



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

UZBEKISTAN

1. The Committee considered the third periodic report of Uzbekistan (CAT/C/UZB/3) at its 789th and 792nd meetings (CAT/C/SR.789 and CAT/C/SR.792), held on 9 and 12 October 2007, and adopted, at its 807th and 808th meetings, held on 22 November 2007 (CAT/C/SR.807 and CAT/C/SR.808), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Uzbekistan and the extensive responses to the list of issues (CAT/C/UZB/Q/3/Add.1) by the State party and the representatives who participated in the oral review.

B. Positive aspects

3. The Committee welcomes the following developments, including the following administrative, legislative and other measures taken:

- (a) Scheduled introduction of *habeas corpus* provisions beginning 1 January 2008;
- (b) Adoption of the law to abolish the death penalty beginning 1 January 2008;
- (c) Amendment to article 235 of the Criminal Code, addressing some of the elements in the definition of torture;
- (d) Transfer of the authority to issue arrests warrants from the prosecutor's office to the courts (8 August 2005);
- (e) Order No. 40, which instructs prosecutors to apply the provisions under the Convention and applicable national laws directly;
- (f) The Supreme Court's directives to prohibit the introduction of evidence, including testimonies, obtained under torture, resulting in courts referring "numerous criminal cases back for further investigation after evidence had been found inadmissible."

(g) Steps to implement the Plan of Action of 9 March 2004 on the adoption of the recommendations of the Committee against Torture (CAT/C/CR/28/7) following consideration of the second periodic report, and the information provided by the delegation of the State party that a similar plan will be adopted to continue efforts to realize the present concluding observations;

(h) Increase in the number of registered complaints of torture to the Ministry of Internal Affairs by 57 per cent, which according to the State party “is a sign of increased confidence in the internal affairs authorities”;

(i) Preparation and distribution to all detainees of a pamphlet prepared jointly with the American Bar Association to inform detainees of their rights;

(j) Reduction in crowding of prisoners in places of detention.

4. The Committee also notes the following:

(a) Ratification of the United Nations Convention against Transnational Organized Crime; and

(b) Ratification of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

C. Main subjects of concerns and recommendations

Prosecution of torture as an offence

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

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

Widespread torture and ill-treatment

6. The Committee is concerned about:

(a) Numerous, ongoing and consistent allegations concerning routine use of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement and investigative officials or with their instigation or consent, often to extract confessions or information to be used in criminal proceedings;

(b) Credible reports that such acts commonly occur before formal charges are made, and during pre-trial detention, when the detainee is deprived of fundamental safeguards, in particular

access to legal counsel. This situation is exacerbated by the reported use of internal regulations which in practice permit procedures contrary to published laws;

(c) The failure to conduct prompt and impartial investigations into such allegations of breaches of the Convention; and

(d) Allegations that persons held as witnesses are also subjected to intimidation and coercive interrogation and in some cases reprisals.

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

(a) **Publicly and unambiguously condemn practices of torture in all its forms, directing this in particular to police and prison staff, accompanied by a clear warning that any person committing such acts, or otherwise complicit or participating in torture be held personally responsible before the law for such acts and subject to criminal penalties;**

(b) **Immediately adopt measures to ensure in practice prompt, impartial and effective investigations into all allegations of torture and ill-treatment and the prosecution and punishment of those responsible, including law enforcement officials and others. Such investigations should be undertaken by a fully independent body;**

(c) **Bring all suspected perpetrators to justice in order to eliminate impunity for law enforcement officials and others responsible for breaches of the Convention; and**

(d) **Ensure in practice that complainants and witnesses are protected against any ill-treatment or intimidation as a consequence of his/her complaint or any evidence given.**

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

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

9. The Committee has also received credible reports that some persons who sought refuge abroad and were returned to the country have been kept in detention in unknown places and possibly subjected to breaches of the Convention. The Committee notes that the State party has not agreed to requests made to set up an independent international commission of inquiry into

these events, as requested by the High Commissioner for Human Rights, endorsed by the Secretary-General and reiterated by the Committee on the Rights of the Child.

The State party should take effective measures:

(a) to institute a full, effective, impartial inquiry into the May 2005 events at Andijan in order to ensure that individuals can lodge complaints and all persons responsible for violations of the Convention are investigated and brought to justice. In accordance with the recommendation of the High Commissioner for Human Rights and others, the Committee recommends that credible, independent experts conduct this inquiry in order to examine all information thoroughly and reach conclusions as to the facts and measures taken;

(b) To provide information to family members on the whereabouts and charges against all persons arrested or detained in connection with the Andijan events; and

(c) To ensure that military and security officials only use force when strictly necessary and that any acting in violation of the Convention are subject to review.

10. The Committee is disappointed that most of the small number of persons whose cases were pursued by the State party received mainly disciplinary penalties. The Committee is also concerned that sentences of those convicted under article 235 of the Criminal Code are not commensurate with the gravity of the offence of torture as required by the Convention.

The State party should immediately adopt measures to ensure that punishment for acts of torture are at a level commensurate with the severity of the crime, in accordance with the requirements of the Convention. Suspected perpetrators should as a rule be subject to suspension or reassignment during the process of investigation. Those subjected to disciplinary penalties should not be permitted to remain at their posts.

Conditions of detention

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

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

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

Safeguards for prisoners

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

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

Independent monitoring of places of detention

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

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

Results of investigations

14. While appreciating the responses by the State party regarding cases raised by the Committee in which violations of the Convention are alleged, the Committee notes with concern that the State party often presents extensive detail on the alleged crimes committed by individuals rather than providing information on the results of investigations into the allegations of torture.

The State party is reminded that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for torture.

Fully independent complaints mechanism

15. Notwithstanding the bodies established by the State parties to investigate complaints, such as through instruction 334 of the Ministry of Internal Affairs and special staff inspection units and the Parliamentary Ombudsperson, the Committee is concerned that these bodies have not been effective in combating torture and lack full independence. The Committee expresses concern that despite the State party's report of thousands of cases registered annually about alleged abuses by law enforcement personnel, and the Ombudsperson's visits to places of detention, it was stated that no appeals regarding torture were received and no reason provided. The Committee also notes that the State party should consider making the declarations under articles 21 and 22 of the Convention.

The State party should ensure in law and in practice that every person has the right to complain to a fully independent mechanism that will investigate and respond promptly, in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The State party is urged to ensure that all procedures for dealing with these complaints are effective and independent and should take the necessary measures to ensure that the Parliamentary Ombudsperson is fully independent, in accordance with the Paris Principles. In addition, the State party should make the necessary declarations under articles 21 and 22 of the Convention.

Closure of human rights and other independent organizations

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

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

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

Training of personnel

17. The Committee takes note of the extensive information provided on training of law enforcement officials and penitentiary staff regarding human rights. The State party's information does not clarify whether this training has been effective. The Committee also notes a lack of information provided on gender specific training.

The State party should provide specific training to its medical personnel dealing with detainees on how to identify signs of torture and ill-treatment and ensure that the Istanbul Protocol of 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) becomes an integral part of the training provided to physicians and others involved in health care of detainees.

In addition, the State party should develop and implement a methodology to assess the effectiveness and impact of its training/educational programmes on cases of torture and ill-treatment and provide information about gender specific trainings.

Compensation and rehabilitation

18. Noting the State party's information about victims' rights to material and moral rehabilitation envisaged in the Criminal Procedure Code and the Civil Code, the Committee is concerned at the lack of examples of cases in which the individual received such compensation, including medical or psychosocial rehabilitation.

The State party should provide compensation, redress and rehabilitation to victims, including the means for as full rehabilitation as possible and provide such assistance in practice.

Independence of the judiciary

19. The Committee remains concerned that there is a lack of security of tenure of judges, that the designation of Supreme Court judges rests entirely with the Presidency, and that lower level appointments are made by the executive which re-appoints judges every five years.

The State party should guarantee the full independence and impartiality of the judiciary, inter alia, by guaranteeing judges' security of tenure.

Evidence obtained through torture

20. While appreciating the frank acknowledgement by the representatives of the State party that confessions under torture have been used as a form of evidence in some proceedings, and notwithstanding the Supreme Court's actions to prohibit the admissibility of such evidence, the Committee remains concerned that the principle of non-admissibility of such evidence is not being respected in every instance.

The State party should take immediate steps to ensure that in practice evidence obtained by torture may not be invoked as evidence in any proceedings. The Committee reiterates its previous recommendation that the State party should review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures.

Violence against women

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

The State party should ensure the protection of women in places of detention and elsewhere, and the establishment of clear procedures for complaints as well as mechanisms for monitoring and oversight. The State party should ensure protection of women by adopting specific legislative and other measures to prevent in practice domestic violence in accordance with the Declaration on the Elimination of Violence against Women (General Assembly resolution 48/104) and provide for protection of victims, access to medical, social and legal services and temporary accommodation. Perpetrators should also be held accountable.

22. The Committee remains concerned at trafficking in women for purposes of sexual exploitation.

The State party should adopt and strengthen effective measures to prevent and combat trafficking in women.

23. The Committee is concerned about reports about inter-prisoner violence, including sexual violence, in places of detention.

The State party should take prompt measures to protect detainees in practice from such inter-prisoner violence. Further, the State party should collect information on such incidents and provide the Committee with its findings and measures taken to prevent, investigate, and prosecute or punish persons found responsible.

Non-refoulement

24. The Committee is concerned at the allegations received that individuals have not been afforded the full protection provided for by article 3 of the Convention in relation to expulsion, return or deportation from another country. The Committee is particularly concerned at reports of forcible return of recognized refugees and/or asylum-seekers from neighbouring countries and the unknown conditions, treatment and whereabouts since their arrival in the State party, some of whom were extradited from neighbouring countries. Although the State party's representatives stated that there is no longer a need for the United Nations High Commissioner for Refugees to be present in the country, the Committee is concerned that at least 700 recognized refugees are resident in the State party and are in need of protection and resettlement.

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

Other ill-treatment

25. The Committee reiterates its concern with the delay in transferring the prison system from the Ministry of Internal Affairs to the Ministry of Justice and notes that insufficient explanation was provided.

The State party should consider the transfer of the prison system from the Ministry of Internal Affairs to the Ministry of Justice without delay, with the aim of institutionalizing oversight and accountability for executive decisions in the judicial branch of Government.

26. While the Committee welcomes the entry into force of the law eliminating the death penalty, it remains concerned about the past practice of the State party resulting in failure to inform families of persons sentenced to death about the time and place of executions and the location of the bodies, which causes them distress.

The State party should ensure that relatives of persons sentenced to death are treated in a humane manner to avoid further suffering due to the secrecy surrounding executions and that remedial measures are taken.

27. The Committee recommends that the State party consider becoming a party to the

- a) Optional Protocol to the Convention;
- b) Rome Statute of the International Criminal Court; and the
- c) core United Nations human rights treaties to which it is not yet a party.

Data Collection

28. The Committee notes that much information was provided in the State party's report on a number of situations, but that this information was not disaggregated in the way requested by the Committee, thereby hampering the identification of possible patterns of abuse or measures requiring attention.

The State party should provide detailed statistical data in its next periodic report, disaggregated by gender, ethnicity or nationality, age, geographical region and type and location of place of deprivation of liberty, on complaints related to cases of torture and other ill-treatment, including those rejected by the courts, as well as related investigations, prosecutions and disciplinary and penal sanctions, and on the compensation and rehabilitation provided to the victims.

29. The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, as approved by the international human rights treaty bodies and contained in document HRI/GEN/2/Rev.4.

30. The State party is encouraged to disseminate widely the reports it submitted to the Committee, its replies to the list of issues, the summary records of meetings and the conclusions and recommendations of the Committee, in appropriate languages, through official websites, the media and non-governmental organizations.

31. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 6, 7, 9, 10, 11 and 14 above.

32. The State party is invited to submit its next periodic report, which will be the fourth report, by 30 December 2011.
