



Human Rights Council
3rd Session of the Universal Periodic Review, 7 – 15 December 2008
ICJ Submission to the Universal Periodic Review of Uzbekistan
July 2008

Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Universal Periodic Review (UPR) of Uzbekistan, which is of particular importance given the gross and systematic violations of human rights that continue to take place there. It is important that the Human Rights Council's working group on the UPR (Working Group) and the Human Rights Council (Council) emphasise the gravity of the situation, point to the gross violations of human rights and call for urgent measures to re-establish the rule of law and ensure the full enjoyment of human rights in Uzbekistan. It is also essential to recall the obligation of Uzbekistan to co-operate with international human rights mechanisms and bodies and the obligation of other states to refrain from co-operating in violations of human rights by the Uzbek authorities.

Extra-judicial executions by the security forces: the Andijan killings

The killings in Andijan in May 2005 have not been satisfactorily investigated and the perpetrators continue to enjoy total impunity. The killings took place on 13 May 2005, when a demonstration gathering in Babur Square in Andijan was repeatedly fired on, reportedly in an indiscriminate way, by military and security forces. As the crowd attempted to disperse, reports indicate that armed forces blocked exits from the square, and snipers aimed at demonstrators, including those wounded. Estimates of the number of killed vary between 186 and 700. A report by the UN High Commissioner for Human Rights concluded that "grave human rights violations, mostly of the right to life, were committed by Uzbek military and security forces" and might amount to a mass killing.¹

No independent investigation has been conducted into the Andijan events, and international governmental and non-governmental organisations have not been permitted to investigate the events within Uzbekistan and have been denied unhindered access to detainees. The High Commissioner for Human Rights has recommended the establishment of an international commission of inquiry into the events² and the Committee against Torture has expressed concern at the failure to hold a full and effective investigation into all claims of excessive use of force by the security forces.³ Given the

¹ UN High Commissioner for Human Rights' Report of the Mission to Kyrgyzstan by the Office of the UN High Commissioner for Human Rights Concerning the Events in Andijan, Uzbekistan, 13-14 May 2005, E/CN.4/2006/119, 1 February 2006 para. 50 a: See further, OSCE/ODIHR Preliminary Findings on the Events in Andijan, Uzbekistan, 13 May 2005, and the Report of the UN Secretary-General on the situation of human rights in Uzbekistan, A/61/526 of 18 October 2006.

² Report of the High Commissioner, *op cit*, para. 51.

³ Conclusions and recommendations of the Committee against Torture on Uzbekistan, CAT/C/UZB/CO/3 of 26 February 2008, para. 7.

reliable evidence that gross violations of human rights, including the right to life and the freedom from torture or ill-treatment, took place in Andijan in May 2005, the Government has a duty to provide for and facilitate an effective, prompt, thorough and independent investigation into the incidents, and to bring to justice and punish those responsible for violations of human rights.⁴

The Working Group and the Council should recommend that the Government of Uzbekistan:

- i) permit, in the absence of an effective investigation into the Andijan events more than three years after they took place, the establishment of an independent international commission of inquiry, and co-operate fully with such an inquiry;**
- ii) afford to the victims of gross human rights violations and members of their families effective remedies and reparation.**

Counter-terrorism and extremism laws

Uzbekistan uses the rhetoric of counter-terrorism or “war on terror” and counter-extremism as a justification for criminal prosecutions of those who peacefully oppose or speak out against the Government, for crimes of terrorism, extremism, subversion or anti-state activity. The Uzbek Criminal Code⁵ contains a sweeping and vaguely worded definition of terrorist acts,⁶ which appears to encompass non-violent acts of opposition to government that are destabilising or damaging to international relations. Uzbek law also makes it an offence to establish, direct or participate in religious, extremist, separatist, fundamentalist or other banned organisations;⁷ to establish, participate, or induce participation in an illegal public or religious organisation; or to perform illegal religious activity.⁸ These laws have been regularly applied to suppress peaceful political and religious dissent, as well as independent criticism of the Government by journalists and human rights defenders, including their relatives.⁹

In the wake of the Andijan events, large number of people, including religious and political dissidents and human rights defenders, were tried on charges including terrorism.¹⁰ Most prominently, in September 2005, 15 men were tried before the Supreme Court on charges including committing acts of terrorism, attempting to overthrow the constitutional order to establish an Islamic state, and participation in an armed group.¹¹ Numerous additional trials connected with the Andijan events have since taken place, the vast majority of which have been closed to the public.¹² Those convicted

⁴ Article 2.3 ICCPR, Article 12 CAT; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, principle 3.b.

⁵ *National laws and regulations on the prevention and suppression of international terrorism – Part I*, UN Doc. ST/LEG/SER.B/22, page 619.

⁶ Human Rights Committee, Concluding Observations on Uzbekistan, CCPR/CO/83/UZB of 26 April 2005, para.18.

⁷ Criminal Code, Article 244, para 2.

⁸ Criminal Code, Article 216.

⁹ International Crisis Group, *Uzbekistan: Stagnation and Uncertainty*, Asia Briefing No. 67, 22 August 2007, pp. 8-11 (ICG Report 2007); Amnesty International Annual Report 2008, *Uzbekistan*, p. 2; International Helsinki Committee, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2007 (Events of 2006)*, p. 210 (IHF Report 2007).

¹⁰ Judgment of the European Court of Human Rights, *Ismoilov v Russia*, App. No.2947/06, para.12.

¹¹ Report from the OSCE/ODIHR Trial Monitoring In Uzbekistan – September / October 2005, Warsaw, 21 April 2006, p.15.

¹² Report of the Secretary General, Situation of human rights in Uzbekistan, A/61/526, 18 October 2006, para.13. OSCE/ODIHR *Report op cit*, p. 6.

include human rights activists who had spoken publicly about the Andijan killings, such as Saidjahon Zainabitdinov, convicted in a closed trial of, amongst other charges, supporting ‘terrorists’ in relation to the events in Andijan.¹³

Vague, ambiguous or imprecise definitions of criminal offences contravene the absolute and non-derogable principle of legality, which is a cornerstone of contemporary criminal law¹⁴ as well as of international human rights law.¹⁵ The wide range of conduct criminalised by the Criminal Code, and its application in practice, violates Uzbekistan’s international obligations under the International Covenant on Civil and Political Rights (ICCPR), in particular Article 15(1), which protects the principle of legality of offences, and Articles 18, 19, 21 and 22, which protect freedoms of speech, assembly, association and religion or belief. In addition, deprivation of liberty, such as pre-trial detention or imprisonment imposed in these conditions may amount to arbitrary detention contrary to Article 9 ICCPR.

The ICJ urges the Working Group and the Council to recommend that the Government of Uzbekistan:

- i) refrain from the prosecution of dissenting political and religious activists, journalists and human rights defenders on vaguely defined charges related to terrorism, extremism, separatism or religious practice;**
- ii) narrow the definition of "terrorist acts", to comply with the principle of legality, and ensure that intent is a necessary element of such offences;**
- iii) ensure, in law and in practice, that the legitimate exercise of freedoms of speech, assembly, association and religion or belief are not criminalised.**

Torture and ill-treatment

Numerous and consistent testimonies of torture in Uzbekistan establish that its use is endemic and systematic within the criminal justice system,¹⁶ in particular during criminal investigation and pre-trial detention,¹⁷ against both suspects and potential witnesses in criminal cases.¹⁸ A significant factor in the prevalence of torture is the lack of access to a lawyer during criminal investigation or pre-trial detention. Although access to a lawyer is provided for by law, in practice the law is poorly respected.¹⁹ Further, the judiciary lacks the strength or independence to provide an effective safeguard against ill-treatment of detainees.²⁰ Criminal convictions are frequently based on evidence obtained by torture, contrary to Article 15 of the Convention Against Torture (CAT).²¹ Although the Supreme Court has held that no information obtained from a detainee in violation of criminal procedure requirements,

¹³ He was suddenly amnestied and released in February 2008. See IHF Report 2007, p.210.

¹⁴ *Rome Statute of the International Criminal Court* (Article 22); Reports of the International Law Commission to the UN General Assembly, 1993 (Supplement N° 10 (A/48/10), p.81) and 1994 (Supplement N° 10 (A/49/10), p.321).

¹⁵ ICCPR, Articles 4 and 15; Human Rights Committee, *General Comment N° 29, States of emergency (Article 4)*, para.7.

¹⁶ Report of the Special Rapporteur on Torture, Theo van Boven, E/CN.4/2003/68/Add.2 of February 2002, found that torture in Uzbekistan was systematic, noting “the pervasive and persistent nature of torture throughout the investigative process cannot be denied”: para.68.

¹⁷ CAT Concluding Observations, *op cit*, para.6.

¹⁸ CAT Concluding Observations *op cit*, para.6(d).

¹⁹ HRC Concluding Observations, *op cit* para.15; CAT Concluding Observations, *op cit* para.10.

²⁰ Report of the Special Rapporteur on Torture, Theo van Boven, *op cit*.

²¹ HRC Concluding Observations *op cit*, para.10. CAT Concluding Observations para.18.

including the absence of a lawyer, may be used as evidence in court,²² and official statements prohibit the use of torture,²³ which is also a criminal offence,²⁴ the value of such laws should be assessed with caution, given the long-standing and undiminished use of torture in practice.²⁵

Impunity for acts of torture by officials is a serious problem, despite its criminalisation. The Committee against Torture has noted that: “most of the small number of persons whose cases were pursued by the State party received mainly disciplinary penalties” and that sentences of those who were convicted were not commensurate with the gravity of the offence of torture.²⁶

The ICJ calls on the Working Group and the Council to recommend that the Government of Uzbekistan:

- i) take immediate and practical measures to ensure the effectiveness of the absolute prohibition of torture, in line with national and international law obligations;**
- ii) enforce the right of access to a lawyer of one’s choice from the time of an arrest and the right to confidential communication between lawyer and client;**
- iii) refrain, in line with Article 15 CAT, from invoking as evidence in any proceedings information extracted by torture;**
- iv) provide for independent, thorough investigations into allegations of torture or ill-treatment, leading, where appropriate, to prosecutions and punishment, and for protection of complainants and witnesses of torture.**

Criminal trials short of fair trial guarantees

The Uzbek criminal justice system fails to guarantee the right to fair trial as stipulated by Article 14 ICCPR. Criminal trials are characterised by reliance on forced confessions and the absence of adequate legal representation and of defence rights.²⁷ The judiciary lacks the strength and independence necessary to protect the rights of suspects: judges are appointed directly by the Government and lack security of tenure.²⁸

Trials conducted in the wake of the Andijan events were manifestly unfair. Trial monitors of the Organisation for Security and Cooperation in Europe (OSCE) observing the Supreme Court trial of 15 men following the events, found serious flaws in the trial, including the absence of arguments for the defence,²⁹ lack of independent lawyers for the defence,³⁰ and lack of access by the public to the trial.³¹

²² HRC Concluding Observations *op cit*, para.10

²³ Prosecutor General’s Order No.40 of 17.02.2005 cited in: Comments of the Ministry of Foreign Affairs of the Republic of Uzbekistan on the report of the International Helsinki Federation for Human Rights (IHF), Tashkent, 2 March 2007, annexed to the Letter of 15 March 2007 from the Permanent Representative of Uzbekistan addressed to the Secretary-General, A/61/807, 19 March 2007.

²⁴ Article 235 Criminal Code

²⁵ European Court of Human Rights, judgment in *Ismoilov v Russia*, Application No.2947/06.

²⁶ CAT Concluding Observations, *op cit*, para.8

²⁷ Report by the Special Rapporteur on the Independence of Judges and Lawyers E/CN.4/2006/52 Add.1, para 297.

²⁸ CAT Concluding Observations, *op cit*, para.17.

²⁹ OSCE/ODIHR Report *op cit* pp. 20-21, 24-25

³⁰ OSCE/ODIHR Report *op cit* pp. 20-22

³¹ OSCE/ODIHR Report *op cit* pp. 20, 28

They also noted the uncooperative and obstructive approach of the Uzbek authorities to the trial monitors.³²

The Working Group and the Council should recommend that the Government of Uzbekistan:

- i) ensure fair trial and due process guarantees, including the right to be represented by legal counsel of one's own choice from the time of an arrest, observance of evidence in favour of defence and presumption of innocence;**
- ii) provide for effective access by the public to criminal trials, including full and effective access for national and international trial observers;**
- iii) reform the judiciary to establish its institutional independence from the executive and provide all judges with security of tenure.**

Transfers of suspects to Uzbekistan

Uzbekistan regularly requests the extradition or other transfer of opponents of the Government back to Uzbekistan, including those who sought refuge abroad after the Andijan events. There have been numerous instances of extradition or deportations, or attempted extraditions or deportations, to Uzbekistan, in particular from Member States of the Shanghai Co-operation Organisation.³³ Kyrgyzstan extradited four Uzbek refugees and one asylum-seeker to Uzbekistan in August 2006,³⁴ having forcibly returned four other Uzbek nationals in June 2005.³⁵ In June 2007, there was a further deportation from Kyrgyzstan connected with the Andijan events³⁶ and Uzbekistan made further requests for extradition of an Uzbek asylum seeker detained in Kyrgyzstan in May 2008.³⁷ In February 2006, Ukraine returned 11 asylum seekers, some apparently connected to the Andijan events.³⁸

In the context of the systematic torture, flagrantly unfair trials and other gross violations of human rights which prevail in the Uzbek criminal justice system, transfers by other states of suspects to Uzbekistan violate the absolute right of *non-refoulement*, where there is a risk of torture, ill-treatment or other gross violations of human rights, either because these violations are widespread or systematic or because there is such a risk to the individual. This was recently affirmed by the European Court of Human Rights in *Ismoilov and Others v Russia*,³⁹ where it held that the applicants' extradition from Russia to Uzbekistan would violate Russia's obligations under the European Convention on Human Rights. Given the systematic violations in Uzbekistan of the absolute prohibition on torture, which is of a *jus cogens* nature, it is essential that states refrain from other acts of recognition or co-operation with the Uzbek criminal justice process, in violation of international law.

The ICJ urges the Working Group and the Council to call on all states to refrain from any act of recognition or co-operation with the Uzbek criminal justice process, including extradition, transfer or return of Uzbek nationals who may face prosecution or interrogation following return, where there is a risk of torture, ill-treatment or other gross violations of human rights.

³² OSCE/ODIHR, *Report op cit*, p.34

³³ ICG Report 2007, op cit, p.7; ECHR communicated case *Kamaliyev and Kamaliyeva v. Russia*, App. No. 52812/07

³⁴ Report of the UN Secretary General, *op cit*, para.18.

³⁵ para.19

³⁶ ICG Report 2007 op cit, p.8

³⁷ HRW Press Release, *Kyrgyzstan: do not return asylum seeker to Uzbekistan*, 13.05.2008

³⁸ Report of the UN Secretary General, op cit para.20; ICG Report 2007, p.8, footnote 53

³⁹ App. no. 2947/06.

Access by Inter-Governmental Organisations including Special Procedures

If the issues raised above are to be addressed, access to Uzbekistan for inter-governmental and non-governmental organisations and their mechanisms is essential, so that information can be gathered, violations of human rights monitored, and meaningful dialogue towards reform begun with the Government. A number of UN independent experts acting as special procedures of the Human Rights Council have however, been unable to secure Government agreement for visits to Uzbekistan in recent years; the Office of the High Commissioner for Human Rights was also unable to visit the country to report on the Andijan events, and the Tashkent office of the UN High Commissioner for Refugees (UNHCR) was forced to close in 2006, due to Government pressure.⁴⁰

The Working Group and the Council should recommend that the Government of Uzbekistan:

- i) allow unhindered access to and within the country to representatives of the United Nations organs and bodies and other inter-governmental organisations, in particular Council special procedures with outstanding requests for visits, including the Special Representative of the Secretary General on human rights defenders, the Special Rapporteur on torture, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on extra-judicial, summary or arbitrary executions and the Working Group on Arbitrary Detention;**
- ii) ratify the Optional Protocol to the Convention against Torture, allow access to all places of detention by the Sub-committee on the Prevention of Torture; allow full access by the ICRC to all places of detention in Uzbekistan;**
- iii) permit the re-opening of the UNHCR office in Tashkent.**

⁴⁰ UNHCR Briefing Note of 18 April 2006 on Uzbekistan.