In other words, the system of criminal justice and punishment execution, as it presently exists, is neither bringing any value to the society nor cleaning it off the crime. On the contrary, it is largely causing irremediable harm and facilitates the criminalisation of society.

#### ***a) Lack of Independence of the Courts and Judges***

The role of the courts as well as the professional qualification of judges is of a rather low standard. Judicial errors are numerous; judges do not notice or dismiss obvious defects in the work of the investigator and *procurator*. They seem to forget that beside the guilt sentence there is also a possibility of acquittal. According to the Constitution, Courts are supposed to represent an independent branch of power, but in practice they are still controlled by the State in the name of the executive power.<sup>67</sup>

Such influence on judges is largely rooted in the mechanism of appointment and dismissal of judges. First, they only have a five-year term of appointment. Second, their candidacies, before final approval by the President, undergo selection by the Judicial Qualification Commission under each court and then by the Higher Qualification Commission under the President, where all members are appointed by the President and are accountable to him. In 2001, this procedure was extended to judges in lower instance courts thus requiring their appointment by the President. The Chair of each province court is the head of the Province Qualification Commission. Six members of the commission are elected by the judges of the district and province courts from among the judges. Each Province Qualification Commission arranges judicial qualification examinations. Candidates who pass the exams are included on the “reserve list” of potential candidates for judges. As soon as a judicial vacancy opens elsewhere, the Qualification Commission puts forward two or three candidates from the reserve list for consideration by the Higher Qualification Commission under the President,

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<sup>66</sup> Article 13 of the Constitution.

<sup>67</sup> Article 106 of the Constitution determines that the judicial power in the Republic of Uzbekistan is exercised independently of legislative and executive powers, political parties, or other public amalgamations.

which interviews the candidates and recommends one of them to the President for approval. The whole process of appointment and dismissal is non-transparent and largely subjective.

### ***b) Role of the Constitutional and Supreme Courts***

Pursuant to Article 107 of the Constitution, the judicial system in the Republic of Uzbekistan consists of:

- the Constitutional Court of the Republic of Uzbekistan,
- the Supreme Court of the Republic of Uzbekistan,
- the Higher Economic Court of the Republic of Uzbekistan,<sup>68</sup>
- the Supreme Court of the Republic of Karakalpakstan on civil and criminal cases,
- the Economic Court of the Republic of Karakalpakstan elected for five years,<sup>69</sup>
- province courts,
- Tashkent City courts on civil and criminal cases,
- inter-district, district and city courts on civil and criminal cases,
- military courts and economic courts appointed for the same period of five years.

### **The Constitutional Court**

The role of the Constitutional Court is extremely insignificant. Despite the provisions of Article 108 of the Constitution, which determine that in their activity the judges of the Constitutional Court shall be independent and abide by the law, in practice they are not really independent and are accountable to the government.<sup>70</sup> This is due to the fact that the Members of the Constitutional Court – namely, the Chair, Deputy Chair and five members of the Constitutional Court including the judge of the Republic of Karakalpakstan, are nominated by the President for appointment by the Oliy Majlis Senate, which is mainly formed of persons loyal to the government.<sup>71</sup> The term of powers of the judges of the Constitutional Court is five years.

The activities of the Constitutional Court are:

- To determine the consistency of the laws of the Republic of Uzbekistan, resolutions of the Parliament, President's decrees, government resolutions and resolutions of the local government organs, interstate treaties or other obligations of the Republic of Uzbekistan, with the Constitution of the Republic of Uzbekistan,
- To issue resolutions regarding the consistency of the Constitution of the Republic of Karakalpakstan with the Constitution of the Republic of Uzbekistan, and of the laws of the Republic of Karakalpakstan with the laws of the Republic of Uzbekistan;
- The overall construction and commentary of constitutional norms and laws of the Republic of Uzbekistan.

Thus, the Constitutional Court does not consider disputes on matters of laws between individuals and the State but only exercises supervisory functions on issues of construction and consistency of normative acts with the Constitution of the Republic of Uzbekistan.

The right to submit requests and communications to the Constitutional Court belongs to a limited circle of higher officials determined by the Law "On the Constitutional Court".<sup>72</sup> This

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<sup>68</sup> This court only considers cases pertaining to business claims and does not consider human rights violations.

<sup>69</sup> *Idem*

<sup>70</sup> For its inertia and ignorance of the problems of contradictions between the Constitution and the whole mass of normative acts issued by the Parliament and the President, the Constitutional Court was given the name of "the Court of Ghosts" in professional circles.

<sup>71</sup> Article 2 of the Law "On the Constitutional Court" of August 30, 1995.

<sup>72</sup> Article 19 determines that the entities eligible to submit issues for consideration by the Constitutional Court shall be the chambers of the Oliy Majlis of the Republic of Uzbekistan, the President of the Republic of Uzbekistan, the Chair of the Senate of the Oliy Majlis, the Jokargy Kenes of the Republic of Karakalpakstan,

Court does not consider communications by citizens or organisations on issues of violations of rights guaranteed by the Constitution and international treaties ratified by Uzbekistan on human rights.

### The Supreme Court

Article 110 of the Constitution determines that the Supreme Court of the Republic of Uzbekistan shall be the highest organ of the judicial power in the sphere of the civil, criminal and administrative judicial process. The rulings issued by this Court shall be final and obligatory for the execution throughout the territory of the Republic of Uzbekistan. The independence of the Supreme Court and judges is determined by the Constitution and the Law “On Courts”. The Supreme Court plays the role of the highest judicial authority vested with the power of issuing interpretative releases on precedents. It has a strong position as it may grant writ of *certiorari* for any case and usually serves as a forum for the terrorist cases and cases involving state secrets. The Supreme Court has also the power to consider cases *de novo* as an appellate or cassation instance and in the order of judicial supervision. However, like with the Constitutional Court, the Supreme Court is not regarded as an independent body due to the same appointment and dismissal system.

### “Prosecution-oriented” courts

Article 113 of the Constitution determines that the hearing of cases in all courts of Uzbekistan shall be open with the exception of in camera court hearing in cases established by procedural legislation.

The insignificant role of courts in the administration of justice, compared to the *Procurator* one, and in the oversight of the state organs, is explained by the fact that due to the Soviet tradition, free of charge interference of the mighty via the *Procuracy* organs was a cheap and accessible instrument, and the *Procuracy* was vested with large powers to exercise coercive measures without consent or oversight of courts, such as arrest and detention, search and seizure, and others. Such a state of affairs manifestly contradicts the Constitution.

The main provision establishing the role of courts in the criminal process is Article 19 of the Constitution, which determines that “*the rights and freedoms of citizens stipulated by the Constitution shall be inviolable and no one may deprive of or restrict these rights without a court decision*”. Thus, the Constitution envisages the exclusive powers of the court regarding restriction or deprivation of rights.

However, despite this provision, pursuant to Section 2 of Article 243 of the CPC, “*the right to issue a sanction to arrest and detention of citizens belongs to the Procurator General of the Republic of Uzbekistan, Procurator of the Republic of Karakalpakstan, their deputies, procurators of the provinces, of the Tashkent City, procurators equalled to them and their deputies as well as to the district (city) procurators and other procurators equalled to them.*” In this case, the sanction of the *procurator* as the state official in charge of the prosecution, and not that of the court, is the only and sufficient decision for the deprivation of liberty at the stage of preliminary investigation. This provision manifestly contradicts the role of the court in the restriction of inalienable human rights to freedom and personal inviolability guaranteed

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groups of Members of Parliament – at least one fourth of the total number of MPs of the Legislative Chamber of the Oliy Majlis, group of Senators – at least one fourth of the total number of Senate members, the Chair of the Supreme Court, the Chair of the Higher Economic Court and the Procurator General of the Republic of Uzbekistan. The issue may also be introduced upon the initiative of at least three judges of the Constitutional Court.

by Article 19 of the Constitution. It also contradicts provisions of the ICCPR, ratified by Uzbekistan in 1995, which determines the exclusive role of the court in this sphere.<sup>73</sup>

Pursuant to Article 44 of the Constitution, each person shall be guaranteed judicial protection of his rights and freedoms, as well as the right to submit complaints to the court against unlawful actions of state organs and officials. This constitutional guarantee means that any unlawful action of a state organ or an official restricting or depriving anyone of their rights and freedoms may be submitted to court. Thus, the existing situation defined in the CPC, whereby *procurators* and not judges issue sanctions on arrest and detention, is contradictory to the Constitution of Uzbekistan as well as to the ICCPR.

First, the CPC does not envisage judicial verification of the legality and validity of the determination of such restriction measures as detention, allowing the person responsible for the prosecution, i.e. the *procurator*, to deprive the defendant of his freedom without judicial involvement. Second, the person in custody is not eligible to complain to court against such decision of the *procurator*. Such a procedural decision does not simply eliminate the exclusive competence of courts regarding the temporary deprivation of liberty, but entirely negates any powers of the court to decide on issues of detention.

Last but not least, in practice it is nearly impossible to complain about unlawful behaviour of the courts, judges or investigators and to have the case brought to superior jurisdictions, including the Supreme Court. For example, the Uzbek legislation and case law provide that judges should rule out any evidence obtained by means of torture.<sup>74</sup> In practice however, judges regularly ignore complaints of torture and continue to use evidences obtained under torture as a basis for convictions. Obtaining redress and reparation in cases of torture is almost impossible. Courts decline the absolute majority of petitions for initiating a criminal case submitted by the defence against state officials who use such methods. Only in exceptional circumstances are criminal cases filed and, as a rule, those responsible get very light, purely symbolical, punishment.<sup>75</sup> The same applies to arbitrary arrests and unlawful detentions, or any other violations of the right to defence.

**The absence of *habeas corpus* in the national criminal process is a serious violation of the international obligations assumed by the Republic. However, what is more important for the integrity and continuity of the national legislation, is the fact that the CPC, in its sections related to restriction measures such as detention, contradicts Articles 18, 25 and 44 of the Constitution of the Republic of Uzbekistan, and therefore requires fundamental revision.**

### *c) The Charge of Procuracy*

In Uzbekistan, the *Procurator's* office is part of the law enforcement system and is called upon by the Uzbek law to exercise oversight of the accurate and uniform enactment and enforcement of laws on the territory of the Republic of Uzbekistan, although this is a power that usually rests upon the judiciary. The *Procuracy* is also a centralised system of prosecution and surveillance organs headed by the *Procurator-General*.<sup>76</sup> Article 120 of the Constitution

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<sup>73</sup> Namely a person, who shall impartially exercise judicial functions, and not the prosecutor, shall sanction detention in an open court hearing. See the *Kulomin v Hungary* (521/92) case of the U.N. Human Rights Committee.

<sup>74</sup> Article 95 of the Criminal Procedural Code prohibits the use of evidences obtained by illegal means, and a resolution of the Supreme Court states that evidences obtained through human rights violations, including torture, do not have legal value and must not be considered.

<sup>75</sup> See for example the case of Agzam Sharipov, a minor who lost his leg as a result of torture. The law enforcement officer responsible for the acts of torture was subjected to 10 years sentence. However, the police officer is being searched for and has up till now not been arrested.

<sup>76</sup> This term identifies the head of the *Procuracy*.

determines that the *Procurator* shall carry out its powers independently of state organs, non-governmental organisations and officials, abiding only by the law. However, in practice the *Procurator* organs and the *Procurator-General* are under the control of the executive power and, in fact, carry out its will. Evidence of that is the fact that the *Procurator-General* is appointed by the President of Uzbekistan and the respective presidential decree is endorsed by the Parliament. The term of office of the *Procurator-General* is five years.

**In short, along with supervisory functions, the *Procuracy* carries out preliminary investigations of a wide range of crimes as well as represents the State in prosecution at judicial process. The concentration of many powers within one state agency gives it enormous weight compared to the whole judicial system.**

Moreover, on August 29, 2001, a new law of direct effect was adopted, which regulates the activity of the *Procuracy*. Article 2 of the Law “On *Procuracy*” determines that the main function of the *Procuracy Office* of the Republic of Uzbekistan is to uphold the rule of law, strengthen due process and crime prevention, as well as **protect the rights and freedoms of citizens**, the interests of society and the State, and the constitutional order in the Republic of Uzbekistan.

Last but not least, Article 24 of the Law (“Supervision of observance of the rights and freedoms of citizens”) determines that **the object of supervision shall be the observance of rights and freedoms of citizens by ministries, state committees, agencies, self-governance organs, non-governmental organisations, enterprises, institutions, establishments, military units, military formations of the ministries, khokimiyats and other officials.**

Therefore, in addition to carrying out the aforementioned functions of prosecution and investigation, the *Procurator* at the same time examines and checks communications, applications and complaints regarding the violation of rights and freedoms of citizens. He also has to explain to the applicants the order of protection of their rights and freedoms and take measures towards prevention and elimination of violations of citizens’ rights and freedoms, holding the persons who committed the violation liable and securing the compensation for the caused damage.

If there are grounds to suppose that the violation of a citizen’s rights and freedoms is of a criminal nature, the *procurator* shall institute criminal proceedings and take measures towards holding the persons who committed the violation liable in accordance with the law.

In cases where the violation of citizens’ rights and freedoms is of an administrative nature, the *procurator* opens an administrative case, and immediately communicates it and forwards the examination materials to the relevant organ or the official responsible for examining cases of administrative delinquency.

Due to the contradictory functions such as preliminary investigation, oversight role and state prosecutor functions as well as the issuing of sanctions for arrests and detention, the *Procuracy* of Uzbekistan is unable to carry out its task of protecting citizens’ rights and freedoms and upholding the rule of law. Numerous violations by the *Procuracy*, such as command order and fabrication in the majority of cases, and violations of the main human rights and freedoms, have discredited this law enforcement organ since the time of its founding under the Soviet Union. The charge of *Procurator* has not experienced any considerable structural changes since the Soviet times and its officers continue to use the same methods of unlawful pressure on individuals.



## 2. Bodies of the Ministry of Interior

The Ministry of Interior (further - MVD) is a central part of the law enforcement system of Uzbekistan. It is the law enforcement organ of the country with most staff. Information regarding the personnel and budget of MVD is a state secret; therefore, there are no accurate data on the number of employees in the MVD and its territorial subdivisions. Human rights organisations estimate that the total staff number of MVD in Uzbekistan is about 200,000 persons. In comparison, the army totals about 70,000 military servicemen and is awaiting considerable reduction.<sup>77</sup> The MVD is headed by a minister who is appointed by President's Decree.<sup>78</sup>

The main tasks of MVD are the maintenance of public law and order and other internal issues in Uzbekistan, such as fire fighting or automotive inspection, or a passport service engaged in the issuing, prolongation, etc. of passports, resident and non-resident registration as per the location of residence, extension of visas for foreign citizens (OVIR) and other services.

The main departments engaged in maintaining law and order are the Service of Public Order, which includes a patrol service – militiamen, and the Criminal Investigation Militia. There are special subdivisions tasked with combating terrorism, racket and corruption. MVD disposes of its own armed forces, which in practice function as internal military units (internal troops). These troops are usually deployed at times of mass disorders as well as to fight against terrorist formations.

The state and public control over the MVD activity is highly limited. MVD has direct contacts with the President's office and is not accountable to the government except for the submission of certain reports. Formal supervision over the MVD activities is carried out by the *Procurator* in accordance with entrusted powers. The National Security Service (former KGB) may also oversee the activities of the MVD officers.<sup>79</sup> Check-ups are mainly launched with respect to a dissident and are used in order to dismiss MVD officers who fail to be a part of the corrupted system. Civil society in Uzbekistan does not have the possibility to oversee the MVD activity. Moreover, the mass media do not have access to that organ and cannot reliably reflect its activity.

According to international and national organisations, cruelty and the use of torture in the MVD organs have become a norm (see chapter 1.d). Cases of holding MVD officers liable for such actions are extremely rare. Over the past years, citizens' distrust of that state body, whose task should be to protect the lawful interests, rights and freedoms of citizens, has grown in Uzbekistan. Evidence of the distrust and negative attitude by common citizens towards the Militia are the March events of 2004 in Tashkent and Bukhara Province, during which the alleged terrorists targeted particularly MVD officers in their attacks.

Despite numerous statements of the international community, the Militia continues to arrest and detain citizens in order to extort bribes from them and their families. There have been cases where militia officers detained people under fabricated charges as a means of intimidation in order to prevent them or their family members from revealing corruption or interfering with local criminal activities. These violations are reflected in detail in the reports of the U.S. Department of State<sup>80</sup> and of Human Rights Watch.<sup>81</sup> The lack of public control

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<sup>77</sup> ICG Report, "Central Asia: Reforms of law enforcement organs – problems and perspectives", December 10, 2002.

<sup>78</sup> Pursuant to Section 11, Article 93 of the Constitution, the President shall endorse the members of the Cabinet of Ministers upon submission of the Prime-Minister

<sup>79</sup> ICG Report "Central Asia: Reforms of law enforcement organs – problems and perspectives" of 10 December 2002

<sup>80</sup> <http://www.usembassy.uz/home/index.aspx?&=&mid=382&lid=1>

<sup>81</sup> <http://hrw.org/english/docs/2005/01/13/uzbeki9895.htm>

over the actions of MVD and the absence of laws to regulate the militia's activities (similar to the laws on *Procuracy*, Courts, etc.) lead to uncontrollable human rights violations by the MVD officers.

### **3. The Ombudsman and the National Human Rights Protection Centre**

#### ***a) The Ombudsman***

Based on the acknowledgement of inactivity and pro-governmental policy of the Human Rights Commissioner in carrying out her responsibilities, it can be said that the activity of the Ombudsman in Uzbekistan represents a practically ineffective protection of the society and citizens' interests. In fact, the Ombudsman's activity is declarative and of no importance to the human rights protection in Uzbekistan.

The Institute of the Human Rights Commissioner, founded upon the initiative of the President of the Republic of Uzbekistan in February 1995, received its status by the Law "On the Parliamentary Human Rights Commissioner (the Ombudsman)" adopted on April 24, 1997. This law determines that the Ombudsman shall be an organ of extra-judicial protection of citizens' rights in charge of accepting and examining complaints when all other legal protection measures have been exhausted. It shall facilitate the restoration of the violated human rights by submitting recommendations regarding the ways to resolve disputes between a state organ and a citizen. The Commissioner, while administering her functions, shall be self-dependent and independent of the executive and judicial organs, basing her activity only upon the law.

The Human Rights Commissioner is elected by the Parliament among its Members by way of open voting and plain majority of votes, and must then resign from his/her political mandate.<sup>82</sup> The Ombudsman term is the same as the term of the effective Parliament.

The Human Rights Commissioner shall facilitate the restoration of violated rights of any individual under the State's jurisdiction (including foreign citizens, illegal migrants and persons without citizenship) as well as of third parties (non-governmental organisations and groups of citizens) by accepting and examining communications regarding the violation of their rights by the state organs and officials and providing recommendations pertaining to the possible and necessary measures to restore the violated rights and freedoms. Due to the fact that the activity of the Commissioner does not replace but mainly complements the existing instruments of rights and freedoms protection, she accepts complaints which have already been examined in the administrative or judicial order but whose adopted decisions did not satisfy the complainant.

Upon the results of a thorough check-up of the validity of a citizen's claims, the Commissioner recognises the said actions or inactivity of the state organs and officials as unlawful and violating the rights and freedoms of the citizen. She notifies the complainant thereof in writing and forwards her recommendations regarding the restoration of the violated rights to the relevant state organ that committed the human rights violation.

To conclude, not only the recommendations of the Ombudsman do not have a juridical status and therefore are not mandatory for the State, but she has also failed to undertake any

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<sup>82</sup> Due to the exercised powers on the protection of citizens' rights and freedoms and independent parliamentary supervision over effectiveness of the current human rights legislation, this position is incompatible with membership and participation in political parties. The Ombudsman does not have the right to engage in entrepreneurial activity or other paid work (any part-time arrangements) except teaching, scientific research or other creative activity.

significant steps in the sphere of protection of lawful rights and interests of the citizens of Uzbekistan. For these reasons, this Institution has been largely ignored by potent organs and caused disappointment among citizens.

### ***b) The National Human Rights Centre***

The National Human Rights Centre of the Republic of Uzbekistan (further on, the Centre) was founded by President's Decree in 1996.<sup>83</sup> The Centre is headed by a director appointed by the President and whose status is equivalent to that of a minister. It is an analytical, consulting, interagency co-ordination state organ, entrusted with the following tasks:

- preparation of national reports on the observance and protection of human rights in the Republic of Uzbekistan;
- development of co-operation of the Republic of Uzbekistan with international and national organisations in the sphere of human rights;
- development of national action plans and strategy for the implementation of the provisions of the Constitution, laws and universally recognised norms of international law in the sphere of human rights.

The Centre is not competent to examine individual complaints of citizens and organisations. The activities of the Centre are carried out in accordance with the Regulations on the National Human Rights Centre adopted by the Cabinet of Ministers<sup>84</sup>. Due to the fact that the Centre is a state organ, it is not capable of objective assessment of the human rights situation in Uzbekistan. As in the case of the Ombudsman, the Centre is more a declarative organ, aiming at preserving the State interests rather than those of the citizens. The main positive developments in the sphere of human rights cannot be accredited to the activity of the Centre or the Ombudsman but to the activity of the international non-governmental and governmental organisations as well as to the representatives of governments of foreign democracies.

In May 2003, the Government of Uzbekistan formed an inter-agency committee headed by the Director of the National Human Rights Centre for the development of an action plan on the implementation of the recommendations reflected in the February Report of the U.N. Special Rapporteur on Torture. In September-October the same year the draft action plan was discussed at a meeting with participation of foreign embassies as well as of local and international non-governmental organisations (NGOs). Since then, no concrete measures have been taken except the legislative changes previously mentioned on the definition and criminalisation of torture; the action plan has remained on paper.

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<sup>83</sup> President's Decree "On the creation of the National Human Rights Centre of the Republic of Uzbekistan" of October 31, 1996.

<sup>84</sup> Resolution of the Cabinet of Ministers No. 399 "On issues of activity of the National Human Rights Centre of the Republic of Uzbekistan" of November 13, 1996.

## SECTION 3. CONCLUSIONS AND RECOMMENDATIONS

Over the recent years, there has been an obvious crisis in the sphere of human rights protection in Uzbekistan. The Government and the state organs ignore lawful rights and interests of citizens, judicial organs do not play the role of independent arbitrators and the *Procurator* is still empowered to use restriction measures without the oversight of the court. Pseudo-civil society institutes created by the government, such as the Ombudsman or the National Human Rights Centre, have proved unable to fight the massive deeply rooted human rights violation practices. Human rights groups criticising the actions of the government do not have an opportunity to work freely, they experience an all-round pressure. The situation of non-governmental non-profit organisations and independent groups continues worsening. The mass media are controlled by the state organs and cannot express their opinions freely. The executive power dominates over the legislative and judicial powers, leading to arbitrariness, unlawfulness and impunity. The law enforcement organs, especially the Militia, continue to use violence and torture with regard to all categories of persons in the criminal process. Due to the lack of a relevant legislation, organs of the Interior enjoy practically uncontrolled power over citizens. Local authorities arbitrarily interfere with citizens' private life, exceeding their powers to family issues of the citizens. The government demonstrates inability to provide for citizens' political and civil rights and adequate children's and women's rights protection, in accordance with the assumed international obligations and the provisions of the Constitution.

Alongside with that, one cannot but admit that Uzbekistan has made some insignificant and fragmentary progress in the sphere of human rights: the Penal Code has been amended to include an article determining liability for cruel treatment and torture, and in practice the first cases of law enforcement officers being held liable have occurred. Officially and institutionally, the censorship organs have been abolished, opening up a debate over sensitive themes in the national mass media.

This said, however, the pressure has shifted in favour of the creation of bureaucratic and administrative barriers for national and international NGOs, and foreign mass media. Recently, the Head of Government made promises of abolishing the death penalty, revising the powers of the *Procurator* in the field of restriction and deprivation of citizens' rights, introducing judicial supervision of arrests and detentions etc. Only the future will determine how credible these promises are and if they will be translated into concrete legislative and practical actions.

### General and Specific Recommendations

#### *Section 1: Human Rights Situation Assessment in Uzbekistan*

##### *Civil and Political Rights*

- To abolish the death penalty which contradicts the provisions of the Constitution of the Republic of Uzbekistan;
- To introduce public control over the arrest and detention centres (IVS), custody (SIZO) and imprisonment centres (ITU) by adopting a specific law (for instance, Law "On Public Control over detention/penitentiary institutions");
- In order to bring the relevant legal provisions in compliance with international norms, in particular Section 3 of Article 9 of the ICCPR, it is necessary to transfer the right to apply restriction measures exclusively to the court, without waiting until the detainee himself

will complain against the detention, and to prohibit arrest or detention without a court decision;

- The judicial hearing on the restriction measure should be public and with due hearing of the parties, as any other judicial process. However, even such measures will not change the situation radically as long as the CPC has a provision enabling the law enforcement organs to put a person in custody merely depending on the gravity of the crime the person is charged with, as determined by the CPC;
- Concerning the expiry of the sanction on arrest and detention, it is necessary to demand that the SIZO investigation custody officials strictly fulfil the CPC. In particular, if at the time of expiry of the established period of custody as a restriction measure, the decision regarding the release of the suspect or the defendant, or the extension of his detention period, has not been received, the head of the detention centre shall take a decision on his own to release the suspect or defendant;
- To introduce into the current criminal procedure legislation the right of witnesses to legal assistance by a defence lawyer (the right to be interrogated with the participation of a lawyer) and the right not to incriminate oneself;
- To determine by law the right of a detainee to medical examination by a doctor of the detainee's choice and discretion (family/personal doctor), including the right to demand the commissioning of a medical examination of the body injuries by a qualified practising forensic doctor;
- To introduce a requirement for mandatory individual record for each detainee/arrested in the form of a personal card, which should be kept in a personal dossier of the detainee/arrested. It should contain mandatory information: time of arrival in the law enforcement organ, time of arrest, time of the advice of the detainee of his rights, signs of body injuries if any (in case of absence of such signs this should also be reflected), time of notification of the close relatives or other close people of the procedural coercion measures used in regard of the detainee (arrest, detention, placement in medical institution, etc.), date and time of the visit of the detainee/arrested by a lawyer or an investigator, time of having meals by the detainee, time of transfer of the detainee/arrested from one detention premise/institution to another;
- To expand the framework of conditional sentencing, especially for the employed people, giving them an opportunity to earn money, sustain their families and themselves, compensate the damage caused to victims and, if necessary, pay the percentage determined by the court to the benefit of the State. In practice, there is a similar precedent in the Penal Code with regard to the majority of economic crimes, in part pertaining to the compensation of damage;
- National legislation on mass media should be brought in compliance with international requirements and standards. For the establishment of transparency and openness, it is necessary to avoid the practice of issuing sub-legislative normative acts contradicting the laws and the Constitution of Uzbekistan, including those of secret and oral nature. It is necessary to entirely revise the requirements for secrecy, libel, insults and access to information. It is also necessary to:
  - develop a new legislation to protect and regulate the mass media and journalists, ensuring a transparent and public participatory decision making process as well as mass media and journalists' protection measures;

- develop methods of legal defence of mass media and journalists against the pressure of state organs and agents, monopolies and oligarchies by way of adopting a Law on TV and Radio Broadcasting;
  - determine that revocation of licenses should only be done by the courts;
  - provide for the diversity of the mass media market including abolition of the restriction of publication and broadcasting by NGOs, political parties, foreign broadcasters and private organisations;
  - make the system of accreditation of foreign mass media public and transparent;
  - abolish administrative and bureaucratic obstacles for the establishment and functioning of professional associations of journalists, independent broadcasters, reporters and others;
  - stop pressuring independent journalists, mass media editors and create real conditions for the realisation of freedom of speech.
- From the institutional point of view, it is necessary to conduct decentralisation and privatisation of state mass media and of the market of printing and information services;<sup>85</sup>
  - To revise and simplify the process of registration for NGOs, including foreign representations, and introduce amendments reducing the control by the state organs and the Ministry of Justice on NGOs activities into legislative acts;
  - To abolish the Institute of Residence Registration (the Propiska) and the permission rule to exit the country for the citizens of the Republic of Uzbekistan.

#### *The Situation of Vulnerable Groups*

- The Government of Uzbekistan should open its files, in particular statistical and legislative information, on minors within the judicial system to the work of non-governmental organisations, i.e. independent bodies, to assess the situation;
- To establish a Juvenile Justice system in the Republic of Uzbekistan by means of the establishment of separate courts for juveniles;
- To develop special procedures for juveniles in the CPC;
- To introduce into practice the principles of restorative justice as an alternative to traditional punishment in the form of imprisonment;
- To establish rehabilitation centres for children, delinquents, torture and domestic violence victims, functioning within the framework of restorative justice;
- In order to improve respect for women's rights and work in favour of gender equality, the Uzbek authorities should :
  - provide a female quota of at least 30% in all governmental agencies, including law-enforcement and Parliament;
  - outlaw early marriages against one's will and polygamy (even in separated households);
  - criminalise domestic violence by law, including marital rape;

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<sup>85</sup> OSCE, "The situation in the sphere of mass media in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan: five special reports", Vienna, 2002, p. 148-150.

- ensure adequate training of state officials, in particular police officers, judges and Mahalla's members, on women's rights and gender equality;
- prohibit and sanction discourses/images in the media that convey stereotypes on the inferior status of women;
- encourage or provide conditions for the establishment of specialised rehabilitation centres for victims of domestic violence;
- provide state welfare programmes for unwed mothers and unemployed women, and pro bono centres for legal aid.

## *Section 2: Human Rights Protection Mechanisms at the National Level*

### *Lack of Independence of the Judiciary*

- To introduce specific amendments to the current CPC with the aim of bringing its provisions in compliance with international standards and norms. In particular, the current criminal procedure legislation should be amended to incorporate the provision of (1) the possibility for the detainees to lodge a complaint to court against actions and decisions of officials of the inquiry and investigation organs; (2) examination by a court of the legitimacy of detention within a short time period upon the arrest; (3) the possibility of lodging a complaint to court against actions and decisions of investigation organs at the stage of preliminary investigation. The possibility of judicial recourse against actions and decisions restricting the rights and freedoms of citizens should also be introduced in compliance with the procedures determined by *habeas corpus*;
- To provide real independence of judges and the judicial system by: (1) transferring the power of appointing judges from the President to the Parliament of Uzbekistan; (2) introducing a life appointment principle for judges; (3) providing a decent salary to judges and material-technical procurement of courts and judges individually; (4) prohibiting administrative rotation or transfer of judges from one position to another, both to the higher or lower instance or from one court to another, without their consent;
- To transfer the power to sanction restrictions of rights and freedoms of citizens in the criminal process from *Procurators* to judges;
- To separate the 3 main functions of the *Procuracy* to be carried out by three separate and independent bodies, and to limit the *Procuracy's* role exclusively to a function of prosecution, surveillance over investigation by law-enforcement bodies and representation of State interests in criminal, administrative and civil cases.

### *Bodies of the Ministry of Interior*

- To adopt Laws "On the Organs of Internal Affairs" and "On the National Security Service", which should determine in detail the powers of these organs and their staff;
- To adopt urgently a Law "On Operative-Investigation Activity" in order to regulate the operative-investigation activity at the legislative level;
- To transfer the authority over the penitentiary institutions from the Ministry of Interior and the National Security Service to the Ministry of Justice.

### *The Ombudsman and the National Human Rights Centre*

- To establish a National Human Rights Committee of the Republic of Uzbekistan in the form of a non-governmental non-profit organisation as an alternative to the state-owned National Human Rights Centre;
- To include the most vocal activists, lawyers, human rights defenders and other prominent public figures in the Committee;
- to grant the Committee the right to develop and submit reports to various committees of international organisations pertaining to the human rights situation in Uzbekistan, in collaboration with the Centre and on behalf of the Republic of Uzbekistan.