



Human Rights Committee
International Commission of Jurists Submission to the Review of the
Third Periodic Report of Uzbekistan
May 2009

Introduction

The International Commission of Jurists (ICJ) welcomes this opportunity to contribute to the Human Rights Committee's review of the Third Periodic Report of Uzbekistan. In this submission, the ICJ points to issues of concern, which it recommends that the Committee highlight in the list of issues on Uzbekistan, in particular the need for an effective and independent investigation into the Andijan killings; the impact of counter-terrorism and extremism laws on protection of the Covenant rights; widespread use of torture and cruel, inhuman and degrading treatment in the criminal justice system; failure to uphold fair trial rights; threats to the independence of the legal profession; and co-operation with inter-governmental organisations including Special Procedures of the United Nations.

Extra-judicial executions and the duty to investigate: 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 those 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 reliable evidence that gross violations of human rights, including the right to life and the freedom from

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.

torture or ill-treatment, took place in Andijan in May 2005, the Government has a duty, including under Article 2.3 of the International Covenant on Civil and Political Rights (ICCPR) 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 ICJ notes with concern that in the Universal Periodic Review of Uzbekistan in December 2008, Uzbekistan rejected calls for investigation into the Andijan events.⁵

In the consideration of its Periodic Report of Uzbekistan, the Human Rights Committee should question the absence of an effective investigation into the Andijan events four years after they took place; and the lack of effective remedies and reparations to the victims of gross human rights violations related to the Andijan events, and members of their families.

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. As previously noted by this Committee, the Uzbek Criminal Code⁶ contains a sweeping and vaguely worded definition of terrorist acts,⁷ 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;⁸ to establish, participate, or induce participation in an illegal public or religious organisation; or to perform illegal religious activity.⁹ 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.¹⁰

In the wake of the Andijan events, large numbers of people, including religious and political dissidents and human rights defenders, were tried on charges including terrorism.¹¹ 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.¹² Numerous additional trials connected with the Andijan events have since taken place, the vast majority of which have been closed to the public.¹³ Those convicted include human rights activists who had spoken publicly about the Andijan killings, such as Saidjahon

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 *Report of the Working Group on the Universal Periodic Review: Uzbekistan*, 9 March 2009, A/HRC/10/83, para.107.

⁶ *National laws and regulations on the prevention and suppression of international terrorism – Part I*, UN Doc. ST/LEG/SER.B/22, page 619.

⁷ Human Rights Committee, Concluding Observations on Uzbekistan, CCPR/CO/83/UZB of 26 April 2005, para.18.

⁸ Criminal Code, Article 244, para 2.

⁹ Criminal Code, Article 216.

¹⁰ 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).

¹¹ Judgment of the European Court of Human Rights, *Ismoilov v Russia*, App. No.2947/06, para.12.

¹² Report from the OSCE/ODIHR Trial Monitoring In Uzbekistan – September / October 2005, Warsaw, 21 April 2006, p.15.

¹³ 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.

Zainabitdinov, convicted in a closed trial of, amongst other charges, supporting ‘terrorists’ in relation to the events in Andijan.¹⁴

Vague, ambiguous or imprecise definitions of criminal offences contravene the absolute and non-derogable principle of legality.¹⁵ The wide range of conduct criminalised by the Criminal Code, and its application in practice, violates Uzbekistan’s international obligations under the 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.

In its consideration of Uzbekistan’s Periodic Report, the Human Rights Committee should address the compliance of the broad definition of "terrorist acts", with the principle of legality under Article 15(1) ICCPR; the criminalisation of legitimate exercise of freedoms of speech, assembly, association and religion or belief; and 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.

Torture and ill-treatment in the criminal justice system

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 Criminal convictions are frequently based on evidence obtained by torture, contrary to Article 7 ICCPR as well as Article 15 of the Convention Against Torture (CAT).¹⁹ Although the Supreme Court has held that no information obtained from a detainee in violation of criminal procedure requirements, including the absence of a lawyer, may be used as evidence in court,²⁰ and official statements prohibit the use of torture,²¹ which is also a criminal offence,²² the value of such laws should be assessed with caution, given the long-standing use of torture in practice.²³

A significant factor in the prevalence of torture has been the lack of access to a lawyer during criminal investigation or pre-trial detention. This is addressed in new legislation of December 2008 that strengthens the right of access to a lawyer, providing for the access from the moment of detention.²⁴

¹⁴ He was suddenly amnestied and released in February 2008. See IHF Report 2007, p.210.

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, General Comment No.20 on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, 10/03/92, para.12. HRC Concluding Observations *op cit*, para.10. CAT Concluding Observations para.18.

²⁰ HRC Concluding Observations *op cit*, para.10

²¹ 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.

²² Article 235 Criminal Code

²³ European Court of Human Rights, judgment in *Ismoilov v Russia*, Application No.2947/06.

²⁴ Law on Lawyers (Advokatura), Law No.3RU-198, adopted on 31 December 2008

However, previous legislative protections of rights of access to lawyers have been poorly respected in practice, as noted by this Committee in its 2005 Concluding Observations,²⁵ and the recent reforms are likely to be undermined by measures to increase government control of the legal profession, discussed below.

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

Uzbekistan has pressured other governments in the region to extradite or return its political opponents who have sought refuge abroad. 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.²⁷ Kyrgyzstan has repeatedly extradited or forcibly returned Uzbek refugees or asylum seekers, and some have been abducted, apparently by intelligence services, and removed to Uzbekistan.²⁸ Following transfer, these individuals face torture and ill-treatment, as the European Court of Human Rights affirmed in *Ismoilov and Others v Russia*.²⁹

The Human Rights Committee should address as a matter of priority the use of torture and cruel, inhuman or degrading treatment in Uzbekistan. It should in particular question the Government regarding

- **practical protection of 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;**
- **the use as evidence in legal proceedings of information extracted by torture;**
- **legal and practical provision for independent, thorough investigations into allegations of torture or ill-treatment, leading, where appropriate, to prosecutions and punishment,**
- **protection of complainants and witnesses of torture.**

The right to fair trial

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.³⁰ 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.³¹ 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,³² lack of independent lawyers for the defence,³³ and lack of access by the public to the trial.³⁴

²⁵ HRC Concluding Observations, *op cit* para.15; CAT Concluding Observations, *op cit* para.10.

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

²⁷ ICG Report 2007, *op cit*, p.7-8; ECHR communicated case *Kamaliyev and Kamaliyeva v. Russia*, App. No. 52812/07; Report of the UN Secretary General, *op cit* para.20

²⁸ Report of the UN Secretary General, *op cit*, para.18-19; ICG Report 2007 *op cit*, p.8; HRW Press Release, *Kyrgyzstan: do not return asylum seeker to Uzbekistan*, 13.05.2008; HRW Press Release, *Uzbekistan: Abducted Refugee on Trial*, 5/2/2009

²⁹ App. no. 2947/06.

³⁰ Report by the Special Rapporteur on the Independence of Judges and Lawyers E/CN.4/2006/52 Add.1, para 297.

³¹ CAT Concluding Observations, *op cit*, para.17.

³² OSCE/ODIHR Report *op cit* pp. 20-21, 24-25

³³ OSCE/ODIHR Report *op cit* pp. 20-22

They also noted the uncooperative and obstructive approach of the Uzbek authorities to the trial monitors.³⁵

In its consideration of Uzbekistan's Periodic Report, the Human Rights Committee should address the protection of fair trial rights in law and in practice, in particular questions of judicial independence, and access by the public to criminal trials, including access for national and international trial observers.

Independence of the legal profession

New measures introduced in 2008, first by Presidential Decree of May 2008 and later by the Law on Lawyers (Law on Advocatura) of December 2008,³⁶ seriously threaten the independence of the legal profession in Uzbekistan, introducing significant Government control over the licensing and practice of lawyers. Article 12.1 of the new law establishes the Chamber of Lawyers, membership of which is made compulsory for all lawyers in Uzbekistan. Under Article 12.3, the Chairperson of the Chamber of Lawyers is appointed, and may be dismissed, by the Chamber upon nomination by the Ministry of Justice. The Chamber of Lawyers is designated as solely responsible for the governance of the profession: the law prohibits the formation of other organisations with similar functions to the Chamber of Lawyers, with the result that the Uzbekistan Bar Association is replaced by the Chamber and is prevented from operating. At a conference of lawyers in September 2008, convened at the instigation of the Ministry of Justice, a vote was recorded in favour of a motion to establish the Chamber of Lawyers, only following a dubious recount of votes.³⁷

Under Article 13 of the law, licensing of lawyers and disciplinary proceedings against them are the responsibility of regional Qualification Commissions, jointly administered by the Chamber of Lawyers and the Ministry of Justice, with decisions being made by panels composed of 50% lawyers and 50% Ministry of Justice officials. The appeal body from decisions of the Commissions, the High Qualification Commission, has a similar composition. This system allows substantial Government control over granting or revocation of lawyers' licences and disciplinary action against lawyers. In practice, all lawyers, irrespective of the length of time they have been in practice, are now required to reapply for their licence before 1 July 2009, as part of which process they must sit a written legal examination. There is concern among Uzbek lawyers that this process will be misused to ensure that independent defence lawyers fail the examination and lose their licence to practice, effectively creating a profession confined to government-approved lawyers.³⁸

The imposition of this new system on the legal profession raises concerns of freedom of association under Article 22 ICCPR, and is contrary to the UN Basic Principles on the Role of Lawyers, Principle 24 of which states that "lawyers shall be entitled to form and join self-governing professional associations to represent their interests The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference". Furthermore, principle 28 of the Basic Principles states that disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an

³⁴ OSCE/ODIHR *Report op cit* pp. 20, 28

³⁵ OSCE/ODIHR, *Report op cit*, p.34

³⁶ Law No.3RU-198, adopted on 31 December 2008

³⁷ ferghana.ru, Узбекистан: Адвокатской вольнице приходит конец, 25 September 2008

³⁸ ferghana.ru, *Uzbekistan to face rearrangement among lawyers*, 15 April 2009; eurasianet.org, *Uzbekistan: Tashkent acts to remove any pretence of fair trials*, 27 April 2009.

independent statutory authority, or before a court ...” The ICJ is also concerned that the new system, by preventing independent defence lawyers from exercising their profession, or discouraging robust defence of opponents of the government, may further undermine the right to fair trial.

The Human Rights Committee should address the impact of the new law on lawyers on the freedom of association of lawyers and on the right to fair trial, and ask the Government what measures will be put in place to ensure that lawyers can freely exercise their profession, without Government control or interference.

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.³⁹

The Human Rights Committee should raise the following issues:

- **the need for 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;**
- **the need for Uzbekistan to 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; and allow full access by the ICRC to all places of detention in Uzbekistan;**
- **the closure of the UNHCR office in Tashkent.**

³⁹ UNHCR Briefing Note of 18 April 2006 on Uzbekistan.