Uzbekistan

Joint Submission to the Committee against Torture on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Prepared by the World Organisation Against Torture (OMCT) and the Uzbek League for Human Rights (ULHR)

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About the Organisations

Created in 1985, the **World Organisation Against Torture (OMCT)** is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. The strength of the OMCT lies in its SOS-Torture Network composed of over 200 NGOs around the world. OMCT's International Secretariat is based in Geneva and it has offices in Brussels and Tunis.

The **Uzbek League for Human Rights (ULHR)** aims at promoting and protecting human rights and supporting democracy and rule of law in Uzbekistan. Since 2010, the ULHR has been involved in preparing a number of alternative reports to the number of United Nations Treaty Bodies.

I. Introduction and the need for a comprehensive road map

This document presents additional and updated information on the topics covered in the submission by OMCT in January 2019 to the Committee against Torture (hereinafter "committee") which provided input for the preparation of the list of issues.

OMCT provides this additional information ahead of the consideration of Uzbekistan's 5th periodic report at the committee's 68th session in November/December 2019, taking into account the list of issues and Uzbekistan's reply to the list of issues.

This document also proposes a number of recommendations which OMCT regards as indispensable to enhance Uzbekistan's compliance with the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (hereinafter "convention").

OMCT recognizes that since president Mirziyoyev took office three years ago, the authorities have made significant efforts to improve the human rights situation in Uzbekistan and to comply with their international obligations, including under the convention.

However, OMCT remains gravely concerned about the scope, the pace and, ultimately, the effective implementation of the reforms announced by the authorities. In this regard, OMCT regrets that the government of Uzbekistan failed to respond to numerous questions from the list of issues and provided only vague and partial replies to many others.

OMCT calls upon the authorities to urgently submit the missing information to the committee. The OMCT believes that the political leaderships unequivocal statements have yet to be translated by the executing authorities into a comprehensive anti-torture reform. Taken the endemic and widespread practice of torture for over a decade, a comprehensive road map against torture would be required. This reform agenda (road map) should provide the basis for a concerted and credible effort to eradicate torture in the country.

It requires a commitment to far reaching reform of the countries law enforcement, penitentiary and judicial institutions to effectively prevent torture. It equally requires a recognition of torture having been systemic and the rehabilitation and recognition of victims of torture. In order to succeed it equally requires an opening up to critical human rights work, able to document and report cases of torture, to provide victim support and to engage on legal and policy reforms to prevent torture and to ensure accountability over torture.

Recommendations:

- **The CAT review should be a first part in a process of stocktaking, and we urge the Committee to call for a comprehensive review process and the development of an anti-torture road map in the country.**
- **Such road map should be public and open to inputs from various stakeholders including civil society groups specialized in the fight against torture.**
- **For the authorities to recognize torture as an endemic problem requiring a holistic and comprehensive response, including effective rehabilitation for victims.**

The OMCT and other anti-torture actors have accompanied reform processes of a similar kind in other former Soviet Republics, Eastern Europe and other parts of the world. We recommend that the authorities open up to those actors including international NGOs with specific anti-torture expertise to translate presidential statements into practice. The development of a credible road map against torture could provide a useful benchmark for supporting governments and agencies to measure the progress of implementation.

II. Continuous widespread torture and ill-treatment

In its 2013 concluding observations, the committee expressed concern "about numerous, ongoing and consistent allegations that torture and ill-treatment are routinely used by law enforcement, investigative and prison officials, or at their instigation or with their consent, often to extract confessions or information to be used in criminal proceedings." (§ 7)

In order to "eradicate widespread torture and ill-treatment," the committee recommended "as a matter of urgency" to the authorities to "carry out prompt, impartial and effective investigations into *all* allegations of torture and ill-treatment and prosecute and punish *all* those responsible" (emphasis added) and to "ensure that high level officials publicly and unambiguously condemn torture in all its forms" (Id.)

OMCT welcomes the unambiguous condemnation of torture by the highest state officials on several occasions in the past two years, along with the introduction of reforms aimed at eradicating torture and ill-treatment.

However, we recall that the Committee recommended that the state party should effectively investigate *all* torture complaints and prosecute *all* those responsible. This must necessarily include ending impunity for widespread torture committed under Mirziyoyev's predecessor.

OMCT is deeply concerned by the extremely low number of prosecutions of officials under article 235 of the criminal code, which criminalizes torture.[1] According to the latest data provided by the authorities 13 persons went on trial in 2016, 28 persons in 2017 and 4 persons in 2018 but it is not entirely clear if all persons were convicted, what punishment they received and if their convictions have become final. (state reply to the list of issues, § 7) The authorities only provided details on a single case. On 22 June 2018 the military court of the republic of Uzbekistan sentenced 6 SBU officers to between 14 and 18 years in prison over the torture and death in custody of Ilhom Ibodov in September 2015.[2] (state reply to the list of issues (§ 118 - 121)

The authorities rejected as unfounded all complaints about arbitrary detention, torture and ill-treatment concerning all other individuals identified by the committee in the list of issues, including:

- Ilhom Ibodov's brother Rahim, who was an eyewitness to the events concerning his brother and was himself subjected to torture; (no information provided in the state reply to the list of issues; see list of issues, § 12(c))

[1] On the compatibility of the definition of torture in domestic law with article 1 of the convention, see below.
[2] But elsewhere the authorities stated that 3 cases against 4 persons were tried by the courts in 2018.

- Bobomurod Abdullayev, a journalist, who was tortured by the SBU after his arrest in September 2017; (state reply to the list of issues, § 18 - 24)
- Akzam Turgunov and other human rights defenders and activists, who were subjected torture and were given long prison sentences on trumped-up charges; (state reply to the list of issues, § 15 – 17, 25 – 28 & 101)
- the forced placement of Elena Urlaeva in a psychiatric facility; (state reply to the list of issues, § 29)
- cases of sexual violence and threat of sexual violence against several female detainees; (state reply to the list of issues, § 34)
- numerous religious figures and other perceived opponents of Karimov. ((state reply to the list of issues, § 116; no information provided on persons named in the list of issues, § 12(d))

Although most of the persons enumerated in the list of issues have now been released, the convention still obliges Uzbekistan to conduct an effective and independent investigation capable of identifying and punishing the alleged perpetrators in each and every case.

One adverse outcome of the lack of effective investigations is the inability of the victim to have his or her wrongful conviction built on evidence obtained under torture overturned and to obtain redress, including rehabilitation and compensation, as was explicitly acknowledged by the state. (state reply to the list of issues, § 17) OMCT also draws the committee's attention to the fact that the authorities provided no concrete examples of redress to victims of torture (state reply to the list of issues, § 142 – 145) and even failed to answer the committee's request for information about what specific measures have been taken to ensure that persons released since September 2016 as a result of the change in government leadership are able to obtain redress. (list of issues, § 17)

Furthermore, the lack of effective investigations, together with a lack of accountability, perpetuates the pervasiveness of torture in Uzbekistan. Although most of the above-mentioned cases concerned events prior to 2017, the high-profile case of Bobomurod Abdullayev happened on Mirziyoyev's watch. In addition, credible allegations about several recent cases of arbitrary detention, torture and ill-treatment have been presented, including complaints of torture by high-ranking former officials. For example, the case of former prosecutor general Rashitjon Kadirov, who was recently convicted for abuse of power and corruption,[3] and the case of former ambassador Kadyr Yusupov, who is currently on trial for high treason.[4] In light of past experiences across the region it is vital to establish accountability over torture in the country, otherwise the various reforms are likely to fail, and will not produce the required culture change within law enforcement structures.

There has been a sharp increase in the number of complaints concerning torture and ill-treatment filed with the prosecutor's office (from 152 in 2016 to 1069 in 2018; see state reply to the list of issues, § 6) and to the ombudsperson of the Oliy Majlis of Uzbekistan (from 17 in

[3] See statement by several NGOs, available at < https://www.hrw.org/news/2019/05/02/uzbekistan-concern-over-reports-torture-rashitjon-kadirov-and-co-defendants >
[4] See statement by several NGOs, available at < https://www.iphronline.org/uzbekistan-cease-intimidation-of-relatives-of-former-diplomat-kadyr-yusupov.html > See also < https://www.hrw.org/news/2019/06/11/uzbekistan-release-retired-diplomat >

2016 to 101 in 2018; see state reply to the list of issues, § 9) This development may well illustrate that victims are becoming less afraid to file an official complaint but it also proves that torture still exists across the board in Uzbekistan.

Against this background, OMCT deplores that the authorities again failed to present comprehensive statistical data, despite the committee's repeated requests to supplement the incomplete statistical data provided in the 5th periodic report. (list of issues, § 2 (a) & (b), 4(a) & (b), 6(c), 8(a), 11(c),(d) & (f), 12(b) & 14(d)) For example, no information is provided about the positions held by all individuals convicted under article 235 of the criminal code and no details are given about the exact punishment imposed on them. (state reply to the list of issues, § 7) The ombudsperson of the Oliy Majlis of Uzbekistan allegedly received no complaints about sexual violence against persons deprived of their liberty but on the other hand no information was provided on complaints received by the Ministry of Interior, prosecutor's office or other institutions. (state reply to the list of issues, § 30) OMCT is particularly worried by the statement that general statistical data on the prison population (for both remand and convicted prisoners) and the capacity of detention facilities in Uzbekistan is "secret." (state reply to the list of issues, § 102)

Moreover, the data submitted in the 5th periodic report is partially contradicted by what was stated in the reply to the list of issues. For example, according to the 5th periodic report (§ 60) there were 20 criminal cases under article 235 against 21 individuals in 2016 but the state party's reply to the list of issues (§ 7) stated that there were only 9 criminal cases concerning 13 individuals.

In light of the above, OMCT regrets that Uzbekistan has always angrily refused to acknowledge that torture constituted a widespread problem (5th periodic report, § 152; see also 2014 state party report on follow-up to the concluding observations) and calls on the authorities to acknowledge the scale of the problem and urgently take additional measures to ensure that all victims of torture can obtain full redress.

Recommendations:

1. ***Provide full and comprehensive statistical data on all issues requested by the Committee;***
2. ***Acknowledge that torture was and is widespread in Uzbekistan, that far better implementation in practice of reforms already adopted at the top is necessary and that additional reforms will be needed in order to eradicate torture;***
3. ***Conduct effective investigations of all reports/complaints about torture and ill-treatment.***
4. ***Recognize the principle of remedy and reparation, including access to rehabilitation, in line with article 14 CAT, and provide support to victims of torture including recognition, compensation, justice and rehabilitation. Set up a task force or a similar process to set an initiative to recognize and compensate victims and to develop, encourage and allow structures that can provide holistic rehabilitation services.***
5. ***Take special measures to ensure full compliance with the prohibition of torture in the context of national security investigations and in cases involving religious minorities and dissent.***

III. Recognizing Andijan

On repeated occasions the committee has requested information on whether the authorities have made progress towards conducting an independent, impartial, thorough and effective investigation aimed at ensuring a full, transparent and credible account of the circumstances surrounding the events of May 2005 in Andijan. (for example, list of issues, § 13)

In its latest submission the authorities replied that an EU delegation visited Andijan twice (in 2006 and 2007) and the EU then lifted sanctions in 2009. No further information whatsoever was provided. (state reply to the list of issues, § 122 & 123) OMCT stresses that Uzbekistan's 5th periodic report had omitted Andijan altogether.

OMCT remains utmost concerned about the authorities' total lack of willingness to facilitate a proper investigation of what happened in Andijan. We believe that it is time in the present political changes to come clean with the history and legacy of the violations committed in the context of the Andijan events. Such process has to start recognizing the facts and recognize the victims affected.

Recommendation:

- ***Fully comply with the committee's previous recommendation to "take effective measures to institute a full, effective and impartial inquiry into the events of May 2005 in Andijan, in order to ensure that alleged violations of the convention are investigated, and the individuals found responsible are properly punished and victims obtain redress. The committee recommends that credible, independent experts conduct this inquiry and that the results be made available to the public."***

IV. Harassment, including arbitrary detention and ill-treatment of human rights defenders

OMCT welcomes the release of a large number of human rights defenders and other perceived regime opponents since 2016 and acknowledges that human rights defenders have generally become freer to conduct their work in recent years.

However, human rights defenders continue to report various types of harassment, including treatment in contravention of the convention. In addition to the above-mentioned persecution of Agzam Turgunov,[5] Elena Urlayeva[6] and Bobomurod Abdullayev[7], there have been further reports of interference with the work of local[8] and foreign[9] human rights defenders in 2019.

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[5] For more details, see < https://www.omct.org/human-rights-defenders/urgent-interventions/uzbekistan/2018/09/d25024/ >
[6] For more details, see < https://www.omct.org/human-rights-defenders/urgent-interventions/uzbekistan/2017/03/d24234/ >
[7] For more details, see < https://www.hrw.org/news/2018/05/07/uzbekistan-reporter-convicted-spared-jail >
[8] For more details, see < https://www.iphronline.org/wp-content/uploads/2019/06/Uzbekistan-briefing-for-HR-dialogue-21-June-1-2.pdf >
[9] For more details, see < https://www.hrw.org/news/2019/06/14/effort-intimidate-human-rights-watch-uzbekistan >

Furthermore, OMCT is concerned that the general legal framework under which human rights defenders operate in Uzbekistan, in particular with regard to the right to freedom of speech and the rights to freedom of peaceful assembly and of association, remains overly restrictive and in many aspects continues to be not in compliance with the provisions of the international covenant on civil and political rights and the UN declaration on human rights defenders.[10]

For example, in June 2019 the authorities published two draft laws, one on non-governmental non-commercial organizations and another on rallies, meetings and demonstrations. Although these drafts have not been adopted according to our sources, OMCT is concerned about several draft provisions: the continued ban on unregistered organizations, the requirement to notify the authorities in advance about events planned by an organization and about any foreign funding to a domestic organization, as well as the proposal to retain a permit system for holding assemblies.

Finally, OMCT recalls that the committee in its 2013 concluding observations (§ 8 & 31) and its 2016 follow-up to the concluding observations, recommended to "investigate promptly, thoroughly and impartially all allegations of harassment (…) of human rights defenders (…) and provide the victims with redress."

OMCT notes with regret that the authorities dismissed all allegations of harassment of human rights defenders as unfounded without elaborating much on the details of each case and also refused to provide any kind redress. (state reply to the list of issues, § 15 -17)

A key concern remains that those being released – a process the OMCT welcomes – have so far not been rehabilitated legally, nor do they have access to medical, social or other support and to rehabilitation services to retake their lives.

Recommendations:

- ***Stop all harassment and other forms of intimidation of human rights defenders;***
- ***Amend its legislation and guarantee in practice all the rights contained in the declaration on human rights defenders;***
- ***Properly investigate all past cases of harassment of human rights defenders in accordance with the committee's previous recommendation.***
- ***Ensure that all human rights defenders, including those now released, are rehabilitated and for those who suffered torture or other forms of cruel, inhuman or degrading treatment have access to effective rehabilitation and social, medical and legal support to retake their lives.***
- ***Ensure that whistleblowers or those willing to notify abuse within the system have a safe way of raising their concerns.***

[10] For more details, see < http://www.icnl.org/research/monitor/uzbekistan.html >

V. Effective investigations of acts of torture and ill-treatment

OMCT already addressed the lack of progress in investigations into torture complaints from the past and how this fundamentally undermines the effort to eradicate torture in Uzbekistan.

This part identifies at least one bottleneck that appears to exist in the domestic legislation and practice that frequently cripples a prompt, thorough and impartial investigation into a complaint about arbitrary detention, torture or ill-treatment.

According to information provided by the authorities, in 2018 the prosecutor's office received 1069 torture related complaints and the ombudsperson of the Oliy Majlis of Uzbekistan received 101 complaints. (state reply to the list of issues, § 6 & 9).[11] However, in the same year (2018) the prosecutor's office investigated only 10 criminal cases opened under article 235 of the criminal code and the courts tried just 3 criminal cases against 4 individuals. (state reply to the list of issues, § 7 & 117). Unfortunately, the authorities' response did not specify what decision/verdict the prosecutor, respectively the court, issued for those 10 resp. 3 cases. Still in the same year, the ombudsperson found no evidence of torture in a single case.[12] (state reply to the list of issues, § 9)

Therefore, it appears that official complaints about torture lead to the opening of a criminal case in less than 1% of cases and thus conclude with a pre-investigation check [доследственная проверка]. It should be noted that during a pre-investigation check an investigator can only conduct a limited number of investigative steps. (articles 320^2 & 329 of the criminal procedure code) Furthermore, a decision refusing to open a criminal case can be quashed and a fresh pre-investigation check initiated. Sources told OMCT that this cycle can be repeated over and over again.

Recommendations:

- ***Promptly, effectively and impartially investigate all reports and complaints of torture and ill-treatment;***
- ***Ensure that investigators immediately open a formal and effective criminal investigation and forgo repeated rounds of pre-investigation checks;***
- ***Create special units in the prosecutor's office that are ratione materiae and ratione loci independent from other investigative bodies and are tasked with investigating allegations of torture committed by law enforcement officials.***
- ***Eliminate all practical incentives to torture, such as a system of promotion based on the success rate of concluded investigations, and any incentive favoring confessions as primary evidence in legal proceedings.***

[11] In 2018 the bodies of the ministry of the interior received 247 complaints related to unlawful acts by penitentiary staff (state reply to the list of issues, § 8) but it is unclear if these specifically concerned torture.

[12] Human rights organizations and individual human rights defenders inside Uzbekistan have consistently told OMCT that the ombudsperson is perceived as neither independent nor effective. This is corroborated by the relatively low number of torture related complaints and the fact that since 2013 it found no evidence of torture in a single case. (state reply to the list of issues, § 9)

- ***Upgrade the Ombudsman office or a potential new national human rights institution with a capacity to effectively investigate torture complaints, rather than acting as a de facto 'post box' simply transferring potential complaints to the prosecutor' office.***

VI. Definition of torture in domestic law – applicability of amnesty acts and statute of limitations

The government stated that the law of 4 April 2018 amended article 235 of the criminal code and the definition of torture in domestic law now reflects all the elements contained in article 1 of the convention. (state reply to the list of issues, § 1, 166 & 197)

In our submission for the list of issues OMCT already stated that that the new version of article 235 still fails to fully incorporate the definition from the convention:

- contrary to article 1 of the convention, article 235 limits the pool of victims of torture to individuals holding some sort of official status in criminal or administrative proceedings;
- article 235 forbids the use of "unlawful (…) pressure" [незаконное (…) давление] leaving open the possibility that certain acts falling under the scope of article 1 of the convention, could be characterized as "lawful" under domestic law;
- contrary to article 1 of the convention, unlawful pressure is torture under article 235 only if it is executed by way of "threats, strikes, beatings, torture, tormenting or other unlawful acts" [угроз, нанесения ударов, побоев, истязаний, причинения мучений или иных незаконных действий], potentially creating a loophole for other acts (omissions) or any conduct that may be "lawful" under domestic law;
- according to article 235 discrimination is only an aggravating circumstance but not a stand-alone purpose to qualify unlawful pressure as amounting to torture;
- article 235 only refers to national, racial, religious or social discrimination [национальной, расовой, религиозной или социальной дискриминации] and not "discrimination of any kind" as in article 1 of the convention.

In this context we welcome that the supreme court of Uzbekistan reiterated its previous call on judges to use the definition of article 1 of the convention. (Plenum no. 24 of 24 August 2018, point 4) However, we are concerned that in the same decision the supreme court provided a definition of torture that completely omitted discrimination and thus is not in compliance with the convention. Unfortunately, we are unaware of any domestic judgments referring to article 1 of the convention and the state party notably failed to provide examples of how their domestic courts have used the definition outlined in the convention, despite the explicit request from the committee. (list of issues, point 19(e))

In addition, the committee asked about the applicability of amnesty acts to individuals convicted under article 235 of the criminal code and the presence of a statute of limitations for article 235. (list of issues, point 19(b) to (d))

Although the committee stressed in general comments nos. 2 & 3 that amnesties and statute of limitations are incompatible with the convention, domestic law does not exclude their applicability to article 235.

We are concerned that the authorities are backtracking on their earlier commitments to bring domestic legislation in conformity with the convention. The 5th periodic report, published in 2018, mentioned legislative proposals to limit the applicability of amnesty acts to persons convicted under article 235 of the criminal code (5th periodic report, § 71). However, in 2019 the authorities simply stated that in theory there are no limitations on the applicability of amnesty acts but nobody convicted under article 235 benefited from an amnesty act between 2017 and 2019. (state reply to the list of issues, § 167 & 168) At the same time it appears that the authorities have no intention to include article 235 in the list of crimes that are not subject to a statute of limitations. (article 64 of the criminal code & state reply to the list of issues, § 174)

Recommendations:

1. ***Bring article 235 of the criminal code fully in line with article 1 of the convention;***
2. ***Insert a provision in domestic law excluding persons convicted under article 235 from amnesty acts and presidential pardons;***
3. ***Include article 235 in the list of crimes that are not subject to a statute of limitations.***

VII. Legal safeguards against torture and ill-treatment, including habeas corpus

In our submission for the list of issues OMCT already highlighted the amendment in September 2017 of article 226 of the criminal procedure code, limiting the period during which a person may be detained without being brought before a judge to 48 hours instead of 72 hours previously. However, the 48-hour period enshrined in article 226 only starts running from the moment a person is brought to a police station or other law enforcement institution and thus not from the very outset of deprivation of liberty as the Committee recommended.

Despite a specific request from the Committee, (list of issues, § 6(a)) the authorities displayed no desire to consider further amending article 226 so that the 48-hour limit would take effect from the very outset of detention. (state reply to the list of issues, § 41)

The authorities further touted recent reforms providing access to all persons deprived of their liberty to have prompt and unimpeded access to a lawyer of their choice. (state reply to the list of issues, § 42 - 50) The authorities also reported that in 2016 three officials were held accountable under article 235 of the criminal code for denying fundamental legal safeguards against torture to persons deprived of their liberty. (state reply to the list of issues, § 51)

However, one OMCT source in Uzbekistan provided the following information, pointing to how these fundamental safeguards are applied in practice. In February 2019, the Chamber of Advocates published the results of a survey conducted anonymously among 91% of lawyers practicing in Uzbekistan.[13] The survey showed that law enforcement officials created obstacles for lawyers to meet their defendants on 461 occasions during the early stages of detention. In addition, 328 respondents stated that they experienced problems to meet with their clients during the investigation. 597 lawyers complained about the absence of a separate room for confidential meetings with their clients and 733 lawyers stated that they routinely

[13] Advokat news, available at < http://advokatnews.uz/xabar/985.html > (in Uzbek)

face problems inside law enforcement premises, including 209 respondents who faced threats of physical violence from law enforcement officers. Separately, Sergey Mayorov, the lawyer for Bobomurod Abdullayev complained that he was repeatedly prevented to meet with his client in detention.[14]

In this regard OMCT recalls that in its previous concluding observations adopted in 2013 (§ 13 & 15) the committee recommended to the authorities to adopt measures to ensure these fundamental legal safeguards applied "in law and in practice" to everybody who was deprived of his or her liberty.

Recommendation:

- ***Take steps to adopt measures to ensure all fundamental legal safeguards set out in the committee's recommendations benefit in law and in practice to all persons deprived of their liberty, including effective access to lawyers.***

VIII. Conditions of detention and independent monitoring of all places of deprivation of liberty

OMCT welcomes president Mirziyoyev's announcement in August 2019 to shut down the prison in Jaslyk, thereby fulfilling a key recommendation from the committee. (state reply to the list of issues, § 96)

However, OMCT calls on the authorities to allow independent local and international civil society organizations and experts full access to the facility, including its archives etc…, in order to investigate what happened in Jaslyk since it first opened in 1999 and to provide individual redress to all the victims of Jaslyk prison, which, according to the UN special rapporteur on torture, "by its very location created conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for inmates and their relatives."

Despite the state party's assurances that persons deprived of their liberty have gained access to independent complaint mechanisms and several state and semi-state bodies regularly inspect places of detention in Uzbekistan, OMCT submits that these complaint mechanisms and inspections remain ineffective and thus unable to prevent torture. For example, the ombudsperson of the Oliy Majlis of Uzbekistan found each complaint about torture it received since 2013 unfounded. (state reply to the list of issues, § 9).

In light of the heavily militarized penitentiary and national security structure, the OMCT highly recommends a process to demilitarize the prison system, and to ensure a full separation between those in charge of holding prisoners and those who have direct interests in the investigations. The positive example in many other former Soviet Republics and countries across Central and Eastern Europe of transferring prison authority to the justice rather than interior ministry should be followed as part of a comprehensive rethink of punishment policies and structures.

[14] RFERL Uzbek service, available at < https://rus.ozodlik.org/a/28893465.html> (in Russian)

A key reform undertaken and discussed with international actors such as the OSCE has been the ratification of the Optional Protocol to the CAT and the establishment of a Paris Principle compatible preventive mechanism. The OMCT considers such approach central. However, the OMCT is concerned about the shortcomings and lack of credibility of the countries two human rights bodies over the past 20 years. These existing human rights institutions carry a legacy of ineffectiveness and unwillingness in addressing critical human rights issues, notably torture.

The OMCT therefore urges the members of the CAT to recognize the need for any new national preventive mechanism to be credible, independent and effective. The OMCT believes that any credible preventive mechanism should be build outside those compromised institutions.

Recommendations:

- ***Take effective steps to conduct a full and impartial inquiry into cases of torture and conditions of detention in Jaslyk prison to ensure that alleged perpetrators are properly punished, and victims obtain redress. Uzbekistan should request credible, independent experts to lead such an inquiry;***
- ***Immediately ratify OPCAT and with assistance from the SPT create a national preventive mechanism that fully complies to the international standards laid down in the OPCAT, and that is not compromised by the legacy of existing human rights institutions such as the Ombudsman office.***
- ***Conduct a comprehensive penitentiary reform that de-militarizes detention, that transfers authority over the prisons from the interior to the justice ministry, and that ensures at all times that those holding prisoners are different from those interested in conducting investigations.***
- ***Train all agencies across the criminal justice chain on international anti-torture standards, including the positive obligation to initiate independent investigations if there are signs of torture, and in the prevention of torture.***

IX. Independence of lawyers and judges

In 2013 the committee recommended Uzbekistan to abolish the requirement for lawyers to undergo recertification every three years and amend its legislation to ensure the full independence of the Chamber of Advocates from the ministry of justice. (2013 concluding observations, § 14)

These recommendations were not implemented.

The Chamber of Advocates is still not sufficiently independent from the ministry of justice. The legislation (presidential decree of 12 May 2018 and law of 11 October 2018) mentioned by the government (state reply to the list of issues, § 93) does not alter this situation. Although the president of the Chamber of Advocates is elected by its General Assembly the candidate must first be nominated by the ministry of justice. (article 12^3 of the law on the legal profession)

Furthermore, the High Qualification Commission and the territorial Qualification Commissions which control admission to the bar and rule on disciplinary matters are created by joint decision of the ministry of justice and the Chamber of Advocates or the respective territorial branches of the Chamber of Advocates. (article 13 of the law on the legal profession) Only 50% plus one of its membership need to be lawyers. (point 8 of the Order on the Qualification Commissions under the Territorial Branches of the Chamber of Advocates, approved by minister of justice Decree no. 69 of 14 March 2009)

The government claims that the obligation for lawyers to upgrade at least once every three years their professional qualification contained in article 7 of the law on the legal profession is not a "recertification" (state reply to the list of issues, § 92) However, the government also admitted that "[v]iolations by lawyers of these requirements shall be grounds for the suspension of their licence to practise the law." (5th periodic report, § 186)

Concerning measures to strengthen the independence of the judiciary, OMCT notes with regret that Uzbekistan's reply to the list of issues did not elaborate on any additional measures. (state reply to the list of issues, § 94 & 95)

Recommendation:

- ***Fully implement the committee's previous recommendations aimed at strengthening the independence of lawyers and the independence of the judiciary.***
- ***Set a comprehensive reform agenda to strengthen the role of the judiciary as guardian of rights able to withstand pressures from law enforcement and the prosecutor office, and to strengthen the role of lawyers in line with international standards, including access to those detained from the first hours of detention.***
- ***Establish effective training modules and rules for all actors in the criminal justice chain on the eradication of torture, and effective torture prevention.***

X. Violence against women and LGBT

OMCT welcomes the data – albeit incomplete – on the number of criminal cases related to violence against women (reply to the list of issues, § 68) but expresses caution at the relatively low numbers presented by the authorities, especially as the Committee on the Elimination of Discrimination against Women (hereinafter "CEDAW") in its latest concluding observations in 2015 was "deeply concerned at the prevalence of violence against women." (§ 17)

In July 2018 several media outlets reported that the authorities arrested a police officer in Samarkand province after video evidence surfaced of him stripping a suspected female petty thief naked and verbally abusing her.[15] Other police officers, who stood by and did not intervene, were apparently not prosecuted.

OMCT further acknowledges the recent adoption of the law of 2 September 2019 "on protecting women from harassment and violence" that according to the government "goes beyond the concept of 'domestic violence'" (state reply to the list of issues, § 71) but on the

[15] For example, < https://www.rferl.org/a/uzbekistan-strip-search-victim-says-police-ruined-my-life-/29355669.html >

other hand does not appear to specifically include marital rape. (list of issues, § 8(c); no further information provided in the state reply to the list of issues)

Concerning violence against LGBT, OMCT notes with grave concern that the authorities stated that not a single criminal case was opened into violence against LGBT. (state reply to the list of issues, § 91)

Recommendation:

- ***Take more robust measures in exercising due diligence to prevent, stop or sanction violence against women and LBGT or to provide reparations to victims.***

XI. International cooperation

In its 2013 concluding observations on Uzbekistan's 4th periodic report (§ 26,28 & 29), the committee recommended to the authorities to ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter "OPCAT") and the International Convention for the Protection of All Persons from Enforced Disappearance, to recognize the competence of the committee to receive individual communications under article 22 of the convention and to issue a standing invitation to the special procedures of the Human Rights Council, in particular the UN special rapporteur on torture. (see also list of issues, § 15(b) & (g) & 28)

OMCT is concerned that the authorities are on purpose delaying the implementation of the committee's recommendations. In their reply to the list of issues in September 2019 the authorities stated that Uzbekistan is "considering the issue" of ratifying OPCAT. (state reply to the list of issues, § 135) However, as far back as June 2017 the parliament was already "conduct[ing] a detailed analysis of the advisability of the country's accession to [OPCAT]". (5th periodic report, §63) OMCT believes the committee should again request the authorities what obstacles prevent them from going forward with the ratification of OPCAT.

The authorities refused to answer if they will accept the request by the UN special rapporteur on torture by stating that two other UN special rapporteurs visited in 2017 and 2019. (state reply to the list of issues, § 141) The authorities equally failed to respond to the question of the acceptance of the competence of the committee to receive individual communications.

Recommendations:

- ***Ratify OPCAT and the International Convention for the Protection of All Persons from Enforced Disappearance;***
- ***Accept the request from the UN special rapporteur on torture to carry out an official mission to Uzbekistan;***
- ***Recognize the competence of the committee to receive individual communications under article 22 of the convention.***
- ***Cooperate with international NGOs working on human rights and torture allowing them to visit the country and to engage in meaningful dialogue on the eradication of torture***
- ***Adopt a comprehensive road map with support of international experts against torture as a basis for international support for an anti-torture reform agenda***

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