

UZBEKISTAN

SUBMISSION TO THE UNITED NATIONS COMMITTEE AGAINST TORTURE

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INTRODUCTION

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in October 2013, of Uzbekistan's fourth periodic report on the implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture).

The document highlights Amnesty International's concerns about failures of the authorities in Uzbekistan to respect and protect the rights guaranteed in the Convention, in particular under Articles 1, 2, 3, 5, 10, 11, 12, 13, 14, 15 and 16. This briefing will also complement other submissions to the Committee against Torture by domestic and international NGOs with which Amnesty International cooperates.

In the period under review the Uzbekistani authorities have taken a number of positive steps in relation to strengthening safeguards against torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment), including the introduction of further legislative and judicial reforms aimed at bringing domestic legislation into line with international standards, among them a National Plan of Action for the implementation of the concluding observations and recommendations made by the Committee against Torture following consideration of the third periodic report of Uzbekistan on the implementation of the Convention against Torture in 2007.¹ Amnesty International also welcomes the adoption in September 2011 of a law on the treatment of individuals in pre-charge and pre-trial detention, which prohibits the use of torture and other ill-treatment against detainees. However, serious concerns remain about the application in practice of the provisions of the law as well as existing safeguards in the criminal procedural code and directives by the Supreme Court of Uzbekistan.

The Uzbekistani authorities had also agreed to prison visits by the International Committee of the Red Cross (ICRC) in the second half of 2009, which constituted a key demand by UN bodies, including the General Assembly in its 2005 resolution, and by the European Union (EU), as a benchmark in successive General Affairs and External Relations Council Conclusions relating to the EU sanctions regime on Uzbekistan. Nevertheless, serious concerns have remained as to the conditions in which detainees and prisoners are held, particularly real or suspected government opponents and members of Islamic groups or Islamist parties banned in Uzbekistan.

On 12 April 2013 the ICRC made a public statement that it had taken the very difficult decision to terminate all visits to detainees in Uzbekistan because the ICRC was unable to conduct such visits according to their standard working procedures and as a result, those

¹CAT/C/UZB/CO/3, 26 February 2008.

visits were “pointless”.²

The authorities have also continued with numerous, wide-ranging and officially endorsed, national initiatives in the fields of human rights education and reform. The government has increased dialogue on human rights with the international community, in particular the EU, and in 2012 agreed to the establishment of an EU Delegation office in Tashkent with a central EU contact point on human rights based at the office.

At the UN Human Rights Council's adoption of the Universal Periodic Review (UPR) outcome on Uzbekistan in September 2013, the Uzbekistani authorities maintained that some of the recommendations by member states aimed at combating torture have been or are being implemented.³ At the same time the Uzbekistani authorities categorically refuted all allegations of the continuing routine and pervasive use of torture and other ill-treatment by security forces and prison personnel.

Amnesty International has continued to receive persistent and credible allegations of routine torture and other ill-treatment by law enforcement officials and prison guards in Uzbekistan. These include dozens of reports that individuals returned to Uzbekistan from other countries pursuant to extradition requests in the name of security and the “fight against terrorism” have been held in incommunicado detention upon return, thereby increasing their risk of torture or other ill-treatment. Methods of torture or other ill-treatment in detention described by former prisoners, including released human rights defenders, include beating detainees with batons, iron rods, bottles filled with water while they are handcuffed to radiators or suspended from ceiling hooks, asphyxiation with plastic bags or gasmasks with the air supply turned off, inserting needles under finger or toenails, electroshock, dousing with freezing water, and rape. Amnesty International's research shows that in the vast majority of cases the authorities have failed to conduct independent, impartial, thorough and effective investigations into allegations of torture or other ill-treatment by detainees. The European Court of Human Rights has issued at least 20 judgments in the past four years prohibiting the return of criminal suspects to Uzbekistan on the basis of a risk of torture, especially those charged with membership of Islamist parties or groups that are banned in the country. For more details see Amnesty International, *Return to torture: Extradition, forcible returns and removals to Central Asia*.⁴

Amnesty International is concerned that, despite repeated assertions to the contrary by the Uzbekistani authorities, impunity prevails as the prosecution of individuals suspected of

²<http://www.icrc.org/eng/resources/documents/news-release/2013/04-12-uzbekistan-detainees.htm>

³ UNDoc. A/HRC/24/7, recommendations 134.7 (Germany), 134.8 (Ireland), 134.9 (Austria), 134.10 (Slovakia), 134.11 (Canada), 134.12 (Namibia). The recommendation by Germany is as follows: “Take all necessary measures to prevent torture and accept the long-standing request of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Uzbekistan. Namibia's recommendation reads: Investigate and prosecute all allegations of torture carried out by government correctional services or security forces.

⁴ For more details please see Amnesty International, *Return to Torture: Extradition, forcible returns and removals to Central Asia*, AI Index: EUR 04/001/2013, July 2013, available at: <http://amnesty.org/en/library/info/EUR04/001/2013/en>

being responsible for torture or other ill-treatment continues to remain the exception rather than the rule.

The policies highlighted above reflect a deep-seated culture of impunity for human rights violations in Uzbekistan and the continued failure by the Uzbekistani authorities to genuinely commit to, and fully and effectively implement, its obligations as a state party to the Convention against Torture. Time and again the Uzbekistani government has failed to effectively implement the recommendations of the Committee against Torture and other UN treaty bodies and special procedures, especially with regard to initiating prompt, thorough, independent and impartial investigations into allegations of torture or other ill-treatment. Amnesty International is particularly concerned that the authorities continue to dismiss as unfounded the allegations of torture at the hands of security officers raised by a number of individuals whose cases Amnesty International and other human rights organizations, as well as the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, have relayed to the Uzbekistani government.

Finally, the Government of Uzbekistan has not yet responded to numerous requests by the Special Rapporteur on torture to visit the country. Amnesty International is concerned that Uzbekistan appears determined to remain closed to meaningful international monitoring and is deeply disappointed that Uzbekistan has rejected recommendations to strengthen and deepen its interaction with international mechanisms, including the Special Procedures of the Human Rights Council,⁵ as “not part of its obligations under internationally agreed human rights standards”⁶.

The organization also continues to call on the authorities to ratify and implement the Optional Protocol to the Convention against Torture and to make a declaration pursuant to article 22 of the Convention recognizing the competence of the Committee to consider individual communications.

JUDICIAL SAFEGUARDS (ARTICLE 2)

Legislation introducing judicial supervision of arrest following a Presidential decree of 2005 came into effect in January 2008, transferring the power to sanction arrest from the prosecutor’s office to the courts. Amnesty International considers the introduction of judicial supervision of arrest to be a positive development in Uzbekistan. However, five years after the introduction of the legislation, the organization remains concerned about various aspects of the legislative changes and their implementation.

The authorities in Uzbekistan called the procedure “habeas corpus”. However, Amnesty International believes this to be a misnomer as the law requires the authorities to bring people deprived of their liberty before a court following detention (similar, in some respects,

⁵ UN Doc. A/HRC/24/7, recommendations 136.21-136.35 (Slovenia, Guatemala, Belgium, Portugal, Costa Rica, Tunisia, Montenegro, Spain, Japan, Brazil, Hungary, Spain, Latvia, Ireland, Netherlands, Paraguay)

⁶ UN Doc. A/HRC/24/7, p. 27.

to a procedure required under Article 9 of the International Covenant on Civil and Political Rights (ICCPR); it does not create a procedure whereby the detainee or someone on his or her behalf may bring a petition challenging the lawfulness of their detention before a court for rapid determination as required by Article 9(4) of the ICCPR. Amended legislation specifies that the prosecutor's office must apply to a judge to keep an individual in pre-charge detention no later than 12 hours before the end of their term of detention, which is 72 hours, and that the judge must review the application by the prosecutor's office no later than 12 hours after receiving it. This means that under amended legislation an individual deprived of their liberty must be brought before a judge within 72 hours of their detention, a length of custody considered excessive by the Human Rights Committee in its Concluding Observations in March 2005⁷ and again in April 2010⁸.

Amnesty International considers that the obligation to bring people deprived of their liberty before a judicial authority promptly after detention is a key safeguard against torture or other ill-treatment and removes the absolute power over the detainee which the detaining law enforcement authorities might otherwise have.

In September 2011, the President approved a new law on the treatment of individuals in pre-charge and pre-trial detention, which, in theory, improves access to those held in police custody and makes it easier to monitor their treatment independently.⁹ The new legislation allows, among other things, for an unrestricted number of visits of undefined length by detainees' relatives and lawyers and abolishes the need to obtain prior permission from the investigating security officers. Article 7 of the new legislation also prohibits the use of torture and other cruel, inhuman or degrading treatment against detainees and remand prisoners. However, by October 2013 there was scant evidence that the law is being implemented consistently and effectively.

Article 88 of the Criminal Procedural Code (CPC) prohibits security officers "to carry out actions that endanger life or health of the persons or humiliate their honor and dignity; [...] to extract testimonies, explanations, opinions, experiments, as well as issue of documents, or objects by means of violence, threat, fraud, and other illegal acts."

Furthermore Article 95 makes it mandatory for law enforcement officers and judicial officials to consider the relevance, admissibility and credibility of evidence before placing reliance on it; this includes the requirement of Article 88 that testimony is not obtained "by violence, threats, [...] or other illegal acts".

A judge may also order a forensic investigation, including to establish the nature and seriousness of physical injury of the accused, should they decide that evidence was obtained in breach of CPC provisions, the results of which might trigger a criminal case against those

⁷Concluding observations of the Human Rights Committee: Uzbekistan, 26/04/2005, CCPR/CO/83/UZB, paragraph 14.

⁸Concluding observations of the Human Rights Committee: Uzbekistan, 07/10/2010, CCPR/C/UZB/CO/3, paragraph 14.

⁹ "About detention in case of criminal proceedings", law No. ZRU-298, 29 September 2011,

security officers accused or suspected of having extracted confessions under duress. This possibility is not set out explicitly in the CPC, but does follow from the more general Article 172 which refers to the requirement for expert examination, including forensic investigation, when it is relevant to the circumstances of the case.¹⁰

Article 173 of the CPC makes a forensic medical examination mandatory in cases where physical injuries are clearly visible to the judge.¹¹ However, in practice, judges rarely exercise their right to order mandatory forensic medical investigations.

Amnesty International is also concerned that the CPC only explicitly mentions torture once, namely in Article 17: “Nobody may be subject to violence, torture, or other cruel or degrading treatment.” In all other Articles more general descriptive terms such as “illegal acts”, “violence” and “threats” are used, allowing scope for interpretation. Amnesty International believes that it is essential that torture is mentioned explicitly in the CPC as exclusionary grounds in all the relevant Articles. This would reinforce the prohibition of torture as a means of extracting evidence and be in line with Uzbekistan’s international obligations under the Convention.

¹⁰ Article 172. Grounds for Expert Examination

Expert examination shall be ordered in cases, when circumstances relevant to the case may be established by an expert examination to be conducted by a person skilled in science, technology, arts, or crafts. Possession of the said skills by an inquiry officer, investigator, prosecutor, judge, expert witnesses, or attesting witness shall not dismiss the necessity of ordering expert examination.

The matters to be examined by a forensic examiner and his opinion may not exceed the limits of his skills.

Substitution of expert examination with research beyond the procedures prescribed by this Code shall be prohibited. Availability of conclusions of departmental visitations, acts of inspections, consultancies shall not dismiss the necessity of ordering expert examination.

¹¹ Article 173. Mandatory Appointment and Conduct of Expert Examination

Appointment and conduction of an expert examination shall be mandatory to establish the following circumstances:

1. cause of death, or nature and heaviness of bodily injury;
2. fact of sexual intercourse, pregnancy, or abortion;
3. age of a suspect, accused, defendant, and victim, in case of unavailability or unreliability of the certificates thereof ;
4. mental and physical condition of a suspect, accused, defendant, or the person being prosecuted for compulsory medical measures; their abilities to realize and direct own actions at the moment of commitment of a crime, as well as their ability to realize their criminal liability, give a testimony and protect own rights and legal interests independently during criminal proceedings;
5. mental and physical condition of a victim and witness, and their abilities to apprehend, remember, and recall the facts relevant to the case at questioning, as well as ability of the victim to protect his rights and legal interests independently during criminal proceedings; [...]

Expert examinations shall also be mandatory for establishment of other circumstances, relevant to the case, which require special skills and have not been reliably established with other evidence.

Amnesty International is concerned that directives by the Plenum of the Supreme Court¹² explicitly prohibiting the use of torture to extract confessions and the admissibility of evidence extracted under torture in court proceedings, have been issued twice in the last 10 years to no effect. They would need to be released again to remind all relevant law enforcement and judicial officials of their obligations not to use torture or other ill-treatment or accept evidence based on confessions extracted under torture. However, Amnesty International believes that because these directives are not legally binding it is time for the authorities to take immediate steps to incorporate these directives into the CPC to make the prohibitions part of domestic criminal law and legally binding.

TORTURE AND OTHER ILL-TREATMENT DURING DETENTION AND INCOMMUNICADO DETENTION (ARTICLES 1, 2, 10 AND 16)

Persistent reports of torture and other ill-treatment by security forces during arrest, in police custody and in pre-trial detention and by security forces and prison personnel following conviction of individuals charged with or convicted of anti-state and terrorism offences, in particular members or suspected members of political opposition parties, continue to be of major concern to Amnesty International in Uzbekistan. According to these reports the authorities have regularly failed to conduct prompt, thorough, and impartial investigations into reports of torture and other ill-treatment and into complaints lodged with the Prosecutor General's Office and impunity for the perpetrators prevails.

During UPR hearings in Geneva in April 2013 the Uzbekistani delegation, while rejecting all allegations of torture and other ill-treatment by security forces, also argued that there is no

¹² Two Resolutions by the Plenum of the Supreme Court were adopted in December 2003 (Resolution № 17, 19 December 2003) and September 2004 (Resolution № 12, 24 September 2004) explicitly banning the admissibility of confessions based on torture from court proceedings. According to part 18 of Resolution № 17 of 2003 "On Practical Application by Courts of Laws ensuring the suspects and defendants the right to defense", "In compliance with law (Articles 17,88 of the CPC) the inquirer, investigator, procurator, court (judge) have no right to humiliate the honor and dignity of the suspect, accused. Protection of the rights and legal interests of citizens should be ensured in collecting, checking and assessment of evidence. It is prohibited to apply torture, force, and any other brutal treatment humiliating human dignity in the process of collecting, checking and assessment of evidence".

Part 19 says, "Evidence obtained with the application of torture, force [harassment], threats, cheating, other severe treatment humiliating human dignity, other illegal measures, as well as with the violation of the right of the suspect, accused for defense, cannot be laid down as the basis for accusation. Inquirer, investigator, procurator, court (judge) are obliged to always ask persons delivered from detention about ways of treatment in the course of carrying out the inquest or investigation, as well as about conditions in custody. A thorough examination of pleaded arguments has to be conducted on each fact of application of torture in the course of inquest or investigation, including through carrying out forensic medical attestation [certification], and undertake both procedural and such other measures of legal nature on their results, right up to initiating a criminal case in regard to official persons".
http://lib.ohchr.org/HRBodies/UPR/Documents/Session3/UZ/VERITAS_UZB_UPR_S3_2008_LegalandInstitutionalFramework_Appendix1.pdf

concept of the “systematic” use of torture in international law, despite this very term being used in Article 20 of the Convention, and its meaning within the Convention subsequently clarified by the Committee. The below case is illustrative of incommunicado detention and alleged torture and other ill-treatment.

Dilorom Abdukadirova, aged 48, fled Uzbekistan after attending the Andizhan protest demonstrations in May 2005, leaving her husband and children behind. She was recognized as a refugee in Australia, and she voluntarily returned to Uzbekistan in January 2010 after receiving assurances from the authorities that nothing would happen to her. However, she was immediately detained for four days upon arrival at Tashkent airport. In March 2010 she was detained again and kept in a police cell for two weeks without access to a lawyer or to her family. She was eventually brought to trial in April 2010 on charges of attempting to overthrow the constitutional order as well as of illegally exiting and entering Uzbekistan in relation to her participation in the 2005 Andizhan unrest. She was sentenced to 10 years and two months' imprisonment in 30 April 2010 in an unfair trial. Family members reported that she appeared emaciated at the trial, had bruises on her face and avoided eye contact with members of her family. The family also believed that she had been forced to appear in court without her hijab, despite being a devout and practicing Muslim. Her sentence was reportedly extended by eight years for allegedly deliberately breaking prison rules following a trial inside prison closed to the public in 2012.

ARBITRARY EXTENSION OF LENGTH OF IMPRISONMENT AND CRUEL, INHUMAN OR DEGRADING CONDITIONS OF DETENTION (ARTICLES 11, 13, 15 AND 16)

Amnesty International's research indicates that certain categories of prisoners, such as human rights defenders and prisoners of conscience, government critics and individuals convicted of membership of Islamist parties and groups or Islamic movements banned in Uzbekistan, are often subjected to severe punishment regimes in prisons where they serve their sentences, and have their sentences extended for long periods even for alleged minor infractions of the prison rules. For example, they are often put in punishment cells, which have been described by former prisoners as small rooms, often windowless and made of concrete, with no heating, no natural light or ventilation and too small for a bed. At least three human rights defenders were released on humanitarian grounds in the past three years, however, at least eight human rights defenders, convicted in unfair trials, continue to serve long prison terms in cruel, inhuman or degrading conditions of detention.¹³ Former prisoner of conscience Khabibulla Akpulatov spent more than a month in a solitary confinement cell in 2012. Prisoner of conscience Isroil Kholdorov spent 20 days locked in a cold cell in solitary confinement without a window at the beginning of 2012. Prisoners are often denied adequate medical care, are forced to work long hours often doing physically demanding manual labour such as building work or making bricks, with basic tools, inadequate clothing, and little food and water. Former prisoners report that they were frequently beaten by prison guards and other prisoners.

When a prisoner is alleged to have breached the prison rules, this can lead to new criminal cases against them. The cases of Isroil Kholdorov and Mamadali Makhmudov below are clear

¹³ Khabibulla Akpulatov, Farkhod Mukhtarov and Norboi Kholzhigitov are three human rights defenders released on humanitarian grounds. Among those continuing to serve long prison terms are: Salidzhon Abdurakhmanov, Azam Farmonov, Isroil Kholdorov, Nosim Isakov, Gaibullo Dzhaliyov, Ganikhon Mamatkhanov, Dilmurod Saidov, Akzam Turgunov.

examples of the cruel, inhuman or degrading treatment or punishment prisoners are subjected to pre-and-post-conviction.

Isroil Kholdorov, a human rights defender and prisoner of conscience, was convicted following an unfair trial on 20 February 2007 and sentenced to six years' imprisonment. Following the Andizhan events in May 2005, Isroil Kholdorov spoke to international media about mass graves in and around Andizhan, including in Bogishamol district, which according to eyewitnesses the authorities had reportedly secretly organized. On 15 June 2012, the Navoi City Court decided to add three years to the original sentence because he allegedly violated prison rules according to Article 221 of the Criminal Code of the Republic of Uzbekistan ("disobedience to legitimate orders of administration of institution of execution of penalty"). Two of the alleged violations that the court referred to were that Isroil Kholdorov had failed to attend a prison inspection and that he had refused to lift a heavy object when asked to by a prison guard.

On 8 April 2013, Mamadali Makhmudov, (72), a well-known writer from Uzbekistan, was sentenced to an additional three-year prison term for allegedly violating prison rules according to Article 221 of the Criminal Code. He was informed on 5 March 2013 that the prosecutor had signed an indictment against him for allegedly violating prison rules a total of 31 times. He had, however, not been made aware by the prison authorities that he had violated specific prison rules. His original 14-year sentence had expired a month earlier, in February 2013, and he should have been released from prison. His family feared that he might not survive a further term in prison as he was suffering from tuberculosis, high blood pressure and general weakness. He suffered a heart attack in early April 2013. He was eventually released on medical grounds on 19 April 2013 at the appeal stage against his additional sentence after serving 14 years in prison.

Mamadali Makhmudov was originally sentenced by Tashkent City Court in August 1999 for his alleged participation in a series of explosions in Tashkent in February 1999, which the authorities described as an assassination attempt on President Islam Karimov. He was held incommunicado in pre-trial detention for almost three months in 1999. In a written statement Mamadali Makhmudov described how he had been systematically tortured during that time by, among other things, being constantly beaten; having his hands and feet burned; having needles stuck under his nails; being suspended by his hands tied behind his back; having a gas mask put over his face with the air supply turned off; and being threatened with rape and death. No thorough, independent and impartial investigations were conducted into these allegations of torture, despite numerous complaints lodged with the competent authorities by Mamadali Makhmudov, his lawyer and his family over the years. Mamadali Makhmudov has always denied the charges against him and has continued to seek accountability for the torture he was subjected to not only in pre-trial detention by security officers but also post conviction by prison officials in Yaslik (or Jaslyk) and Navoi prisons, as described below.

From April until July 2000, Mamadali Makhmudov spent time in Yaslik prison in the Northern Karakalpakstan region. The UN Special Rapporteur on Torture's February 2003 report on Uzbekistan included the recommendation to "...give urgent consideration to closing Jaslyk colony, which by its very location creates conditions of detention amounting to cruel, inhuman and degrading treatment or punishment for both its inmates and their relatives...". Mamadali Makhmudov wrote in a letter about how he had been subjected to constant beatings by prison guards and other prisoners while in Yaslik and that he lost 24 kilograms in just a few months. Ten years later Yaslik prison has still not been closed and Amnesty International continues to receive similar allegations of torture and other ill-treatment from prisoners and their families.

In a further letter smuggled out of prison in 2004 Mamadali Makhmudov described how prison authorities systematically tortured prisoners convicted of crimes against the state, such as the violent overthrow of the

constitutional order under Article 159 of the Uzbekistan Criminal Code as well as membership of banned religious organizations under Article 244 of the criminal code. Prison officers made these prisoners crawl naked across the prison and beat them with truncheons and steel pipes, they were kicked and beaten if they failed to sing the national anthem, they were locked up in small, cold and damp cells often naked and with no food or water for several days and no toilet facilities.

No effective, independent, thorough and impartial investigations have been conducted by the competent authorities into any of the allegations of torture and other ill-treatment of these categories of prisoners raised by Mamadali Makhmudov during the 14 years he spent in prison.

ALLEGATIONS THAT INDIVIDUALS RETURNED TO UZBEKISTAN FROM OTHER COUNTRIES PURSUANT TO EXTRADITION REQUESTS HAVE BEEN HELD IN INCOMMUNICADO DETENTION, THEREBY INCREASING THEIR RISK OF BEING TORTURED OR OTHERWISE ILL-TREATED; ALLEGATIONS OF ABDUCTIONS AND RENDITION TO UZBEKISTAN INVOLVING UZBEKISTANI OFFICIALS (ARTICLES 2, 3 AND 10)

Amnesty International's research has shown that Uzbekistan has relentlessly pursued the extradition or otherwise forcible return of hundreds of individuals it suspects of having organized or participated in a number of alleged terrorist acts in Uzbekistan including bomb explosions in Tashkent in 1999 and 2004; the Andizhan protests in 2005 and violent acts, including bombings and shootings by armed groups, in Tashkent and the Ferghana Valley in 2009. The government also has requested the extradition of political opponents, government critics and wealthy individuals out of favour with the regime.¹⁴ Many of these extradition requests are based on fabricated or unreliable evidence. The government has offered "diplomatic assurances" to sending states to secure the returns, pledging free access to detention centres for independent monitors and diplomats. In practice, they have not honoured these guarantees.

¹⁴For more details see Amnesty International, *Return to Torture: Extradition, forcible returns and removals to Central Asia*, AI Index: EUR 04/001/2013, July 2013

Uzbekistan has no independent monitoring mechanisms in place to inspect all places of detention and no independent non-governmental organizations, domestic or international, carry out any form of regular, unannounced and unsupervised prison monitoring. Diplomats, while granted access to some detention facilities, are as a rule accompanied by prison or law enforcement officials during their visits.

The European Court of Human Rights has issued at least 20 judgements in the past four years prohibiting the return of individuals to Uzbekistan, especially those accused of membership of Islamist parties or groups that are banned in the country, on the basis that they would be at risk of torture or other ill-treatment if returned. For example, on 10 June 2010 in the case *Garayev v. Azerbaijan*, the Court ruled that the extradition of Shaig Garayev from Azerbaijan to Uzbekistan would be in violation of Article 3 of the European Convention on Human Rights. The court stated that “any criminal suspect held in custody [in Uzbekistan] faces a serious risk of being subjected to torture or inhuman or degrading treatment both in order to extract a confession and as a punishment for being a criminal.”¹⁵ Amnesty International’s research has found that most of those forcibly returned to Uzbekistan at the request of the Uzbekistani authorities have faced incommunicado detention, torture and other ill-treatment and, following unfair trials, long prison sentences in cruel, inhuman or degrading conditions.

The cases below are typical examples of what happens to individuals accused of anti-state activities when they are returned to Uzbekistan.

Uzbekistani asylum seeker Rustam Zokhidov was detained in St. Petersburg on 21 December 2011, and forcibly returned the same day by plane to Uzbekistan. This forcible return happened despite the European Court having ordered interim measures in this case on 19 November 2010, and despite the fact that Rustam Zokhidov was still in the process of appealing the decision by the Federal Migration Service to reject his application for refugee status. The authorities later informed the European Court that St. Petersburg Federal Migration Service officials were unaware that Rule 39 measures were in place. However, Rustam Zokhidov maintains that when officials of the FMS came to his flat to detain him he showed them a certified copy of his appeal against refusal of refugee status to the appeal court (Dzerzhinsky District Court). He immediately called his lawyer, who informed the officials by phone that the European Court had instructed Russia not to remove him pending its full examination of his complaint. Nonetheless, Rustam Zokhidov was taken to St Petersburg airport and flown straight to Samarkand in Uzbekistan. On arrival in Uzbekistan he was kept in NSS detention and in April 2012 he was sentenced to eight years’ imprisonment following an unfair trial. His relatives, who were not allowed into the courtroom and only permitted to see him briefly, report seeing bruises on his face. Pressure was reportedly put on both Rustam Zokhidov’s family and his lawyers not to appeal the court decision and his lawyers were threatened with losing their licenses. Rustam Zokhidov advised his family that their NSS officers were tapping their phones and asked them to stop contacting the lawyers who had represented him in Russia “in order not to have any more problems”.

On 5 February 2013, the European Court found that the Russian authorities had not carried out a thorough examination of Rustam Zokhidov’s allegations concerning the risk of his ill-treatment in Uzbekistan, in

¹⁵*Garayev v. Azerbaijan*, The European Court of Human Rights, (Application no. 53688/08) Judgement of 10 June 2010, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-99218>.

particular “the Russian Courts’ decisions to set aside the order for his extradition was mainly based on technical reasons [...] and had and had not specifically addressed his detailed submissions concerning the risk of being subjected to ill- treatment in case of his removal.¹⁶

In the last few years, the European Court of Human Rights has questioned the reliance by Russia on diplomatic assurances from the governments of Tajikistan and Uzbekistan in respect of extradition requests from both countries. In its April 2008 judgement *Ismoilov and Others v. Russia* the Court stated that it was “not persuaded that the assurances from the Uzbekistani authorities offered a reliable guarantee against the risk of ill-treatment”.¹⁷

The Human Rights Committee has also expressed strong reservations about reliance on diplomatic assurances in such cases, stating that “the more systematic the practice of torture or cruel, inhuman or degrading treatment, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedures may be” and urged “the utmost care” in the use of assurances with a key element being adequate judicial review before decisions on an individual’s deportation are taken

In May 2013, the Committee against Torture, in its Concluding Observations following its examination of the United Kingdoms’ fifth periodic report stated that “diplomatic assurances are unreliable and ineffective and should not be used as an instrument to modify the determination of the Convention”.¹⁸

Amnesty International’s global research strongly indicates that post-return monitoring mechanisms, particularly in states where torture is endemic or specific groups are routinely targeted for torture, such as Uzbekistan, cannot safeguard a person against such abuse. Nothing in any post-return monitoring mechanism, no matter how rigorous, can possibly change the irreparable nature of the harm caused by torture. Further, monitoring mechanisms that are not part of an established framework with a proven track record not only in detecting cases of abuse, but also consistently bringing all perpetrators fully to justice and immediately stopping all further abuse, and in actually reducing the incidence of torture, cannot seriously be considered as having any significant preventive or deterrent effect.

In June 2012 the Committee against Torture, following an unprecedented oral hearing in May 2012 into a complaint lodged by 29 Uzbek men against the decision by Kazakhstan to extradite 28 of them to Uzbekistan despite their complaints of risk of torture upon return, concluded “that the State party’s extradition of the complainants to Uzbekistan was in breach of article 3 of the Convention [against torture].” The Committee went on to comment on the procurement of diplomatic assurances as protection against torture “[recalling] that they cannot be used as an instrument to avoid the application of the principle of non-

¹⁶ *Zokhidov v Russia*, The European Court of Human Rights (Application number 67286/10) judgement of 5 February 2013.

¹⁷ *Ismoilov and Others v. Russia*, European Court of Human Rights (Application no. 2947/06), judgement of 24 April 2008. The Uzbekistani authorities had provided the Russian Federation with assurances of humane treatment of *Ismoilov* and the others.

¹⁸ Committee against Torture, Concluding observations on the fifth periodic report of the United Kingdom, adopted by the Committee at its fiftieth session (6-31 May 2013), CAT/C/GBR/CO/5, para 18.

refoulement”.¹⁹

At least 12 of 28 Uzbekistani asylum-seekers and refugees extradited from Kazakhstan to Uzbekistan in June 2011 were put on trial on charges of religious extremism and alleged membership of the previously unknown “Jihadchilar” Islamist organization. All of them were held incommunicado following their extradition and human rights organizations believed they were at grave risk of torture and other ill-treatment. Relatives report that they were intimidated by security forces and prevented from discovering the whereabouts of the men. Three of the returned refugees were sentenced to prison terms of between four and 13 years in separate trials in August and September 2011. They had been held incommunicado for two months and were only allowed to meet their relatives after the trial. They were not given permission to hire lawyers of their own choice and had only limited access to their state-appointed lawyers.

In November 2012 the General Prosecutor’s office informed the Committee that Kazakhstani diplomatic representatives had been able to visit 18 of the extradited men in prison between 3 and 14 August 2012, but only after the men had spent more than one year in detention in Uzbekistan. The information submitted by Kazakhstan, that “none of the visited convicts indicated to have been subjected to torture, unlawful measures of physical and moral pressure or other impermissible methods of investigation. All of them were assigned ex officio lawyers and could retain lawyers privately. None of them complained about the conditions of detention, the food or the medical care provided”, must be viewed in the light of reports of human rights organizations and relatives of the detainees that most of the men had spent most of the 14 months in incommunicado detention and that they had been tortured but were too frightened to report this to the representatives of Kazakhstan for fear of reprisals.

The medical examinations requested by Kazakhstan apparently showed no signs that the men had been tortured. However, Amnesty International has long been concerned by the lack of independent medical investigations available in Uzbekistan. Criminal investigations into a further seven of the 28 extradited were still ongoing at the time of the visit and therefore Kazakhstani officials did not in fact manage to visit them although they are reportedly planning to meet them at a later stage.

In March 2013 the Kazakhstani authorities extradited Khairullo Tursunov, an imam from Tashkent, to Uzbekistan in defiance of this Committee’s request not to extradite him while his complaint was being considered. The Kazakhstani Prosecutor General’s office and the courts did not give proper consideration to the real risk of torture and other ill-treatment that Khairullo Tursunov would face in Uzbekistan. Upon arrival in Uzbekistan he was immediately arrested by security forces. Khairullo Tursunov is in pre-trial detention in Uzbekistan, and his family has not been allowed to see him.

The authorities have also been accused of attempting assassinations of political opponents living abroad as well as abducting Uzbekistani nationals or ethnic Uzbeks wanted for extradition from neighbouring countries and Russia and Ukraine. Officers of the Uzbekistani National Security Service have also conducted unsupervised interrogations of Uzbekistani

¹⁹CAT/C/48/D/444/2010, Communication No. 444/2010, Abdussamatov et al. v. Kazakhstan, 11 July 2012, para 9.3, p 13, http://www.un.org/ga/search/view_doc.asp?symbol=CAT/C/48/D/444/2010.

detainees in Russian pre-trial detention facilities. During these interrogations the officers verbally threatened the detainees and physically assaulted them, including by beating them and subjecting them to other forms of ill-treatment.

The case of Abdusamat Fazletdinov, a 19-year old labour migrant from Namangan in Uzbekistan, is one such example.

On 9 December 2012 Abdusamat Fazletdinov committed suicide in his cell in a pre-trial detention facility in Moscow, terrified that he would be extradited to Uzbekistan where officers of the National Security Service (NSS) had threatened to torture him. The Russian human rights organisation Memorial said that on 7 December three Uzbekistani NSS officers were given access to Abdusamat Fazletdinov and four other migrant workers from Namangan arrested with him a month earlier. They interrogated the men in a basement cell and reportedly threatened to torture them, for example by pulling out their finger nails, to make them confess to belonging to and financing a banned Islamist group. They showed the men photographs of acquaintances from Namangan detained in Uzbekistan in relation to the same criminal case who bore visible marks of beatings and other ill-treatment, and told them they would spend up to 20 years in prison. Abdusamat Fazletdinov later reportedly became extremely distressed and, two days later took his own life. His mother denied he had links to any banned organizations. Just a few days later, on 20 December 2012, Uzbekistani NSS officers reportedly paid a visit to Uzbekistani national Latif Zhalalbaev, in prison in the KP-12 colony in Kaliningrad region, Russia. Latif Zhalalbaev alleged that they took him to the cellar, interrogated him and beat him in order to get him to provide them with information on a group of men from Namangan who allegedly were financing a "jihadist" group in Uzbekistan. The NSS officers reportedly threatened that as soon as he was released from prison he would be extradited to Uzbekistan where he would "rot in jail". They accused Latif Zhalalbaev of being a conspirator of Abdusamat Fasletdinov and said the latter had been killed in Moscow and that Latif Zhalalbaev could expect the same fate. Latif Zhalalbaev was beaten so badly that he was unable to move unaided afterwards.

FAILURE TO INDEPENDENTLY, IMPARTIALLY, PROMPTLY AND EFFECTIVELY INVESTIGATE ALLEGATIONS OF TORTURE AND OTHER ILL- TREATMENT, RESULTING IN IMPUNITY (ARTICLES 1, 5, 12, 13, 14 AND 15)

In April 2010 a court in Dzhizzakh sentenced 25 men to terms ranging from between two and 10 years in prison in connection with violent attacks by armed groups in the Ferghana Valley and the capital, Tashkent, in May and August 2009 and the killings of security and religious officials in Tashkent in July 2009. All were convicted of attempting to overthrow the constitutional order and of religious extremism. At least 12 of the men stated in court that their confessions had been obtained under torture. Relatives similarly alleged that some of the accused had been tortured in pre-trial detention in an attempt to force them to confess to participating in the July 2009 killings. The mother of one of the men arrested said that her

son's face was swollen and his body covered in bruises, that needles had been inserted in the soles of his feet and electroshocks applied to his anus, and that he had difficulties eating, standing or walking. The trial judge ordered an investigation into these allegations, but then declared they were unfounded. However, Amnesty International had serious concerns that the investigation, which was carried out by the prosecutor's office, was not effective and thorough and relied solely on testimony provided by the security officers alleged to have carried out the torture. Independent observers reported that the men had admitted to having participated in prayer meetings and practised sports together, but had denied that they were part of a group intent on overthrowing the constitutional order.

Suspected followers of the Turkish Muslim theologian, Said Nursi, were convicted in a series of trials that had begun in 2009 and continued into 2012. The charges against them included membership or creation of an illegal religious extremist organization, the "Nurchilar" Islamic movement, and publishing or distributing materials threatening the social order. In the period under review at least 130 men in connection with similar allegations have been sentenced to prison terms of between six and 12 years following unfair trials. Reportedly, some of the verdicts were based on confessions gained under torture in pre-trial detention; defence and expert witnesses were not called; access to the trials was in some cases obstructed while other trials were closed. In February 2012, 12 Turkish businessmen were released from prison following a presidential amnesty in December 2011, and deported to Turkey. They were sentenced in Uzbekistan in 2011 with 42 other Turkish businessmen, to two to three years' imprisonment for various economic crimes including tax evasion. The authorities also claimed that the men had links to the banned "Nurchilar" Islamic movement. Upon his return to his home country, one of the men, Vahit Güneş, former general manager of the Turkuaz shopping centre in Tashkent, began legal action in Turkey against the Uzbekistani authorities, which is still ongoing. He alleged that he and others were tortured in NSS custody in Uzbekistan in order to force them to sign false confessions and that they had not been able to choose their own lawyers. He also alleged that other detainees had been tortured in pre-trial detention, and that some had died as a result.

In August 2012, Jehovah's Witness Gulchehra Abdullaeva reported that she had been tortured at a police station in the town of Hazorasp, to make her confess to smuggling banned religious literature into Uzbekistan, a charge she denied. Police officers arbitrarily detained her in July after she returned from a trip to Kazakhstan. She said that they forced her to stand for hours without food or water, placed a gas mask over her head and cut off the air supply to suffocate her. She was made to sign a statement admitting to participating in proscribed religious activities and was then released. On 28 July 2012 she was convicted by the Hazorasp District Court of "teaching religious beliefs privately", and fined. Gulchehra Abdullaeva appealed against her sentence and lodged official complaints with the authorities regarding her treatment but officials refused to respond or address her complaints.

No investigations have been conducted into allegations that have been made and documented by Amnesty International and other non-governmental human rights organizations, as well as international governmental organizations that human rights defenders have been tortured and otherwise ill-treated in detention and no one has received any reparation. Amnesty International also continues to have serious concerns in relation to the lack of a prompt, thorough, effective, independent and impartial investigation of events in Andizhan in May 2005.

Amnesty International has welcomed Uzbekistan's repeated assertions at the UPR in 2008 and again in 2013 that the authorities support recommendations by

several states at the UPR to establish a national independent mechanism to monitor all places of detention and to consider complaints. The organization considers that such a mechanism (the establishment of which had also been recommended repeatedly by UN mechanisms), could significantly contribute towards protecting individuals deprived of their liberty from torture or other ill-treatment. However, to date, no such national independent mechanism has been established.

The authorities have regularly failed to conduct independent, impartial, thorough, and effective investigations into allegations and reports of torture and other ill-treatment and into complaints lodged with the Prosecutor General's Office.

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Amnesty International also continues to have serious concerns in relation to the lack of an independent, impartial, thorough and effective investigation of events in Andizhan in May 2005. At the recent public examination of Uzbekistan's human rights record at the UPR on 24 April 2013 the Uzbekistani delegation categorically stated that "the issue [of an international investigation into the events] of Andizhan is closed for us!".

RECOMMENDATIONS

Amnesty International calls on the government of Uzbekistan to take steps to ensure full compliance with the Convention's provisions on the following issues:

Ratification of human rights treaties and cooperation with the UN

- ratify the Optional Protocol to the Convention against Torture and enact implementing legislation;
- make a declaration pursuant to article 22 of the Convention recognizing the competence of the Committee to consider individual communications.
- issue a standing invitation to the Special Procedures of the UN Human Rights Council and in particular facilitate the outstanding request of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Uzbekistan at the earliest occasion possible.

Judicial safeguards

- take immediate and effective steps to ensure that every individual is informed

of their rights and afforded access to a lawyer of their own choice and contact with their family from the actual moment of deprivation of liberty, as well as to promptly appear before an independent court, as guaranteed under international and domestic legislation, including the Criminal Procedural Code and the law of September 2011;

- take immediate steps to initiate legislative amendments to incorporate into domestic criminal law, especially the Criminal Procedural Code, the Directives by the Council of the Supreme Court which explicitly prohibit the use of torture as a means of obtaining confessions and forbid the use of such coerced confession as admissible evidence in a trial;

Torture and other ill-treatment during incommunicado detention and arbitrary extension of prison sentences

- stop the use of torture and other ill-treatment in detention;
- put an end to arbitrary extensions of prison sentences;
- end the practice of incommunicado detention ensuring that all prisoners are brought before a judge without delay after being taken into custody. Prisoners should have access to relatives, lawyers and doctors without delay and regularly thereafter as guaranteed under domestic legislation.
- expedite the establishment of an independent monitoring mechanism of all places of detention.

Independent, impartial, prompt and effective investigations into allegations of torture and other ill-treatment

- ensure that all trials, including those of people charged in connection with membership of banned religious organizations, is in full compliance with international law and standards governing fair trial;
- ensure the strict implementation in practice of existing guarantees in domestic legislation that no statement obtained as a result of torture or other ill-treatment is used as evidence in any proceedings, except as evidence against a person accused of torture or other ill-treatment;
- ensure that relevant law enforcement and judicial authorities initiate prompt, effective, thorough, independent and impartial investigations into all complaints of torture or other ill-treatment as provided for in domestic legislation, including the criminal procedural code;
- establish an independent complaints mechanism accessible to all persons deprived of liberty without exception.

Allegations that individuals returned to Uzbekistan from other countries pursuant to

extradition requests have been held in incommunicado detention, thereby increasing their risk of being tortured or otherwise ill-treated; allegations of abductions and rendition to Uzbekistan involving Uzbekistani officials

- ensure that all trials, including of people forcibly returned to Uzbekistan and of people charged with terrorist offences, are in full compliance with international law and standards governing fair trial;
- ensure that the whereabouts of those returned to Uzbekistan are promptly disclosed and that they are allowed prompt and regular access to a lawyer of their choice, as well as to their relatives and an independent medical practitioner;
- cease seeking, using, providing and relying on diplomatic assurances against torture and other ill-treatment to forcibly return persons to places where they are at risk of such violations.

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