

**Accessing Economic and
Social Rights in Uzbekistan:**
An Analysis of Selected Laws
and Practices

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Introduction

Economic, social and cultural rights (ESC rights) like civil and political rights, are indispensable for the preservation of human dignity.¹ As agreed by States in Vienna in 1993, civil and political rights and ESC rights must be treated equally, as “all human rights are universal, indivisible and interdependent and interrelated”.² As the UN Office of the High Commissioner on Human Rights has explained, there is no fundamental difference in nature between civil and political and ESC rights.³

Treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) are binding on the States that are party to them and States thereby undertake to implement them in good faith.⁴ All States parties, including the Republic of Uzbekistan, have internationally binding obligations to protect and secure these rights, including the rights to: healthcare; housing; food; water and sanitation; education; work; and social security.⁵ Thus, these are not benefits that depend on the good will of States, but rights that must be guaranteed by States which have undertaken to implement these international obligations.

The ICESCR is one of the principal universal treaties in this field — other treaties to which Uzbekistan is a party⁶ provide particular guarantees for the ESC rights of persons from particular groups, including women, children and persons with disabilities.⁷ Under this and other human rights treaties, States implement their international legal obligations through their national legal systems: laws, policies and practices, on matters including healthcare, housing, food and nutrition, education or labour.⁸

This report considers some aspects of Uzbekistan’s implementation of these obligations through laws and policies as well as through access to justice and remedies for those who allege that their ESC rights have been violated. Analysing the general legal framework for protection of these rights, it considers in more detail particular challenges in Uzbekistan, in respect of the right to adequate housing, the right to health, and rights in the workplace.

For rights to be effective in practice, they must not only be provided for in legislation and policy, but also be accessible to all, on an equal basis.⁹ Accessibility of rights requires access to information, and the dismantling of physical, administrative, economic or cultural barriers to accessing rights, as well as access to justice and effective remedies (including judicial remedies) to enforce these rights.¹⁰ The obligation to protect

¹ Universal Declaration of Human Rights (UDHR), United Nations General Assembly (General Assembly resolution 217 A), 10 December 1948, article 22.

² Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, article 5.

³ OHCHR, Frequently Asked Questions on Economic, Social and Cultural Rights, Fact Sheet No. 33, <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf>, p. 8.

⁴ Vienna Convention on the Law of Treaties, concluded at Vienna on 23 May 1969, article 26.

⁵ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, article 2.

⁶ Uzbekistan acceded to the ICESCR in 1995 (see https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN).

⁷ International Covenant on Civil and Political Rights (acceded to by Uzbekistan on 28 September 1995); the Convention on the Elimination of Discrimination against Women (acceded by Uzbekistan on 19 July 1995); the Convention on the Rights of the Child (acceded by Uzbekistan on 29 June 1994); the International Convention on the Elimination of All Forms of Racial Discrimination (acceded by Uzbekistan on 28 September 1995); the Convention on the Rights of Persons with Disabilities (signed by Uzbekistan on 27 February 2009); the International Convention on the Rights of Migrant Workers and of the Members of Their Families (not acceded to by Uzbekistan).

⁸ ICESCR, article 2.

⁹ E.g. UDHR, article 7; International Covenant on Civil and Political Rights, article 26.

¹⁰ The Right to a Remedy and Reparation for Gross Human Rights Violations, A Practitioners’ Guide Revised Edition, 2018, <https://www.icj.org/the-right-to-a-remedy-and-reparation-for-gross-human-rights-violations-2018-update-to-practitioners-guide-no-2/>, pp. 65–81.

human rights under international law therefore includes an integral duty to provide those who claim to be victims of a violation with equal and effective access to justice and effective remedies¹¹, including reparation.¹²

Moreover, domestic law must, to the extent possible, be interpreted and applied consistently with international human rights obligations.¹³ When there is a conflict between domestic law — including the Constitution, legislative enactments or administrative orders — and international law, a State cannot invoke its domestic law as justification for its failure to perform its international legal obligations.¹⁴ Indeed this approach is also consistent with the Uzbekistan Constitution¹⁵ which recognizes the “priority of the generally accepted norms of the international law” in its Preamble.

Accepting the position set out by the Vienna Convention on the Law of Treaties (VCLT), as it is bound to do, in its most recent report to the UN Committee on Economic, Social and Cultural Rights (CESCR), Uzbekistan indicated that:

“...the Uzbek Constitution proclaims the primacy of the universally recognized rules of international law, a principle enshrined in the country’s current law on human rights and freedoms, which formally codifies the provision that, if an international treaty to which Uzbekistan is a party establishes rules other than those constituted by Uzbek law, the rules of the international treaty prevail in Uzbekistan.”¹⁶

While treaties such as the ICESCR create a legal framework for ESC rights protection, the rights are implemented by States domestically. A range of national legislation is relevant, from labour laws, to non-discrimination law, to laws regulating healthcare and medicine, to housing laws. Laws affecting access to courts or other dispute resolution mechanisms, and the independence and effectiveness of those mechanisms, also need to be considered.

The importance of national legal frameworks in implementing these international law obligations is particularly relevant at a time of considerable legal change in Uzbekistan. Uzbekistan, having made a strong break with its isolationist past, has since the assumption of authority of the administration of President Mirziyoyev in 2016, carried out wide-ranging reforms of its institutions, procedures, laws and policies. Extensive revision of codes and other laws is still ongoing, including changes to the Constitution itself.¹⁷ Many of these reforms concern subject matter relevant for the protection of

¹¹ *Ibid.*

¹² 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, Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, Principle 3; UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 9: The domestic application of the Covenant, 3 December 1998, E/C.12/1998/24, paras 2–3; CESCR, General Comment No. 24, State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, para. 39; CESCR, General Comment No. 20, Non-discrimination in economic, social and cultural rights, E/C.12/GC/20, 2 July 2009, para. 40.

¹³ European Commission for Democracy through Law (Venice Commission), Report on the Implementation of International Human Rights Treaties in Domestic Law and the Role of Courts, CDL-AD(2014)036, 8 December 2014, [https://www.venice.coe.int/webformsf/documents/default.aspx?pdffile=CDL-AD\(2014\)036-e](https://www.venice.coe.int/webformsf/documents/default.aspx?pdffile=CDL-AD(2014)036-e), para. 113.

¹⁴ Article 27 of the Vienna Convention on the Law of Treaties reads in full: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46.” Article 46 reads: “Article 46. 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.”

¹⁵ The Constitution of the Republic of Uzbekistan, 8 December 1992, <https://lex.uz/docs/4032775>.

¹⁶ Third periodic report of Uzbekistan on implementation of the Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, para. 46.

¹⁷ The Law of the Republic of Uzbekistan on the Introduction of Amendments and Additions to the Constitution of the Republic of Uzbekistan, 6 April 2017, No. ZRU-426.

ESC rights, including the education and healthcare systems, child protection and gender violence, and for access to justice.

Notably, the first steps have been towards reform of the judicial system, which is crucial to the protection of human rights. The reforms have, among others, led to changes in the judicial appeals procedure, the creation of a system of judicial self-governance under the High Judicial Council and new procedures for the selection, appointment and tenure of judges.¹⁸

This climate of reform has also brought greater openness to engagement with international law, standards and mechanisms for the protection of human rights. Uzbekistan is party to some of the principal universal human rights treaties including: the International Covenant on Economic, Social and Cultural Rights (ICESCR); the International Covenant on Civil and Political Rights (ICCPR); the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Rights of the Child (CRC).¹⁹ Uzbekistan is a party to different Conventions of the International Labour Organization (ILO), which are particularly relevant for the protection of the right to labour and conditions of labour.²⁰

It is a significant constraint on the effective implementation of these treaties however, that Uzbekistan has not accepted individual complaint mechanisms available under the UN treaties relevant to ESC rights, including under the Optional Protocols to the ICESCR, CEDAW and the CRC, or the communication mechanisms provided for under article 14 of CERD and article 77 of the CMW.²¹ And while Uzbekistan is a party to the Optional Protocol to the ICCPR, the implementation record of more than 40 decisions remains unsatisfactory.²²

One welcome development is that, in the past four years, two independent experts (Special Procedures) of the UN Human Rights Council have visited the country: the UN Special Rapporteur on freedom of religion or belief in 2017²³ and the UN Special Rapporteur on the Independence of Judges and Lawyers in 2019.²⁴ Uzbekistan had previously not allowed for such visits since 2002, following the visit of the UN Special Rapporteur on Torture.²⁵ Besides, Uzbekistan has been elected for the first time as a member of the UN Human Rights Council²⁶ and elaborated its first ever National Human Rights Strategy outlining some of its key priorities in pursuing its goals in relation to human rights in the country.²⁷

¹⁸ The Law of the Republic of Uzbekistan on the High Judicial Council of the Republic of Uzbekistan, 6 April 2017, No. ZRU-427.

¹⁹ United National Human Rights Treaty Body Database, Uzbekistan, https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=189&Lang=EN.

²⁰ International Labour Organisation: Ratifications for Uzbekistan, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103538.

²¹ United National Human Rights Treaty Body Database, Uzbekistan, *op. cit.*

²² UN Treaty Bodies Jurisprudence, <https://juris.ohchr.org/search/documents>.

²³ Report of the Special Rapporteur on Freedom of Religion or Belief on his mission to Uzbekistan: note / by the Secretariat, <https://digitallibrary.un.org/record/1481445?ln=en>.

²⁴ The Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan, A/HRC/44/47/Add.1, 20 April 2020, <https://www.undocs.org/A/HRC/44/47/Add.1>.

²⁵ Theo van Boven, Report of the Special Rapporteur on the Question of Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2, 3 February 2003.

²⁶ Uzbekistan elected to UN Human Rights Council for the period 2021–2023, <https://www.un.int/uzbekistan/news/uzbekistan-elected-un-human-rights-council-period-2021-2023>.

²⁷ Decree of the President of the Republic of Uzbekistan on the Adoption of the National Human Rights Strategy of the Republic of Uzbekistan, 22 June 2020, No. UP-6012, <https://lex.uz/ru/docs/4872357>.

Translating this openness into real change that will lead to the protection of human rights in practice, remains an enormous challenge. As was confirmed by the UN Special Rapporteur on the Independence of Judges and Lawyers, it remains the case that neither the institutional independence of the judiciary, nor the independence of individual judges, is yet adequately protected, either in law or in practice in Uzbekistan.²⁸

Deep systemic problems of lack of independence of the judiciary and of the legal profession, lack of the culture and practice of the rule of law, and the absence of a strong civil society, mean that extensive structural and practical reforms are needed to ensure that violations of human rights are prevented and that there are effective national systems in place to protect against and redress such violations. In particular, effective access to justice and remedies through the courts is essential.

The reforms have also brought risks to ESC rights. For example, the drive for renovation of the cities and a greater speed of urbanization²⁹ have led to increasing number of evictions, demolition of homes and relocations.³⁰ While the issue per se is not a new one for Uzbekistan,³¹ the large scale of the evictions is unprecedented, and the public response to it has been notably stronger than before.³²

In this context, this report aims to contribute to the discussion in Uzbekistan about how to achieve greater protection of ESC rights, and for effective access to justice for those whose ESC rights have been violated.

The report marks the conclusion of a three-year project, ACCESS, of the International Commission of Jurists (ICJ), which has worked to advance civil society engagement for the protection of ESC rights in Uzbekistan. The project, co-funded by the European Union, held discussion seminars and trainings on ESC rights, and published practitioners' guides and training modules. The report draws on several discussions in Uzbekistan, as well as on legal research carried out throughout the project. Thus, this report, does not aim to provide a definitive or comprehensive assessment to the workings of the Uzbekistan justice system or implementation of all aspect of ESC rights in Uzbekistan. Rather, it gives a glimpse of some of the issues which are essential for ensuring access to justice for specific ESC rights.

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Chapter 1 of the report outlines the general issues which are essential to ensure access to justice for ESC rights in Uzbekistan. Chapter 2 is dedicated to issues related to the right to housing, its international legal aspects and national implementation. Chapter 3 discusses issues related to the right to health while Chapter 4 describes the aspects of the protection of the right to work internationally as well as in Uzbekistan. In Chapter 5, the report sets out conclusions and recommendations on access to justice as well as the measures to protect specific rights addressed in the report.

²⁸ Special Rapporteur on the Independence of Judges and Lawyers on his visit to Uzbekistan, Preliminary Observations on the official visit to Uzbekistan, 19–25 September 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25043&LangID=E>.

²⁹ Decree of the President of Uzbekistan on the Measures on Fundamental Improvement of the Processes of Urbanisation, 10 January 2019, No. UP-5623, <https://lex.uz/ru/docs/4154824>.

³⁰ Podrobno.Uz news portal: "Urbanisation is understood differently, most often associating it with demolitions", 15 June 2019, <https://www.podrobno.uz/cat/obchestvo/urbanizatsiyu-vse-ponimayut-po-raznomu-zachastuyu/>.

³¹ Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan on Court Practice Concerning Housing Disputes, 14 September 2001, <https://lex.uz/docs/1452369>.

³² Podrobno.Uz news portal: "MP on the demolitions in Tashkent: transparent and clear rules should be developed", 17 February 2019, <https://podrobno.uz/cat/obchestvo/deputat-o-snosakh-v-tashkente-neob/>.

Chapter I. The General Framework for the Protection of International Law and Economic, Social and Cultural Rights in Uzbekistan

International Obligations of States in realization of ESC rights

Under international human rights law, in particular the ICESCR, Uzbekistan, like other States, has an obligation to undertake a range of measures, including legislative, administrative, budgetary, judicial and others, to realize ESC rights.³³ This means that all “branches” of government (executive, legislative and judicial) and indeed all organs of the State or entities otherwise performing State functions have a role and responsibility to uphold ESC rights within their respective mandates.

States’ obligations to realize ESC rights include obligations to refrain from interference as well as to take positive measures to ensure their realization. These can be divided into obligations to *respect*, *protect* and *fulfil* rights. Under their *obligations to respect*, State authorities must refrain from adopting measures or engaging in conduct that violates ESC rights. Under the obligation to protect, State authorities must act to prevent and stop the conduct of third parties, including individuals, businesses or groups, from impairing the enjoyment of these rights.³⁴ *Obligations to fulfil* rights require States to positively facilitate or provide for their realization, including, where necessary, though dedication of resources. Specifically, as the UN Committee on Economic, Social and Cultural Rights (CESCR) has clarified, this last obligation requires the State to provide access to facilities, goods and services needed to uphold ESC rights, to facilitate the enjoyment of these rights by removing obstacles and creating conditions for such enjoyment and to promote such rights through education and public awareness.³⁵

States must, pursuant to their ICESCR obligations, ensure that some elements of rights are realized immediately. Others may be subject to “progressive development”.³⁶ States must immediately comply with the obligation of non-discrimination in respect of each of the Covenant rights and must ensure immediate enjoyment of at least the “minimum core” of each of the rights guaranteed under the ICESCR.³⁷

Pursuant to article 2(1) of the ICESCR, a State that is not able to comply immediately with all aspects of ICESCR obligations, in particular those that are significantly dependent on financial or other resources, may realize them progressively. However, whatever the limitations on the State’s resources, there is an obligation to “progressively

³³ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997), available at: http://hrlibrary.umn.edu/instree/Maastrichtguidelines_.html.

³⁴ CESCR, General Comment No. 24, *op. cit.* In relation to businesses, see further: United Nations Guiding Principles on Business and Human Rights (2011), HR/PUB/11/04, available at: https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf (“UN Guiding Principles on Business and Human Rights”); and International Commission of Jurists, Corporate Accountability for Abuses of Economic, Social & Cultural Rights in Conflict and Transition (2020), p. 52, available at: <https://www.icj.org/wp-content/uploads/2020/02/Universal-ESCR-accountability-guide-Publications-Reports-Thematic-report-2020-ENG.pdf>.

³⁵ International Commission of Jurists, Guide on the Enforcement and Adjudication of Economic, Social and Cultural Rights (ESCR) in South Africa, August 2019, <https://www.icj.org/the-icj-launches-guide-to-economic-social-and-cultural-right-in-south-africa/>, pp. 38–42.

³⁶ CESCR, General Comment No. 3: The Nature of States Parties' Obligations (article 2, para. 1 of the Covenant), 14 December 1990, E/1991/23, available at: <https://www.refworld.org/docid/4538838e10.html>, paras 1, 2, 9–10.

³⁷ ICESCR, article 2 (2); CESCR, General Comment No. 20, para. 7; CESCR, General Comment 3, para. 10.

realize”³⁸ these rights to the “maximum” of available resources.³⁹ The State must take steps towards realizing these obligations to the greatest extent possible, and must avoid any retrogressive steps decreasing existing enjoyment of ICESCR rights.

“Resources” in this context are not limited to financial resources. They include, among other things, natural resources, human resources, technological resources, and informational resources.⁴⁰ Resources encompass both existing resources and additional resources that States can make newly “available”. In this regard, States are duty bound to:⁴¹ maximize existing resources by using all resources at their disposal effectively; and expand existing resources by enlarging the State’s pool of resources through the support of international co-operation and assistance, as well as the “private” contributions of companies, groups and individuals.

International law and the national legal system of Uzbekistan

Under general principles of international law and in particular according to the Vienna Convention on the Law of Treaties to which Uzbekistan is a party⁴² “[e]very treaty in force is binding upon the parties to it and must be performed by them in good faith.”⁴³ In accordance with the Convention, States “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.⁴⁴

The Preamble of the Uzbekistan Constitution recognizes the “priority of the generally accepted norms of international law . . .” Furthermore, according to the Law on International Treaties of the Republic of Uzbekistan, “international treaties of Uzbekistan, along with generally recognized principles and norms of international law, are an integral part of the legal system of Uzbekistan.”⁴⁵ The Law envisages:

“International treaties of the Republic of Uzbekistan are subject to rigorous and mandatory execution by the Republic of Uzbekistan in accordance with international law.

In case it is necessary to enact legislation of the Republic of Uzbekistan in order to execute an international treaty of the Republic of Uzbekistan, relevant State bodies, in agreement with the Ministry of Foreign Affairs and the Ministry of Justice of the Republic of Uzbekistan, submit proposals to enact relevant act on execution of the norms of the international treaty of the Republic of Uzbekistan.”⁴⁶

Many Uzbekistan laws relating to ESC rights include a specific provision that if an international treaty to which Uzbekistan is a party establishes rules other than those

³⁸ CESCR, General Comment No. 3, para. 9.

³⁹ *Ibid.*, para.10.

⁴⁰ International Commission of Jurists, Guide on the Enforcement and Adjudication of Economic, Social and Cultural Rights (ESCR) in South Africa, August 2019, *op. cit.*, p. 158–159; R. Robertson, Measuring State Compliance with the Obligation to Devote the “Maximum Available Resources” to Realizing Economic, Social, and Cultural Rights, *Human Rights Quarterly*, Volume 16 (1994), p. 695.

⁴¹ I. Seiderman & T. F. Hodgson, “COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 2)”, *Opinio Juris* (1 April 2020), <http://opiniojuris.org/2020/04/01/covid-19-symposium-covid-19-responses-and-state-obligations-concerning-the-right-to-health-part-2/>.

⁴² Uzbekistan acceded to the Vienna Convention on the Law of Treaties on 12 July 1995, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en.

⁴³ Vienna Convention on the Law of Treaties, Vienna, 23 May 1969, United Nations, Treaty Series vol. 1155, at 331 (Vienna Convention), article 26.

⁴⁴ *Ibid.*, article 27.

⁴⁵ Law on International Treaties of the Republic of Uzbekistan, 6 February 2019, LRU-518, article 3.

⁴⁶ *Ibid.*, article 33.

constituted by the domestic law, the terms of the international treaty prevail.⁴⁷ In particular, the “Law on Normative Legal Acts” enshrines that “[t]he normative legal act [i.e. ‘laws and by-laws’] applies to citizens and legal entities of the Republic of Uzbekistan, as well as to foreign legal entities when they carry out activities on the territory of the Republic of Uzbekistan, foreign citizens and stateless persons located on the territory of the Republic of Uzbekistan, unless otherwise provided by an international treaty of the Republic of Uzbekistan.”⁴⁸ Furthermore, the law specifies that the drafters of the law should take into account commonly accepted principles and norms of international law.⁴⁹

As regards the role of courts in implementation of international human rights law, the Law on Courts provides that:

“A court in Uzbekistan is called upon to exercise judicial protection of citizens’ rights and freedoms provided for by the Constitution and other laws of the Republic of Uzbekistan, international acts on human rights, [as well as] rights and interests of the legal entities, organizations protected by law.”⁵⁰

However, most legal practitioners and scholars in Uzbekistan with whom the ICJ discussed this, considered that in practice, courts typically restrict themselves to applying national legislation as it is written, and desist from applying international law directly or interpreting legislation in light of international law.

The official position on the status and application of international law in the national legal system is ambiguous. According to the common core document forming part of Uzbekistan’s report to the UN Treaty Bodies of 2017,⁵¹ “...the rights provided for by international treaties may be directly granted to everyone, and the international obligations of Uzbekistan met, solely through the application of the rules of national law.”

It further states in regard to invocation of international human rights treaties by judicial bodies that:

“The national legal system recognizes the supremacy of the Constitution and the precedence of international law over national legislation. An international treaty must be incorporated into national legislation before it can be applied. Following incorporation, the rules of international law become part of national legislation and are binding. However, it has not become standard practice for judicial bodies to make direct reference to specific international treaties; such practice is in fact extremely rare.”⁵²

In its Concluding Observations of 2014 on Uzbekistan, following review of the report, the CESCR has indicated that it: “regrets that, according to information provided by the State party, domestic courts do not directly refer to the Covenant, despite their competence to do so under the domestic law (article 1)”.⁵³

⁴⁷ E.g. Law on Healthcare of the Citizens of the Republic of Uzbekistan, 29 August 1996, No. 265-I, article 1; Law on Sanitary and Epidemiological Welfare of the Population of the Republic of Uzbekistan, 26 August 2015, No. ZRU-393, article 2; Law on Reproductive Healthcare of Citizens of the Republic of Uzbekistan, 11 March 2019, No. ZRU-528, article 2; Housing Code of the Republic of Uzbekistan, 24 December 1998, No. 713-I, article 3.

⁴⁸ Law on Normative Legal Acts of the Republic of Uzbekistan, 14 December 2000, No. 160-II, article 34.

⁴⁹ *Ibid.*, article 20.

⁵⁰ Law on Courts of the Republic of Uzbekistan, 2 September 1993, No. 924-XII, article 2, <https://www.lex.uz/acts/68521>.

⁵¹ Common core document forming part of the reports of States parties, Uzbekistan, HRI/CORE/UZB/2017, 20 November 2017, [https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=HRI/CORE/UZB 2017](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=HRI/CORE/UZB%2017), paras 267–269.

⁵² *Ibid.*

⁵³ CESCR, Concluding Observations on the second periodic report of Uzbekistan, E/C.12/UZB/CO/2, 12 June 2014, para. 5.

In its most recent report to CESCR, of 2019, the Government of Uzbekistan stated its position, at least as to how the ICESCR is given effect in the national law of Uzbekistan:

"...the Uzbek Constitution proclaims the primacy of the universally recognized rules of international law, a principle enshrined in the country's current law on human rights and freedoms, which formally codifies the provision that, if an international treaty to which Uzbekistan is a party establishes rules other than those constituted by Uzbek law, the rules of the international treaty prevail in Uzbekistan.

...According to the Law on Courts, the work of the courts is governed not only by the country's law but also by the universally recognized rules and principles of international law and no restrictions are placed on the exercise by courts of their right directly to apply the rules of international law in handing down their judgments."⁵⁴

In its fifth periodic report of 2019 to the UN Human Rights Committee, Uzbekistan reiterated its position that "the Constitution and laws of the Republic of Uzbekistan enshrine the principle of the primacy of international human rights, pursuant to which, if national laws are inconsistent with international rules, the rules of the international treaty prevail."⁵⁵ However, in the State Replies of Uzbekistan to the UN Human Rights Committee's List of Issues, the Uzbek Government also noted the difficulties regarding the implementation of the Views of the UN Human Rights Committee in a case concerning Uzbekistan, citing limitations imposed under the domestic law.⁵⁶ Following review of that report, the UN Human Rights Committee expressed concern about Uzbekistan's:

"...continuing failure to implement its Views under the Optional Protocol, in particular citing incompatibilities with national legislation, despite the fact that the Constitution recognizes the primacy of international law over national law."⁵⁷

Uzbekistan has also expressed its position on the courts and human rights treaties in its sixth periodic report of 2020 to the UN Committee on the Elimination of Discrimination against Women (CEDAW Committee), the supervisory body of the Convention on the Elimination of all Forms of Discrimination against Women. According to the report:

"the courts do not directly apply the Convention, since Article 15 of the Constitution proclaims the supremacy of the Constitution and the laws of Uzbekistan, they are guided by national legislation, and the norms of international treaties are applied only after their implementation into national legislation."⁵⁸

This position is contrary to the representations made to the CESCR, and points to the lack of a unified approach by the State on the incorporation of the international law in the national legal system. The CESCR urged Uzbekistan to ensure that the ICESCR provisions were invoked before and applied by the domestic courts, including by raising awareness among rights holders and the authorities responsible for its implementation.

⁵⁴ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, paras 46–47.

⁵⁵ Fifth periodic report of Uzbekistan on implementation of the International Covenant on Civil and Political Rights, 10 January 2019, CCPR/C/UZB/5, para. 44.

⁵⁶ *Ibid.*, para 4: "Comments were prepared by Uzbekistan regarding implementation of the Views of the Human Rights Committee in the case of Karima Sabirova and Bobir Sabirov. Based on the stipulations of Uzbek law, in view of the fact that the administrative cases brought against Ms. Sabirova and Mr. Sabirov for the commission of an administrative offence under article 1842 of the Administrative Liability Code had been considered in 2012, it is not possible for the judgments handed down against those persons to be reviewed, because of the six-month statute of limitations imposed under law on appeals."

⁵⁷ UN Human Rights Committee (HRC), Concluding Observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/CO/5, para. 4.

⁵⁸ CEDAW, Replies of Uzbekistan to the list of issues in relation to its sixth periodic report on implementation of the Convention on the Elimination of All Forms of Discrimination against Women, 3 November 2020, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT/CEDAW/RLI/UZB/43648&Lang=en, para. 3.

It referred to its General Comment No. 9 (1998) on the domestic application of the ICESCR⁵⁹ and invited Uzbekistan to include, in its next periodic report, information on court decisions giving effect to ICESCR rights. General Comment No. 9 says that:

*"within the limits of the appropriate exercise of their functions of judicial review, courts should take account of Covenant rights where this is necessary to ensure that the State's conduct is consistent with its obligations under the Covenant. Neglect by the courts of this responsibility is incompatible with the principle of the rule of law, which must always be taken to include respect for international human rights obligations."*⁶⁰

Indeed, as mentioned earlier, and as provided for by many Uzbekistan laws as well as under international law, it is Uzbekistan's obligation to interpret and apply its domestic law consistently with its international human rights obligations and in case of a conflict between domestic law and international law, it will not be able to invoke its domestic law as justification for its failure to perform its international legal obligations.⁶¹

One potential means of strengthening the application of international law by the Uzbekistan courts, is the proposal in the recent National Human Rights Strategy to adopt a decision of the Plenum of the Supreme Court on "Court practice on application of the principles and rules of international law, as well as international treaties to which Uzbekistan is a party". This would aim to achieve "further enlargement of the practice of use by courts of international human rights treaties".⁶² If adopted, this could help to encourage national courts to apply international human rights law, including obligations under the ICESCR.

Access to Justice for Economic, Social and Cultural Rights

Access to justice and effective remedies for ESC rights violations in international law

International law obligations to protect ESC rights engage the responsibility of all agents and organs of the State, including the courts, and the judicial system plays an important role in ensuring that ESC rights are realized in practice, through the availability of effective remedies for violation of these rights. The right to an effective remedy and reparation for the violation of any human right is a general principle of law, provided for in numerous international human rights instruments⁶³ and in the UN Basic Principles on Remedy and Reparation, adopted by the UN General Assembly in 2005.⁶⁴ Everyone has the right to an effective remedy for any violation of their human rights. Such remedies,

⁵⁹ CESCR, General Comment No. 9, *op. cit.*

⁶⁰ *Ibid.*, para. 14.

⁶¹ Article 27, Vienna Convention on the Law of Treaties reads in full: "Internal law and observance of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46." Article 46 reads: "Article 46. Provisions of internal law regarding competence to conclude treaties. 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance. 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

⁶² National Human Rights Strategy of the Republic of Uzbekistan, approved by the Presidential Decree of 22 June 2020, No. UP-6012, <https://lex.uz/ru/docs/4872357>.

⁶³ See The Right to a Remedy and Reparation for Gross Human Rights Violations, International Commission of Jurists Practitioners Guide No. 2 (Revised Edition), 2018, available at: <https://www.icj.org/wp-content/uploads/2018/11/Universal-Right-to-a-Remedy-Publications-Reports-Practitioners-Guides-2018-ENG.pdf>.

⁶⁴ United Nations General Assembly, 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, Resolution 60/147, 2005, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>.

to be effective, must be prompt, accessible, available before a competent, independent and impartial authority, and lead to cessation of the violation and to reparation.⁶⁵

In regard to the rights protected under the ICESCR, it has been made clear by the CESCR⁶⁶ that: "appropriate means of redress, or remedies, must be available to any aggrieved individual or group, and appropriate means of ensuring governmental accountability must be put in place."⁶⁷ The provision of domestic legal remedies for violations of ESC rights is required under article 2.1 of the ICESCR, by which States parties must take all "appropriate means" for the realization of the rights under the Covenant. While either judicial or administrative remedies can be made available to this end, the latter "could be rendered ineffective if they are not reinforced or complemented by judicial remedies".⁶⁸ Remedies must be effective and expeditious, and accessible to everyone without discrimination.⁶⁹ Remedies must also be accompanied by full reparation, which take the form of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition, or a combination of these forms as appropriate.⁷⁰

Avenues for redress of ESC rights violations are, in principle under the law, available in the domestic context in Uzbekistan. Under the Constitution of the Republic of Uzbekistan, everyone is guaranteed the right to access to a court for protection of his or her rights and freedoms and has the right to lodge a complaint with a court against any unlawful action of State bodies, officials or public associations.⁷¹

As well as judicial remedies through the court system,⁷² non-judicial remedies are established under the national law, in particular through the mechanism of the Ombudsperson (Oliy Majlis Commissioner for Human Rights), who is empowered to examine and address complaints, to lodge a complaint in the domestic courts on behalf of victims, and to lodge an application with the Constitutional Court.⁷³

The Ombudsperson is "an official authorized to ensure parliamentary control over the observance of legislation on human rights and freedoms by State bodies, enterprises, institutions, organizations and officials".⁷⁴ The Ombudsperson examines and addresses violations of human rights and freedoms on the basis of complaints or on his or her own initiative.⁷⁵ In this connection, the Ombudsperson is entitled, *inter alia*, to require information or data from persons, including state authorities and officials, where it is necessary for examination of a case, or to refer the case to the relevant authorities to seek remedies for violations.⁷⁶ Accordingly the State bodies and officials are obliged to provide information inquired by the Ombudsperson and cooperate in this connection.⁷⁷ The Ombudsperson does not examine cases which are in competence of the courts,

⁶⁵ The ICJ Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems, 12 December 2012, <https://www.icj.org/wp-content/uploads/2013/02/Congress-Declaration-adoptedFINAL.pdf>, principle 5.

⁶⁶ CESCR, General Comment No. 9, paras 2 and 3. See also: CESCR, General Comment No. 12, UN Doc. E/C.12/1999/5 (1999), paras 32–35; CESCR, General Comment No. 14, UN Doc. E/C.12/2000/4 (2000), paras 59–62; CESCR, General Comment No. 15, UN Doc. E/C.12/2002/11 (2002), paras 55–59; CESCR, General Comment No. 18, E/C.12/GC/18 (2006), paras 48–51; and General Comment No. 19, UN Doc. E/C.12/GC/19 (2008), paras 77–81.

⁶⁷ CESCR, General Comment No. 9, para. 2.

⁶⁸ *Ibid.*, paras 2 and 3. See also: 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 2. See also: General Comment No. 24, para. 39.

⁶⁹ CESCR, General Comment No. 20, para. 4.

⁷⁰ CESCR, General Comment No. 24, para. 41.

⁷¹ The Constitution of the Republic of Uzbekistan, article 44.

⁷² *Ibid.*, article 107.

⁷³ Law on Ombudsperson of the Oliy Majlis For Human Rights, 27 August 2004, No. 669-II, article 20, <https://lex.uz/docs/276155#276426>; website of the Ombudsperson, <http://ombudsman.uz/en/>.

⁷⁴ *Ibid.*, article 1.

⁷⁵ *Ibid.*, article 12.

⁷⁶ *Ibid.*, article 14.

⁷⁷ *Ibid.*, article 15.

and must inform the applicant about the outcome of the examination of a complaint, and submit its finding to the relevant state authority or official, with a recommendation concerning how to redress any violation of human rights found to have occurred in the case.⁷⁸ The officials receiving the finding of the Ombudsperson must examine it and provide a reasoned reply within a month.⁷⁹

Access to justice through the courts: justiciability of ESC rights in Uzbekistan

The Preamble to Uzbekistan's Constitution affirms the "ideal" of "social justice" as one of its core values⁸⁰ and it further enshrines that "the State shall function on the principles of social justice and legality in the interests of well-being of the people and society".⁸¹ In addition, the Constitution includes specific protections for particular ESC rights including the rights to work,⁸² social security,⁸³ health⁸⁴ and education.⁸⁵ Some ESC rights such as the rights to housing, food, water and sanitation are not explicitly provided for in the Constitution. However, the Constitution entrenches protections of various rights related to ESC rights protection, such as human dignity,⁸⁶ life,⁸⁷ inviolability of the home⁸⁸ and property.⁸⁹ Under the national legislation, everyone is guaranteed the right to seek judicial protection of their rights and freedoms, and shall have the right to lodge a complaint with the court against any unlawful action of State bodies, officials and public associations.⁹⁰ It provides that no one can be deprived of or limited in their rights, except on the basis of a court order.⁹¹

According to the Law on Courts,

*"A court in Uzbekistan is a guarantee of enforcement of citizens' rights and freedoms provided for by the Constitution and other laws of Uzbekistan Republic, the international covenants on human rights, as well as rights and interests of the legal entities, organizations protected under the law."*⁹²

Accordingly, ESC rights are in principle justiciable under national law. Many aspects of the rights to housing, work and health that are the focus of this report are already provided for in detail in domestic laws, therefore, in law their potential for justiciability does not raise serious questions. However, in practice difficulties arise with invoking obligations of the State to guarantee ESC rights, relying on constitutional provisions, as well as international law.

In practice, there often exists a lack of perception of ESC rights as human rights or justiciable rights, but as unalterable legal or social facts and natural guarantees by the State; accordingly, in many cases problems of accessing ESC rights would not be considered as violations of rights, still less as violations which can be remedied through the

⁷⁸ *Ibid.*, article 10.

⁷⁹ *Ibid.*, article 16.

⁸⁰ The Constitution of the Republic of Uzbekistan.

⁸¹ *Ibid.*, article 14.

⁸² *Ibid.*, articles 37–38.

⁸³ *Ibid.*, article 39.

⁸⁴ *Ibid.*, article 40.

⁸⁵ *Ibid.*, article 41.

⁸⁶ *Ibid.*, article 13.

⁸⁷ *Ibid.*, article 24.

⁸⁸ *Ibid.*, article 27.

⁸⁹ *Ibid.*, article 36.

⁹⁰ *Ibid.*, article 44.

⁹¹ *Ibid.*, article 19.

⁹² Law on Courts of the Republic of Uzbekistan, *op. cit.*, article 4.

justice system.⁹³ This applies, for instance, to the possibility for a person to challenge the provisions of the law itself, claiming its incompatibility with the general provisions of the Constitution or obligations to protect rights under international law for example, challenging the sub-standard amount of minimum wage.

Impediments to judicial protection of ESC rights

The independence of the judiciary

A basic tenet of the rule of law is that courts established to administer justice must be competent, independent and impartial, including, necessarily, as relates to the protection of human rights.⁹⁴ Judicial independence requires the institutional independence of the judiciary, both in law and in practice, as well as to the independence of individual judges who enjoy personal independence in their decision making. Both of these are necessary elements of the right to a fair hearing in civil and criminal cases.⁹⁵

Independence and impartiality of a court or other tribunal requires, in particular, that adequate safeguards are put in place to secure such independence relating, amongst other things, to: the procedure for the appointment of judges; the guarantees relating to their security of tenure once appointed; the conditions governing the promotion, transfer, suspension and cessation of their functions; and the independence of the judiciary in practice from undue interference by the executive and the legislature or other powerful actors.⁹⁶

The independence of the judiciary is established by law in Uzbekistan. In particular, the Constitution enshrines both the principle of separation of powers⁹⁷ and the independence of the judiciary from the legislative and executive authorities, political parties and other public associations.⁹⁸ It also provides that:

- in the exercise of their functions, judges are independent and only subject to law;
- any interference with their activities is not permitted and is punishable by law; and
- judges can only be removed from office before the completion of their terms in the cases provided by law.⁹⁹

According to the Law on Courts, the “independence of judges is ensured” by: (a) Statutory procedures for election, appointment and termination of office of the judges; (b) judges’ inviolability; (c) Strict procedures for the administration of justice; (d) Secrecy of the judges’ deliberations before the delivery of a judgment and restraint of disclosure of the respective confidential information; (e) Liability for contempt of court or interfering with judicial proceedings, or violation of judicial immunity; (f) An adequate level of material and social security provided to judges by the State commensurate with their high status.¹⁰⁰

⁹³ ICJ research mission to Uzbekistan on access to justice for economic, social and cultural rights, 2018, <https://www.icj.org/uzbekistan-icj-research-mission-on-access-to-justice-for-economic-social-and-cultural-rights/>; <https://www.icj.org/country/europe/uzbekistan/>.

⁹⁴ E.g. The Basic Principles on the Independence of the Judiciary, Principles 1 and 2; International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, ICJ Practitioners’ Guide No. 1 (2007), <https://www.icj.org/wp-content/uploads/2012/04/International-Principles-on-the-Independence-and-Accountability-of-Judges-Lawyers-and-Prosecutors-No.1-Practitioners-Guide-2009-Eng.pdf>.

⁹⁵ E.g. International Commission of Jurists, International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, *op. cit.*, pp. 21–27.

⁹⁶ HRC, General Comment No. 32, article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, available at: <https://www.refworld.org/docid/478b2b2f2.html>, para. 19.

⁹⁷ The Constitution of the Republic of Uzbekistan, article 11.

⁹⁸ *Ibid.*, article 106.

⁹⁹ *Ibid.*, article 112.

¹⁰⁰ Law on Courts of the Republic of Uzbekistan, *op. cit.*, article 67; the Civil Procedure Code of the Republic of Uzbekistan, 22 January 2018, No. ZRU-460, article 9.

Yet, following his recent visit to Uzbekistan, the UN Special Rapporteur on the Independence of Judges and Lawyers highlighted that “the judiciary cannot be regarded at present as being independent from other State authorities”¹⁰¹ and that “[m]uch more needs to be done to ensure that the judiciary is truly independent from other branches of the State, in particular the executive branch, and that judges, prosecutors and lawyers are free to carry out their professional activities without any undue interference or pressure.”¹⁰²

Other UN authorities have expressed similar concern about the lack of independence of the judiciary in Uzbekistan, which refers to the appointment, tenure and disciplinary responsibility of judges in particular.¹⁰³ In 2020, the UN Human Rights Committee, which supervises States’ performance under the ICCPR recommended that Uzbekistan

*“[e]radicate all forms of undue interference with the judiciary by the legislative and executive branches and guarantee the independence of the Supreme Judicial Council, including by ensuring that it is comprised mostly of judges and prosecutors elected by professional self-governing bodies and that it operates with transparency.”*¹⁰⁴

Thus, despite these guarantees, judicial independence has not been achieved in practice in Uzbekistan. The lack of independence of the judiciary puts in doubt the effectiveness of the Uzbekistan court system, in ensuring protection of human rights, including ESC rights, and providing remedies for their violation.

Access to independent legal advice

Effective access to justice also depends on an independent and well-qualified legal profession. In Uzbekistan, the organization and functioning of the legal profession is regulated by the Law on Lawyers¹⁰⁵ and the Law on Guarantees of Defence Lawyers’ Activities and Social Protection of Defence Lawyers.¹⁰⁶ According to the Law, the Chair of the Chamber of Lawyers is elected by the Conference of the Chamber Lawyers upon the nomination by the Ministry of Justice.¹⁰⁷ Premature termination of the powers of the Chair of the Chamber of Lawyers is also carried out by the same Conference upon a motion by the Ministry of Justice.¹⁰⁸

The Ministry of Justice issues licences to practice the legal profession¹⁰⁹ and takes a joint decision together with the Chamber of Lawyers in appointing members of the Qualification Commissions.¹¹⁰ The mandate and rules on functioning of the Qualification Commissions of the Chamber of Lawyers are also established by the Ministry of Justice in agreement with the Chamber of Lawyers. This interference by the Ministry of Justice effectively makes the Chamber of Lawyers dependent on the executive.

¹⁰¹ The Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan, *op. cit.*, para. 90.

¹⁰² *Ibid.*, para. 91.

¹⁰³ *Ibid.*, para. 25.

¹⁰⁴ HRC, Concluding Observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/CO/5, para. 39.: The UN Human Rights Committee said that the lack of independence of the judiciary in Uzbekistan was, in particular owing to: (a) the involvement of political bodies and the President in the selection and appointment of judges and prosecutors and in the appointment and dismissal of the Prosecutor General; (b) the lack of clear and objective criteria defined by law for the selection of candidates for judges and prosecutors and transparent evaluation procedures; (c) and regulations and procedures relating to disciplinary liability of prosecutors on broadly defined grounds.

¹⁰⁵ Law on Lawyers of the Republic of Uzbekistan, 27 December 1996, No. 349-I.

¹⁰⁶ Law on Guarantees of Defence Lawyers’ Activities and Social Protection of Defence Lawyers, 25 December 1998, No. 721-I.

¹⁰⁷ Law on Lawyers, *op. cit.*, article 12.

¹⁰⁸ *Ibid.*, article 12.

¹⁰⁹ *Ibid.*, article 3.

¹¹⁰ *Ibid.*, article 13.

The ICJ's 2016 report on the independence of the legal profession in Central Asia concluded that: "[t]he Chamber of Lawyers of Uzbekistan clearly lacks independence, since its head is appointed and removed pursuant to a motion of the Ministry of Justice, which although subject to a vote of the Chamber in practice determines outcome. The ICJ is concerned that the involvement of the executive branch of government in the appointment of the leadership of the lawyers' association is inconsistent with international standards."¹¹¹

In its Concluding Observations on Uzbekistan, the Human Rights Committee stated that it: "... is further concerned about the lack of independence of the Chamber of Lawyers from the Ministry of Justice".¹¹² The Special Rapporteur on the Independence of Judges and Lawyers also noted that the independence of the Chamber undermined.¹¹³ This affects the integrity of the legal profession and the professional interests of lawyers. Such dependence on the executive effectively puts lawyers in a position where they are not able to freely protect the rights of their clients, including ESC rights, due to an overall chilling effect as well as procedural dependence on the executive in specific cases.¹¹⁴

In addition, according to the UN Special Rapporteur on the Independence of Judges and Lawyers, the number of practicing lawyers in Uzbekistan is not sufficient to meet the needs of justice.¹¹⁵ The majority of such lawyers reside and work in Tashkent.¹¹⁶ In other areas of the country, there is a dramatic shortage of lawyers, which has a serious impact on access to justice.¹¹⁷

Access to legal aid

Persons seeking access to justice in judicial or administrative fora should be guaranteed access to legal advice and representation, including, where necessary, free legal aid. It is the responsibility not only of the State, but also of the legal profession, to act to facilitate such access.¹¹⁸ The lack of financial means to access justice is often a significant obstacle to access to justice for ESC rights, especially for persons from the most marginalized and disadvantaged sectors of society. The availability of free legal aid can be a crucial means to overcome this barrier, and may be required in some cases in order for access to justice to be effective.¹¹⁹

As the UN Human Rights Committee has explained "[t]he availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way."¹²⁰ The CESCR has emphasized the importance of "ensuring access to justice and the provision of free legal aid services, in particular for disadvantaged and marginalized individuals and groups".¹²¹

¹¹¹ ICJ, Independence of the Legal Profession in Central Asia, <https://www.icj.org/wp-content/uploads/2013/09/Independence-of-the-Legal-Profession-in-CA-Eng.pdf>, para. 18.

¹¹² Human Rights Committee, Concluding Observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/5, paras 38–39.

¹¹³ The Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan, *op. cit.*, paras 82–83.

¹¹⁴ E.g. ICJ, Independence of the Legal Profession in Central Asia, *op. cit.*, p. 82.

¹¹⁵ The Special Rapporteur on the independence of judges and lawyers, Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan, *op. cit.*, para. 77.

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*, At the time of the Special Rapporteur's visit to Uzbekistan, there were approximately 4,000 lawyers in Uzbekistan.

¹¹⁸ The ICJ Declaration on Access to Justice and Right to a Remedy in International Human Rights Systems, 12 December 2012, *op. cit.*, principle 4.

¹¹⁹ ECtHR, *Airey v. Ireland* (Application No. 6289/73), para. 26; HRC, General Comment No. 32, para. 10.

¹²⁰ HRC, General Comment No. 32, para. 10.

¹²¹ CESCR, Concluding Observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, 14 July 2016, E/C.12/GBR/CO/6, para. 21.

The free legal aid system in Uzbekistan covers only criminal cases.¹²² As regards civil cases, including those relating to economic, social and cultural rights, free legal aid is provided only in respect of a narrow range of rights, such as those regarding violations of the equal rights of men and women.¹²³ However, the impact of these recent measures on the ability of women, including those from the rural areas, to report cases of discrimination against women and access justice and legal aid is not yet clear.¹²⁴

In view of the lack of free legal aid system in civil cases, the State, in particular, through the Ministry of Justice, has taken some measures to provide legal consultation and information through a website (www.advice.uz), which contains a legal database on various ESC rights, as well as through "Madad", an organisation registered as an NGO but established based on a decision of the Cabinet of Ministers of Uzbekistan.¹²⁵ These measures cannot however replace a fully-functioning legal aid system. It is worth mentioning that the National Human Rights Strategy envisages the enactment of a Law on a Free Legal Aid system, that would provide for legal aid in administrative and civil cases, which should in principle encompass internationally protected ESC rights.

Length of proceedings

National legislation provides for specific time limitations for examination of the ESC rights-related cases.¹²⁶ For example, under the Civil Procedure Code, urgent civil cases must be examined by the first instance court no later than twenty days from the date of completion of the preparation of cases for court proceedings, while for other cases it is in general a month.¹²⁷ The preparation of civil cases for the court hearing must take place within ten days following receipt of the application and opening a civil case.¹²⁸

In addition to the first instance courts, there are higher instances, including appeal and cassation appeal court instances to review the lower courts' decisions.¹²⁹ The statutory time-limit for an appeal is one month.¹³⁰ As a general rule, the appeal courts "have to examine an appeal case no later than a month after receipt of an appeal complaint against the first-instance court's decision".¹³¹ The statutory time-limit to lodge a cassation appeal in civil proceedings is one year.¹³² The cassation instance court, the Supreme Court, must also "examine a cassation appeal not later than a month after its receipt".¹³³

¹²² The Constitution of the Republic of Uzbekistan, article 112; Law on Lawyers, *op. cit.*, article 11; and Law on Courts, article 10; Criminal Procedure Code of the Republic of Uzbekistan, 22 September 1994, No. 2013-XII, article 50.

¹²³ Law on Guarantees of Equal Rights and Opportunities for Women and Men of the Republic of Uzbekistan, 2 September 2019, No. ZRU-562, article 28, <https://lex.uz/docs/4494873>; Presidential Decree of the Republic of Uzbekistan, 7 March 2019, No. PP-4235, "On measures to further strengthen guarantees of labour rights and support for women's entrepreneurial activity".

¹²⁴ E.g., Committee on the Elimination of Discrimination against Women, List of issues and questions in relation to the sixth periodic report of Uzbekistan, CEDAW/C/UZB/Q/6, 27 July 2020, para. 2.

¹²⁵ Decision of the Cabinet of Ministers of the Republic of Uzbekistan on Measures to Further Improve the system of legal assistance and legal awareness of the population, 6 December 2019, No. 741; Decree of the President of the Republic of Uzbekistan "On the radical improvement of the system of increasing legal awareness and legal culture in society", No. UP-5618, 9 January 2019; National Human Rights Strategy of the Republic of Uzbekistan, approved by the Presidential Decree of 22 June 2020, No. UP-6012, *op. cit.*

¹²⁶ Civil Procedure Code of the Republic of Uzbekistan, articles 202, 207, 395 and 415.

¹²⁷ *Ibid.*, article 207.

¹²⁸ *Ibid.*, article 202.

¹²⁹ Law on Courts, *op. cit.*, articles 25 and 33.

¹³⁰ Civil Procedure Code of the Republic of Uzbekistan, article 385.

¹³¹ *Ibid.*, article 395.

¹³² *Ibid.*, article 405.

¹³³ *Ibid.*, article 415.

In practice, these time limitations are not always respected¹³⁴ and certain civil court cases are considered in violation of the established deadlines.¹³⁵ The Plenum of the Uzbekistan Supreme Court has acknowledged problems concerning the length of proceedings and has attributed them to poor organization of work or negligence when planning a trial, slowness in processing procedural documents, violation of procedural rules during a court hearing, or superficial examination of the materials of the case at the stage of appointment of the court session. The reports also found problems with omissions in the preparation of civil cases for trial, untimely notification of the participants in court proceedings, and, in some courts, the practice of repeatedly suspending cases based on the grounds not provided for by the law.¹³⁶

However, the issue is not an isolated one but is related to other systemic problems such as caseload which seems to be very high in Uzbek courts.¹³⁷ While the problem may be particularly serious in Tashkent, courts in general appear to be understaffed.¹³⁸

Quality of decision-making and access to court decisions

Clear and well-reasoned judicial decisions are a necessary aspect of access to justice, allowing the parties to the case to understand how their case has been resolved, and providing them with a basis to appeal the decision if necessary. Judicial decisions also play a wider role, demonstrating transparently to the wider public beyond the parties to a case, the administration of justice through the judicial system, and helping to develop clear and consistent application of the law.

The quality of judicial decisions is therefore central for the quality of justice as a whole.¹³⁹ As pointed out by the Consultative Council of European Judges (CCJE): "A high quality judicial decision is one which achieves a correct result—so far as the material available to the judge allows—and does so fairly, speedily, clearly and definitively."¹⁴⁰ Importantly they note that "the purpose of a judicial decision is not only to resolve a given dispute providing the parties with legal certainty, but often also to establish case law which may prevent the emergence of other disputes and to ensure social harmony."¹⁴¹

According to the Civil Procedure Code of the Republic of Uzbekistan, court decisions must be lawful, reasoned and fair.¹⁴² The court's decision must contain the actual and

¹³⁴ Dildor Kamalov (head of the Law faculty of the Tashkent University), "One court—one instance: how will this change the system", 29 January 2021, available at the website of the Supreme Court of the Republic of Uzbekistan, https://sud.uz/ru/ccr_slider/один-суд-одна-инстанция-как-данный/: "For example, in more than eight thousand (or 44 percent) applications received [by the courts] in 2020, the applicants complained of . . . bias, and delays in the consideration of cases in courts."; Uza.uz news portal, Ensuring the rule of law and justice is essential to achieving our noble goals, <http://www.uza.uz/ru/politics/obespechenie-verkhoventstva-zakona-i-spravedlivosti-vazhneysh-13-06-2017>.

¹³⁵ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On the preparation of civil cases for the court examination and terms of their consideration", <http://lex.uz/acts/1448991>, Preamble. Although this decision was annulled on 24 August 2018, the problems mentioned in that decision persist in practice according to the findings of the ICJ mission to Uzbekistan.

¹³⁶ E.g. *Ibid.*

¹³⁷ Alisher Umirdinov and Khakimov Akhadjon, "Tensions between Domestic and International Law for Supremacy in Uzbekistan", November 2020, Tashkent State Institute of Law, https://www.researchgate.net/publication/348391118_Tensions_between_Domestic_and_International_Law_for_Supremacy_in_Uzbekistan, p. 214; Uza.uz news portal, Ensuring the rule of law and justice is essential to achieving our noble goals, *op. cit.*

¹³⁸ United Nations Country Team submission for the 2018 Universal Periodic Review of Uzbekistan (3rd cycle), United Nations Country Team in Uzbekistan, para. 13.8; ICJ mission findings, *op. cit.*

¹³⁹ Opinion No. 11 (2008) of the Consultative Council of European Judges (CCJE) to the attention of the Committee of Ministers of the Council of Europe on the quality of judicial decisions, paras 2–3.

¹⁴⁰ *Ibid.*, para. 3.

¹⁴¹ *Ibid.*, para. 7.

¹⁴² E.g. Civil Procedure Code of the Republic of Uzbekistan, article 249.

legal justification of the conclusions of the court in the case.¹⁴³ In particular, this part of the decision must indicate the facts of the case established by the court; the evidence on which the court's conclusions are based; and the content of the conclusions, according to which the court accepts or rejects certain evidence. The decision must also indicate the substantive law upon which it is based, such as civil, family, land, housing or other laws, including the formal name of the law, article, clause, number and date of adoption of other legislation, as well as procedural law.¹⁴⁴

According to the Civil Procedure Code, in case of lack of clarity of a decision, the court that issued the decision, on its own initiative or upon the application of a party to the case, the State bailiff, or other bodies entrusted with the execution of the court decision, is entitled to clarify the decision without changing its content.¹⁴⁵ Such clarification is permitted if the decision has not yet been executed and the period of execution has not expired.¹⁴⁶

In practice, court decisions appear to be often of poor quality.¹⁴⁷ The Supreme Court of Uzbekistan, in a resolution of the Plenum of the Court, stated that:

*"some court decisions do not meet the requirements of legality, validity and fairness. Sometimes the decisions do not fully reflect the circumstances of the case, there is no analysis of evidence, their assessment, the legal qualification of the established facts, the conclusions of the court do not always correspond to the circumstances of the case. The facts of wrongful application of the norms of substantive law continue to take place. In a number of cases, the decisions do not reflect the facts established by the court and do not contain conclusions arising from the circumstances of the case, the reasoning part of the decision does not always give reasons for refusing to satisfy the claim, especially if the claim is partially satisfied, and the resolution part of the decision is often stated in such a way that it creates difficulties in its execution."*¹⁴⁸

A number of experts confirmed to the ICJ this assessment regarding the poor quality of judicial decisions. Judicial decisions were said to be inconsistent, lacking solid reasoning, including analysis of laws and an explanation of how and why the law is applied. The ICJ was told that judicial decisions tend to vary to the extent of contradicting each other in identical cases.¹⁴⁹ It appears that on the same issue, the courts in Tashkent and in other cities will take different decisions, and require different documents.¹⁵⁰ As a result, the application of law is not foreseeable and predictable; objective legal tests are not well-defined or are absent.¹⁵¹ One lawyer interviewed told the ICJ that the Uzbek

¹⁴³ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan on a judicial decision, 24 May 2019, No. 12, <https://lex.uz/docs/4396488>.

¹⁴⁴ *Ibid.*

¹⁴⁵ Civil Procedure Code of the Republic of Uzbekistan, article 263.

¹⁴⁶ *Ibid.*

¹⁴⁷ Alisher Umirdinov and Khakimov Akhadjon, "Tensions between Domestic and International Law for Supremacy in Uzbekistan", Tashkent State Institute of Law, November 2020, <https://www.researchgate.net/publication/348391118>, p. 217: "...domestic courts make only a very formalistic interpretation of statutes, and where they intentionally abstain from using their broad interpretative powers. The court decisions issued by domestic courts are notoriously terse and dry; this fact demonstrates the tendency of lower courts to seek top-down guidance from the Supreme Court on the interpretation of ambiguous points of primary or secondary legislation..."

¹⁴⁸ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan on a Judicial Decision, 17 April 1998, No. 13, <https://lex.uz/docs/1446053>. Although this resolution lost its force according to the Resolution of 24 May 2019 of the Plenum of the Supreme Court, the problems mentioned in that resolution still persist in practice according to the findings of the ICJ mission to Uzbekistan as well.

¹⁴⁹ Alisher Umirdinov and Khakimov Akhadjon, "Tensions between Domestic and International Law for Supremacy in Uzbekistan", Tashkent State Institute of Law, November 2020, *op. cit.*, p. 226; ICJ mission to Uzbekistan, *op. cit.*

¹⁵⁰ ICJ mission to Uzbekistan, *op. cit.*

¹⁵¹ Dildor Kamalov (head of the Law faculty of the Tashkent University), "One court—one instance: how will this change the system", *op. cit.*: "... Meanwhile, today investment disputes are considered by both civil, administrative and economic courts. This, in turn, makes it difficult to form a unified judicial practice in resolving investment disputes..."; ICJ mission to Uzbekistan, *op. cit.*

Courts resemble “a conveyor that does not have time to write down the decisions and sentences in the cases under consideration, so the quality of the written decisions and the conduct of the process suffers”.

In this connection it is welcome that the Supreme Court has now begun regular publication of court decisions on its website. In a relatively recent development, thousands of cases have now been made available and may be downloaded on the website of the Supreme Court of the Republic of Uzbekistan.¹⁵² Many documents and templates are now easily accessible and downloadable online, and services such as making online appointments or tracking cases gave the court procedure a welcome level of transparency through the Portal of Electronic Services of the Supreme Court.¹⁵³ Such steps may further increase transparency of the justice system. However, greater transparency will not in itself increase the quality of reasoning and consistency of court decisions, and this will require further efforts, including through capacity building for judges aimed at changing the culture and practice of judicial decision-making.

COVID-19 and access to justice

Like other countries, Uzbekistan needed to and did respond to the COVID-19 pandemic.¹⁵⁴ In response to COVID-19 pandemic, Uzbekistan applied a quarantine regime, relying for legal authority on the Law on Sanitary and Epidemiological Welfare of the Population.¹⁵⁵ On 29 January 2020, the President created a Special Commission on Preparation of a Programme of Preventive Measures Against Spread of the Coronavirus in Uzbekistan.¹⁵⁶ The Commission was charged with development and implementation of preventative measures in Uzbekistan.¹⁵⁷ Through documents, in particular, through the acts of the President and (or) Cabinet of Ministers, various measures were taken in response to COVID-19 pandemic, including certain restrictions on freedom of movement.¹⁵⁸

The restrictions due to COVID-19 have adversely affected access to justice in Uzbekistan. For example, one issue that arose was the ability of lawyers to exercise their

¹⁵² Official Website of the Supreme Court of the Republic of Uzbekistan: <http://sud.uz/>.

¹⁵³ Electronic services of the courts: <https://my.sud.uz/>.

¹⁵⁴ International Commission of Jurists, Briefing paper on the impact of anti-COVID-19 pandemic measures on access to justice in CIS countries, 12 June 2020, <https://www.icj.org/icj-briefing-paper-on-the-impact-of-anti-covid-19-pandemic-measures-on-access-to-justice-in-cis-countries/>.

¹⁵⁵ Decree of the President of the Republic of Uzbekistan, No. R-5537, 29 January 2020, “On Establishment of the Special Commission on Preparation of a Programme of Preventive Measures Against Spread of the Coronavirus in Uzbekistan”, <https://lex.uz/docs/4720408>; International Commission of Jurists, Briefing paper on the impact of anti-COVID-19 pandemic measures on access to justice in CIS countries, 2020, *op. cit.*; Frequently Asked Questions and Answers on Legal Issues, website of the Ministry of Justice, 2020, <https://www.minjust.uz/ru/press-center/news/98981/>.

¹⁵⁶ Decree of the President of the Republic of Uzbekistan, No. R-5537, 29 January 2020, “On Establishment of the Special Commission on Preparation of a Programme of Preventive Measures Against Spread of the Coronavirus in Uzbekistan”, *op. cit.*

¹⁵⁷ *Ibid.*

¹⁵⁸ Law of the Republic of Uzbekistan of 26 March 2020, No. ZRU-613, “On Amendments and Additions to the Criminal Code, Criminal Procedure Code and the Administrative Liability Code of the Republic of Uzbekistan”; Decree of the President of the Republic of Uzbekistan of 19 March 2020, No. UP-5969, “On priority measures to mitigate the negative impact on the economic sectors of the coronavirus pandemic and global crisis phenomena”; Resolution of the President of the Republic of Uzbekistan of 26 March 2020, No. PP-4649, “On additional measures to prevent the widespread spread of coronavirus infection in the Republic of Uzbekistan”; Resolution of the President of the Republic of Uzbekistan of 26 March 2020, No. PP-4652, “On additional measures to support medical workers and workers of the sanitary and epidemiological service involved in countering the spread of coronavirus infection”; Order of the President of the Republic of Uzbekistan of 29 January 2020, No. R-5537, “On the formation of a Special Republic Commission on the preparation of a Program of Measures to Prevent the Importation and Spread of a New Type of Coronavirus in the Republic of Uzbekistan”; Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 23 March 2020, No. 176, “On Additional Measures Against the Spread of Coronavirus Infection”.

profession freely during the pandemic.¹⁵⁹ Transportation was restricted for most of the population and to use personal transport, special stickers were introduced and the Ministry of Justice published a list of professions the members of which would not be required to obtain a special travel sticker.¹⁶⁰ Certain groups of persons that were exempted included judges or law enforcement personnel.¹⁶¹ Lawyers however were under a travel ban which raised concern as to ensuring of the right of those detained or interrogated for legal representation.¹⁶² The Ministry of Justice subsequently clarified that the law enforcement authorities could “accompany” lawyers with their vehicles to participate in “judicial and investigative activities”.¹⁶³

Non-discrimination and Access to ESC Rights

Non-discrimination and ESC rights in international law

The rights to equality, non-discrimination and equal protection of the law, are protected under international human rights law, including in the context of the enjoyment of all human rights. In international human rights law, a succinct expression of the right to equality and equal protection is contained in article 26 of the ICCPR, which provides that:

*“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*¹⁶⁴

Discrimination in respect of rights protected by the ICESCR is prohibited under article 2(2) of the Covenant. As clarified by the CESCR, the prohibited grounds listed expressly in article 2(2) in addition to those coming under “other status” include: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.¹⁶⁵

The CESCR has indicated that non-discrimination “is an immediate and cross-cutting obligation”.¹⁶⁶ Importantly, the CESCR has consistently affirmed that equality encompasses substantive equality as well as formal equality.¹⁶⁷

A number of applicable treaties and other instruments protect against discrimination of persons from particular groups. These include, as examples:

¹⁵⁹ International Commission of Jurists, Uzbekistan: expert discussions on economic, social and cultural rights (ESC) and access to justice during COVID-19, <https://www.icj.org/uzbekistan-expert-discussions-on-economic-social-and-cultural-rights-esc-rights-and-access-to-justice-during-covid-19/>; <https://www.icj.org/country/europe/uzbekistan/>; International Commission of Jurists, Briefing paper on the impact of anti-COVID-19 pandemic measures on access to justice in CIS countries, 12 June 2020, *op. cit.*

¹⁶⁰ Kun,uz news portal: “Updated the list of persons who can ride without a sticker during quarantine”, 9 April 2020, <https://kun.uz/ru/news/2020/04/09/obnovlen-spisok-lits-kotoryye-smogut-yezdit-bez-stikera-vo-vremya-karantina>.

¹⁶¹ *Ibid.*

¹⁶² International Commission of Jurists, Briefing paper on the impact of anti-COVID-19 pandemic measures on access to justice in CIS countries, 12 June 2020, *op. cit.*

¹⁶³ Frequently Asked Questions and Answers on Legal Issues, *op. cit.*

¹⁶⁴ ICCPR, *op. cit.*

¹⁶⁵ CESCR, General Comment No. 20, paras 18–34.

¹⁶⁶ *Ibid.*, para 7.

¹⁶⁷ *Ibid.*, para 8.

- the International Convention on the Elimination of All Forms of Racial Discrimination (providing for substantive equality on the ground of race);¹⁶⁸
- the Convention on the Elimination of all Forms of Discrimination Against Women (providing for substantive equality on the grounds of sex and gender);¹⁶⁹
- the Convention on the Rights of the Child (providing for substantive equality for children regardless of their various identities and expressions);¹⁷⁰
- the Convention on the Rights of Persons with Disabilities; (providing for substantive equality for persons with disabilities);¹⁷¹
- the United Nations Declaration on the Rights of Indigenous Peoples (providing for substantive equality for indigenous persons);¹⁷²
- the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (providing for substantive equality for ethnic, religious and linguistic minorities);¹⁷³ and
- the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (providing for substantive equality relating to sexual orientation and gender identity).¹⁷⁴

As a general principle of international human rights law,¹⁷⁵ nearly all human rights¹⁷⁶ must be guaranteed by all States to all people, irrespective of citizenship status, including in the context of the full range of ESCR. According to the CESCR:

*"The ground of nationality should not bar access to Covenant rights... The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation."*¹⁷⁷

Non-discrimination and ESC rights in Uzbekistan's national legislation and practice

The Uzbekistan Constitution states that the nation of Uzbekistan is made up of the citizens of the Republic of Uzbekistan regardless of their ethnic background.¹⁷⁸ The Constitution and all laws of Uzbekistan accord citizens equal liberties and rights to equality

¹⁶⁸ International Convention on the Elimination of All Forms of Racial Discrimination, <https://www.ohchr.org/EN/professionalinterest/pages/universalhumanrightsinstruments.aspx>.

¹⁶⁹ Convention on the Elimination of All Forms of Discrimination Against Women, <https://www.ohchr.org/EN/professionalinterest/pages/universalhumanrightsinstruments.aspx>.

¹⁷⁰ Convention on the Rights of the Child, <https://www.ohchr.org/EN/professionalinterest/pages/universalhumanrightsinstruments.aspx>.

¹⁷¹ Convention on the Rights of Persons with Disabilities, <https://www.ohchr.org/EN/professionalinterest/pages/universalhumanrightsinstruments.aspx>.

¹⁷² United Nations Declaration on the Rights of Indigenous Peoples (2 October 2007), <https://www.ohchr.org/EN/professionalinterest/pages/universalhumanrightsinstruments.aspx>.

¹⁷³ United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Adopted by General Assembly resolution 47/135 of 18 December 1992, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/Minorities.aspx>.

¹⁷⁴ The Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), Principle 17, available at: <https://www.refworld.org/pdfid/48244e602.pdf> (Principle 17); The Yogyakarta Principles Plus 10, Additional Principles and State Obligation on the Application of International Human Rights Law in Relation to Sexual Orientation, Gender Expression and Sex Characteristics to Complement the Yogyakarta Principles (10 November 2017) available at: <https://www.refworld.org/docid/5c5d4e2e4.html>.

¹⁷⁵ International Commission of Jurists, Promoting Non-Citizens' Right to Work in South Africa, (April 2020), available at: <https://www.icj.org/wp-content/uploads/2020/04/South-Africa-Non-Citizens-Right-to-Work-Advocacy-Analysis-Brief-2020-ENG-.pdf>, pp. 9–15.

¹⁷⁶ Certain political rights protected in article 25 of the ICCPR, for example, are guaranteed only to citizens.

¹⁷⁷ CESCR, General Comment No. 20, para. 30.

¹⁷⁸ The Constitution of the Republic of Uzbekistan, article 8.

before the law, irrespective of their race, sex, ethnicity, language, religion, social origin, beliefs, and personal or social status.¹⁷⁹

The prohibition of discrimination is reflected in legislation, which includes administrative¹⁸⁰ and criminal penalties¹⁸¹ for offences against equality of rights. Furthermore, non-discrimination is one of the proclaimed principles of the State policy, as it is reflected in the Uzbekistan National Human Rights Strategy.¹⁸²

Yet, the existing legal framework does not afford comprehensive protection against direct or indirect discrimination in the public and private sectors or on all the grounds prohibited under the ICCPR and ICESCR, including colour, political or other opinion, national origin, property, birth, sexual orientation and gender identity or other status.¹⁸³ Uzbekistan's legislation does not contain any prohibition on discrimination on grounds of sexual orientation or gender identity. Moreover, consensual same-sex relations between adult males continue to be criminalised under the Criminal Code,¹⁸⁴ which may render gay, bisexual and transgender persons subject to discrimination. This points to the failure of the State to comply with its obligations to ensure non-discrimination on grounds of sexual orientation and gender identity.¹⁸⁵

The adoption of comprehensive legislation prohibiting discrimination has been recommended, including by the CESCR.¹⁸⁶ In this connection, the Government of Uzbekistan has already committed to adopt a Law on Equality and Prohibition of Discrimination — preparation of this draft Law is envisaged as a part of the action plan for implementation of the Uzbekistan's National Human Rights Strategy of 2020.¹⁸⁷

Uzbekistan legislation on discrimination sometimes specifically limits rights, including the right to equality, to "citizens" rather than "persons". For example, article 18 of the Constitution refers to the equal rights and equality before the law of "[a]ll citizens of the Republic of Uzbekistan". Legislation often speaks of rights afforded to "citizens".¹⁸⁸ While certain limited rights maybe subject to nationality, the majority of human rights should be guaranteed to all persons under the jurisdiction of States. The CESCR noted in its Concluding Observations on Uzbekistan that "stateless persons and refugees residing in the State party reportedly lack access to basic economic and social rights, including health care, education and legal employment (article 2(2))." It therefore recommended that Uzbekistan "[a]dopt legislative and policy frameworks to ensure the full

¹⁷⁹ *Ibid.*, article 18: "All citizens of the Republic of Uzbekistan shall have equal rights and freedoms and shall be equal before law without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status. Any privileges may be granted solely by law and must conform to the principles of social justice."

¹⁸⁰ Administrative Liability Code of the Republic of Uzbekistan, 22 September 1994, No. 2015-XII, e.g. articles 42, 1843.

¹⁸¹ Criminal Code of the Republic of Uzbekistan, 22 September 1994, No. 2012-XII, article 141 (violations of equality of rights); article 156 (incitement to national, racial, ethnic, or religious hatred); article 153 (genocide, or the deliberate creation of conditions of life designed to bring about total or partial physical extermination, enforced birth control or the transfer of children from one group of people to another or the issuance of instructions to carry out such acts); article 1301 (dissemination, advertisement or demonstration of products that promote a cult of violence or cruelty).

¹⁸² National Strategy of the Republic of Uzbekistan on Human Rights, adopted by the Decree of the President of the Republic of Uzbekistan of the 22 June 2020, No. UP-6012, *op. cit.*

¹⁸³ HRC, Concluding Observations on the fifth periodic report of Uzbekistan on implementation of the International Covenant on Civil and Political Rights, 1 May 2020, CCPR/C/UZB/CO/5, para. 9.

¹⁸⁴ Criminal Code, article 120, which provides for the sanction of restriction of liberty from one to three years, or imprisonment up to three years.

¹⁸⁵ HRC, Concluding Observations on the fifth periodic report of Uzbekistan on implementation of the International Covenant on Civil and Political Rights, 1 May 2020, CCPR/C/UZB/CO/5, paras 10–11.

¹⁸⁶ CESCR, Concluding Observations on the second periodic report of Uzbekistan, E/C.12/UZB/CO/2, 12 June 2014, paras 9–10.

¹⁸⁷ National Strategy of the Republic of Uzbekistan on Human Rights, adopted by the Decree of the President of the Republic of Uzbekistan of the 22 June 2020, No. UP-6012, <https://lex.uz/docs/4872357#4873776>, the draft law shall be prepared by April 2021.

¹⁸⁸ See, as example, under the Constitution of the Republic of Uzbekistan, certain aspects of the rights to work (article 34) appear to be afforded to only citizens, while many other rights (property (article 36), other aspects of the right work (article 37), social security (article 39), health (article 40), education (article 41) appear to be afforded to everyone.

enjoyment of the Covenant rights without discrimination by all persons residing on its territory, irrespective of their ethnic and national background” as well as take “. . . practical steps, including through legislative measures as appropriate, to ensure that stateless persons and refugees enjoy economic, social and cultural rights, including access to legal employment, health care and education . . .”

Discrimination against women

Discrimination on the grounds of sex is prohibited under Article 18 of the Constitution¹⁸⁹ and the Constitution further provides for that “women and men have equal rights”.¹⁹⁰ In 2019, a new legislative framework was adopted to provide for certain guarantees for gender equality. The Law on Guarantees of Equal Rights and Opportunities for Women and Men of the Republic of Uzbekistan¹⁹¹ sets out for the first time definitions of direct and indirect sex discrimination,¹⁹² and establishes that the State must undertake temporary special measures for the implementation of gender policy in order to achieve *de facto* equality between women and men, increase their participation in all spheres of society and eliminate and prevent direct and indirect sexual discrimination. The law requires State bodies to conduct gender-legal assessments of legislation and its drafts.¹⁹³

It provides for complaints to be made to the competent authorities or a court against direct or indirect gender discrimination. Furthermore, in such cases, free legal aid is provided by the State.¹⁹⁴

The Law on Protection of Women from Harassment and Violence,¹⁹⁵ enacted in 2019, defines the concepts of sexual, physical, economic and psychological violence and provides for protection orders to protect women against harassment and violence. The same year, the Family Code was amended to establish the same marriageable age for women and men at 18 years.¹⁹⁶

This legislation in Uzbekistan is enacted in a national context of systematic and deeply rooted gender inequality affecting all aspects of society including rights in the workplace and access to social services necessary for upholding economic, social and cultural rights.¹⁹⁷

UN Human Rights Committee recommended in this connection that Uzbekistan:

“should take more robust legal and policy measures to effectively achieve, within specified time frames, an equitable representation of women in public and political life, particularly in decision-making positions, including in legislative and executive bodies and the judiciary at all levels, if necessary, through appropriate

¹⁸⁹ The Constitution of the Republic of Uzbekistan, article 18.

¹⁹⁰ *Ibid.*, article 46.

¹⁹¹ Law on Guarantees of Equal Rights and Opportunities for Women and Men of the Republic of Uzbekistan, *op. cit.*

¹⁹² Article 3 of the Law on Guarantees of Equal Rights and Opportunities for Women and Men of the Republic of Uzbekistan stipulates that “direct discrimination on the basis of sex means any distinction, exclusion or restriction aimed at the nonrecognition of women and men’s rights and freedoms in all spheres of society, including discrimination on the grounds of marital status, pregnancy, family obligations, as well as sexual harassment, different remuneration for equal work and qualifications”; “indirect sex discrimination means the creation of a situation, provision or criteria whereby persons of one sex are placed in a less favourable position compared with persons of other sex, including through narratives of gender inequality in the mass media, education or culture by establishing conditions or requirements with potential adverse effects on persons of one gender.”

¹⁹³ *Ibid.*

¹⁹⁴ *Ibid.*, article 28.

¹⁹⁵ Law on Protection of Women from Harassment and Violence of the Republic of Uzbekistan, 2 September 2019, ZRU-561, article 3.

¹⁹⁶ Family Code of the Republic of Uzbekistan, 30 April 1998, No. 607-I, article 15. The marriageable age had previously been 17 for women and 18 for men.

¹⁹⁷ HRC, Concluding Observations on the fifth periodic report of Uzbekistan on implementation of the International Covenant on Civil and Political Rights, 1 May 2020, CCPR/C/UZB/CO/5, paras 12–13; CEDAW/C/UZB/CO/5, Concluding Observations on the fifth periodic report, 24 November 2015, paras 15, 25–26.

temporary special measures, in order to give effect to the provisions of the Covenant. It should also develop and implement strategies to combat patriarchal attitudes and stereotypes on the roles and responsibilities of women and men in the family and society at large."¹⁹⁸

Discrimination based on disability

Although Uzbekistan signed the Convention on the Rights of Persons with Disabilities in 2009, it has yet to ratify this important treaty. It is in fact one of the very few countries in the world not to have done so, as the Convention presently has 182 State parties.¹⁹⁹ Disability is not listed explicitly among the prohibited grounds of discrimination in the Uzbekistan Constitution (article 18) but should be interpreted as being covered by it.²⁰⁰ The Law on Rights of Persons with Disabilities²⁰¹ also prohibits discrimination on the basis of disability. In particular, it provides a definition of discrimination in respect of persons with disabilities as "any isolation, exclusion, restriction or preference in relation to persons with disabilities, as well as refusal to create conditions for persons with disabilities to access facilities and services." The Law also considers that "special measures aimed at the equality of opportunities for the persons with disabilities and their integration into society and state, is not considered as discrimination."²⁰²

In Uzbekistan, access to justice is a particular challenge for persons with disabilities. Effective access to justice on an equal basis with others can be inhibited where architectural barriers or language obstacles prevent or limit the access of persons with disabilities to court buildings or court proceedings.²⁰³ In particular, the Special Rapporteur on the Independence of Judges and Lawyers stated in respect of Uzbekistan that many court buildings remained inaccessible to people with disabilities, especially outside of the main cities.²⁰⁴ He expressed concern at:

"the insufficient number of sign language interpreters; the lack of documents, including court decisions, in accessible formats for persons with sensory, intellectual or psychosocial disabilities; and the absence of policies to empower persons with disabilities to participate in the justice system as direct or indirect participants, such as lawyers, court officers or law enforcement officials."

Conclusions

A lack of a coherent and clear approach of State authorities in regard to use of international law on the domestic level, by *inter alia*, courts, hinders the discharge of Uzbekistan's obligations to ensure access to ESC rights. Uzbekistan should become party to the Optional Protocol to the Covenant on Economic, Social and Cultural Rights to allow for individual communication procedure and the courts should be provided with

¹⁹⁸ HRC, Concluding Observations on the fifth periodic report of Uzbekistan on implementation of the International Covenant on Civil and Political Rights, 1 May 2020, CCPR/C/UZB/CO/5, para. 13.

¹⁹⁹ See Status of the Convention on the Rights of Persons with Disabilities, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en.

²⁰⁰ The Constitution, e.g. article 18: All citizens of the Republic of Uzbekistan shall have equal rights and freedoms, and shall be equal before the law, without discrimination by sex, race, nationality, language, religion, social origin, convictions, individual and social status. Any privileges may be granted solely by the law and shall conform to the principles of social justice; Moreover, the rights of the persons with disabilities are may also be protected by various articles, including Article 45 of the Constitution, which considers that "The rights of minors, the ones incapable to work, and the elderly shall be protected by the State."

²⁰¹ Law on the Rights of Persons with Disabilities, 15 October 2020, No. ZRU-641, <https://lex.uz/ru/docs/5049549>, articles 6, 23-25.

²⁰² *Ibid.*, article 6.

²⁰³ Report of the Special Rapporteur on the independence of judges and lawyers on his visit to Uzbekistan, *op. cit.*, para. 86.

²⁰⁴ *Ibid.*

relevant guidance. It should also become party to the Convention on the Rights of Persons with Disabilities, and its Optional Protocol.

Lack of independence of the judiciary and the legal profession hinder access to justice for ESC rights. While their independence is enshrined as a principle in law, the actual procedures speak to the contrary. At the same time, there is a significant improvement in ensuring access to court decisions as they have become publicly available, organized and downloadable. This signifies an important step in accessibility of court decisions to the public. Yet, the quality of court decisions remains an issue to be addressed as a matter of priority. They continue to fall short of the standards on the quality of court decisions necessary to ensure the right to a fair hearing.

Despite adoption of the national laws related to non-discrimination, the legal framework does not yet afford comprehensive protection against direct or indirect discrimination on all grounds. Moreover, full implementation of these laws is still to be achieved to ensure non-discrimination in law and in practice, including providing effective judicial remedies against discrimination in particular with respect to persons with disabilities, as well as gender equality in access to ESC rights in practice.

Chapter II. The Right to Adequate Housing

International law and standards

The right to adequate housing is a self-standing right protected in the ICESCR as part of the broader right to an adequate standard of living²⁰⁵ which encompasses food, clothing, housing and the “continuous improvement of living conditions”. The CESCR has adopted two General Comments on the right to adequate housing which provide authoritative interpretation of the content of this right and of State obligations to guarantee it: General Comment No. 4 on the right to adequate housing; and General Comment No. 7 on forced evictions.²⁰⁶ Other international human rights treaties also guarantee the right to adequate housing and build on existing protections provided by ICESCR, including regarding the right to housing for persons from specific groups, such as women, children, or those with disabilities.²⁰⁷ In December 2019, the UN Special Rapporteur on the right to adequate housing published “Guidelines for the Implementation of the Right to Adequate Housing”, which also provide authoritative guidance to States in discharging their obligations to ensure this right.²⁰⁸

In many States, domestic Constitutions explicitly provide for protection for the right to adequate housing,²⁰⁹ while others include general obligations of the State for ensuring adequate housing and living conditions for all.²¹⁰ Constitutions may also include protection for the right to housing indirectly as components of other rights, such as the rights to life or dignity, or through directive principles for State policy that are eventually considered to include a legally binding right to housing.²¹¹ Courts from various legal systems have also adjudicated cases related to the enjoyment of the right to housing, covering issues including forced evictions, tenant protection, and prohibition of discrimination and , where necessary, direct and proactive provision of housing and housing-related services.²¹²

²⁰⁵ ICESCR, article 11.

²⁰⁶ CESCR, General Comment No. 7: The right to adequate housing (article 11.1): forced evictions, UN Doc. E/1998/22, (1997), para. 15.

²⁰⁷ The 1951 Convention Relating to the Status of Refugees (article 21); The International Labour Organization’s 1962 Convention No. 117 concerning Basic Aims and Standards of Social Policy (article 5 (2)); The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (article 5 (e)(iii)); The 1966 International Covenant on Civil and Political Rights (article 17); The 1979 Convention on the Elimination of All Forms of Discrimination against Women (articles 14 (2) and 15 (2)); The 1989 Convention on the Rights of the Child (articles 16 (1) and 27 (3)); The International Labour Organization’s 1989 Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (articles 14, 16 and 17); The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 43 (1)(d)); The 2006 Convention on the Rights of Persons with Disabilities (articles 9 and 28).

²⁰⁸ UN Special Rapporteur on the right to adequate housing, Guidelines for the Implementation of the Right to Adequate Housing A/HRC/43/43 (26 December 2019), available at: <https://undocs.org/en/A/HRC/43/43>.

²⁰⁹ For instance, Belgium, South Africa, Uruguay, Ecuador, Guyana, Haiti, Honduras, Iran (Islamic Republic of), Maldives, Mali, Mexico, Nicaragua, Panama, Paraguay, Peru, Portugal, Russian Federation, and Spain, UN Factsheet No. 21, The Right to Adequate Housing, p. 14; In respect of South Africa, see further: International Commission of Jurists, A Guide for the Legal Enforcement and Adjudication of Economic, Social and Cultural Rights in South Africa, August 2019.

²¹⁰ For instance, Argentina, Bangladesh, Brazil, Burkina Faso, Colombia, Costa Rica, Dominican Republic, El Salvador, Finland, Guatemala, Nepal, Netherlands, Nigeria, Pakistan, Philippines, Poland, Republic of Korea, Sri Lanka, Sweden, Switzerland, Turkey, Venezuela (Bolivarian Republic of) and Vietnam, UN Factsheet No. 21, UN Factsheet No. 21, The Right to Adequate Housing, p. 14.

²¹¹ See for prominent examples in the context of India: *Chameli Singh v. Union of India*, (1996) 2SCC549, paras 4–8; *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520, at para. 9; *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors*, 1980 SCC (2) 275, para. 8; *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*, (1997) 11SCC121; *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3SCC545, para. 46; *Ajay Maken v. Union of India*, W.P.(C) 11616/2015.

²¹² The International Covenant on Economic, Social and Cultural Rights, Ben Saul, David Kinley, and Jacqueline Mowbray, pp. 954–967.

The right to adequate housing as guaranteed in international human rights law is not merely a right to basic shelter but a “right to live somewhere in security, peace and dignity”.²¹³ The mere provision of “housing” or “shelter” will not by itself meet the standards set in terms of the right to adequate housing in international law. To be adequate, housing must at very least meet the requirements of the following elements of the right to housing:²¹⁴

- **Legal security of tenure:** for housing to be adequate it must provide legal security of tenure. Protection of legal security of tenure entails the provision of legal protections (in the form of legislation and policy) against “forced evictions”, harassment and other threats by State and non-State actors.²¹⁵ Legal security of tenure may be provided in a variety of ways, including ownership occupation; lease; rental accommodation; cooperative housing, emergency housing; and housing in informal settlement.²¹⁶
- **Availability of Services:** for housing to be adequate it must include access to services, materials, facilities and infrastructure and other elements essential for the health, security, comfort, and nutrition. It also includes access to basic services such as water, sanitation, electricity and refuse removal services.²¹⁷
- **Affordability of housing:** for housing to be adequate such housing must be affordable. This applies both to “social housing”²¹⁸ programmes adopted by the State and when housing is acquired, for example, on a rental market from private owners. The duty to protect the right to housing requires States to regulate private rental markets for housing access to ensure that such housing is affordable for the majority of the population.²¹⁹
- **Habitability:** for housing to be sufficiently habitable to be “adequate” it must be safe and provide protection from disease and weather.²²⁰ Enjoyment of a home environment that is not harmful to one’s health and in which one is not exposed to disease is also a core component of the right to health.²²¹
- **Accessibility of housing:** housing must be accessible to all without discrimination.²²² Article 2(2) of the ICESCR obliges the State “to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This protection against discrimination applies to persons from vulnerable and marginalized groups as identified in CESCR’s General Comment No. 20.²²³
- **Location:** for housing to be adequate it has to be positioned in a location that allows for the protection of its residents’ livelihoods.²²⁴ This includes consideration of access to employment (whether in city centres near to economic hubs or in rural

²¹³ CESCR, General Comment No. 4: The right to adequate housing (article 11(1) of the Covenant), UN Doc. E/1992/23, (1991), para. 7.

²¹⁴ *Ibid.*, para.8.

²¹⁵ *Ibid.*

²¹⁶ *Ibid.*

²¹⁷ *Ibid.*

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

²²¹ CESCR, General Comment No. 14: The Right to the Highest Attainable Standard of Health (article 12 of of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 (11 August 2000).

²²² CESCR, General Comment No. 4, para. 8.

²²³ CESCR, General Comment No. 20.

²²⁴ CESCR, General Comment No. 4, para. 8.

areas near to opportunities for farming), healthcare, public transport, schools and other facilities.²²⁵ People from specific marginal and vulnerable groups should not be forced to live in effectively segregated far flung areas away from any economic opportunities necessary for their survival.²²⁶

- **Cultural adequacy:** Housing must be culturally acceptable and facilitate cultural identity and a diversity of housing needs.²²⁷ For some this might require housing in an area in which subsistence farming, grazing areas for domesticated farm animals and access to rivers and other natural resources are accessible.²²⁸

As underscored by the former UN Special Rapporteur on the Right to Adequate Housing, “security of the home”, including “security of tenure”, forms part of adequate housing. This includes: “privacy and security; participation in decision-making; freedom from violence; and access to remedies for any violations suffered.”²²⁹

The prohibition on discrimination under international human rights law applies equally in the context of the right to housing.²³⁰ States are therefore required to ensuring that there is no discrimination in access to housing. This is crucial to the overall well-being of all people, because:

“Discriminatory exclusion from housing greatly exacerbates and reinforces socio-economic inequality for members of these groups, depriving them of access to employment or productive land and forcing them to pay higher costs for services. In many States, the ability to buy and own housing or land has become the dominant factor in perpetuating inequality.”²³¹

National legal framework, policy and practice

In Uzbekistan, there are a range of relevant constitutional provisions that may in principle provide some protection to the right to housing in the absence of an explicit right to housing protected by the Constitution.²³² They include:

- the right to protection against encroachments on honour, dignity, and interference in his or her private life, and inviolability of the home;²³³
- the right to own property and the right to inheritance;²³⁴ and
- freedom of economic activity as well as equality and legal protection of all forms of ownership and property²³⁵ accompanied by a guarantee that someone may only be deprived of property in accordance with procedure prescribed by law.²³⁶

²²⁵ *Ibid.*

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ *Ibid.*

²²⁹ Miloon Kothari, Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, implementation of General Assembly Resolution 60/251 of 15 March 2006, entitled “Human Rights Council”, UN Doc. A/HRC/4/18 (2007), p. 23.

²³⁰ CESCR, General Comment No. 4, *op. cit.*

²³¹ UN Special Rapporteur on the right to adequate housing, Guidelines for the Implementation of the Right to Adequate Housing A/HRC/43/43 (26 December 2019), *op. cit.*, para. 45.

²³² The Constitution of the Republic of Uzbekistan, article 27.

²³³ *Ibid.*, article 27.

²³⁴ *Ibid.*, article 36.

²³⁵ *Ibid.*, article 53.

²³⁶ *Ibid.*

The Constitution further guarantees that “[t]he land, its minerals, fauna and flora, as well as other natural resources constitute the national wealth, and shall be rationally used and protected by the State.”²³⁷

Following the fall of Soviet Union, public housing stock in Uzbekistan was privatized under the Law on Privatization of Public Housing,²³⁸ as a result of which the proportion of private housing has increased from 41 to 98.9 percent overall.²³⁹ In the Soviet Union the housing stock comprised of State, public, cooperative, and individual housing stock.²⁴⁰ Under the privatization programme, ownership of residential property, which constituted part of the State housing stock, has been transferred to residents which occupied the property under a lease agreement.²⁴¹

Currently, the main legislative framework for the right to housing in Uzbekistan is contained in the Housing Code of Uzbekistan.²⁴² Other legislative acts regulating the housing include the Law on Protection of Private Property and Guarantees of Owners' Rights;²⁴³ Civil Code;²⁴⁴ the Land Code;²⁴⁵ the Urban Development Code;²⁴⁶ and the Law on Mortgages.²⁴⁷ Under the Housing Code, the Cabinet of Ministers has an important function in regulating housing issues, inducing, carrying out the State policy on use and maintenance of the housing fund, adoption of State programmes on the development of housing, and management of the activities of State bodies in charge of housing and communal services.²⁴⁸ The housing policy is also implemented through Presidential Decrees or orders, in general through targeted State programmes.²⁴⁹

The Uzbekistan Housing Code specifies that: “The housing legislation applies to the relations with participation of the foreign citizens, persons without citizenship, as well foreign legal persons, unless regulated otherwise under the law or international conventions to which Uzbekistan is a party.”²⁵⁰ Moreover, the Civil Code also specifies that it applies to non-citizens, unless regulated otherwise under law.²⁵¹

By law, social housing is available to persons from certain categories of disadvantaged groups, who are in need of housing and are registered in the waiting list for social housing.²⁵² These groups include among others, unemployed persons with disabilities of categories 1 and 2,²⁵³ certain categories of sick persons, pensioners living alone, some

²³⁷ *Ibid.*, article 55.

²³⁸ Law on Privatization of Public Housing of the Republic of Uzbekistan, 7 May 1993, No. 846-XII, <https://www.lex.uz/acts/98427>.

²³⁹ Country Profile on Housing and Land Management, UNECE, 2015, <https://unece.org/fileadmin/DAM/hlm/documents/Publications/cp.uzbekistan.2015.en.pdf>, p. 15.

²⁴⁰ The foundations of the housing legislation of the USSR and the Republics of the Union, Adopted by the Supreme council of the USSR, 24 June 1981, No. 5150-X (as amended on 22 May 1990), article 4 (Housing Stock).

²⁴¹ Law on Privatization of Public Housing of the Republic of Uzbekistan, 7 May 1993, No. 846-XII, article 13.3.

²⁴² Housing Code of the Republic of Uzbekistan, *op. cit.*

²⁴³ Law on Protection of Private Property and Guarantees of Owners' Rights, 24 September 2019, LRU-336, <https://lex.uz/docs/4402206>.

²⁴⁴ Civil Code of the Republic of Uzbekistan, 21 December 1995, <https://lex.uz/docs/111181>.

²⁴⁵ Land Code of the Republic of Uzbekistan, 30 April 1998, <https://lex.uz/docs/149947>.

²⁴⁶ The Urban Planning Code of the Republic of Uzbekistan, 7 May 2002, No. 354-II.

²⁴⁷ The Law on Mortgage of the Republic of Uzbekistan, No. ZRU-58, of 4 October 2006.

²⁴⁸ Housing Code, article 3.

²⁴⁹ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, paras 133–141.

²⁵⁰ Housing Code, article 2.

²⁵¹ Civil Code, article 2.

²⁵² Housing Code, articles 38–40.

²⁵³ Law on Rights of the Persons with Disabilities, article 31, The categories of the disabilities is assigned on the basis of the medical-social examination of a person.

World War II veterans, and families who have adopted orphans.²⁵⁴ Accordingly, though the law applies “need” as a criterion, homelessness alone is not a sufficient condition for inclusion in the abovementioned list.

Private entities play a role in the housing sector, in particular in construction of houses or as investors or banks.²⁵⁵ Some of the State programmes on housing, including those for persons from vulnerable groups, are implemented with the involvement of private entities, through investment programmes and/or mortgages and microcredits.²⁵⁶ Under the National Human Rights Strategy of 2020, the share of the private actors in housing (finance, construction and housing services) is expected to increase.²⁵⁷

Research and analysis by several UN bodies has shown the continuing need for *social housing* for disadvantaged groups in Uzbekistan.²⁵⁸ Uzbekistan informed the CESCR in its third periodic report of 2019 that “priority measures have been undertaken to address the housing needs of socially vulnerable categories of the population, including women, young people, orphans and children deprived of parental care and others.”²⁵⁹ This was said to include the granting of microcredit on easy terms or provision of non-repayable grant assistance to families living in difficult circumstances for the acquisition of affordable housing and household appliances.²⁶⁰

Under the Law on the Rights of Persons with Disabilities, homes must be accessible for persons with disabilities.²⁶¹ The law requires the State authorities to take measures to provide persons with disabilities with unhindered access to their homes.²⁶² Homes for persons with disabilities must be adapted and equipped properly by the local authorities.²⁶³

It is also mandatory under the law to adapt houses for persons with disabilities during planning, construction and/or reconstruction of houses.²⁶⁴ The rules on construction and reconstruction of houses must be drafted in consultation with public associations of persons with disabilities.²⁶⁵

Reportedly, in practice, these requirements of the law are often disregarded, and the standards not respected.²⁶⁶ In particular, it has been reported that persons with disabilities regularly complain of insufficient level of accessibility of houses.²⁶⁷

²⁵⁴ Housing Code, articles 38–40, and the decision of the Cabinet of Ministers of 28 June 1994, No. 325.

²⁵⁵ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, para. 136–141.

²⁵⁶ *Ibid.*

²⁵⁷ National Human Rights Strategy of the Republic of Uzbekistan, *op. cit.*

²⁵⁸ Country Profile on Housing and Land Management, Uzbekistan, United Nations Development Programme in Uzbekistan, United Nations Economic Commission for Europe and the Government of Uzbekistan, 2015, p. 15; CESCR, Concluding Observations on the second periodic report of Uzbekistan, 13 June 2014, E/C.12/UZB/CO/2, para. 22.

²⁵⁹ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, para. 134.

²⁶⁰ *Ibid.*, para. 114.

²⁶¹ Law on the Rights of Persons with Disabilities, articles 22–23.

²⁶² *Ibid.*, article 22.

²⁶³ *Ibid.*, articles 22–23.

²⁶⁴ *Ibid.*, articles 9 and 23.

²⁶⁵ *Ibid.*, article 23.

²⁶⁶ Situation analysis on children and adults with disabilities in Uzbekistan, United Nations (UNDP, UNESCO, UNFPA, UNICEF and WHO in Uzbekistan), May 2019, <https://www.unicef.org/uzbekistan/media/3576/file/Snapshots PwD SitAn.pdf>, para. 105.

²⁶⁷ *Ibid.*, para. 107.

Availability of services is guaranteed by the Housing Code²⁶⁸, as well as other legislation and a number of relevant by-laws.²⁶⁹ Despite detailed regulation, the low quality of the access to basic services such as water and electricity, in particular, outside of the capital, Tashkent,²⁷⁰ remains an obstacle to the realization of the right to housing for many people.²⁷¹ For instance, regular cases of switching off electricity in the regions of Uzbekistan are reported, linked apparently with the limitations set by the Ministry of Energy.²⁷² These limits per day can be exhausted in the period of two or three hours.²⁷³ In some districts and cities of Fergana, Kashkadarya, Andijan and Samarkand regions, electricity is said to be supplied according to a schedule with power outages every day for several hours.²⁷⁴ These cutoffs have been justified by an expert of the Ministry of Energy in the following terms: for “[...] the daily operational management [of the power system], it is necessary to provide all consumers with high quality electrical energy as much as possible. In case of high consumption and the emergence of a danger of equipment overload and system accidents [it is necessary] to immediately disconnect some of the consumers and avoid emergency situations”.²⁷⁵

Forced evictions

International law and standards

Under article 11 of the ICESCR, States Parties have an immediate obligation to protect security of tenure, which includes protection from “forced evictions”. Forced eviction does not refer to every removal of an individual from a household or dwelling — lawful evictions may well comply with international human rights law. However, for an eviction to qualify as “forced” under international law several criteria should be met. In CESCR’s General Comment on forced evictions it defined such evictions as:

*“The permanent or temporary removal against their will of individuals, families and/or communities from the homes and/or land which they occupy, without the provision of, and access to, appropriate forms of legal or other protection.”*²⁷⁶

Though this prohibition does not amount to a total prohibition of all evictions, it does place a strong prohibition on any evictions without appropriate forms of legal protection. Legal protections required to ensure that evictions are lawful include the enactment and implementation of legislation regulating evictions and: 1) requiring that evictions only take place in a procedurally and substantively fair manner; and 2) requiring that evictions take place in terms of a prior court order with those being evicted having had access to a court to challenge the lawfulness of their eviction.²⁷⁷

²⁶⁸ Housing Code, articles 5, 6 and 49.

²⁶⁹ E.g. The Decree of the Cabinet of Ministers of the Republic of Uzbekistan on the adoption of the Rules of provision of communal services, of 15 July 2014, No. 194.

²⁷⁰ See: Gazeta.uz news portal, Life by limits: why do they switch off electricity in the region, <https://www.gazeta.uz/ru/2018/11/29/energy/>; National Center for Human Rights of Uzbekistan, New Uzbekistan and Human Rights: Information on the Status of Compliance of the Republic of Uzbekistan with International Obligations on Human Rights, Report, 2020, <http://www.nhrc.uz/en/menu/doklad-o-situatsii-v-oblasti-prav-cheloveka->, pp. 19–20.

²⁷¹ National Center of Human Rights of Uzbekistan, New Uzbekistan and Human Rights: Information on the Status of Compliance of the Republic of Uzbekistan with International Obligations on Human Rights, Report, 2020, *op. cit.*, pp. 19–20.

²⁷² E.g. see: Gazeta.uz news portal, Life by limits: why do they switch off electricity in the region, *op. cit.*

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ The causes of accidents in power supply systems, 28 November 2019, <https://telegra.ph/prichiny-vozniknoveniya-avarij-v-sistemah-ehlektrosnabzheniya-11-28>.

²⁷⁶ CESCR, General Comment No. 7: The right to adequate housing (article 11.1): forced evictions, UN Doc. E/1998/22, (1997), para. 3.

²⁷⁷ See also: *Ibid.*, para. 13.

According to the CESCR, for an eviction to be lawful the following criteria must be complied with:²⁷⁸

- **Genuine Consultation:** genuine consultation with those affected by evictions prior to the evictions;
- **Adequate Notice:** adequate and reasonable notice provided to those affected by evictions prior to the scheduled date of evictions;
- **Adequate Information:** information on the eviction, including about proposed use of the property must be provided to those who are being evicted;
- **Government Presence:** Government officials or their representatives, properly and clearly identified, must be present during the process of eviction regardless of whether the persons are being evicted from government owned land;
- **Appropriate Conditions:** evictions must be conducted during the day and in good weather; and
- **Legal Remedies:** legal remedies must be provided for those who seek to challenge evictions. Such remedies should include access to courts to contest the lawfulness of evictions and legal aid to assist in doing so.

Furthermore, CESCR has emphasized that States must ensure that “where evictions do occur, appropriate measures are taken to ensure that no form of discrimination is involved”.²⁷⁹ Evictions failing to meet these standards will amount to unlawful “forced evictions” in violation of international human rights law.

States have an obligation to prevent, regulate and ensure appropriate reparation for evictions impinging on the rights of those who are evicted. The CESCR recognizes, and experience globally shows that it will only be in exceptional circumstances in which evictions especially of large groups of people will comply with the international human rights law.²⁸⁰ States must therefore be cautious when they enter, initiate or agree to programmes or policies that may require large-scale evictions.

The prohibition on forced evictions applies to evictions aimed at ensuring “development” in the form of commercial and other activity.²⁸¹ Regardless of the potential economic benefits of such initiatives, States are still obliged to respect international human rights law which governs how the private entities which whom they are cooperating design and implement development projects.

National legal framework and practical issues

Uzbekistan law in principle secures legal tenure, and prohibits forced eviction. In particular, article 53 of the Constitution provides: “The State guarantees... equality and legal protection of all forms of ownership. ...Private property, along with other types of property, is inviolable and protected by the State. An owner may be deprived of his property solely in the cases and in accordance with the procedure prescribed by law.”²⁸²

²⁷⁸ *Ibid.*, para. 15.

²⁷⁹ *Ibid.*, paras 10 and 17.

²⁸⁰ *Ibid.*, para. 13.

²⁸¹ *Ibid.*, para. 17; CESCR, General Comment No. 24 (2017), paras 9, 12.

²⁸² The Constitution of the Republic of Uzbekistan.

Guarantees are also set out under the Civil Code,²⁸³ Housing Code²⁸⁴ and other legal acts²⁸⁵ providing for deprivation of housing rights only in accordance with the procedure prescribed by law.

Depending on whether the housing is public or private, or whether the persons affected by eviction are owners of property or tenants (lessee),²⁸⁶ the regulations on eviction differ. The differences lie mainly in the permissible grounds for eviction and reparations prescribed by housing law for evicted persons.

As regards evictions from public (social) houses, under the Housing Code, tenants may be evicted in cases specifically defined by law.²⁸⁷ Depending on the reasons for eviction, they may be provided with alternative accommodation²⁸⁸ and a court order may be required.²⁸⁹ For instance, in cases of expropriation for the State or public needs, of a plot of land on which public housing is located, a court order is required for the eviction.²⁹⁰ In such cases, the tenant has to be provided with another accommodation and information about this alternative accommodation must be reflected in the court order on eviction.²⁹¹

However, the categories of persons who might be offered alternative housing upon eviction from public houses are limited.²⁹² For instance, persons deprived of parental rights are evicted without alternative accommodation if they are found unfit to live with their children.²⁹³ In this connection, the CESCR recommended that Uzbekistan “take appropriate measures, including legislative and other measures, to provide all evicted persons with alternative accommodation or adequate compensation”.²⁹⁴

Considering that under the national law public houses are granted mainly to the disadvantaged or socially vulnerable categories of population, evictions without alternative accommodation might lead to homelessness as well, another aspect of the right to housing in respect of which the State has international law obligations.

As regards eviction from privately owned houses, when a plot of land where the private houses, other buildings or structures belonging to an owner are placed is subject to expropriation on the basis of the decision of a State body the owner is entitled to “[alternative] property of an equivalent value and [monetary] compensation for losses or full [monetary] compensation for losses caused by the termination of ownership”.²⁹⁵

The seizure of private property is possible upon the owner’s consent²⁹⁶ or based on a court decision.²⁹⁷ Demolition of a house, or other structures on the withdrawn plot of

²⁸³ Civil Code, article 166.

²⁸⁴ Housing Code, articles 19, 27–29, 70–71, 73–74, 79–80.

²⁸⁵ Law on Protection of Private Property and Guarantees of Owners' Rights, article 19: termination of ownership in connection with a decision of a State body, including a decision to seize a plot of land on which a house, is located, is allowed only in cases and in the procedure established in law.

²⁸⁶ Housing Code, articles 32–35, 86–99.

²⁸⁷ *Ibid.*, article 69–71.

²⁸⁸ *Ibid.*, articles 71, 73, 80, 85.

²⁸⁹ *Ibid.*, articles 70.

²⁹⁰ *Ibid.*, articles 70–71.

²⁹¹ *Ibid.*, article 71.

²⁹² *Ibid.*, articles 60, 74, 79, 85.

²⁹³ CESCR, Concluding Observations on the second periodic report of Uzbekistan, 13 June 2014, E/C.12/UZB/CO/2, para. 22.

²⁹⁴ *Ibid.*

²⁹⁵ Civil Code, article 206; Housing Code, article 27; Law on Protection of Private Property and Guarantees of Owners' Rights, article 19.

²⁹⁶ Law on Protection of Private Property and Guarantees of Owners' Rights, article 19.

²⁹⁷ *Ibid.*

land is not allowed until preliminary and full compensation for losses at market value has been paid.²⁹⁸ If the owner disagrees with the decision, it shall not be carried out until the dispute is resolved by the court.²⁹⁹ The owner also has the right to lodge a complaint with the court against the decision on eviction.³⁰⁰

Under the relevant legal acts, expropriation is in general allowed for the “State and public needs” and realisation of “investment projects”.³⁰¹ Investment projects are defined as “the projects, implementation of which is considered in State programmes, providing for the improvement of housing conditions, development of a certain territory, architectural look, and infrastructure, as well as construction of social-economic facilities”.³⁰² The procedure prescribed for an eviction in case of investment projects considers that if 75 percent of owners in the property subjected to eviction agree to purchase of their houses by the investor on the basis of contract and it is impossible to obtain the consent of other owners, the investor is entitled to apply to a court, requesting it to order “compulsory purchase of their houses”. In this case, the court decides on “the sum, types and timeline for payment of compensation for the rest of the owners”.³⁰³ It is concerning that the legal basis for these broad powers of expropriation and eviction is a decree, rather than legislation. However, under the Uzbekistan legal system, such secondary acts should be in compliance with the Constitution, including with Constitutional protections for housing rights.³⁰⁴

Only certain executive authorities are allowed to make a decision to seize a plot of land for the State and public needs. This include Khokim of the district, city, region and city of Tashkent, the Council of Ministers of the Republic of Karakalpakstan or Cabinet of Ministers of the Republic of Uzbekistan.³⁰⁵

The decision to seize a plot of land and demolish a house, or other buildings and structures must be in compliance with the city master plans, as well as urban projects for detailed planning and development of residential areas and micro-districts of settlements.³⁰⁶ However, in practice, those plans are not revealed to public.³⁰⁷

Compensation to the owner for the demolished property in connection with the seizure of a plot of land includes either the provision of the value of the housing, alternative housing, or a plot of land for individual housing construction, and covers losses caused by eviction.³⁰⁸ If the parties do not agree on the compensation, the court decides on the issue of compensation.³⁰⁹

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 16 November 2019, No. 911, “On additional measures to improve the procedure for providing compensation for the seizure and provision of land plots and ensuring the guarantee of property rights of individuals and legal entities”, https://lex.uz/docs/4597630?fbclid=IwAR37rOnvrthHJUDF_M-fqmVK-srV8wNICO5HAJ8Z4xInmjj0sSTSC5iRUY, para. 2.

³⁰² *Ibid.*, para. 47.

³⁰³ *Ibid.*

³⁰⁴ Law on Normative Legal Acts, article 7.

³⁰⁵ Law on Protection of Private Property and Guarantees of Owners' Rights, article 19.

³⁰⁶ *Ibid.*

³⁰⁷ Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, Independent Center on Human Rights Defense, <http://ichrptj.org/ru/blog/monitoring-2020-soblyudenie-zhilishchnyh-prav-v-uzbekistane>.

³⁰⁸ The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 16 November 2019, No. 911, “On additional measures to improve the procedure for providing compensation for the seizure and provision of land plots and ensuring the guarantee of property rights of individuals and legal entities”, paras 41–42.

³⁰⁹ Civil Code, article 206 and Law on Protection of Private Property and Guarantees of Owners' Rights, article 19.

Where the eviction relates to private housing, the guarantees under Uzbekistan national law providing for the right to private property allow for stronger legal protection of the right to housing. However, in cases of an eviction from public housing, current legal regulation is inadequate and points to the need for the State to adopt legal reforms to ensure the right to housing.

Evictions or threats of evictions from informal settlements, which are widespread in Uzbekistan,³¹⁰ raise particular problems in regard to the right to housing. Under the domestic law, informal settlement means housing in a plot of land not allocated for this purpose under the law and/or constructed without the requisite permission in breach of the architectural or construction rules.³¹¹ The property right in regard to an unauthorised construction may be recognised by the court in favour of a person, in whose ownership, lifetime inheritance, permanent possession and use is the land plot where the construction was carried out. In this case, the person in favour of whom the right to property of the construction is recognized, shall reimburse to the person who carried out the construction the costs of the construction in the amount determined by the court.³¹²

In practice, forced evictions constitute a substantial portion of violations of the right to housing in Uzbekistan, and have led to significant protests.³¹³

Mostly, evictions are carried out in the context of purported urban development and renewal of cities.³¹⁴ Reportedly, the legal procedures required for evictions under domestic law, including notification procedures have often not been followed in practice, and due process guarantees have not been respected.³¹⁵

In particular, the eviction procedure raises the following issues:

- **Genuine Consultation:** According to the relevant regulations, consultation with those affected by evictions prior to the evictions must be conducted.³¹⁶ However, in practice, in many cases genuine consultation with those affected prior to evictions does not take place.³¹⁷
- **Adequate Notice:** The State bodies are obliged to provide notice to those affected by evictions following a decision to seize a plot of land or seize or demolish a house, in writing (against signature) at least six months before the start of the seizure or demolition.³¹⁸ A copy of the decision of the relevant bodies must be

³¹⁰ Shahnoza Soatova, an officer of the Ministry of Justice of the Republic of Uzbekistan, "Informal settlements: causes, analysis and outcomes", 26 February 2020, <https://uza.uz/ru/posts/nezakonnye-postroyki-prichiny-analiz-i-posledstviya-26-02-2020>; Ноқонуний қурилган уй-жойлар: сабаб, таҳлил, оқибат— Teletype (official telegram account of the Ministry of Justice), https://teletype.in/@huquqiy_axborot/npX1kZrW.

³¹¹ Civil Code, article 212.

³¹² *Ibid.*

³¹³ Dilmira Matyakubova, "The perils of rebuilding Uzbekistan: The rise of glass and glitter", The Foreign Policy Centre (fpc.org.uk), 14 July 2020, <https://fpc.org.uk/the-perils-of-rebuilding-uzbekistan-the-rise-of-glass-and-glitter/>. Several persons attempted to commit suicide by setting themselves alight in protest to demolitions. On 14 December 2018, Nozima Ergasheva in Kibray District publicly set herself on fire during a reception of citizens in the district administration to protest against the decision on demolition of her house. As a result, she received injuries to 68 per cent of her body. In February 2020, Mukaddas Mustafaeva in Karshi set herself alight in protest at the demolition of her house and her father suffered severe burns in an attempt to stop the fire.

³¹⁴ Human Rights Watch, Events in Uzbekistan, Property Rights, 2020, <https://www.hrw.org/world-report/2020/country-chapters/uzbekistan#fb32c6>.

³¹⁵ Firuz Tursunov (the judge of the Supreme Court of the Republic of Uzbekistan), "The right to property is inviolable", 30 January 2021, the web-site of the Supreme Court of Uzbekistan Republic, https://sud.uz/ru/ccr_slider/право-собственности-неприкосновенно/.

³¹⁶ The Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 16 November 2019, No. 911, "On additional measures to improve the procedure for providing compensation for the seizure and provision of land plots and ensuring the guarantee of property rights of individuals and legal entities", *op. cit.*

³¹⁷ National Center for Human Rights of Uzbekistan, New Uzbekistan and Human Rights: Information on the Status of Compliance of the Republic of Uzbekistan with International Obligations on Human Rights, Report, 2020, p. 20; Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, Independent Center on Human Rights Defense, *op. cit.*

³¹⁸ Law on Protection of Private Property and Guarantees of the Owner's Rights, article 19.

attached to the notice.³¹⁹ However, in practice sometimes such notice has either not been issued at all, or has not complied with the law, having been insufficiently detailed,³²⁰ verbal,³²¹ or issued by the state bodies not authorized to do so.³²²

- **Adequate Information:** Information on the eviction, including on proposed use of the property must be provided to those affected by eviction.³²³ Reportedly, in some cases those affected by eviction have not been provided with adequate information as to the reasons for demolition and the remedies to address their questions.³²⁴

In practice, in some cases those affected by eviction have not been provided with compensation or adequate housing at all or in a timely manner.³²⁵ Some have not been offered any temporary housing and were asked to live with their relatives or friends, despite demolitions of their houses.³²⁶ According to reports of NGOs, most claims of the residents subjected to forced evictions have been dismissed by the courts.³²⁷

There have been reports that evictions were sometimes not conducted in appropriate conditions. For instance, the Ombudsperson of Uzbekistan on Child Rights criticized an eviction carried out by the enforcement authorities, which was conducted “in bad weather in autumn-winter season, without provision of alternative housing, and [did] not take into account that the evicted family has children”.³²⁸

In particular, there has been a wave of cases of mass house demolitions and forced evictions in connection with construction and development projects in Uzbekistan.³²⁹ In many cases, such evictions were reportedly undertaken without adequate advance notice, without the ability to legally challenge them and without providing adequate alternative accommodation or compensation.³³⁰ In some cases, reportedly, the basic

³¹⁹ *Ibid.*

³²⁰ Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, Independent Center on Human Rights Defense, *op. cit.*

³²¹ Facebook public group “Снос—Ташкент” disseminating information on the demolitions and forced evictions in Uzbekistan, <https://www.facebook.com/groups/328799110874813/>.

³²² Independent Center on Human Rights Defense, Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, *op. cit.*

³²³ E.g. Resolution of the Cabinet of Ministers of the Republic of Uzbekistan “On additional measures to improve the procedure for providing compensation for the seizure and provision of land plots and ensuring the guarantee of property rights of individuals and legal entities”, *op. cit.*

³²⁴ Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, Independent Center on Human Rights Defense, *op. cit.*

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ *Ibid.*

³²⁸ Anhor.uz news portal: “I don’t understand the position of the authorities that impose forced evictions in the autumn-winter period”—Ombudsman on the Rights of the Child”, 27 November 2020, <https://anhor.uz/news/23620>.

³²⁹ Marc Bennetts, “Evicted without warning: sudden Tashkent demolitions spark anger”, The Guardian, 2 April 2019, <https://www.theguardian.com/cities/2019/apr/02/evicted-without-warning-demolitions-spark-activism-in-tashkent-uzbekistan>; Agnieszka Pikulicka-Wilczewska, “Alarm as demolitions make way for new-look Uzbekistan”, Al Jazeera, 31 October 2019, <https://www.aljazeera.com/features/2019/10/31/alarm-as-demolitions-make-way-for-new-look-uzbekistan>.

³³⁰ In 2016–2018, in connection with the seizure of land for state and public needs, 4,689 residential buildings and 1,456 non-residential premises were demolished. For example, the owners of 358 houses on Uychi Street in Namangan did not receive a written notice, and in August 2016 their housing was demolished. The owners of 84 houses in Khiva received a written notice, but the houses were destroyed some five to seven days after the notification. In addition, in almost all regions, there was failure to make provision for temporary housing for owners and their families or reimbursement of expenses for renting and transporting possessions to temporary housing. In 688 cases, the demolition was carried out without any notification. Among this number, 569 were in the Namangan region, 57 in the Andijan region, 31 in the Navoi region, 22 in the Bukhara region, and seven in the Samarkand region. In 985 cases, violations were related to the terms of notification, including 212 in Khorezm, 189 in Samarkand, 172 in Surkhandarya and 125 in Karakalpakstan. For example, the owners of 358 houses on Uychi Street in Namangan did not receive a written notice, and in August 2016 their housing was demolished. The owners of 84 houses in Khiva received a written notice, but the housing was destroyed five to seven days after the notification. Gazeta.Uz news portal: <https://www.gazeta.uz/ru/2018/07/25/demolition/>; The justice authorities, after examining the compliance with the laws when seizing land for state and public needs in 2016–2018, revealed many violations committed by the khokimiyats, ICJ’s mission to Uzbekistan, *op. cit.*

housing services such as water, sanitation and electricity attached to homes had been cut off to make the residents leave their houses pending demolition.³³¹

Effective Remedies and the right to adequate housing

As outlined in Chapter I above, judicial remedies are particularly important in ensuring effective protection for the right to adequate housing, most specifically in the context of evictions. In this context, the CESCR has emphasized that “legal remedies or procedures should be provided to those who are affected by eviction orders”, including remedies and procedures that ensure that all “individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected” by eviction.³³² Persons subjected to forced evictions “must receive adequate compensation, reparation and access to housing or productive land as appropriate”.³³³

To ensure that this obligation is effectively discharged, the former UN Special Rapporteur on the right to housing has indicated that the right must be “integrated into policy and programme design and included in the training of lawyers and judges”.³³⁴ With regard to access to judicial remedies in particular, “[c]ourts should adopt interpretations of domestic law that are consistent with the right to housing when exercising judicial review and Governments should promote such interpretations, including in pleadings in court cases.”³³⁵

In her report on access to justice in the context of the right to housing the Special Rapporteur set out 10 key principles on access to justice and the right to housing.³³⁶ According to these principles, access to justice must be ensured by all appropriate means and address the needs of diverse groups.³³⁷ Importantly, remedies provided by courts in individual matters should ensure effective access to justice for those claiming protection of their right to housing. Where necessary, these should include “structural remedies” that cure “systemic violations” of the right to housing.³³⁸ This may include, where appropriate, courts require the authorities to adopt or amend legislation; allocate necessary resources; and/or regulate private actors in the housing market.³³⁹

In addition to general guarantees that everyone is entitled to use judicial and non-judicial remedies under Uzbekistan’s domestic law, the housing law also specifies some aspects of the remedies against violation of housing rights. Under Uzbekistan’s domestic law, any person whose rights to housing are adversely affected by the actions of the State is entitled to use judicial, as well as non-judicial remedies for protection of these rights.³⁴⁰ As regards judicial remedies, individuals have the right to lodge a complaint with the court against the unlawful action or inaction of the State authorities and their officials. There is also a right to compensation for the damage sustained as a result of

³³¹ Dilmira Matyakubova, “The perils of rebuilding Uzbekistan: The rise of glass and glitter”, The Foreign Policy Centre (fpc.org.uk), 14 July 2020, *op. cit.*

³³² General Comment No. 7, para. 13.

³³³ UN Special Rapporteur on the right to adequate housing, Guidelines for the Implementation of the Right to Adequate Housing, A/HRC/43/43 (26 December 2019), *op. cit.*, para. 38. See also: the Basic Principles and Guidelines on development-based evictions and displacement (A/HRC/4/18, paras 23–27) and the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas, articles 17 and 24.

³³⁴ UN Special Rapporteur on the right to adequate housing, Guidelines for the Implementation of the Right to Adequate Housing, *op. cit.*, paras 16(a), 19(e).

³³⁵ *Ibid.*, para. 16(c).

³³⁶ UN Special Rapporteur on the right to adequate housing, Access to justice for the right to housing (15 January 2019), A/HRC/40/61, available at: https://www.uclg-cisd.org/sites/default/files/A_HRC_40_61_E.pdf.

³³⁷ *Ibid.*, para. 13.

³³⁸ *Ibid.*, paras 21–22.

³³⁹ *Ibid.*

³⁴⁰ Law on Protection of Private Property and Guarantees of Owners' Rights, article 14; Civil Code, article 206; Housing Code, article 140.

the action or inaction of the State bodies, officials, or acts of the State bodies not complying with the legislation.³⁴¹ Property owners are exempted from paying the filing fee when filing suit at the court against violation of their rights and legitimate interests as a result of the decisions and actions or inactions of the State bodies and their officials.³⁴² Besides, complaints against violations by enforcement officers, who carry out evictions in the majority of cases, are exempted from the filing fee.³⁴³

National experts working on housing rights consistently informed the ICJ that in practice, homes are often demolished, based on decisions of municipal authorities, without a court order or without giving residents sufficient time to lodge an appeal against the decisions concerning evictions. In such cases, the officials involved in forced evictions would often not be held to account.³⁴⁴ According to the limited court statistics that are available, the number of court cases on property or housing rights lodged against the action or inaction of local executive authorities has recently increased³⁴⁵ and in 2020, 46 percent of the complaints against the local executive authorities were granted by the courts [administrative courts].³⁴⁶ However, the reports are very limited and do not contain disaggregated data on the right to housing and effectiveness of the remedies.

Moreover, reportedly, domestic courts are reluctant to invoke and apply international human rights law standards on housing rights in Uzbekistan in the case law.³⁴⁷ Yet, the Supreme Court's Plenum has delivered decisions concerning housing, including the decision on the domestic case law on evictions, which mainly reiterate the domestic provisions that have to be followed by the courts while examining the cases.³⁴⁸

Conclusions

Uzbekistan's legal framework concerning the right to housing includes some important guarantees which must be in place to meet international standards on the right to housing. Yet, in practice the guarantees provided for by law are often ignored and or applied in a manner that fails to enforce the right to adequate housing, free from discrimination, in breach of Uzbekistan's international law obligations. This has served to deny people who have become victims of forced evictions access to justice and left them in a precarious situation.

In recent years, forced evictions has become a particular cause of concern. Often being driven by urban developments, the policies adopted resulted in violations of the right to housing of individuals across the country. These have not been sporadic instances but rather a pattern which has demonstrated the weaknesses of the protection of the right to housing. It does not appear that the courts have been able to play a sufficiently strong role in providing effective remedies against forced eviction.

³⁴¹ Law on Protection of Private Property and Guarantees of Owners' Rights, article 15.

³⁴² *Ibid.*; Law on State Fees, 6 January 2020, No. ZRU-600, article 10.

³⁴³ Law on State Fees, 6 January 2020, No. ZRU-600, article 10.

³⁴⁴ ICJ mission to Uzbekistan, *op. cit.*

³⁴⁵ Firuz Tursunov (the judge of the Supreme Court of the Republic of Uzbekistan), "The right to property is inviolable", *op. cit.*

³⁴⁶ *Ibid.*

³⁴⁷ Monitoring Report on Human Rights during expropriation of housing for public and state needs in Central Asian Countries, *op. cit.*

³⁴⁸ Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan on Judicial Practice on Housing Disputes, 14 September 2001, No. 22, <https://www.lex.uz/acts/1452369>.

Chapter III. The Right to Health

International law and standards

The right to the highest attainable standard of physical and mental health is commonly identified simply as the “right to health”. Though not a right to “be healthy”, the right to health is a right to a functioning “system of health protection” and “to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health”.³⁴⁹ The right to health is protected under article 12 of ICESCR, according to which:

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:
 - (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

It has been authoritatively interpreted by the CESCR in its General Comment No. 14 (*The Right to the Highest Attainable Standard of Health*)³⁵⁰ and General Comment No. 22 (*The Right to Sexual and Reproductive Health*).³⁵¹

The Convention on the Rights of the Child, to which Uzbekistan is a party, sets out very specific standards for “enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health” for children.³⁵² Certain aspects of the right to health are also protected under other human rights treaties including, notably the International Covenant on Civil and Political Rights;³⁵³ the Convention on the Elimination of All Forms of Discrimination Against Women;³⁵⁴

³⁴⁹ CESCR, General Comment No. 14, paras 8–9.

³⁵⁰ *Ibid.*

³⁵¹ CESCR, General Comment No. 22 on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016.

³⁵² Convention on the Rights of the Child, article 24 (“States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”); UN Committee on the Rights of the Child (CRC), General Comment No. 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (article 24 of the Convention on the Rights of the Child), CRC/C/GC/15 (17 April 2013).

³⁵³ International Covenant on Civil and Political Rights, article 6 (“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”); UN Human Rights Committee (HRC), General Comment No. 36: The Right to Life (article 6 of the International Convention on Civil and Political Rights), CCPR/C/GC/35 (3 September 2019), paras 8, 25.

³⁵⁴ Convention on the Elimination of All Forms of Discrimination Against Women, article 12 (“States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning”); UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Women and Health (article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women), A/54/38/Rev.1 (1999).

the UN Convention against Torture,³⁵⁵ and the Convention on the Rights of Persons with Disabilities.³⁵⁶

Healthcare facilities, services and goods must be available (in sufficient quantity and range); accessible (economically and physically); acceptable; and of sufficient quality:³⁵⁷

- **Availability:** States must ensure the existence and operation of a functioning public health system, healthcare facilities, goods and services of a sufficient quantity and quality to ensure that every person can fully enjoy the right to health. These goods and services also include underlying determinants of health such as sanitation, water, electricity and food at all health facilities.³⁵⁸ This includes availability of “the fullest possible range of sexual and reproductive healthcare” including: “a wide range of contraceptive methods, such as condoms and emergency contraception”; “medicines for abortions and for post abortion care”; and “for the prevention and treatment of sexually transmitted infections and HIV”.
- **Accessibility:** States must ensure that all health facilities, goods and services are available, physically and economically, without discrimination of any kind.³⁵⁹ The non-discrimination obligation is expanded on below. It requires States specifically to ensure that all health facilities, goods and services are “accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact”.³⁶⁰ Accessibility requires physical, economic and information accessibility:
 - ◇ *Physical accessibility:* All health services, goods and facilities “must be available within safe physical and geographical reach for all, so that persons in need can receive timely services and information”. This includes, for example, persons living in rural and remote areas and persons with disabilities.³⁶¹
 - ◇ *Economic accessibility:* All health services, goods and facilities must be affordable to all people.³⁶² Whether such services, goods and facilities are provided publicly or privately, they must be “affordable for all”.³⁶³ In regard to reproductive health services, goods and facilities in particular, the CESCR has emphasized that they must be “provided at no cost” or at a level that ensures “that individuals and families are not disproportionately burdened with health expenses”.³⁶⁴
 - ◇ *Information accessibility:* States must take measures to ensure that all persons have access to health-related education, and that all people and can freely

³⁵⁵ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 (“1. For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions”).

³⁵⁶ Convention on the Rights of Persons with Disabilities, article 25 (“States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability”).

³⁵⁷ CESCR, General Comment No. 4, para. 12.

³⁵⁸ These include safe portable drinking water, adequate sanitation facilities, hospitals, clinics and other health related buildings, trained medical and professional personnel receiving domestically competitive salaries and essential drugs. See: CESCR, General Comment No. 14, para. 12(a).

³⁵⁹ CESCR, General Comment No. 14.

³⁶⁰ *Ibid.*

³⁶¹ CESCR, General Comment No. 20, para. 16.

³⁶² *Ibid.*, para. 12(b).

³⁶³ *Ibid.*, para. 17.

³⁶⁴ *Ibid.*

seek, receive and share information and ideas concerning health issues.³⁶⁵ States are under an immediate obligation to provide: “comprehensive education and information on sexual and reproductive health, that is non-discriminatory, non-biased, evidence-based”.³⁶⁶ States are prohibited from “censoring, withholding or intentionally misrepresenting” health-related information or “preventing people’s participation in health-related matters”.³⁶⁷ They must also “prohibit and prevent private actors” including businesses, religious institutions and non-governmental organizations from disseminating misinformation about sexual and reproductive health.³⁶⁸

- **Acceptability:** For health services, goods, facilities and information to be acceptable they must be respectful of medical ethics and culturally appropriate.³⁶⁹ Health information, for example must be sensitive to gender, age, disability, sexual diversity and life cycles requirements and information must be provided in a manner that respects confidentiality and aims to improve the health status of those concerned. Importantly, despite the obligation to ensure that health services, goods, information and facilities are acceptable, “this cannot be used to justify the refusal to provide tailored facilities, goods, information and services to specific groups”.³⁷⁰
- **Quality:** All health facilities, goods and services must be scientifically and medically appropriate and of good quality. This requires sufficiently trained health workers and other personnel and the use of “scientifically approved” and unexpired drugs, hospital equipment, safe and potable water, and adequate sanitation at health facilities.³⁷¹ In the specific context of reproductive health services, this requires the incorporation of technological advancements and innovations including regarding “medication for abortion” and “advancements in the treatment of HIV and AIDS”.³⁷²

National legal framework, policy and practice

Article 40 of the Uzbekistan Constitution provides: “Everyone has the right to qualified medical care”.³⁷³ Under article 26 of the Constitution, no one may be subject to medical or scientific experiments without his or her consent.³⁷⁴

Health legislation in Uzbekistan includes some important guarantees, which while not entirely expressed in human rights terms, clearly serve to discharge human rights obligations regarding the enjoyment of the right to health. The right to health itself is reflected in the Law on Health Care of Citizens of the Uzbekistan Republic (hereinafter referred to as Law on Health Care), the main piece of legislation on health law.³⁷⁵ The domestic law recognizes the right of everyone to the enjoyment of the physical and mental health.³⁷⁶

According to the Law on Health Care, in case of illness, disability and other cases, persons have the right to medical and social assistance, which includes preventive, medical, diagnostic, rehabilitation, sanatorium, orthopaedic and other types of assistance, as

³⁶⁵ General Comment No. 14, para. 12(b).

³⁶⁶ CESCR, General Comment No. 20, para. 49(f).

³⁶⁷ *Ibid.*

³⁶⁸ *Ibid.*, paras 41, 43.

³⁶⁹ *Ibid.*, para. 12(c).

³⁷⁰ *Ibid.*, para. 20.

³⁷¹ *Ibid.*, para. 12(d).

³⁷² *Ibid.*, para. 21.

³⁷³ The Constitution of the Republic of Uzbekistan.

³⁷⁴ *Ibid.*

³⁷⁵ Law on Healthcare of the Citizens of the Republic of Uzbekistan, *op. cit.*

³⁷⁶ Law on Psychiatric Care of the Republic of Uzbekistan, 31 August 2000, No. 123-II, <https://www.lex.uz/acts/14460>.

well as social measures for caring for patients and persons with disabilities, including the payment of temporary disability benefits.³⁷⁷ Certain categories of persons have the right to preferential provision of prostheses, orthopaedic, corrective products, hearing aids, vehicles and other special assistance.³⁷⁸

Article 24 of the Law on Healthcare lists the following health-related rights that must be afforded to patients:

- respectful and humane treatment by health workers;
- choice of physician and healthcare facility;
- receive diagnostic and medical care in an environment that meets sanitary and hygienic norms;
- confidentiality related to seeking healthcare, state of health, or other information obtained in the process of diagnosis and treatment;
- obtaining information on their rights and obligations and their health status, as well as on the choice of persons to whom information on their health status can be transmitted in the interests of the patient;³⁷⁹
- voluntary consent or refusal from medical intervention. In particular, according to the Law on Healthcare, a prerequisite for medical intervention is informed voluntary consent of the patient.³⁸⁰ However, a patient has the right to refuse medical intervention or to demand its termination,³⁸¹ with the exception of cases where a person suffers from diseases which pose danger to others.³⁸²

Protecting health is listed as one of the priorities of the reform under the National Strategy of Action 2017–2021 on the Strategy for the Further Development of the Republic of Uzbekistan.³⁸³ It requires the State to take specific actions which reflect Uzbekistan's obligations under the ICESCR, including:

- improving the availability and quality of medical and socio-medical services; creating a healthy lifestyle for the population;
- measures of expanding access of mothers and children to high-quality medical services; and reducing child mortality;
- improving the availability of affordable, high-quality medicines and medical devices.

Various governmental programmes and plans, including the Concept of development of the healthcare system of the Republic of Uzbekistan for 2019–2025 and Program of measures for the implementation of the Concept have been adopted.³⁸⁴ These consider measures for various State authorities to improve the quality of health services and protection of patients' rights.³⁸⁵

³⁷⁷ Law on HealthCare of the Citizens of the Republic of Uzbekistan, article 16.

³⁷⁸ *Ibid.*

³⁷⁹ *Ibid.*, article 15: Everyone has the right to receive reliable and timely information on factors affecting his/her state of health, including information on the sanitary and epidemiological well-being of the territory of residence, rational nutritional standards, on goods, work, services, their safety, and compliance with sanitary standards and rules; Article 45: Information about the fact of applying for medical care, the state of health of a person, the diagnosis, and other information obtained during the medical examination and treatment are confidential; All health facilities are required to display article 24 (Rights of Patients) of the Law on Health care in an "Information corner".

³⁸⁰ *Ibid.*, article 26.

³⁸¹ *Ibid.*, article 27.

³⁸² *Ibid.*, article 28.

³⁸³ Decree of the President of the Republic of Uzbekistan, 7 February 2017, No. UP-4947, "On the Strategy of Action for Further Development of the Republic of Uzbekistan", <https://lex.uz/docs/3107042>.

³⁸⁴ Decree of the President of the Republic of Uzbekistan, 7 December 2018, No. UP-5590, "On complex measures to radically improve the health care system of the Republic of Uzbekistan".

³⁸⁵ *Ibid.*

Further regulations include the decisions on development of the private health sector,³⁸⁶ public-private partnerships and medical tourism, the creation of an enabling environment to attract investment in health care, further development of the pharmaceutical industry and the mainstreaming of the e-health system.³⁸⁷

Despite some progress in the field of access to the right to health,³⁸⁸ in particular with regard to legal provisions and stated policy goals, there are also serious shortcomings,³⁸⁹ that raise concern as to the accessibility and quality of healthcare required to comply with article 12 of ICESCR and leave many in the country underserved. Some of these problems are systemic and structural, inherent in the healthcare system³⁹⁰ and some national policies also fail to effectively address them.

For example, there appears to be a continuing shortage of general practitioners and specialists, in particular in remote regions of the country.³⁹¹ There remains inadequate education and professional development of health workers, including poor quality of medical training,³⁹² as well as weak implementation of modern forms and methods of organizing continuing professional education.

Payments for health services are both formal and informal. While Uzbekistan preserves an officially (partly) free health care system, formal payment schemes have been increasingly introduced and currently account for a major share of revenue, in particular for health facilities that are expected to finance themselves largely through user fees rather than allocations from the State budget.³⁹³ Other sources of funds include technical assistance programmes by various agencies.³⁹⁴

The collection of informal fees for consultations and treatment continues to be prevalent.³⁹⁵ There is survey evidence of informal payments, in particular for secondary and tertiary care.³⁹⁶ The persistence of corruption regarding access to health care hinders in particular the effective use of resources and implementation of the right to

³⁸⁶ Presidential Order of the Republic of Uzbekistan, 1 April 2017, No. PP-2863, "On Measures for Further Development of the Private Health Sector".

³⁸⁷ Decree of President of the Republic of Uzbekistan, 7 December 2018, No. UP-5590, "On comprehensive measures for the radical improving the health-care system in Uzbekistan".

³⁸⁸ *Ibid.*

³⁸⁹ News portal: "Shavkat Mirziyoyev [the President of the Republic of Uzbekistan] criticized the quality of medical care to the population", 25 February 2020, <https://nuz.uz/zdorove/47065-shavkat-mirziyoyev-raskritikoval-kachestvo-okazaniya-medicinskoy-pomoschi-naseleniyu.html>.

³⁹⁰ Decree of the President of the Republic of Uzbekistan, "On comprehensive measures to radically improve the health-care system of the Republic of Uzbekistan", *op. cit.*

³⁹¹ Presidential Decree of the Republic of Uzbekistan, 6 May 2019, PP-4310, On Measures for Further Development of the System of Medical and Pharmaceutical Education and Science, <https://lex.uz/docs/4323167>; There has also been a decline in the number of physicians per population, which is now also below the average for the central Asian countries. The number of nurses per population has remained largely constant in the last two decades and is now the highest in the central Asian region. R. Azimov, Z. Mutalova, S. Huseynov, E. Tsoy, B. Rechel and M. Ahmedov, "Uzbekistan: Health System Review", Health Systems in Transition, 2014, http://www.euro.who.int/__data/assets/pdf_file/0019/270370/Uzbekistan-HiT-web.pdf, p. xviii; Presidential Decree of the Republic of Uzbekistan, On comprehensive measures to radically improve the healthcare system of the Republic of Uzbekistan, 7 December 2018; On 25 February 2020, the President of the Republic of Uzbekistan Shavkat Mirziyoyev held a meeting on the next important tasks in the field of developing the healthcare system and improving the quality of medical services, Nuz.uznewsportal: <https://nuz.uz/zdorove/47065-shavkat-mirziyoyev-raskritikoval-kachestvo-okazaniya-medicinskoy-pomoschi-naseleniyu.html>.

³⁹² Decree of the President of the Republic of Uzbekistan, On measures to further develop the system of medical and pharmaceutical education and science, 6 January 2020; Health Care in Uzbekistan, 2016, http://factsanddetails.com/central-asia/Uzbekistan/sub8_3f/entry-4735.html.

³⁹³ Uzbekistan: Health System Review, Health Systems in Transition, *op. cit.*, p. xvii.

³⁹⁴ Health Care in Uzbekistan, *op. cit.*

³⁹⁵ Uzbekistan: Health System Review, Health Systems in Transition, *op. cit.*, p. xvii.

³⁹⁶ *Ibid.*

healthcare.³⁹⁷ It may lead to persons in socio-economically disadvantaged situations being precluded from health services due to a lack of financial resources.³⁹⁸

Furthermore, accessibility of health care is impeded by frequent shortages of essential medicines, water, electricity, heating, equipment, and in particular hospital beds,³⁹⁹ hygiene materials in public healthcare facilities, as well as supply of vaccines.⁴⁰⁰

Although immunization coverage is high, a substantial proportion of the vaccines included in routine vaccination programmes appear to be dependent on donor funding, resulting in uncertainty as to their long-term sustainability.⁴⁰¹ Despite the recommendations of the World Health Organization to initiate antiretroviral therapy for patients since the diagnosis of HIV infection and regardless of the stage of the disease, only 47 percent of HIV-infected people are on treatment. There are threats of interruption in treatment and the possibility of HIV strains resistant to used antiretroviral drugs, due to delays in procurement and supplies related to the lack of targeted allocation of funds from the state budget for these purposes.⁴⁰²

Public and Private Health

International legal framework

States, as part of their obligation to protect the right to health, must regulate the conduct of private health care providers, an obligation that is especially pronounced where health providers play a critical role in fulfilling the right to health.⁴⁰³ It is a core obligation of immediate effect for all States to ensure “equitable distribution of all health facilities, goods and services” which evidence clearly suggests may be compromised by underregulated private health sectors.⁴⁰⁴ The involvement of the private sector in the provision of healthcare goods, services and facilities “poses particular challenges and risks to the privatization of the right to health and other human rights”.⁴⁰⁵ Private actor involvement in healthcare therefore “requires careful planning, regulation and accountability” by States in order to ensure compliance with their legal obligations in terms of the right to health.⁴⁰⁶ The former UN Special Rapporteur on the Right to the Highest Attainable Standard of Health, has drawn attention to situations where States

³⁹⁷ Anti-corruption reforms in Uzbekistan, Fourth round of monitoring of the Istanbul Anti-Corruption Action Plan, Anti-Corruption Network for Eastern Europe And Central Asia, https://www.oecd.org/corruption/acn/OECD-ACN-Uzbekistan-4th-Round_Monitoring-Report-2019-ENG.pdf, p. 36: “For example, according to the citizens in the sphere of healthcare and medicine, corruption has doubled in 3 years (in 2016—26.1%, in 2017—37.6%, in 2018—43.7%). According to the results of the public opinion poll “Fight against Corruption in the Mirror of Public Opinion” conducted by the same centre, in 2018 the healthcare system, recruitment process, system of higher and public education were defined as the most corrupt spheres in Uzbekistan, followed by the courts, prosecutor bodies, Ministry of Internal Affairs, tax authorities and bodies of sanitary and epidemiological supervision and control; Meetings of the Parliament Committees and Commissions, “When will the corruption in the healthcare industry be eradicated?” 24 February 2020, official website of the Parliament of the Uzbekistan Republic, <https://parliament.gov.uz/ru/events/committee/30300/>; Health Care in Uzbekistan, *op. cit.*

³⁹⁸ CRC, Concluding Observations on the combined third and fourth periodic reports of Uzbekistan, 10 July 2013, CRC/C/UZB/CO/3-4, para. 51 (a).

³⁹⁹ Uzbekistan: Health System Review, Health Systems in Transition, *op. cit.*, p. xvii: “In terms of care hospital beds per population, the country now ranks below the averages for the central Asian countries and the CIS.”

⁴⁰⁰ Healthcare in Uzbekistan, *op. cit.*

⁴⁰¹ E.g. CRC, Concluding Observations on the combined third and fourth periodic reports of Uzbekistan, 10 July 2013, para. 51 (d).

⁴⁰² Gazeta.uz news portal: “Fight against HIV will be intensified in Uzbekistan”, 25 January 2018, <https://www.gazeta.uz/ru/2018/01/25/hiv/>.

⁴⁰³ CESCR, General Comment No. 14, paras 33 and 51.

⁴⁰⁴ *Ibid.*, para. 43(e).

⁴⁰⁵ Global Initiative for Economic, Social and Cultural Rights, Private Actors in Health Services: Towards a Human Rights Impact.

⁴⁰⁶ *Ibid.*

have fallen short in this respect. In particular, “in many cases, privatization has led to increased out-of-pocket payments for health goods and services” and an “increased disparity in the availability of health facilities, goods and services among rural, remote and urban areas”.⁴⁰⁷ States are obligated to ensure that all private actors respect the right to health.⁴⁰⁸

The CESCR has made clear that private healthcare providers “should be subject to strict regulations that impose on them so-called ‘public service obligations’”.⁴⁰⁹ Private healthcare providers, it indicates, must be “prohibited from denying access to affordable and adequate services, treatments or information”.⁴¹⁰

The obligation to protect the right to health requires States proactively to take measures—including legal and regulatory measures—to prevent both transnational companies and national businesses from impairing the enjoyment of ESC rights.⁴¹¹ This requires the adoption of a range of legal and policy measures. Such measures, which include, “regulatory” measures to mitigate risks of private actors impairing the enjoyment of the right to health must be established in clear terms.⁴¹² The CESCR has indicated that privatization of the health sector must not serve to “constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services”.⁴¹³

The right to health includes a right to a “system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health”.⁴¹⁴ If any health system, whether fully public, fully private, or hybrid public-private falls short of this standard, it will mean that the State has fallen afoul of its obligations in respect of the right to health.⁴¹⁵ Although States may allow for “provision of a public, private or mixed health insurance system”, they must ensure that any such system is “affordable for all” and fully compliant with the standards set by the right to health.⁴¹⁶

The CESCR has also affirmed that States should “provide an environment which facilitates the discharge” of responsibilities of non-State actors, including “the private business sector”, “regarding the realization of the right to health”.⁴¹⁷ Violations of the obligation to protect the right to health therefore include the “failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others”.⁴¹⁸

National legal and practical issues

In Uzbekistan, the healthcare system is comprised of both public and private healthcare institutions.

⁴⁰⁷ Interim Report of the Special Rapporteur on the right of everyone to enjoyment of the highest attainable standard of physical and mental health, UN A/67/302 (13 August 2012).

⁴⁰⁸ CESCR, General Comment No. 14, paras 42, 55, 56.

⁴⁰⁹ CESCR, General Comment No. 24: State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities E/C.12/GC/24 (10 August 2017), para. 21.

⁴¹⁰ *Ibid.*

⁴¹¹ Written contribution by FIAN International for the 3rd session of the OEIGWG on transnational corporations and other business enterprises with respect to human rights: Comments to the elements document presented by the Chairperson-Rapporteur, February 2018, <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/CallforComments/FIAN.pdf>, p. 11.

⁴¹² *Ibid.*; CESCR, General Comment No. 14.

⁴¹³ CESCR, General Comment No. 14, para. 35.

⁴¹⁴ *Ibid.*, para. 8.

⁴¹⁵ *Ibid.*, paras 19, 38

⁴¹⁶ *Ibid.*, para. 36.

⁴¹⁷ *Ibid.*, para. 42.

⁴¹⁸ *Ibid.*, para. 51.

The Public health system includes enterprises, institutions and organizations that are State-owned or subordinate to the State bodies.⁴¹⁹ These include:

- institutions of treatment, prevention, research and education (training and re-training of medical and pharmaceutical workers), pharmacies, pharmaceutical enterprises;
- sanitary and prophylactic institutions; and
- forensic institutions, enterprises producing medicines, medical devices and medical equipment.⁴²⁰

Under the Law on Healthcare, public health institutions of treatment and prevention shall provide State-guaranteed medical assistance to the population free of charge.⁴²¹ However, certain medical and other services provided by the public health institutions are paid under the national health law.⁴²²

The list of guaranteed healthcare services supported by the State budget are to be approved annually and must be posted on the official website of the Ministry of Health, as well in all State medical institutions of the Republic, with relevant extracts in both Uzbek and Russian languages.⁴²³ This list covers emergency medical care, planned medical care (including primary health care), specialized and high-tech medical care and palliative care, as well as provision of medicines, supplies and medical supplies.⁴²⁴

The Private healthcare system includes medical institutions, pharmacies, pharmaceutical companies, medical devices and medical equipment companies, and individuals involved in pharmaceutical activities.⁴²⁵

Under the national law, primary health care provided by the public healthcare system institutions is the main, affordable and free medical care in the country. It includes:

- treatment of the “most common diseases, injuries, and other emergency conditions”;
- taking sanitary-hygienic and anti-epidemic measures, medical prevention of major diseases;
- measures to protect the family, motherhood and childhood, and other activities related to the provision of health care to persons at the places of their residence.⁴²⁶

As regards emergency care, everyone has the right to emergency medical care at any public or private healthcare institution.⁴²⁷ Medical and pharmaceutical workers are required to provide emergency medical care to patients.⁴²⁸

Under the law, private medical treatment and preventive care institutions provide health services to certain categories of persons, which often includes those from vulnerable groups, free of charge,⁴²⁹ that is, their services are compensated by the State on

⁴¹⁹ Law on Healthcare, article 9.

⁴²⁰ *Ibid.*

⁴²¹ *Ibid.*

⁴²² *Ibid.*

⁴²³ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan, 30 September 2019, No. 832, “On approval of the rules on procedure for compiling list of guaranteed set of healthcare services supported by the state budget”, <https://lex.uz/ru/docs/4535088>.

⁴²⁴ *Ibid.*

⁴²⁵ Law on Healthcare of the Citizens of the Republic of Uzbekistan, article 10.

⁴²⁶ *Ibid.*, article 29.

⁴²⁷ *Ibid.*, article 30.

⁴²⁸ *Ibid.*, article 30.

⁴²⁹ *Ibid.*, article 10.

account of the state budget.⁴³⁰ Such preferential categories of persons are determined by the Cabinet of Ministers.⁴³¹

There is a trend towards an increased role of the private sector in healthcare in Uzbekistan.⁴³² This is evidenced in the policy documents, public-private partnerships, as well as some tax incentives for the private actors involved in health sector.⁴³³ The Law on Health Care provides for a possibility of voluntary insurance but there is no mandatory insurance system. However, its phased implementation as of 1 January 2021 was envisaged under the State national health policy.⁴³⁴

The State regulates the private health care system, as private healthcare facilities operate on the basis of a license issued by the Ministry of Health.⁴³⁵ The Ministry of Health establishes quality standards and other requirements concerning the healthcare system and supervises over their implementation.⁴³⁶ Those standards are the same both for the public and private healthcare services.⁴³⁷ Under the Law on Healthcare, private health care systems use only preventive, diagnostic and treatment methods permitted for use by the Ministry of Health. Private and other health care systems have to maintain medical records and provide statistics in due course.⁴³⁸ The national law also envisages liability for implementation of the health law by public and private healthcare services.⁴³⁹

Diseases, Pandemics and Epidemics

The obligation to protect rights under article 12 of the ICESCR fully applies to the situation of the COVID-19 pandemic.⁴⁴⁰ Article 12(c) places an explicit duty on all States to prevent, treat, control all diseases including those arising in epidemics, including COVID-19. Article 12(d) requires States to establish the conditions that allow for medical treatment for all persons “in event of sickness”, including sickness arising from COVID-19.

⁴³⁰ *Ibid.*, Decree of the President of the Republic of Uzbekistan, 10 November 1998, No. UP-2107, “On the State Program of Reforming the Healthcare System of the Republic of Uzbekistan”, <https://lex.uz/acts/221139#221173>, para. 5. To establish that non-state medical and preventive institutions, including private ones that provide paid medical services to the population, are obliged to provide up to 20% of the volume of medical services free of charge to preferential contingents of patients according to the list established by the Cabinet of Ministers of the Republic of Uzbekistan, with funding from the budget.

⁴³¹ *Ibid.*, Decree of the President of the Republic of Uzbekistan, 10 November 1998, No. UP-2107, “On the State Program of Reforming the Healthcare System of the Republic of Uzbekistan”, *op. cit.*

⁴³² Presidential Order of the Republic of Uzbekistan, 1 April 2017, No. PP-2863, “On Measures for Further Development of the Private Health Sector”; Decree of the President of the Republic of Uzbekistan on complex measures to radically improve the health care system of the Republic of Uzbekistan, 7 December 2018, No. UP-5590, <https://lex.uz/ru/docs/4096199>.

⁴³³ *Ibid.*

⁴³⁴ The draft Law of the Republic of Uzbekistan on Medical Activities and Compulsory Medical Insurance has already been introduced to public discussion, <https://regulation.gov.uz/ru/document/6263>, ID-6263.

⁴³⁵ Law on Healthcare, article 5.

⁴³⁶ *Ibid.*

⁴³⁷ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan, 30 September 2019, No. 832, “On approval of the rules on procedure for compiling list of guaranteed set of healthcare services supported by the state budget”, *op. cit.* Quality standard of medical care—a document that includes a set of norms, rules and requirements that reflect the level of medical care that is actually achievable for a certain period of time”. Quality standards for medical care are mandatory for organizations engaged in medical activities and are used by medical organizations for planning and economic calculations in the provision of medical care.

⁴³⁸ Law on Healthcare, article 10.

⁴³⁹ *Ibid.*, article 46.

⁴⁴⁰ International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, <https://www.icj.org/wp-content/uploads/2020/09/Universal-Global-Health-COVID-19-Publications-Reports-Thematic-Reports-2020-ENG.pdf>.

In its statement on COVID-19, the CESCR makes several recommendations to States regarding the realization of the right to health. Overall, it indicates that obligations concerning the right to health requires that States' responses to the pandemic be "based on the best available scientific evidence to protect public health".⁴⁴¹ States are generally obliged to grant any person who requires it full and uninhibited access to COVID-19 prevention, screening and treatment measures.⁴⁴²

Globally, a number of States have taken exceptional measures in a genuine or purported effort to confront the public health crisis engendered by the COVID-19 crisis.⁴⁴³ In a few instances, such measures have been taken pursuant to declared states of emergencies, or similar states of exception.⁴⁴⁴ As a general matter, the CESCR has been clear that such measures must be: "necessary to combat the public health crisis posed by COVID-19", "reasonable and proportionate", "should not be abused", and "should be lifted as soon as they are no longer necessary for protecting public health".⁴⁴⁵

Importantly in the context of the right to health, any limitations or derogations of rights in the name of a "public health" emergency must be "specifically aimed at preventing disease or injury or providing care for the sick and injured".⁴⁴⁶ Given the human rights obligations pertaining to the right to health outlined above, it is clear that the "public health" objectives that emergency measures and restrictions are undertaken to cure must be specifically aimed at both addressing public health imperatives in general terms and realizing the right to health of all persons in a State's jurisdiction without discrimination.⁴⁴⁷

Finally, even in the narrow circumstances in which some human rights may be limited or derogated from in order to resolve a public health emergency, such as COVID-19, the minimum core obligations in terms of the right to health described are generally not subject to such limitations or restrictions. As the CESCR indicates unambiguously in General Comment No. 14: "a State party cannot, under any circumstances whatsoever, justify its non-compliance with the core obligations... which are non-derogable." These obligations include the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups, provision of essential drugs, and ensuring equitable distribution of all health facilities, goods and services.⁴⁴⁸

These core obligations, must therefore, even in the context of a public health emergency such as COVID-19, be implemented immediately, rather than progressively. Consistently with this, in its statement on COVID-19 the CESCR has indicated that "minimum

⁴⁴¹ CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, 6 April 2020, para. 10.

⁴⁴² I. Siederman & T. F. Hodgson, COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1) (1 April 2020), available at: [op. cit.](#)

⁴⁴³ International Commission of Jurists, Living Like People Who Die Slowly: The Need for Right to Health Compliant COVID-19 Responses, September 2020, [op. cit.](#)

⁴⁴⁴ International Commission of Jurists, The Impact of Anti-COVID-19 Pandemic Measures on Access to Justice in Azerbaijan, Kazakhstan, Kyrgyzstan, Russia, Ukraine and Uzbekistan, <https://www.icj.org/wp-content/uploads/2020/06/CIS-Justice-and-coronavirus-Advocacy-Analysis-brief-ENG-2020.pdf>.

⁴⁴⁵ CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, 6 April 2020, para. 11.

⁴⁴⁶ *Ibid.*, paras 25-26 which read in full: "Public health may be invoked as a ground for limiting certain rights in order to allow a State to take measures dealing with a serious threat to the health of the population or individual members of the population. These measures must be specifically aimed at preventing disease or injury or providing care for the sick and injured. Due regard shall be had to the International Health Regulations of the World Health Organization."

⁴⁴⁷ I. Siederman & T. F. Hodgson, COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1) (1 April 2020), [op. cit.](#)

⁴⁴⁸ CESCR, General Comment No. 14, para. 47.

core obligations imposed by the Covenant should be prioritized” in States’ responses to the epidemic.⁴⁴⁹

Short of derogations, any other limitations on the right to health—including reprioritizations of reprioritizations as result of health systems focusing on COVID-19 outbreaks—must comply with the general standard set by article 4 of ICESCR. The CESCR has clarified that article 4 is “primarily intended to protect the rights of individuals rather than to permit the imposition of limitations by States”.⁴⁵⁰ To be lawful, restrictions on the right to health must be: in accordance with law; compatible with the nature of the right to health; in pursuit of legitimate, lawful aims; strictly necessary; proportionate; the least restrictive alternative available; of limited duration; and subject to review.⁴⁵¹

In Uzbekistan, the national law places an explicit duty on the State to prevent, treat and control all diseases including those arising in epidemics.⁴⁵² Various State programs and legal acts address among others the areas such as prevention of communicable diseases (HIV, tuberculosis and lung diseases)⁴⁵³ and non-communicable diseases.⁴⁵⁴

In response to COVID-19 pandemic, Uzbekistan applied a quarantine regime, relying on the Law on Sanitary and Epidemiological Welfare of the Population.⁴⁵⁵ On 29 January 2020, the President created a *Special Commission on preparation of programme of preventive measures against spread of the coronavirus in Uzbekistan*.⁴⁵⁶ The Commission was charged with organization of preventative measures in Uzbekistan.

Through legislation, and other legal acts of the President and Cabinet of Ministers, various measures were taken in response to COVID-19 pandemic, including certain restrictions on the right to movement.⁴⁵⁷ Those acts further required that State authorities create conditions for realization of the right to health and allow for medical treatment “in event of sickness” as a result of COVID-19. They envisaged, *inter alia*, allocation of budget for medical expenses related to COVID-19, financial support (supplement to

⁴⁴⁹ CESCR, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, 6 April 2020, para. 12.

⁴⁵⁰ CESCR, General Comment No. 14, paras 28–29.

⁴⁵¹ *Ibid.*

⁴⁵² Law on HealthCare of the Citizens of the Republic of Uzbekistan and the Law on Sanitary and Epidemiological Welfare of the Population of the Republic of Uzbekistan.

⁴⁵³ Presidential Order of the Republic of Uzbekistan, “On measures to improve the system of provision of specialized treatment of tuberculosis and lung disease”, 13 February 2019, No. PP-4191; Decree of the President of Uzbekistan “On measures to further improve the system of countering the spread of the disease caused by the human immunodeficiency virus in the Republic of Uzbekistan”, 25 January 2018, No. PP-3493, <https://lex.uz/docs/3523144>.

⁴⁵⁴ Presidential Order of the Republic of Uzbekistan on measures to prevent non-communicable diseases, to support healthy lifestyles and to promote physical activity, an outline plan was approved for the prevention of non-communicable diseases, support for healthy lifestyles and the promotion of physical activity over the period 2019–2022, along with a corresponding programme of action for the same period, 18 December 2018, No. PP-4063.

⁴⁵⁵ Decree of the President of Uzbekistan, No. P-5537, 29 January 2020, “On Establishment of the Special Commission on Preparation of a Programme of Preventive Measures Against Spread of the Coronavirus in Uzbekistan”, *op. cit.*; International Commission of Jurists, ICJ briefing paper on the impact of anti-COVID-19 pandemic measures on access to justice in CIS countries, *op. cit.*; Frequently Asked Questions and Answers on Legal Issues, *op. cit.*

⁴⁵⁶ Decree of the President of Uzbekistan, 29 January 2020, No. P-5537, On Establishment of the Special Commission on Preparation of a Programme of Preventive Measures Against Spread of the Coronavirus in Uzbekistan, *op. cit.*

⁴⁵⁷ Law of the Republic of Uzbekistan of 26 March 2020, No. ZRU-613, “On Amendments and Additions to the Criminal Code, Criminal Procedure Code and the Administrative Liability Code of the Republic of Uzbekistan”; Decree of the President of the Republic of Uzbekistan of 19 March 2020, No. UP-5969, “On priority measures to mitigate the negative impact on the economic sectors of the coronavirus pandemic and global crisis phenomena”; Resolution of the President of the Republic of Uzbekistan of 26 March 2020, No. PP-4649, “On additional measures to prevent the widespread spread of coronavirus infection in the Republic of Uzbekistan”; Resolution of the President of the Republic of Uzbekistan of 26 March 2020, No. PP-4652, “On additional measures to support medical workers and workers of the sanitary and epidemiological service involved in countering the spread of coronavirus infection”; Order of the President of the Republic of Uzbekistan of 29 January 2020, No. R-5537, “On the formation of a Special Republican Commission on the preparation of a Program of Measures to Prevent the Importation and Spread of a New Type of Coronavirus in the Republic of Uzbekistan”; Resolution of the Cabinet of Ministers of the Republic of Uzbekistan of 23 March 2020, No. 176, “On Additional Measures Against the Spread of Coronavirus Infection”.

salaries) to medical team dealing with COVID-19 cases, creation and adaptation of the medical facilities for the needs of the patients.⁴⁵⁸ The private healthcare system was also involved in medical services in response to COVID-19 pandemic and those services are covered by the State (budget).⁴⁵⁹

Under international human rights law, States are generally obliged to grant any person who requires full and uninhibited access to COVID-19 prevention, screening and treatment measures.⁴⁶⁰ It follows from the Ministry of Health's National Guide on COVID-19, which considers the provisions on diagnosis, testing, tracing and treatment of the patients, that in case of shortage of resources of the medical facilities, only the patients with serious symptoms are allowed to receive treatment in specialised medical facilities.⁴⁶¹ However, in respect of other patients staying home, the healthcare institutions have to trace and conduct monitoring of their state of health and ensure their isolation to prevent spread of the virus. Otherwise, all COVID-19 positive patients have to be provided with screening and treatment measures at the specialized medical facilities.⁴⁶²

The national law entitles everyone to access to information relating to pandemics⁴⁶³ and requires State agencies to provide the population with information on measures taken in connection with pandemics.⁴⁶⁴ In this context, despite some updated public information on COVID-19,⁴⁶⁵ there have been reports of problems with dissemination of this information, especially among the elderly persons.⁴⁶⁶

In the initial stages of the COVID-19 pandemic, there were reports of, *inter alia*, shortages of medical personnel, problems with access to emergency care, as well as medicine for patients with COVID-19.⁴⁶⁷ Individuals returning from abroad were subjected to a mandatory quarantine, which was organized in specialized facilities. Mass and social media accounts indicate that conditions and treatment in these facilities were substandard and in some cases may have amounted to inhumane and degrading treatment, in violation of Uzbekistan's human rights obligations. People lived in containers which substituted for rooms in such facilities. A typical account described the facilities as follows:

⁴⁵⁸ Decree of the President of the Republic of Uzbekistan of 19 March 2020, No. UP-5969, "On priority measures to mitigate the negative impact on the economic sectors of the coronavirus pandemic and global crisis phenomena", <https://lex.uz/acts/4770763>.

⁴⁵⁹ Resolution of the President of the Republic of Uzbekistan, 26 March 2020, No. PP-4649, "On additional measures to prevent the widespread spread of coronavirus infection in the Republic of Uzbekistan", <https://lex.uz/acts/4775069>.

⁴⁶⁰ I. Siederman & T. F. Hodgson, COVID-19 Symposium: COVID-19 Responses and State Obligations Concerning the Right to Health (Part 1) (1 April 2020), available at: *op. cit.*

⁴⁶¹ National Guide on COVID-19, Ministry of Health of the Republic of Uzbekistan, March 2020; https://www.minzdrav.uz/openData/csv/nation_rukovodstvo_COVID-19.pdf.

⁴⁶² *Ibid.*

⁴⁶³ Law on Healthcare, article 15: Everyone has the right to receive reliable and timely information on factors affecting his/her state of health, including information on the sanitary and epidemiological well-being of the territory of residence, rational nutritional standards, on goods, work, services, their safety, and compliance with sanitary standards and rules.

⁴⁶⁴ Law on Sanitary and Epidemiological Welfare of the Population of the Republic of Uzbekistan, article 13.

⁴⁶⁵ Web-site of the Ministry of Health of Uzbekistan Republic, <https://coronavirus.uz/ru/questions/index/4>.

⁴⁶⁶ Dynamically Identifying Community-level COVID-19 Impact Risks, William Seitz, Eldor Tulyakov, Obid Khakimov, Avralt-Od Purevjav, Sevilya Muradova, the World Bank Poverty and Equity Program for Central Asia, the Development Strategy Center of Uzbekistan (DSC), the Center for Economic Research and Reforms of Uzbekistan (CERR), the Ministry of Economic Development and Poverty Reduction of Uzbekistan, and the Ministry of Mahalla and Family Affairs of Uzbekistan, 2020, <https://openknowledge.worldbank.org/bitstream/handle/10986/34925/Uzbekistan-Dynamically-Identifying-Community-Level-COVID-19-Impact-Risks.pdf>, p. 13.

⁴⁶⁷ Kun.uz news portal: Pandemic in Uzbekistan: Ten biggest problems, 28 July 2020, <https://kun.uz/ru/news/2020/07/28/pandemiya-v-uzbekistane-10-masshtabnyx-problem>; Summary Assessment of Damage and Needs, COVID-19 Emergency Response Project, Asian Development Bank, e.g., para. 11, <https://www.adb.org/sites/default/files/linked-documents/54282-001-sd-01.pdf>.

*"In the first few days we were not even given tea bags in containers, they said to drink boiling water. The air conditioner did not work for a group of women, it was snowing, they knocked, asked for help, they were simply locked [the door from the] outside with a key and ignored. Some people were given drinking water, some were not given it for several days. We cut up empty plastic bottles, put them on the roof, and collected rainwater to at least moisten our lips. Some filmed the videos, sent them to friends in Tashkent. But it only got worse—people came to us with demands to give away our phones and threatened that they could put us in prison for three years for trying to escape."*⁴⁶⁸

The following observation was made by a human rights defender who monitored the situation:

*"I conducted an interview with two dozen guys from different regions on the situation in the Urtachirchik (Urtasaray village is located in the Urtachirchik district of the Tashkent region) quarantine camp ... To sum up: none of them gave me a single positive reaction... But especially these days when the temperature is close to 40 °C... and air conditioners are not working in most of the containers—I have no idea what is happening to those locked in in quarantine there..."*⁴⁶⁹

These accounts point to conditions of treatment which fell short of the State's obligation to respect the right to health, as well as the right to adequate housing and an adequate standard of living, and may amount to inhuman or degrading treatment in violation of obligations under ICCPR (articles 7 and 10). Furthermore, as placement in the quarantine facilities was mandatory, it may amount to deprivation of liberty under article 9 of the ICCPR.

Non-discrimination

International standards

The State has an obligation to guarantee that the right to health is exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, the prohibited grounds of discrimination enunciated in article 2(2) of the ICESCR. As affirmed by the CESCR, the prohibited grounds of discrimination coming under "other status" is not exhaustive and might include disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence, and economic and social situation.⁴⁷⁰

Health status as a prohibited ground of discrimination refers to a person's physical or mental health. The State should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the ICESCR. The State should also adopt measures to address widespread stigmatization of persons on the basis of their health status.⁴⁷¹

In the direct context of healthcare facilities, goods and services must be "accessible to all, especially the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds".⁴⁷² Discrimination on any prohibited grounds listed above with the "intention or effect" of "nullifying or

⁴⁶⁸ Fergana News Agency, "The containers of waiting", <https://fergana.news/articles/118569/>.

⁴⁶⁹ *Ibid.*

⁴⁷⁰ CESCR, General Comment No. 20, paras 18–34.

⁴⁷¹ *Ibid.*, para. 33.

⁴⁷² CESCR, General Comment No. 14, para. 12(b).

impairing the equal enjoyment or exercise of the right to health" is unlawful.⁴⁷³ As an immediate obligation, the CESCR has stressed that non-discrimination in access to health must be ensured "even in times of severe resource constraints".⁴⁷⁴

It has also expanded on the "right to sexual and reproductive health" in a separate General Comment.⁴⁷⁵ Generally stated, the right to sexual and reproductive health, "entails a set of freedoms and entitlements" including:

*"the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, regarding matters concerning one's body and sexual and reproductive health. The entitlements include unhindered access to a whole range of health facilities, goods, services and information, which ensure all people full enjoyment of the right to sexual and reproductive health under article 12 of the Covenant."*⁴⁷⁶

Other human rights treaties expressly and through the commentary of their supervisory bodies have expanded on the content of the right to non-discriminatory access to health facilities, goods and services, including⁴⁷⁷ CEDAW on the right to health of women, girls and gender minorities;⁴⁷⁸ CRC on the right to health of children⁴⁷⁹ and adolescents;⁴⁸⁰ and CRPD on the right to health of persons with disabilities.⁴⁸¹

Legal and practical issues in Uzbekistan

Reproductive health, access of women to healthcare

On 11 March 2019, Uzbekistan adopted the Law on Reproductive Health Care.⁴⁸² The key principles of the Law include gender equality in reproductive health, non-interference in the private life of person, the protection of personal and family confidentiality, ensuring the availability and quality of medical services in the field of reproductive health of persons and ensuring State-guaranteed set of services for the protection of reproductive health of citizens.⁴⁸³

The State guarantees for realization of the reproductive rights include, among others, protection of reproductive health and the exercise of their reproductive rights, accessibility and continuity of the reproductive healthcare, free primary medical-sanitary care, and that persons have the right to take decisions on family health without discrimination, threats or violence.⁴⁸⁴

⁴⁷³ *Ibid.*, para. 18.

⁴⁷⁴ *Ibid.*

⁴⁷⁵ CESCR, General Comment No. 22, para. 5.

⁴⁷⁶ *Ibid.*

⁴⁷⁷ See also: HRC, General Comment No. 36: The Right to Life (article 6 of the International Convention on Civil and Political Rights), CCPR/C/GC/35 (3 September 2019).

⁴⁷⁸ CEDAW, General Recommendation No. 24: Women and Health (article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women), A/54/38/Rev.1 (1999).

⁴⁷⁹ UN Committee on the Rights of the Child (CRC), General Comment No. 15: The Right of the Child to the Enjoyment of the Highest Attainable Standard of Health (article 24 of the Convention on the Rights of the Child), CRC/C/GC/15 (17 April 2013).

⁴⁸⁰ UN Committee on the Rights of the Child (CRC), General Comment No. 20: The Implementation of the Rights of the Child During Adolescence, CRC/C/GC/20 (6 December 2016).

⁴⁸¹ Special Rapporteur on the rights of persons with disabilities, Rights of persons with disabilities, A/73/161 (16 July 2018).

⁴⁸² Law on Reproductive Healthcare of Citizens of the Republic of Uzbekistan, 11 March 2019, No. ZRU-528, <https://lex.uz/ru/docs/4233888>.

⁴⁸³ *Ibid.*, article 3.

⁴⁸⁴ *Ibid.*, article 6.

The Law envisages that a termination of pregnancy, induced abortion, must be carried out at a women's request, up to the twelfth week of pregnancy and at any time during the pregnancy if there are medical reasons threatening the life of the pregnant woman.⁴⁸⁵ Women may not be forced into pregnancy, to undergo abortion or to use contraception.⁴⁸⁶ The Law provides for the women's reproductive rights which includes: obtaining reliable and complete information about their reproductive health; methods of treatment of infertility and contraception; ensuring access to reproductive health services; and obtaining medical consultations and services on reproductive health issues, while respecting confidentiality.⁴⁸⁷ Women have the right to treatment for infertility and reproductive health care before pregnancy, during birth and in the postnatal period, with modern treatment methods and state guaranteed social protection.⁴⁸⁸

Reportedly, despite some improvements in women's reproductive health, significant failings that impact the right to health persist.⁴⁸⁹ For instance, maternal mortality rates remain high in some rural areas.⁴⁹⁰ Practices such as those related to virginity tests and shaming in cases where the virginity is not confirmed, breach the rights of women and girls to equal protection of their health, and may also violate rights to respect for private life and protection from inhuman or degrading treatment.⁴⁹¹

While the adoption of a specialized law on reproductive rights is an apparent step forward, in general the information about reproductive health especially among minors remains at a rudimentary level as it may be perceived as contradicting "national values".⁴⁹² CEDAW has criticized "the persistence of some negative stereotypes of women in . . . curricula and textbooks and at the absence of age-appropriate education on sexual and reproductive health and rights in schools".⁴⁹³ CEDAW recommended that Uzbekistan "[r]eview school curricula and textbooks to eliminate gender stereotypes and integrate age-appropriate education on sexual and reproductive health and rights into the curricula, including sex education for adolescent girls and boys covering responsible sexual behaviour."⁴⁹⁴

Persons with disabilities

Persons with disabilities, including children, have the right to medical-social help in respect of various kinds of rehabilitation, the provision of medicines, prosthetic and orthopaedic products, the remedies for transporting, as well as professional training.⁴⁹⁵ They are entitled to free medical-sanitary assistance in the public medical entities and/or

⁴⁸⁵ *Ibid.*, article 18.

⁴⁸⁶ *Ibid.*, article 11.

⁴⁸⁷ *Ibid.*

⁴⁸⁸ *Ibid.*

⁴⁸⁹ Gender, agriculture and rural development in Uzbekistan, Country Gender Assessment Series, Food and Agriculture Organization of the United Nations, Budapest, 2019, Gender, agriculture and rural development in Uzbekistan — Country gender assessment series (<http://www.fao.org/3/ca4628en/ca4628en.pdf>), p. XII; United Nations Population Fund Country programme document for Uzbekistan, 16 December 2020, DP/FPA/CPD/UZB/5, https://www.unfpa.org/sites/default/files/portal-document/DP.FPA_.CPD_.UZB_.5._-_Uzbekistan_CPD_-_FINAL_-_16Dec20.pdf, para. 8; 7 Facts About Healthcare In Uzbekistan, Healthcare in Uzbekistan: The Former Soviet Nation | The Borgen Project, September, 2020.

⁴⁹⁰ Gender, agriculture and rural development in Uzbekistan, Food and Agriculture Organization of the United Nations, *op. cit.*, p. XII.

⁴⁹¹ E.g. news portal: "Check for virginity — in Uzbekistan, the groom's relatives checked the bride", 2 December 2020, <https://newsbeezee.com/ukraineeng/check-for-virginity-in-uzbekistan-the-grooms-relatives-checked-the-bride-world-news-unian/>.

⁴⁹² CRC, Concluding Observations on the combined third and fourth periodic reports of Uzbekistan, 10 July 2013, CRC/C/UZB/CO/3-4, para. 55.

⁴⁹³ CEDAW, Concluding Observations on the fifth periodic report of Uzbekistan, CEDAW/C/UZB/CO/5, 24 November 2015, para. 23.

⁴⁹⁴ *Ibid.*, para. 24.

⁴⁹⁵ Law on Healthcare, article 22.

the services at home. Persons with disabilities who need help and those with chronic psychological illnesses have the right to accommodation in care homes. The procedure of assistance to persons with disabilities and social benefits they are entitled to are regulated by legislation, including the Law on Healthcare,⁴⁹⁶ and the Law on Rights of Persons with Disabilities.⁴⁹⁷ For instance, under the law on the Rights of Persons with Disabilities, social assistance to persons with disabilities is provided in the form of cash payments (pensions, benefits, lump sum payments) or provision with cars, wheelchairs, prosthetic and orthopaedic products, prints with a special font, sound reinforcing equipment and signalling devices; medical, professional, social rehabilitation and domestic services; transport services and provision of medicines.⁴⁹⁸

During an event on the ESC rights of persons with disabilities⁴⁹⁹, the ICJ heard from local experts, that in practice the existing legal framework is not always implemented in practice. One of the problems specifically mentioned was the unavailability of medicine which is often not affordable for persons with disabilities. Reportedly, health facilities and other buildings are not disability friendly (lacking, for example, accessible toilets and handwashing facilities) leading to difficulties for persons with disabilities in accessing their right to health.⁵⁰⁰

As mentioned in Chapter I of the report, Uzbekistan has not ratified the Convention on the Rights of Persons with Disabilities despite signing it in 2009. Such ratification would create a solid basis for further improvement of the legislation and practice concerning the right to health of persons with disabilities as well as their access to effective legal remedies where these rights are violated.

Access to justice

Domestic law addresses both the civil and criminal remedies in respect of violations of the right to health. According to national experts on health rights, the legal remedies are used in exceptional cases leading to death or serious damage to health, which are addressed mainly through criminal proceedings.⁵⁰¹ The report of the Ombudsperson of 2020 also reflects some complaints on the violation of the right to health.⁵⁰² However, no public data is available to assess the effectiveness of the remedies provided for by the domestic law in respect of the right to health.

In addition to general remedies under the national legislation, the Law on Health Care provides that patients are entitled to compensation for damage they sustained during medical care and can lodge a complaint with the management of the health care facility or directly in the courts against violation of their rights protected under the Law.⁵⁰³

⁴⁹⁶ *Ibid.*

⁴⁹⁷ Law on Rights of Persons with Disabilities, *op. cit.*

⁴⁹⁸ *Ibid.*, article 36.

⁴⁹⁹ International Commission of Jurists, Uzbekistan: expert discussions on economic, social and cultural rights (ESC) and access to justice during COVID-19, *op. cit.*

⁵⁰⁰ W. Seitz, E. Tulyakov, O. Khakimov, A.-Od Purevjav, S. Muradova, Dynamically Identifying Community-level COVID-19 Impact Risks, *op. cit.*, p. 7; Situation analysis on children and adults with disabilities in Uzbekistan, United Nations (UNDP, UNESCO, UNFPA, UNICEF and WHO in Uzbekistan), *op. cit.*, p. 13: "... users with disabilities report insufficient level of accessibility to essential public places, such as ... hospitals..."; p. 16: "The medical model claims to ensure access to and quality of healthcare services. However, the survey shows that one out of four people with disabilities report not to receive required healthcare as compared to one out of ten people without disabilities. People with disabilities are almost 3 times more likely to lack access to prescribed drugs. Although legislation on privileges and benefits makes healthcare services free of charge for people with disabilities at all levels, barriers to health care are caused by disable people having insufficient money to pay for examinations/diagnostics; doctors' services; medicines; and transportation."

⁵⁰¹ ICJ mission to Uzbekistan, *op. cit.*

⁵⁰² Report of the Ombudsperson of the Oliy Majlis For Human Rights for 2019, 2020, p. 34.

⁵⁰³ Law on Health Care, article 24.

Under the domestic law, in cases of damage to health of the patient, including as a result of unqualified services of medical and pharmaceutical workers causing damage to health and life, the perpetrators are obliged to pay compensation to the victims in the amount and manner established by law.⁵⁰⁴ Funds spent on the provision of medical assistance to persons who have suffered from unlawful actions are compensated by individuals and legal entities responsible for the harm done to their health. Compensation does not relieve medical and pharmaceutical workers from disciplinary, administrative or criminal liability in accordance with the law.⁵⁰⁵ According to the Law on Healthcare, physicians may also be held liable for violation of their oath and breach of the medical confidentiality.⁵⁰⁶

Under the Civil Code, in respect of violations of the right to health,⁵⁰⁷ compensation might cover lost earnings (income, salaries) that the victim had or could have, as well as additional expenses incurred because of the damage to health, including for treatment, additional nutrition, purchase of medicines, prosthetics, purchase of special vehicles, training for another profession, if it is established that the victim needs these types of assistance and care and does not have the right to receive them free of charge.

As regards non-judicial remedies, in particular, the Ombudsperson's report of 2020 reveals limited data on the protection of the right to health and its role in facilitating access to justice in respect of this right.⁵⁰⁸ According to the report, the Ombudsperson received complaints about the low quality of the medical services, and damage sustained to the health and life of victims as a result of medical services and ineffectiveness of the remedies in redressing those violations.⁵⁰⁹

Conclusions

While the legal framework regulating aspects of the right to health is relatively well elaborated in Uzbekistan in practice, there are serious issues with respect the availability, accessibility, and quality of the health services, which is recognised at the official level. Despite the enactment of a new law, in practice the reproductive health and access of women to healthcare still remains a problem in terms of the right to health and protection against discrimination. The challenges presented by the COVID pandemic also revealed the need for the State to take further measures to guarantee the right to health provided for under the Constitution. These problems should be considered, by both government and the courts, in light of Uzbekistan's international human rights law obligations, including under the ICESCR, the CRC and CEDAW, as well as the CPRD, which should be ratified by the State at the earliest opportunity.

⁵⁰⁴ *Ibid.*, article 46.

⁵⁰⁵ *Ibid.*; Criminal Code, article 116.

⁵⁰⁶ Law on HealthCare, articles 44–45.

⁵⁰⁷ Civil Code, articles 1005–1016.

⁵⁰⁸ Report of the Ombudsperson of the Oliy Majlis For Human Rights for 2019, *op. cit.*

⁵⁰⁹ *Ibid.*, p. 34: "The right to health and medical care: In 2019, the Ombudsman received 352 requests regarding the right of citizens to receive qualified medical services (312 requests in 2018). The appeals alleged that some health workers made the wrong diagnosis, which led to serious health problems, child mortality (in the maternity complex of the Koson district), misuse of budget funds, ill-treatment of citizens and extortion of unidentified amount for medical certificates."

Chapter IV. The Right to Work and Rights in the Workplace

This chapter addresses the right to work and workplace rights as protected by international human rights law. It sets out the international legal framework and then surveys some of the key issues of Uzbekistan's legislation concerning the right to work and workplace rights, an area of law particularly developed in Uzbekistan.

International law and standards

The right to work is protected under UN human rights treaties and those of the International Labour Organization (ILO).⁵¹⁰ These rights include both a right to work and rights at work sometimes called "labour rights".

Article 6 of ICESCR protects the right to work which is "freely chosen" in order to have the opportunity to "gain a living". Article 7 of ICESCR guarantees the right to the "enjoyment of just and favourable conditions of work" including, as examples, fair and equal remuneration that provides a "decent living" for workers and their families. Article 8 of ICESCR provides for the right to "join the trade union of [one's] choice" and the right to strike. It also provides for a right to establish trade union federations and provides for trade unions' independence.

The CESCR has confirmed that forced labour and slavery are implicitly outlawed by articles 6–8 of ICESCR. Article 8 of the ICCPR also prohibits slavery, servitude and forced or compulsory labour. Two other treaties outlaw and protect against slavery and similar practices.⁵¹¹ There are specific ILO treaties on forced labour⁵¹² and child labour.⁵¹³

The right to work is not a right to a job, but, rather, both a right to access employment opportunities, and a right to just and favourable conditions of employment. As the CESCR has made clear: "Work as specified in article 6 of the Covenant must be decent work."⁵¹⁴

To comply with the standards required in terms of the right to work, States must ensure that work is:

- **Available:** States must ensure availability for "specialized services to assist and support individuals in order to enable them to identify and find available employment".⁵¹⁵ This requires particular efforts to promote access to work opportunities for younger persons.⁵¹⁶
- **Accessible:** to be accessible work must be available without discrimination and both physical and information accessibility must be secured:

⁵¹⁰ ICESCR, articles 6–8, ; See also: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

⁵¹¹ Convention to Suppress the Slave Trade and Slavery (1926); Supplementary Convention on the Abolition of Slavery (1956).

⁵¹² See also: ILO Conventions: The Forced Labour Convention, 1930 (No. 29); the Abolition of Forced Labour Convention, 1957 (No. 105).

⁵¹³ See also: ILO Conventions: The Minimum Age Convention, 1973 (No. 138); the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁵¹⁴ CESCR, General Comment No. 18, para. 7.

⁵¹⁵ CESCR, General Comment No. 20, para. 12 (a).

⁵¹⁶ *Ibid.*, para. 23.

- ◇ *Non-discriminatory accessibility*: Discrimination of any kind is prohibited in both “access to and maintenance of employment”.⁵¹⁷ The CESCR stresses that this requires the “adoption, modification or abrogation of legislation” and “dissemination of information” aimed at “eliminating” discrimination”.⁵¹⁸ It also requires non-discrimination in conditions of and remuneration for work.⁵¹⁹
- ◇ *Physical accessibility*: This includes the removal of “artificial barriers to integration in general”, including barriers and physical obstructions to employment for persons with disabilities.⁵²⁰ To do so, workplaces must provide “flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers”.⁵²¹ Read with the “location” element of the right to adequate housing,⁵²² this may also require work and living opportunities within sufficient proximity to ensure “physical accessibility.
- ◇ *Information accessibility*: This includes “the right to seek, obtain and impart information on the means of gaining access to employment” which States must secure through “establishment of data networks on the employment market at the local, regional, national and international levels”.⁵²³ Information on the right to work should also be made available in “accessible formats”, and should include information relating to minimum wages, workplace hygiene, health and safety, and information necessary for workers to exercise their rights to freedom of expression, association, assembly and public participation.⁵²⁴
- **Acceptability and Quality**: This refers to the need to ensure just and favourable conditions of work and is detailed in full in the CESCR’s General Comment No. 23.⁵²⁵ To be acceptable and of sufficient quality the following must be ensured:
 - ◇ *Remuneration*: remuneration, which includes cash paid and other benefits, must include fair, non-discriminatory wages, at or above a legislated minimum which provide for a decent living for workers and their families.⁵²⁶
 - ◇ *Safe and Healthy*: working conditions which are safe and healthy and where occupational diseases and injuries are prevented. This requires policies which address the “design, testing, choice, substitution, installation, arrangement, use and maintenance of the material elements of work”⁵²⁷ and are monitored and enforced.
 - ◇ *Opportunity of Promotion*: opportunities and promotions must be available without discrimination or consideration of any irrelevant criteria.⁵²⁸

⁵¹⁷ *Ibid.*, para. 12(b)(i).

⁵¹⁸ *Ibid.*

⁵¹⁹ CESCR, General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), 7 April 2016, E/C.12/GC/23, available at: <https://www.refworld.org/docid/5550a0b14.html>, paras 53 and 65(a).

⁵²⁰ CESCR, General Comment No. 5: Persons with Disabilities, 9 December 1994, E/1995/22, available at: <https://www.refworld.org/docid/4538838f0.html>, para. 22 referred to in General Comment No. 20, para. 12(b)(ii).

⁵²¹ Article 27 of the CRPD specifically requires a “work environment that is open, inclusive and accessible to persons with disabilities” and “reasonable accommodation” of “persons with disabilities in the workplace”.

⁵²² CESCR, General Comment No. 4: The Right to Adequate Housing (article 11 (1) of the Covenant), 13 December 1991, E/1992/23, available at: <https://www.refworld.org/docid/47a7079a1.html>, para. 8(f) indicates that “housing must be in a location which allows access to employment options” because “temporal and financial costs of getting to and from the place of work can place excessive demands upon the budgets of poor households”.

⁵²³ CESCR, General Comment No. 20, para. 12(b)(iii).

⁵²⁴ CESCR, General Comment No. 23, paras 24, 30, 49.

⁵²⁵ *Ibid.*

⁵²⁶ *Ibid.*, paras 7–24.

⁵²⁷ *Ibid.*, para. 27.

⁵²⁸ *Ibid.*, paras 31–33.

- ◇ *Rest and Leisure:* laws, policies and regulations should ensure provision for rest and leisure including daily and weekly rest periods, limitations on working hours, paid periodic holidays and other forms of leave (such as for sickness, stress, family responsibility and maternity/paternity).⁵²⁹

National legal framework, policy and practice

General legal framework

Labour law is codified in Uzbekistan in the Labour Code,⁵³⁰ which sets minimum mandatory standards, including as regards rights to and at work.⁵³¹ They include among others, the right to rest, leisure, working hours, paid leave and public holidays.⁵³²

The right to work is constitutionally protected in Uzbekistan. Article 37 of the Constitution provides:

*"Everyone has the right to work, to choose occupation, just conditions of work and protection against unemployment in accordance with a procedure prescribed by law. Any forced labour is prohibited, except as punishment under the court's sentence, or in some other instances specified by law."*⁵³³

According to article 38 of the Constitution, "Employed citizens are entitled to a paid rest. Duration of the working hours and paid leave is specified by law." However, the labour law and collective agreements, as well as individual labour contracts can envisage additional guarantees and rights for an employee.⁵³⁴ Terms and conditions of labour agreements and contracts that worsen the position of employees in comparison with legislative and other normative legal acts are null and void.⁵³⁵

The guarantees under labour law apply both to the public and private sectors.⁵³⁶ According to the Labour Code, these guarantees apply to all persons employed on the basis of a labour contract by any type of employer.⁵³⁷ In addition, the Law on Occupational Safety of the Republic of Uzbekistan establishes unified rules of organizing labour protection regardless of the forms of ownership of the employer, to ensure protection of health and labour rights.⁵³⁸

Importantly, Uzbekistan law specifies that international law applies to regulating labour law issues. In addition to general provisions on priority of international law in the national legal system,⁵³⁹ the labour law specifically recognizes the priority of international law:

"If an international treaty of the Republic of Uzbekistan or a convention of the International Labour Organization ratified by Uzbekistan establishes more preferential rules for workers in comparison with legislative or other regulatory acts on labour of the Republic of Uzbekistan, then the rules of the international treaty or

⁵²⁹ *Ibid.*, paras 34–46.

⁵³⁰ Labour Code of the Republic of Uzbekistan, 21 December 1995, <https://lex.uz/docs/145261>.

⁵³¹ *Ibid.*, article 4.

⁵³² *Ibid.*, article 16.

⁵³³ The Constitution of the Republic of Uzbekistan, article 37.

⁵³⁴ Labour Code, article 4.

⁵³⁵ *Ibid.*

⁵³⁶ *Ibid.*, article 1.

⁵³⁷ *Ibid.*

⁵³⁸ Law on Occupational Safety of the Republic of Uzbekistan, 6 May 1993, No. 839-XII, <https://www.lex.uz/acts/97258>, Preamble and articles 4 and 6.

⁵³⁹ See chapter I.

convention apply. The rules of international treaties of the Republic of Uzbekistan or conventions of the International Labour Organization ratified by Uzbekistan also apply in cases where labour relations are not directly regulated by legislation."⁵⁴⁰

Non-discrimination

Labour law provides for the provisions on non-discrimination in addition to general guarantees on non-discrimination.⁵⁴¹ According to the Labour Code, all persons enjoy equal opportunities to exercise labour rights.⁵⁴² Establishment of any restrictions or provision of benefits in the field of employment depending on sex, age, race, nationality, language, social origin, property and official capacity, religion, beliefs, membership to public associations, and also other circumstances which are not connected with professional qualities of employees and results in their unsuitability to work, amounts to discrimination.⁵⁴³

The Labour Code specifies that "[d]ifferences in the area of work that result from the requirements of the particular type of work or from the State's special concern for persons in need of more social protection (women, minors, persons with disabilities and others) do not constitute discrimination."

Discrimination against women in the workplace

General guarantees of non-discrimination in the Law on Guarantees of Equal Rights and Opportunities for Women and Men also provide for gender equality with respect the right to work.⁵⁴⁴ Yet in practice gender inequality remains widespread in respect of right to work.⁵⁴⁵ There is a persistent gender pay gap, by which an average monthly wage of women was 36.2 percent lower than men in 2019.⁵⁴⁶ Furthermore, reportedly, as many as 33 percent of working-age women are engaged in unpaid care work as main activity, as compared with three per cent of working age men.⁵⁴⁷ There is substantial evidence to suggest that a major obstacle for women in accessing employment concerns traditional attitudes towards women's work.⁵⁴⁸

Sexual harassment in the workplace is defined and prohibited under Uzbekistan legislation. While legal experts in Uzbekistan consistently expressed a view that harassment at work, including sexual harassment and other types of discrimination based on sex and gender, regularly take place, these cases have not generally been addressed

⁵⁴⁰ Labour Code, article 10.

⁵⁴¹ The Constitution of the Republic of Uzbekistan, article 18.

⁵⁴² Labour Code, article 6.

⁵⁴³ *Ibid.*

⁵⁴⁴ Law on Guarantees of Equal Rights and Opportunities for Women and Men, No. ZRU-562, article 21.

⁵⁴⁵ Report on Women and Work in Uzbekistan: Towards Gender Equality and Decent Work for All, International Labour Organization, 2020, https://www.ilo.org/moscow/news/WCMS_758049/lang--en/index.htm; Gender and youth employment in CIS countries, International Labour Organization, 2020, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_764206.pdf, p. 9.

⁵⁴⁶ The percentage of the difference between the average monthly wages of men and women to the average monthly wages of men, 2020, official website of the State Committee of the Republic of Uzbekistan on Statistics, Gender Statistics of Uzbekistan, <https://gender.stat.uz/en/i-group-en/942-the-percentage-of-the-difference-between-the-average-monthly-wages-of-men-and-women-to-the-average-monthly-wages-of-men>.

⁵⁴⁷ "ILO presented report on Women and Work in Uzbekistan: Towards Gender Equality and Decent Work for All", 8 October 2020, https://www.ilo.org/moscow/news/WCMS_758049/lang--en/index.htm.

⁵⁴⁸ Gender and youth employment in CIS countries, International Labour Organization, 2020, *op. cit.*, p. 6: the recent Gallup-ILO poll (Gallup-ILO, 2017) reports that, in Uzbekistan only 63 per cent of men think it is acceptable for women to work outside of the home if she wishes. While only 72 per cent of women in the country think it acceptable for women to work outside the home.

through judicial remedy.⁵⁴⁹ Recent legislative measures have been taken⁵⁵⁰ to address the problem as protection against sexual harassment and violence in the workplace was enshrined in law as a component of “direct discrimination”.⁵⁵¹ A recently adopted Law on Protection of Women from Harassment and Violence establishes safeguards for the protection of women’s rights against harassment and violence in the workplace.⁵⁵² The Law also provides for the establishment and procedure of operation of hotlines for victims of harassment and violence.⁵⁵³

Employers are forbidden from refusing to hire women or to reduce their wages due to pregnancy or having children.⁵⁵⁴ In case of refusal to hire a pregnant woman or a woman with a child under the age of three, an employer must inform her in writing of the reasons for refusal to hire. In such cases, a woman is entitled to lodge a complaint with a court against the refusal to hire her.⁵⁵⁵

Under the Labour Code (Article 225), women's work in unfavourable working conditions, as well as underground work, is prohibited, with some exceptions (non-physical work or sanitary and domestic service work).⁵⁵⁶ Women are prohibited from lifting and carrying loads above certain limits.⁵⁵⁷ While on their face these laws may have a protective intent, the approach is discriminatory and a relic of stereotypical notions of roles and capacities of women. For example, a ban on specific types of work based on sex has been found to be discriminatory by the CEDAW Committee in *Medvedeva v. Russia* where the Russian Federation’s list of banned professions for women was challenged.⁵⁵⁸ The Committee noted:

“[...] the State party is required to provide equal protective measures to safeguard the reproductive functions of both men and women and to create safe working conditions in all industries, rather than preventing women from being employed in certain areas and leaving the creation of safe working conditions to the discretion of employers. When a State party wishes to deviate from the above approach, it must have strong medical and social evidence of the need for protection of maternity/pregnancy or other gender-specific factors. The Committee observes that the adoption of a list of 456 occupations and 38 branches of industry contradicts the State party’s obligations under the Convention because it treats men and women differently, it in no way promotes the employment of women and it is based on discriminatory stereotypes.”⁵⁵⁹

In its Concluding Observations of 2015 on Uzbekistan, the CEDAW Committee expressed concern at “[t]he list of occupations that are prohibited for women, which appears to

⁵⁴⁹ Sixth periodic report of Uzbekistan on implementation of Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/UZB/6, paras 84–89. The report covers 7 cases of discrimination in workplace in 2019 and 8 cases in 2020. No further details are provided in the report to identify which reported cases are related with labour rights.

⁵⁵⁰ Law on Protection of Women from Harassment and Violence and Law on Guarantees of Equal Rights and Opportunities for Women and Men.

⁵⁵¹ Law on Guarantees of Equal Rights and Opportunities of Women and Men, article 3.

⁵⁵² Law on Protection of Women from Harassment and Violence, articles 3, 9 and 18.

⁵⁵³ *Ibid.*, article 18.

⁵⁵⁴ Labour Code, article 224.

⁵⁵⁵ *Ibid.*

⁵⁵⁶ Labour Code, article 225.

⁵⁵⁷ *Ibid.*, The Ministry of Employment and Labour Relations of the Republic of Uzbekistan and the Ministry of Health of the Republic of Uzbekistan, in consultation with the Council of the Federation of Trade Unions of Uzbekistan and representatives of employers, approve the list of occupations with unfavourable working conditions and the limits of loads that women can lift and carry.

⁵⁵⁸ *Medvedeva v. Russia*, Committee on the Elimination of Discrimination against Women Communication No. 60/2013, Views of 21 March 2016, CEDAW/C/63/D/60/2013.

⁵⁵⁹ *Ibid.*, para. 11.7.

be overly protective, overemphasizes women's role as mothers and places excessive restrictions on working time, overtime work and night work for women, thereby limiting their economic opportunities in several areas.⁵⁶⁰ The CEDAW Committee recommended that Uzbekistan "[r]eview the list of occupations and sectors that are prohibited for women, so as to ensure that such a prohibition is strictly necessary for the protection of motherhood and proportionate to the legitimate aim pursued, and promote and facilitate women's access to previously prohibited occupations by improving working conditions and occupational health and safety".⁵⁶¹

Presidential Decree of 7 March 2019 "On measures to further strengthen guarantees of labour rights and support for women's entrepreneurial activity" envisaged eliminating prohibitions on the use of women's labour in certain industries or professions and approval of a new list of recommended industries or occupations that may have a negative impact on women's health.⁵⁶² However, article 225 of the Labour Code, which establishes these prohibitions, is still in force. The human rights action plan in the human rights strategy of 2020 envisages measures to repeal this article, abolishing the ban on the use of female labour in certain spheres or professions.⁵⁶³

Persons with disabilities

In addition to some guarantees under the Constitution,⁵⁶⁴ Labour Code,⁵⁶⁵ the Law on Rights of Persons with Disabilities⁵⁶⁶ also prohibits discrimination on the basis of disability. In particular, under the Law on Persons with Disabilities:

*"Any isolation, exclusion, restriction or preference in relation to persons with disabilities, as well as refusal to create conditions for persons with disabilities to access facilities and services, is prohibited. Special measures aimed at the equality of opportunities for the persons with disabilities and their integration into society and state, is not considered as a discrimination."*⁵⁶⁷

According to the Law, a person with a disability has the right to work "in organizations with normal working conditions, in specialized enterprises, and in areas using the labour of persons with disabilities, as well as to carry out individual labour or other activities not prohibited by law".⁵⁶⁸ Termination of an employment contract at the initiative of the employer during the period of temporary incapacity for work and the stay of a person with a disability on leave provided for by labour legislation is not allowed, except in cases of complete liquidation of the organization.⁵⁶⁹

It is forbidden to use the labour of persons with disabilities during night hours, or to work overtime or work on weekends, except as otherwise provided by law. Employed persons with certain forms of disabilities are set to work shorter hours without reducing wages and are provided with an annual basic extended leave in accordance with labour legislation.⁵⁷⁰

⁵⁶⁰ CEDAW, Concluding Observations on the fifth periodic report of Uzbekistan, 2015, para. 25.

⁵⁶¹ *Ibid.*, para. 26.

⁵⁶² Decree of the President of the Republic of Uzbekistan, 7 March 2019, PP-4235, "On measures to further strengthen guarantees of labour rights and support for women's entrepreneurial activity".

⁵⁶³ National Human Rights Strategy of the Republic of Uzbekistan, *op. cit.*

⁵⁶⁴ The Constitution, article 45: "The rights of minors, the persons with disabilities and the single elderly shall be protected by the state".

⁵⁶⁵ Labour Code, article 6.

⁵⁶⁶ Law on Rights of Persons with Disabilities, articles 6 and 23–25.

⁵⁶⁷ *Ibid.*, article 3.

⁵⁶⁸ *Ibid.*, article 42.

⁵⁶⁹ *Ibid.*

⁵⁷⁰ *Ibid.*

Legislation provides for additional State support for employment of persons with disabilities, by

- vocational rehabilitation of persons with disabilities, and providing persons with disabilities with the opportunity to be hired, maintain a suitable job and advance at work;
- establishing the minimum number of jobs in organizations for persons with disabilities.⁵⁷¹

However, in practice there are still serious problems with ensuring the right to work of persons with disabilities. Their employment level is still low. The failure of the State, *inter alia*, to make the social infrastructure facilities accessible to persons with disabilities, as well as problems with proper education and training opportunities for them hinders enforcement of the labour rights of persons with disabilities.⁵⁷²

Forced labour

International law and standards

Slavery and forced labour is prohibited under international human rights law both in specific conventions⁵⁷³ and more general treaties such as the ICCPR⁵⁷⁴ as well as ICESCR.⁵⁷⁵ The CESCR has explained that ICESCR's protection of the right to work includes the right to "decide freely to accept or choose work" which "implies not being forced in any way whatsoever to exercise or engage in employment".⁵⁷⁶

Forced or other exploitative or harmful labour of children is also prohibited under the Convention on the Rights of the Child (CRC).⁵⁷⁷ Article 32.1 of the CRC recognizes: "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development." Under article 32.2, states must take "legislative, administrative, social and educational measures" to protect against such labour, including by establishing a minimum working age, and through appropriate regulation and enforcement of sanctions for the use of child labour that is contrary to the Convention. Effective inspection and enforcement systems against the exploitation of children in the workplace must be put in place, and states must put in place measures for the physical and psychological recovery and re-integration of child victims of such exploitation.⁵⁷⁸

⁵⁷¹ *Ibid.*, article 43.

⁵⁷² National Center for Human Rights of Uzbekistan, *New Uzbekistan and Human Rights: Information on the Status of Compliance of the Republic of Uzbekistan with International Obligations on Human Rights, Report, 2020, op. cit.*, pp. 40–41; Association of People with Disabilities of Uzbekistan (APwD), *ALTERNATIVE REPORT On the implementation of International Covenant on Economic social and cultural rights by the Republic of Uzbekistan, 2020*, pp. 4–6, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT/CESCR/ICO/UZB/41239&Lang=en.

⁵⁷³ Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); The Slavery Convention, 1926; UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery in 1956; The 2006 UN Convention on the Rights of Persons with Disabilities provides the same, though more briefly, in article 27(2): "2. States Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour."; The UN International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, adopted in 1990, explicitly prohibits both slavery and forced labour, in article 11: "1. No migrant worker or member of his or her family shall be held in slavery or servitude."

⁵⁷⁴ ICCPR, article 8.

⁵⁷⁵ CESCR, General Comment No. 18, para. 6.

⁵⁷⁶ *Ibid.*

⁵⁷⁷ CRC, article 32; Committee on the Rights of the Child, *Concluding Observations on the combined third and fourth periodic reports of Uzbekistan*, paras 4, 7 and 65.

⁵⁷⁸ CRC, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, CRC/C/GC/16, 17 April 2013, Section VI.A.1.

The Forced Labour Convention defines “forced or compulsory labour” as: “all work or service which is exacted from any person under the menace of any penalty, and for which the said person has not offered himself voluntarily.”⁵⁷⁹ Forced Labour therefore has three elements: 1) work or service performed; 2) under the menace of any penalty; 3) for which the person has not offered himself or herself voluntarily.⁵⁸⁰

Importantly, article 1 of the Abolition of Forced Labour Convention, further specifies that the more general prohibition on forced or compulsory labour applies to the use of forced or compulsory labour as a:⁵⁸¹

- means of political coercion or education or as a punishment;
- method of mobilising and using labour for economic development;
- means of labour discipline;
- punishment for having participated in strikes;
- means of racial, social, national or religious discrimination.

There are a wide range of actions, circumstances and factors that may result in labour being considered to have been exacted in a manner which falls short of the prohibition of forced or compulsory labour. Overall, any actions, circumstances or factors that “deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as ‘force’”.⁵⁸² Force may therefore include: physical force, legal force, economic force or even social force. The ILO, for example, has explicitly indicated that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’.⁵⁸³

The CESCR has also highlighted that agricultural workers are often particularly vulnerable to “severe socioeconomic disadvantages” and “forced labour” and that States must therefore “enact laws and policies to ensure that agricultural workers enjoy treatment no less favourable than that enjoyed by other categories of workers”.⁵⁸⁴

Forced labour exacted by both State and non-State actors are prohibited. Failure by a State to prevent non-State actors from exacting forced labour will amount to a violation of its’ duty to protect the right to work. Failure by a State to comply with its own obligation to refrain from exacting forced labour will amount to a violation of its duty to respect the right to work.

Victims of violations of the prohibition of slavery and forced labour, a crime under international law, are entitled to effective remedies and access to justice. It is incumbent upon States to ensure that the exaction of forced or compulsory labour is a criminal offense and that penalties imposed for such an offense are “adequate” and “strictly enforced”.⁵⁸⁵

⁵⁷⁹ Forced Labour Convention, 1930 (No. 29), article 2.

⁵⁸⁰ ILO, Forced Labour and Human Trafficking: Casebook of Court Decisions (2009): https://www.ilo.org/global/topics/forced-labour/publications/WCMS_106143/lang--en/index.htm.

⁵⁸¹ Abolition of Forced Labour Convention, 1957 (No. 105).

⁵⁸² ILO, Forced Labour and Human Trafficking: Casebook of Court Decisions (2009): *op. cit.*, pp. 42–43.

⁵⁸³ *Ibid.*

⁵⁸⁴ CESCR. General Comment No. 23, para. 47.

⁵⁸⁵ Forced Labour Convention, 1930 (No. 29), article 25. See also: ILO Report IV, Strengthening action to end forced labour (2013), available at: https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_217752.pdf.

Child labour and forced labour in Uzbekistan

Forced labour is prohibited under the national legislation of Uzbekistan (article 37 of the Constitution of the Republic of Uzbekistan⁵⁸⁶ and article 7 of the Labour Code⁵⁸⁷). It is considered as an administrative⁵⁸⁸ and criminal offence,⁵⁸⁹ as well as disciplinary action against officials involved in practice of forced recruitment of persons.⁵⁹⁰ The State Labour Inspection carries out monitoring to identify the cases of forced labour.⁵⁹¹

For many years, there was systematic use of child labour and forced labour in Uzbekistan.⁵⁹² The reliance of its economy on the forced labour of children and students was notorious, and was identified as a violation of human rights by a range of UN and other bodies.⁵⁹³ Starting from 2017, Uzbekistan began the process of ending its reliance on systematic child labour and forced labour.⁵⁹⁴ Although this has resulted in progress, it has not yet led to the effective elimination of forced labour.⁵⁹⁵ According to the recent ILO report: "...systematic child labour is no longer used during the cotton harvest in Uzbekistan. Schoolchildren and students were not mobilized for cotton picking... Systematic forced labour did not occur during the 2020 cotton harvest."⁵⁹⁶ Despite this, some cases of child labour still take place in cotton picking.⁵⁹⁷ Moreover, it is reported that public sector employees were forced to pick cotton or pay for replacement pickers during the 2020 harvest.⁵⁹⁸

In its Concluding Observations of 2020, the UN Human Rights Committee expressed concern at the continued use of child and forced labour in the cotton harvest and about poor working and living conditions in the sector. It also highlighted the lack of

⁵⁸⁶ The Constitution of the Republic of Uzbekistan, *op. cit.*

⁵⁸⁷ The Labour Code, *op. cit.*

⁵⁸⁸ Administrative Liability Code, articles 51 and 491.

⁵⁸⁹ Criminal Code, articles 135, 138 and 148.

⁵⁹⁰ Resolution of the Cabinet of Ministers of the Republic of Uzbekistan, 10 May 2018, No. 349, On Additional Measures for the Elimination of Forced Labor in the Republic of Uzbekistan, <https://lex.uz/ru/docs/3730231>.

⁵⁹¹ "List of officials fined for labor during cotton picking", Official web-site of the Ministry of Employment and Labour Relations of the Republic of Uzbekistan, <https://mehnat.uz/en/article/list-of-officials-fined-for-labor-during-cotton-picking>, 40 officials were subjected to administrative fine for forced labour in cotton picking in 2019–2020.

⁵⁹² 2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organization, 2021, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/projectdocumentation/wcms_767756.pdf, pp. 26 and 68.

⁵⁹³ CESCR, Concluding Observations on the second periodic report of Uzbekistan, 13 June 2014, E/C.12/UZB/CO/2, para. 19.

⁵⁹⁴ ILO and Uzbekistan: Assessing progress towards ending forced labour, promoting sustainable and inclusive employment, expanding social protection and strengthening labour inspection, 27 January 2021, https://www.ilo.org/moscow/news/WCMS_767792/lang--en/index.htm, October, 2020; Third-party monitoring of child labour and forced labour during the 2019 cotton harvest in Uzbekistan, International Labour Organization, 2020, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_735873.pdf; CESCR, State Reply to the List of Issues for the third periodic report, E/C.12/UZB/RQ/3, 13 November 2020, para. 96: "Based on the monitoring results, it was concluded that the level of voluntary participation of citizens in the 2019 cotton harvest was estimated at 96.8 percent." https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E/C.12/UZB/RQ/3.

⁵⁹⁵ During the Expert Discussion of 18 September 2018 at the Tashkent State Law University the national experts noted that significant progress made by Uzbekistan in eliminating child labour, including the exploitation of girls and boys in the cotton-harvesting season <https://www.icj.org/expert-discussion-on-economic-social-and-cultural-rights-labour-guarantees-in-national-and-international-law/>.

⁵⁹⁶ 2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organization, 2021, *op. cit.*, p. 5; Third-party monitoring of child labour and forced labour during the 2019 cotton harvest in Uzbekistan, International Labour Organization, 2020, *op. cit.*, p. 4.

⁵⁹⁷ 2020 Third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organisation, 2021, *op. cit.*, p. 5; Third-party monitoring of child labour and forced labour during the 2019 cotton harvest in Uzbekistan, International Labour Organization, 2020, *op. cit.*, p. 4; Human Rights Watch, World Report 2021: Uzbekistan, <https://www.hrw.org/world-report/2021/country-chapters/uzbekistan>.

⁵⁹⁸ 2020 Third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, *op. cit.*, p. 5.

accountability for senior officials involved in the use of child labour.⁵⁹⁹ It recommended that Uzbekistan:

"expedite its efforts and put an end to forced labour in the cotton sector and in the public sector, including by:

- (a) Effectively enforcing the legal framework prohibiting forced labour, including through the prosecution of all those responsible for violations;*
- (b) Eliminating any initiatives or programmes that require compulsory labour for private and public sector employees and for persons deprived of liberty, in particular in the cotton industry, including through the reform of the State-imposed mandatory cotton production quota system;*
- (c) Improving the working and living conditions in the cotton industry;*
- (d) Taking all measures necessary to prevent deaths in connection with cotton harvesting, thoroughly investigating such cases when they occur and providing effective remedies, including adequate compensation, to victims' families."*⁶⁰⁰

Despite progress, further measures are required to prevent any use of child and forced labour by public or private entities, to ensure accountability of the perpetrators of forced labour, and to provide the victims of such violations with effective remedies and reparation.

National minimum wage

In accordance with article 7 of ICESCR, the State must ensure just and favourable conditions of work.⁶⁰¹ Remuneration must include fair, non-discriminatory wages, at or above a legislated minimum which provide for a decent living for workers and their families.⁶⁰²

Under the Labour Code,⁶⁰³ an employer, regardless of their financial condition, is obliged, within the time limits determined by the Code, to pay an employee for the work performed in accordance with the established labour remuneration conditions.⁶⁰⁴ Wages must also not fall below the wage agreed in any collective agreement.⁶⁰⁵ However, they can be increased without any limits. As regards enforcement of minimum wages, state supervision and control over timely and full payment of wages to employees is conducted by the State Labour Inspection⁶⁰⁶ as well as by trade unions.⁶⁰⁷

⁵⁹⁹ HRC, Concluding Observations on the fifth periodic report of Uzbekistan, CCPR/C/UZB/CO/5, 30 April 2020, para. 34.

⁶⁰⁰ *Ibid.*, para. 35.

⁶⁰¹ CESCR, General Comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), *op. cit.*

⁶⁰² *Ibid.*, paras 7–24.

⁶⁰³ Labour Code, articles 16 and 155.

⁶⁰⁴ *Ibid.*, article 154.

⁶⁰⁵ *Ibid.*

⁶⁰⁶ *Ibid.*, article 223; CESCR, Replies of Uzbekistan to the list of issues in relation to its third periodic report, E/C.12/UZB/RQ/3, 13 November 2020, paras 102–103: in 2019, the Inspection considered 3933 cases concerning timely and full payment of wages to employees and 2023 cases in the first five months of 2020.

⁶⁰⁷ According to article 223 of the Labour Code "Public control over the observance of labour protection norms and rules is carried out by trade unions and other representative bodies of workers".

In Uzbekistan, the national minimum wage is periodically reviewed.⁶⁰⁸ The minimum wage in 2021 was 747,300 Soum (60 EUR) per month,⁶⁰⁹ an increase in comparison with some previous years.⁶¹⁰ However, the share of the population living below the national poverty line was 11.9 percent in 2017, according to national statistical data.⁶¹¹ Moreover, reportedly, despite economic growth, “poverty reduction and decent employment creation have lagged behind growth rates”, partly due to a shortage of decent work opportunities.⁶¹²

Uzbekistan has an obligation to establish in legislation and in consultation with workers and employers, their representative organizations and other relevant partners, minimum wages that are non-discriminatory and absolute, fixed by taking into consideration relevant economic factors and indexed to the cost of living so as to ensure a decent living for workers and their families. It is difficult to assess whether this obligation has been met, as there is no comprehensive and regular publicly available data on the living standards of the population in Uzbekistan and mainly fragmented information about income, poverty, and vulnerability is available. In Uzbekistan’s human rights strategy of 2020, it is planned to establish criteria to identify low-income categories of the population.⁶¹³ The human rights action plan of 2020 also envisages: “ensuring a decent wage corresponding to the work of an employee in the private sector, by regulating and improving the system of remuneration in this sector.”⁶¹⁴

No cases concerning judicial review of the national minimum wage or inadequate wages have been reported. However, under the law, national judicial remedies as well have the potential to address the right to just and favourable conditions of work in light of the international law. Reported cases concerning the right to work mainly concern non-payment or timely payment of salaries.⁶¹⁵

Informal workers

The guarantees of labour rights under ICESCR articles 6–8 apply to “everyone”.⁶¹⁶ The CESCR has emphasized that this includes both “formal” workers and “workers in the

⁶⁰⁸ The Decree of the President of the Republic of Uzbekistan, 30 December 2019, No. PP-4555, On Measures to Ensure the Enforcement of the Law of the Republic of Uzbekistan “On the State Budget of the Republic of Uzbekistan for 2020”, <https://lex.uz/ru/docs/4673469>; The Decree of the President of the Republic of Uzbekistan, 30 December 2020, PP-4938, “On Measures to Ensure the Enforcement of the Law of the Republic of Uzbekistan “On The State Budget of the Republic of Uzbekistan for 2021”, <https://lex.uz/ru/docs/5193210>.

⁶⁰⁹ The Decree of the President of the Republic of Uzbekistan, 30 December 2020, PP-4938, “On Measures to Ensure the Enforcement of the Law of the Republic of Uzbekistan “On the State Budget of the Republic of Uzbekistan for 2021”.”

⁶¹⁰ *Ibid.*

⁶¹¹ An assessment of the social protection system in Uzbekistan Based on the Core Diagnostic instrument (CODI), Report by ILO, UNICEF, and the World Bank, 2020, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_760153.pdf, pp. 23–24.

⁶¹² *Ibid.*, p. 91.

⁶¹³ National Human Rights Strategy of the Republic of Uzbekistan, *op. cit.*

⁶¹⁴ *Ibid.*

⁶¹⁵ Replies of Uzbekistan to the list of issues in relation to its third periodic report on implementation of the International Covenant on Economic, Social, Cultural and Rights, E/C.12/UZB/RQ/3, 13 November 2020, para. 103, In 2019, the State Labour Inspection examined 3,933 cases on violations of timely and full payment of wages to employees and in 2020, 2,023 cases; The Ministry of Innovative Development of the Republic of Uzbekistan, National innovation system modernization project, Labour Regulation Procedures Relationship, 2020, https://mininnovation.uz/uploads/mininno/news/J/LMP_%d1%80%d1%83%d1%81.pdf, para. 14: “. . . Mandatory overtime work is prohibited by law, but in practice, overtime work limits are not respected and compensation is rarely paid. Until recently, the banking system had an acute problem with the issue of cash. As a consequence of this phenomenon, irregularities and delays in the payment of wages have become quite common. However, at present, delays in payment of wages are not observed as often as before.”

⁶¹⁶ ICESCR, *op. cit.*

informal sector”.⁶¹⁷ The right to work therefore “encompasses all forms of work whether independent work or dependent wage paid work”.⁶¹⁸

As emphasized by the CESCR, high unemployment and/or a lack of secure employment often compels people to seek work opportunities in the “informal sector of the economy” because they “need to survive”. States are therefore required to take necessary legislative and other measures to protect the rights of informal workers.⁶¹⁹ States should ensure informal workers are included in data collection processes, national statistics and legal and policy initiative providing protections and safeguards to the right to work and just and favourable working conditions.⁶²⁰

ILO Recommendation 204 defines “informal economy” as “all economic activities by workers or economic units . . . not covered sufficiently by formal arrangements”.⁶²¹ It further defines “economic units” as including a) units that employ hired labour; b) “own account” workers both inside and outside of families; and c) cooperatives and social solidarity units.⁶²² Own account workers also fall squarely under the definition of “workers” in terms of the recommendation as do workers in “unrecognized or unregulated employment relationships”.⁶²³

Though Recommendation 204 indicates that States should aim to formalize informal working relationships over time, it also confirms that informal workers livelihoods and rights should be protected.⁶²⁴ It sets as a guiding principle “the effective promotion and protection of the human rights of all those operating in the informal economy” and the “fulfilment of decent work for all through respect for the fundamental principles and rights at work, in law and practice”.⁶²⁵ Crucially, Recommendation 204 explicitly extends the rights in the ILO’s four “core” conventions to workers in the informal economy.⁶²⁶

Informal workers, to a large extent, therefore, should enjoy the same legal protections in terms of the right to decent work as formal workers. States must take measures to achieve decent work and ensure protection of the “rights at work for those in the informal economy”.⁶²⁷ States are required assess the situation and causes of informal work and in light of this “review and enforce national laws and regulations or other measures to ensure appropriate coverage and protection of all categories of workers and economic units”.⁶²⁸ Specifically, this requires the adoption of an “integrated policy framework” which should include informal work in all “national development strategies or plans as well as in poverty reduction strategies and budgets, taking into account, where appropriate, the role of different levels of government”.⁶²⁹

Moreover, in connection with informal workers, the right to work is implicitly connected in Recommendation No. 204 to a range of other rights such as: access to basic services (“Access to infrastructure and technology”); an adequate standard of living (“minimum wage that takes that takes into account . . . the cost of living”);⁶³⁰ social security

⁶¹⁷ CESCR, General Comment No. 23, para. 5.

⁶¹⁸ CESCR, General Comment No. 18, para. 6.

⁶¹⁹ *Ibid.*, para. 10.

⁶²⁰ CESCR, General Comment No. 23, para. 47, 54, 57, 64.

⁶²¹ Recommendation No. 204, p. 4, article I (2)(a).

⁶²² *Ibid.*, p. 5, article I (3).

⁶²³ *Ibid.*, p. 6, article I 4(a)(i).

⁶²⁴ *Ibid.*, p. 10, article III 13.

⁶²⁵ *Ibid.*, p. 8, article III 7(e)-(f).

⁶²⁶ *Ibid.*, p. 14, article V 16 (a)-(e).

⁶²⁷ Recommendation No. 2014, p. 8, article 7(f).

⁶²⁸ *Ibid.*, article 9.

⁶²⁹ *Ibid.*, article 10.

⁶³⁰ Recommendation No. 204, article 18.

(“establishment of social protection floors, where they do not exist, and the extension of social security coverage”);⁶³¹ and land and property (providing for workers or economic units “to obtain recognition of their existing property as well as by providing the means to formalize property rights and access to land”).⁶³²

Uzbekistan labour legislation requires working relationships to be formalized, that is, an employee must be hired on the basis of a labour contract.⁶³³ It applies to the informal workers in the sense that they are entitled to seek documentation of working relationships, concluding the labour contract, from the employer or lodge complaints against them with the relevant bodies.⁶³⁴ The legislation makes employers liable for not documenting labour relationships.⁶³⁵ Moreover, labour law requires labour inspection of workplaces.⁶³⁶ Fixed term labour contracts may be concluded with homeworkers.⁶³⁷ Further regulation of the legal status and rights of homeworkers, is an objective under the human rights action plan of human rights strategy of 2020.⁶³⁸

As regards self-employed persons, or “own account” workers both inside and outside of families, recent regulations cover such economic activities. For instance, under the Cabinet of Ministers’ decision on regulations on the activities of self-employed persons, such persons have to register (simplified procedure) at the Ministry of Taxes, but are exempted from payment of income tax.⁶³⁹

Uzbekistan has taken some measures to stimulate employment, especially among women and in rural areas, through small enterprises, home-based jobs and simplified business regulations.⁶⁴⁰ There are various regulations on supporting the small enterprises and individual entrepreneurs to reduce the informal economy.⁶⁴¹ However, there are still serious gaps in national law to regulate the informal sector.⁶⁴² Accordingly, informal workers do not enjoy guarantees provided for by the national laws on labour rights and social security.⁶⁴³

The informal labour market is estimated to amount to 45 percent of the economically active population.⁶⁴⁴ This situation continues despite the CESCR’s recommendation in 2014 in its review of Uzbekistan’s compliance with its ICESCR obligations that it “gradually regularize the situation of all workers in the informal sector and ensure their

⁶³¹ *Ibid.*, article 9.

⁶³² *Ibid.*, article 13.

⁶³³ Labour Code, articles 72–76.

⁶³⁴ *Ibid.*, articles 264, 268

⁶³⁵ *Ibid.*, article 71; Administrative Liability Code, article 49.

⁶³⁶ E.g. Labour Code, article 9; the Law on Occupational Safety, article 28.

⁶³⁷ Labour Code, articles 18 and 76; the Resolution of the Cabinet of Ministers of 11 January 2006, No. 4, <https://www.lex.uz/acts/967575#971709>.

⁶³⁸ National Human Rights Strategy of the Republic of Uzbekistan, *op. cit.*

⁶³⁹ The Cabinet of Ministers of the Republic of Uzbekistan, Resolution on approval of the regulation on the procedure for activity as a self-employed person, 23 December 2020, No. 806, <https://lex.uz/ru/docs/5182451>.

⁶⁴⁰ Decree of the President of the Republic of Uzbekistan, 7 March 2019, PP-4235, “On measures to further strengthen guarantees of labour rights and support for women’s entrepreneurial activity”.

⁶⁴¹ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, para. 91: “In 2018, a two-year moratorium was introduced for audits of the financial and economic activities of business entities. In addition, venture funds that have been set up for the co-financing of high-tech business start-ups and other initiatives have been exempted until 1 January 2023 from the payment of all types of taxes and compulsory payments, except for the universal social payment.”

⁶⁴² Assessment of COVID-19 impacts on socio-economic situation in Uzbekistan (incomes, labour market and access to social protection): overview of crisis response and areas of improving public policies, Presentation of the key findings of the report, Janna Fattakhova, Sergey Chepel, International Labour Organization, 16 July 2020, https://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-moscow/documents/publication/wcms_751295.pdf, pp. 12–14.

⁶⁴³ *Ibid.*, pp. 13–14.

⁶⁴⁴ Seeing the invisible: the informal sector in Uzbekistan: <https://review.uz/post/razglyadet-nevidimku-neformalny-sektor-v-uzbekistane>, 30 March 2020.

coverage under existing labour and social security schemes".⁶⁴⁵ It further called on Uzbekistan:

*"to provide, in its next periodic report, information on the progress made to reduce the informal economy, including on the percentage of workers and 'small enterprises' concerned, as well as on whether 'small enterprises' are subject to labour inspections and to administrative liability for violations of workers' rights to just and favourable conditions of work."*⁶⁴⁶

In its initial report of 2019 to the CESCR, Uzbekistan indicated that it had taken measures to regulate the informal sector.⁶⁴⁷ However, an updated public report on this issue is still needed. In particular, in view of the negative impact of COVID-19 on economy, the share of informal sector is still significant,⁶⁴⁸ which indicates the importance of regulation to uphold the rights of workers in the sector.

Access to Justice

In addition to general guarantees on access to justice under the national law,⁶⁴⁹ the labour law also provides for judicial and non-judicial remedies for violations of labour rights. The victims of those violations have the right to lodge a complaint with a court. They are also entitled to apply to the labour dispute committee, if there is such an alternative, an internal non-judicial remedy entrusted to review certain labour disputes under the national law.⁶⁵⁰ Under the national labour law, victims are entitled, *inter alia*, to claim damages (pecuniary and non-pecuniary) for violations of their labour rights.⁶⁵¹

Some of the labour law violations are an administrative or criminal offence under the national law.⁶⁵² Accordingly, the legal remedies in these cases are also related to investigations of the cases by law enforcement authorities. In the case of forced labour and child labour, the reported cases are mainly administrative offence cases, resulting in administrative fines against officials, heads of organizations⁶⁵³ and no criminal cases brought to trial were reported.⁶⁵⁴ Although criminal liability for forced labour was

⁶⁴⁵ CESCR, Concluding Observations on the second periodic report of Uzbekistan, E/C.12/UZB/CO/2, 12 Jun 2014, para. 12(c).

⁶⁴⁶ *Ibid.*, para.12 (d).

⁶⁴⁷ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, para. 91: "The proportion of the population employed in the informal sector stands at 59 per cent (7.9 million) of the total number of persons in employment."

⁶⁴⁸ E.g. Assessment of COVID-19 impacts on socio-economic situation in Uzbekistan (incomes, labour market and access to social protection): overview of crisis response and areas of improving public policies, *op. cit.*; Project "Strengthening the social protection system in Uzbekistan", official web-site of the Ministry of Employment and Labour Relations of the Republic of Uzbekistan, <https://mehnat.uz/ru/pages/proekt-ukreplenie-sistemy-socialnoy-zaschity-v-uzbekistane>, para. 10: according to the Labor Code of the Republic of Uzbekistan, labor relations must be formalized in the form of a fixed-term or temporary labor contract. Nevertheless, there are cases when Uzbek employers bypass labor legislation without signing contracts, in particular for working women, in order to avoid paying benefits during maternity leave.

⁶⁴⁹ See chapter I of the report.

⁶⁵⁰ Labour Code, article 260, They are established on voluntary basis, on the basis of a collective contract or on the basis of agreement between an employer and the trade union; Labour Code, article 263.

⁶⁵¹ *Ibid.*, article 187.

⁶⁵² Administrative Liability Code, articles 51 and 491; and Criminal Code, articles 1481 and 1482.

⁶⁵³ 2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organization, *op. cit.*, p. 24; Third-party monitoring of child labour and forced labour during the 2019 cotton harvest in Uzbekistan, International Labour Organization, *op. cit.*, p. 7.

⁶⁵⁴ 2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organization, *op. cit.*, pp. 21–22: "Successfully investigating and prosecuting a case of criminal liability proved to be challenging during the cotton harvest. There were difficulties collecting sufficient evidence and the ILO Third-Party Monitoring Project observed several cases where alleged victims and witnesses would change testimonies, thereby making it impossible to prosecute. There can be many reasons why a victim or a witness might change his/her testimony. There may be cases of fear of reprisal, intimidation, and bribery, but factors such as social pressure and community relations may also play a role."

introduced in January 2020,⁶⁵⁵ according to the ILO, some criminal proceedings for forced labour that were initiated were later closed, following the withdrawal of victims of their testimonies.⁶⁵⁶

There were also forced labour cases outside the cotton harvest. According to ILO report 2020, "in total, 106 forced labour cases were recorded in 2020 across the country covering primarily landscaping, cleaning and construction works. The representatives of private employment agencies were brought to justice for violations of legislation on recruitment of people for work abroad in line with the articles 168 and 228 of the Criminal Code."⁶⁵⁷

No cases are reported, where the victims of forced labour have been granted compensation for the damage (pecuniary or non-pecuniary) they had sustained. Under the Administrative Liability Code, the body examining a case of an administrative offence, must examine and decide whether the applicant sustained pecuniary damage.⁶⁵⁸ Otherwise the case is decided by a court in separate (civil) proceedings.⁶⁵⁹ The victim has also the right to compensation for non-pecuniary damage. Under the Administrative Liability Code, this is decided separately in civil court proceedings to be launched by the victims themselves.⁶⁶⁰

As regards other labour rights related cases, while the laws may be clear and provide limited guarantees of protection, it appears that where the laws are not followed, the judiciary may not always play an active role in remedying work related rights violations. ICJ has been told that one of the main factors impeding access to justice in labour cases is unpopularity of labour cases among lawyers. These cases tend to require special qualification, be legally complex and make slow progress through the courts. It is sometimes perceived as impractical for lawyers to represent clients in these cases, bearing in mind that often the dispute is against a legal entity, which can afford longer-term proceedings.⁶⁶¹

Even where a court decides in favour of a person who alleges violations of his or her labour rights, the execution of judgments may not be guaranteed. For example, in one case, a person was reinstated in his workplace by a court decision and resumed his work. However, he was fired the very next working day.⁶⁶² Such covert failure to execute a court decision points to a general problem of execution of judgements in labour rights cases. Under the domestic law, the decision on reinstatement should be enforced immediately.⁶⁶³

Moreover, problems persist in gaining access to data on case law on labour law. Available reports, including the State's report to various UN bodies mainly refer to statistics on administrative offence and criminal proceedings for various violations, rather than

⁶⁵⁵ Law on amendments and additions to legislation of Uzbekistan Republic, 22 January 2020, No. ZRU-603, <https://lex.uz/acts/4708438>.

⁶⁵⁶ 2020 third-party monitoring of child labour and forced labour during the cotton harvest in Uzbekistan, International Labour Organisation, *op. cit.*, pp. 21–22.

⁶⁵⁷ *Ibid.*, p. 20.

⁶⁵⁸ Administrative Liability Code of the Republic of Uzbekistan, articles 38 and 307.

⁶⁵⁹ *Ibid.*, article 38.

⁶⁶⁰ *Ibid.*, articles 38 and 295; Decision of the Plenum of the Supreme Court of the Republic of Uzbekistan on Some Issues of Application by Courts of Legislation Regulating the Examination of Cases on Administrative Offenses, 30 November 2018, No. 35.

⁶⁶¹ ICJ mission to Uzbekistan, *op. cit.*

⁶⁶² "An employer fired from the plant 'Kukdumalok' reinstated in his workplace, by a court decision, was fired the very next working day", 13 July 2020, <https://kun.uz/ru/news/2020/07/13/sotrudnik-uvolenny-s-zavoda-kukdumalok-byi-vosstanovlen-sudom-na-rabote-a-cherez-den-snova-uvolen>.

⁶⁶³ Labour Code, article 273.

individual civil cases on labour rights violations launched by the victims.⁶⁶⁴ Uzbekistan has so far failed to heed the CESCR Recommendation of 2014 that it provide “statistics on the number and nature of court cases regarding labour rights violations and on sentences imposed, as well as information on the concrete impact of monitoring on the prevention of forced and hazardous labour”.⁶⁶⁵

Though Uzbekistan’s periodic report filed to the CESCR in 2019 does report on measures taken to combat forced labour, it fails to provide court statistics or indeed any information about the vindication of legal protections against forced labour (or the right to work more generally) in courts.⁶⁶⁶ The absence of detailed or disaggregated statistics hinders proper assessment of the effectiveness of the legal remedies. In this connection, reports indicate that Uzbekistan has begun to take some actions to provide disaggregation of data at least on the basis of gender.⁶⁶⁷

The national law also envisages certain remedies against sexual harassment in the workplace. According to the Law on Protection against Violence and Harassment of Women, the victim of sexual violence and harassment has the right to:

- lodge a complaint with the court, as well as the relevant state bodies;
- free legal consultation in the centres for victims or via free hotline;
- lodge a complaint with the court, claiming compensation for pecuniary and non-pecuniary damage as a result of sexual violence and harassment. In these cases, the victim is exempted from payment of State fees;⁶⁶⁸
- request the protection order from the internal affairs bodies⁶⁶⁹ — the protection order might consider prohibition of sexual violence and harassment, the ban on alleged perpetrator to contact the victim. (In workplaces the indirect contact of the victim with an alleged perpetrator is allowed.)⁶⁷⁰

The available data indicates that in practice women in Uzbekistan have had recourse to those remedies, in particular to protection order. However, information is limited or absent on the effectiveness of these remedies.⁶⁷¹

Under the national law, employees are exempted from payment of the legal costs in the labour cases they file in court.⁶⁷² Moreover, according to the Law on Protection of Women from Harassment and Violence, the victims of sexual violence and harassment in the workplace are exempt from payment of state fees while claiming compensation for pecuniary and non-pecuniary damage as a result of sexual violence and harassment at the court.⁶⁷³ In court proceedings regarding violations of the equal rights of men and

⁶⁶⁴ “List of officials fined for labor during cotton picking”, official web-site of the Ministry of Employment and Labour Relations of the Republic of Uzbekistan, <https://mehnat.uz/ru/article/spisok-dolznostnyh-lic-oshtrafovannye-zaprinyuzhdenie-k-trudu-vo-vremya-uborki-hlopka>, 40 officials were subjected to administrative fine for forced labour in cotton picking in 2019–2020.

⁶⁶⁵ CESCR, Concluding Observations on the second periodic report of Uzbekistan, 13 June 2014, E/C.12/UZB/CO/2, para. 19 (b).

⁶⁶⁶ Third periodic report of Uzbekistan on implementation of the International Covenant on Economic, Social and Cultural Rights, E/C.12/UZB/3, 14 August 2019, paras 103–105.

⁶⁶⁷ Website of the State Committee of the Republic of Uzbekistan on Statistics, Gender statistics of Uzbekistan, <https://gender.stat.uz/en/>.

⁶⁶⁸ Law on Protection of Women from Harassment and Violence, article 4.

⁶⁶⁹ *Ibid.*

⁶⁷⁰ *Ibid.*, article 26.

⁶⁷¹ E.g, Sixth periodic report of Uzbekistan on implementation of Convention on the Elimination of All Forms of Discrimination against Women, 23 January 2020, CEDAW/C/UZB/6, paras 84–89, The report covers 7 cases of discrimination in workplace in 2019 and 8 cases in 2020. No further details are provided in the report to identify the cases related to the right to work.

⁶⁷² Labor Code, article 277.

⁶⁷³ Law on Protection of Women from Harassment and Violence, article 4.

women, the party is entitled to request free legal assistance of a lawyer (the payment of legal services covered by the State).⁶⁷⁴ In this respect, a person lodging a complaint against direct and indirect discrimination on the grounds of sex with the courts, is exempted from state fees.⁶⁷⁵

Conclusions

Labour rights are regulated by law and constitute one of the most developed and well-established areas of ESC rights in Uzbekistan. In practice, however, the law is not always applied in such a way that consistently and constantly guarantees the right to work, free from discrimination, as required by Uzbekistan's legislation, or protects effectively against forced labour or exploitative practices. Uzbekistan has taken steps to end systematic child and forced labour. However, the reports on continuing use of forced labour indicates further measures are needed to protect against such violations, including through effective accountability and access to judicial remedies for victims.

Labour rights of informal workers remain one of the problematic areas in Uzbekistan on account of the gaps in legal regulation, as well as lack of serious policy and administrative measures by the State to guarantee the right to just and favourable conditions of work.

Despite adoption of the national laws related to non-discrimination with respect to labour rights, their full implementation in practice is still to be achieved, including in respect of gender equality and persons with disabilities.

⁶⁷⁴ Decree of the President of the Republic of Uzbekistan, 7 March 2019, No. PP-4235, "On measures to further strengthen guarantees of labour rights and support for women's entrepreneurial activity".

⁶⁷⁵ Law on Guarantees on Equal Rights and Opportunities for Women and Men, article 28.

Chapter V. Conclusions and Recommendations

Following almost three decades of stagnation of the legal system and an isolationist approach to international human rights law, since 2016 Uzbekistan has undertaken a forced march to reforms. This has included the beginnings of a greater openness to international human rights procedures. Such openness is not only welcome but is essential to achieving greater protection of human rights and the rule of law at national level. Yet, in-depth reforms of the justice system are still needed to ensure effective remedies for ESC rights violations in practice, including through genuine independence of the judiciary and regular application of international human rights law in and by the courts.

Uzbekistan has a solid legal basis for the protection of many of the ESC rights it has obligations to respect, protect and fulfil, particularly under the ICESCR and other human rights treaties. This is evident for example in the three rights areas examined in this report: housing, health and rights to and at work. Indeed, labour, housing and health legislation serve to a significant degree to incorporate into national law many ESC rights guarantees. They provide a solid basis for their protection at national level, if they are interpreted and applied in accordance with international human rights law. Yet, often, this does not translate into real and equal protection of these rights in practice.

Recent increases in forced evictions, lack of access to justice in cases concerning the right to work, and right to health; discrimination and lack of equal protection; and shortcomings in the context of the COVID pandemic, are among the problems that show the need for renewed efforts to make protection through the justice system of these internationally-guaranteed rights a daily reality for all.

Uzbekistan has obligations to provide access to justice for ESC rights under international law and those obligations are reflected in its Constitution and other laws. It has already undertaken some legislative, administrative, and judicial measures to guarantee its international and constitutional obligations in this area. Recent legal reforms in Uzbekistan including the adoption of the National Human Rights Strategy are important, but still only first steps towards addressing the problems inherent in national law and practice concerning ESC rights.

The role of the judiciary in this regard and its institutional weakness compared to prosecutorial bodies, which continue to be the backbone of the justice system, is of key importance. The judiciary's lack of independence is enabled by the laws, structures and procedures of judicial administration, as well as by some customs and practices that have been inherited from its past.

Despite some legislative and administrative measures addressing independence and impartiality of the judiciary, it has not yet succeeded in becoming a genuinely independent guardian of the rule of law, able to administer justice in line with the international standards on the role and independence of the judiciary and guarantees of fair trial as provided under international human rights law in particular article 14 of the ICCPR. If the courts are to be able to protect ESC rights, as well as other human rights, effectively, further pertinent reforms are needed to achieve the independence of the judiciary in Uzbekistan.

The independence of the legal profession in Uzbekistan remains unattained. It is still directly answerable to the Ministry of Justice in law and in practice. Given the important role of lawyers in ensuring access to justice, including for violations of ESC rights, the need to protect exercise of the legal profession from undue interference is among the issues to be addressed as a matter of priority.

The lack of consistent enforcement of laws in practice appears to be a significant problem. The general acceptance as normal of the continued discrepancy between a written law and practice is striking. Reforms should therefore focus on adherence to and implementation of the law in practice, and equal access to justice and remedies to enforce it. Laws should not be treated as mere good intentions, but should be enforced, including by the courts, in their letter and spirit, which in their turn must conform to international human rights obligations.

One general relevant issue is the insulation of the national legal system, in practice from the effect and contemporary interpretations of international human rights law and standards. In general, the use of international law in the Uzbekistan justice system, remains weak and underdeveloped. International law is to a high degree theoretical for most legal practitioners, an approach that appears to have its roots in legal tradition and culture, lack of political will and a lack of concrete programmes of measures to make progress in this regard. In practice, judges, prosecutors and lawyers continue not to be exposed to international law on ESC rights, and usually do not apply it in their work directly.

In Uzbekistan the justiciability of ESC rights is not always accepted, as some ESC rights are not seen as rights whose violation could or should be remedied through and by the courts. Rather, many actors see guarantees of non-discrimination or aspects of the right to health or education as benefits which are not of a justiciable nature. Lawyers, sharing a similar legal mindset and background, do not tend to demonstrate the necessary legal activism in pursuing judicial remedies in such cases.

Uzbekistan has taken some important anti-discrimination legislative measures that support equal protection of ESC rights, such as through enactment of laws on gender equality and women's rights, as well as the persons with disabilities. In other areas however, notably in regard to sexual orientation and gender identity, the law permits and even requires discrimination. Comprehensive non-discrimination legislation, which allows judicial remedies in cases of discrimination, is needed to fix these gaps. In addition, attention must focus on implementation of the legal framework in practice to protect the rights of women, and of members of disadvantaged and marginalized groups who still experience discrimination and barriers to accessing ESC rights.

Housing rights have become a topic of particular concern in Uzbekistan with regular cases of forced evictions. The existence of a relatively well-developed national legal framework in regard to the right to housing underlines the failure to implement national law in practice as judicial remedies in certain cases remain ineffective for protection of the right to housing.

The right to health is not fully protected and the availability and accessibility of the health services as provided by the law and the quality of the services remain deficient despite a solid legal framework, problems that have been particularly evident during the COVID-19 pandemic.

Uzbekistan has well-structured and developed labour legislation. Yet, it requires further implementation in practice in order to ensure that everyone benefits from the well-intended letter of the law in actual practice. The illusory nature of the labour legislation was demonstrated by decades of the systematic use of child and forced labour which are clearly prohibited by law but were widespread and systematic in practice, and continue in some cases. There is large role for the judiciary to play to ensure access to justice and providing effective judicial remedies for violations of workplace rights.

Recommendations

Bearing in mind these conclusions, based on international law and standards, below the ICJ makes a number of recommendations, many of which targeted at the justice system and the role of the judiciary. But the ICJ also recommends that the executive, the Parliament, and the legal profession take steps to strengthen practical protection and access to ESC rights.

Recommendations in regard to the Judiciary

Judges should as a matter of ordinary practice apply international human rights treaties, as interpreted by the relevant UN Treaty Bodies, to protect ESC rights, as a means of interpreting national legislation, as well as to scrutinize the compatibility of national legislation both with Uzbekistan's Constitution and its international law obligations. Among other measures, the Plenum of the Supreme Court should adopt guiding decisions on effective implementation of international law in the domestic legal system.

The Constitutional Court should have jurisdiction to hear individual applications of natural and legal persons on violations of their rights under domestic and international law. In practice, through its case law, the Constitutional Court should scrutinize implementation of international human rights law in the domestic legal system.

The judiciary, the legal profession and the prosecutorial bodies should be well equipped to provide legal remedies where violations of ESC rights are alleged.

Victims of violations of their ESC rights, including the rights to housing, health and labour rights, should have effective access to legal advice and assistance that would enable them to access justice and remedies, including through the courts. Free legal aid should be provided where necessary and particular efforts should be made to provide information on their rights and access to remedies to people in marginalised or disadvantaged situations, such as victims of forced labour.

In view of the findings of the report on specific ESC rights, where ESC rights issues come before the courts, the judiciary should, in appropriate cases:

- ensure implementation of the principles of non-discrimination and equal protection in practice;
- enforce housing legislation including full protection against forced eviction, in light of the international law right to housing. Courts, including when considering cases of evictions, should take into account that the right to housing is broader than the right to private property and non-owners, including tenants or those occupying a dwelling informally, have the right to housing under international law. All evicted persons should be provided with alternative accommodation or adequate compensation, in line with international law;
- apply the constitutional right to health, in light of obligations to protect the right to health under international human rights law;
- enforce the national legal framework protecting labour rights, in light of obligations under international human rights law, and provide judicial remedies, including in cases of forced labour.

Training and other capacity building activities for legal professionals, including judges, provided by appropriate professional institutions, should cover the protection of ESC rights under international law.

Furthermore, the institutions of the judiciary should regularly publish and make available for judges in local languages decisions of UN Treaty Bodies where authoritative interpretation of specific ESC rights is provided.

Comprehensive reforms should be put in place aimed at attaining not only formal but the practical and effective independence of the judiciary. Any forms of undue interference with the judiciary by the institutions of executive and legislative should be eradicated including through the *de jure* and *de facto* independence of the Supreme Judicial Council and its procedures. In this connection it is essential that the recommendations of the UN Special Rapporteur on the Independence of Judges and Lawyers following his visit to Uzbekistan are fully implemented.

The quality of court judgments should be improved in order to ensure well-reasoned decisions, which are perceived by the parties, and by the public, as applying clear legal rules and a proper factual evaluation in fair proceedings.

Programmes of capacity building for judges, put in place through the School of Judges, should also address questions of judicial independence, ethics and accountability, as well as quality of judgments.

The judicial authorities should take further measures to ensure that court judgments are made accessible to the public, including through available online tools.

Courthouses should be made more accessible to the public, including persons with disabilities, in order to ensure that justice is more accessible for the public.

Recommendations in regard to the Executive and Parliament

The supremacy of international law over national legislation, which is established in the Uzbekistan legal system, should be applied in practice. International law, standards and jurisprudence on human rights, including in respect of the ICESCR, should become a governing framework for the ongoing programme of legal reform, which should be aimed, *inter alia*, at ensuring compliance with international law obligations, including on issues of equality and non-discrimination, housing, healthcare, labour rights, access to justice and remedies in cases of violations of ESC rights.

Recommendations of the UN Treaty Bodies on ESC rights, including as a result of periodic reporting procedure, as well as the Human Rights Council's Universal Periodic Review, should be fully implemented through a structured process involving consultation with civil society.

Uzbekistan should become party to additional international instruments which can provide protection of ESC rights. These include the UN Convention on the Protection of Persons with Disabilities and its Optional Protocol. Besides, Uzbekistan should join the procedures which allow for individual communications (complaints) to UN Treaty Bodies to seek redress for violations of rights protected under the relevant UN treaties: these include the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Elimination of Discrimination against Women, the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure.

The Parliament should adopt comprehensive anti-discrimination legislation prohibiting direct and indirect discrimination, and guaranteeing equal protection, in both the public and private sectors, on all grounds. The legislation should guarantee full access to effective remedies and reparation for victims of discrimination in judicial and administrative proceedings, including through access to legal advice and legal aid where necessary.

The parliament should adopt legislation restoring the independence of the Chamber of Lawyers, in particular from the executive.

The legislature should also adopt a Law on Legal Aid to establish full-functioning system covering non-criminal cases as well to enhance access to justice for ESC rights cases.

Recommendations concerning specific ESC rights

The procedures and practices of eviction should be in line with international law. In particular, it should meet the standards of genuine consultation, adequate notice, adequate information, government presence, appropriate conditions during the eviction. Where a person wishes to contest the evictions, effective legal remedies should be available in all cases. Forced evictions should be prohibited at all times be they from private, public or other dwellings.

Quality healthcare services should be made available, accessible (including physical, economic and information accessibility), acceptable, and of good quality to everyone across the country without any discrimination. Where health services or treatment are guaranteed by law, they should be available at all time in practice without any discrimination.

The issue of discrimination in the workplace, especially based on sex, such as sexual harassment, should be addressed as a matter of priority at the level of State policy, raising awareness among the wider public as well as employers. Women should not suffer discrimination as a result of their pregnancy. Judicial remedies should be made available in cases where cases of sexual harassment or other discrimination at work are alleged.

Further measures should be taken to enforce the national legal framework regulating labour rights. In particular, the cases of the forced labour shall be fully eradicated. Where individuals are left out of contractual protection in labour cases, general principles should apply in order to ensure that individuals are afforded all the necessary remedies under international labour law and standards.

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Dr Jarna Petman, Finland

Prof Mónica Pinto, Argentina

Prof Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Mr Michael Sfard, Israel

Prof Marco Sassoli, Italy—Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Justice Marwan Tashani, Libya

Mr Wilder Tayler, Uruguay

Justice Philippe Texier, France

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Prof Rodrigo Uprimny Yepes, Colombia

