
UZBEKISTAN

BRIEFING TO THE HUMAN RIGHTS COMMITTEE. JUNE 2015

ACAT submits the following report for the consideration of the Human Rights Committee, in advance of its examination of Uzbekistan's fourth periodic report under the International Covenant on Civil and Political Rights (ICCPR) at the 114th Session (June-July 2015).

The briefing highlights concerns in relation to ACAT's mandate focusing on article 7 (prohibition of torture) in relationship with articles 9 (liberty and security of person), 10 (treatment of persons deprived of their liberty), 14 (right to a fair trial and independence of the judiciary) of the Covenant.

UZBEKISTAN

BACKGROUND

Uzbekistan is one of the most repressive States in the post-soviet region. It secured its independence in 1991 following the breakup of the USSR. Islam Karimov became the head of State, a position which he has maintained to this day by putting in place an authoritarian regime. All opposition parties and movements are prohibited, any signs of dissidence are repressed, and any criticism of the regime's practices by human rights defenders or journalists is severely punished. Since 2011, not a single international independent NGO has been allowed to work in Uzbekistan.

Despite the ratification of international human rights conventions and the inclusion in national legislation of a range of regulations designed to protect individual freedoms, the situation in terms of fundamental rights is appalling. It has drastically worsened since the events in Andijan in 2005, when the city saw demonstrations against unemployment, crackdowns by the regime and legal action taken against 20 small-scale entrepreneurs. Elite troops and armoured vehicles were dispatched to quell the movement with massive bloodshed. Hundreds of people were killed, there was no independent enquiry following the events, and the victims are still waiting to learn the truth and secure justice. This massacre served only to reinforce the climate of repression, impunity and enforced silence that reigns in the country.

PRACTICE OF TORTURE

Over the last five years, the European Court of Human Rights (ECtHR) has issued judgements in some 20 extradition cases involving Uzbekistan, ruling that torture practices in the country were "systematic", "unpunished" and "encouraged".¹ Yet the State's representatives continue to deny any such practices.²

Victims

Torture in Uzbekistan affects anyone suspected of committing a crime. It is a regular method of criminal investigation. It is also used to target those accused of membership in opposition political parties, such as members and sympathisers of ERK and Birlilik (two secular opposition parties) or banned religious organisations. Alleged or actual membership in an outlawed Islamic movement (Islamic Movement of Uzbekistan, Islamic Jihad Union, Hizb-ut-Tahrir, etc.) increases the risk of torture or ill-treatment in the event of detention. Muslims who practice their faith outside of the State-controlled organisations but who have no links to these movements are nonetheless arrested on charges as vague as “subversion”, “attempts to overthrow the constitutional order” or “anti-governmental activities” and are subjected to torture while in detention. Human rights activists and independent journalists who are arrested are systematically tortured or subjected to cruel, inhuman or degrading treatment.

Mukhammed Begjanov, 60 years old, is a journalist and an eminent member of the opposition political party ERK. He was arrested in March 1999 and was tortured while in pre-trial detention with a view to extracting a confession and securing a sentence against him. He was subjected to electric shocks and beaten with truncheons and plastic bottles filled with water. He was also asphyxiated on several occasions with a plastic bag. He was placed in *incommunicado** detention throughout this period, and the security forces threatened to rape his wife. Following his sentencing, he continued to be humiliated, beaten and deprived of food, medical care and visits from his family. His health deteriorated considerably over the course of his 16 years in detention.

The individuals who fled the country or sought asylum abroad, are at risk of torture upon return. In several cases, the ECtHR has ruled against the return of individuals to Uzbekistan due to such risk. These rulings related in particular to people accused of belonging to Islamist parties or other outlawed groups in the country. The Uzbek authorities consistently request the extradition of individuals who have fled overseas and sometimes became refugees – in some cases by kidnapping them on foreign soil. In 2012, ACAT’s litigation was crucial in securing a decision by the United Nations Committee against Torture, which stated that “the extradition by the State party [Kazakhstan] of complainants to Uzbekistan was a violation of Article 3 [ban on torture]”. ACAT represented 29 individuals who were refugees or had requested asylum in Kazakhstan. As devout Muslims practising their faith outside the State-controlled Uzbek organizations, these men had been arrested, threatened, some had been tortured and decided to flee Uzbekistan. They were forcibly returned to their country in

June 2011 despite the manifest risk of torture. Like the UN Human Rights Committee and the ECtHR, the Committee against Torture expressed the strongest reservations concerning the use and reliability of diplomatic assurances* issued by the Uzbek authorities, arguing that they offered no guarantee of protection from torture.

In the case of the 29 individuals extradited to Uzbekistan, ACAT received credible information that there were tortured following their return. “We were subjected to unimaginable acts during the investigation. There were all kinds of torture. In particular, they used electric chairs to electrocute us. These practices continued once we had been sentenced. [...] We were asphyxiated with plastic bags placed over our heads. The bag is closed for a long time until you’re completely suffocated, and then it’s reopened to keep you alive. Then it all starts again. It’s horrible.” Following pressure by ACAT, Kazakh diplomats visited at least 18 of the complainants in August 2012, after 14 months of *incommunicado** detention. The aim of these visits was simply to get them to sign pre-drafted declarations stating that they had not been tortured and that the conditions of their detention were good. ACAT received information revealing that the complainants had been tortured and threatened with reprisals should they refuse to sign the documents. In November 2013, during the review of Uzbekistan in Geneva, the UN Committee against Torture requested information and asked whether investigations had been carried out into the allegations of torture and ill-treatment against the individuals concerned. Uzbekistan did not provide a response.

Torturers and torture sites

The main perpetrators of torture under this system are investigators, police officers, security forces working directly under the authority of the Interior Ministry (*Ichki Ishlar Vazirligi*), penitentiary personnel and officers from the intelligence agency (*Milliy Xavfsizlik Xizmati (MXX)* – national security service, formerly the KGB).

Torture takes place on premises that fall under the jurisdiction of these authorities: police stations, offices of the internal affairs department, where arrestees are placed in pre-trial detention cells (*KPZ*), pre-trial detention units under the control of the Interior Ministry (IVS) or pre-trial detention centres (SIZO).

Torture is regularly practised in prisons, known as colonies. Some colonies in particular have been singled out, including Jasyk, Navoi, Karshi, Angren, Kattakurgan, Chirchik and Karakul Bazar. This list is of course far from being exhaustive, as the use of torture and ill-treatment is unfortunately routine and commonplace, occurring on a daily basis in prison colonies. The headquarters of the national security service

in Tashkent and Bukhara, as well as the secret detention centre in Chirchik, have also been cited by victims.

As well as the abuse that is deliberately inflicted, living conditions generally in Uzbekistan's penitentiary facilities amount to inhuman and degrading treatment and even torture. Most prisons are overcrowded. These facilities were built during the Soviet era and have never been renovated. Hygiene facilities are lacking and in an appalling state. Food is rationed and of poor quality, and the food provided by families is often confiscated by the prison authorities. Many detainees do not have adequate clothing and have to keep the same clothes for months on end. Temperatures in the cells are very high during the summer, while in the winter the lack of heating exposes detainees to extreme cold. Added to this is poor ventilation and inadequate air circulation, humidity and serious failings in terms of healthcare (lack of access to medical care and poor sanitation), which increases the occurrence of infectious diseases, tuberculosis in particular. Forced labour is practised in prison colonies. Detainees in a state of poor health are usually exempt, with the exception of political prisoners. These conditions heighten the risk of deaths within the prison population.

Methods and objectives

Recorded testimonies provide an indication of the different forms of torture used: blows and beatings, particularly with the use of truncheons, metal rods or bottles filled with water (victims are handcuffed or hung from hooks on the ceiling); asphyxiation with plastic bags or gas masks whose air vent has been closed off; electric shocks to all parts of the body; suspension for hours on end from the wrists or feet; needles inserted under fingernails or toenails, which may also be torn off; burns using cigarettes or boiling water; stripping and prolonged exposure to freezing temperatures in the middle of winter; rape and sexual violence. All of these methods were included in the arsenal of torture techniques recorded by ACAT through victim accounts.

In recent years, ACAT has received allegations of forced sterilisation. Mutabar Tajibaeva claims to have been a victim of this practice while in prison in 2008. She filed a complaint with the UN Human Rights Committee in December 2012.³ An investigative report by the BBC highlighted further cases in different regions, particularly in rural areas. Doctors are said to have been forced to carry out these sterilisations, by order of the Health Ministry or local health authorities, on women who were neither informed nor gave their consent.⁴ The authorities have officially denied such practices.

Beyond physical violence, psychological pressure is another form of abuse: humiliation, threats of reprisals against relatives, denial of the right to visit or to exercise religious freedom, etc. Some victims are placed in isolation for extended periods, during which time they are denied access to their lawyer, families or anyone else from outside the prison. This can last for weeks or even months. There have also been cases of internment in psychiatric hospitals and the forced administration of psychotropic drugs, although less common. The journalist Jamshid Karimov is an iconic example of this. He was confined to the psychiatric hospital in Samarkand from 2006 to 2011. Human rights defender Elena Urlaeva was also forcibly admitted to a psychiatric facility on several occasions beginning in the early 2000s and again in 2014. She claims to have been forced to ingest psychotropic drugs, without knowing their names or intended use and without any explanation.

The abusive and arbitrary extension of prison sentences is a recurring practice that has been observed by ACAT in recent years in the case of political opponents, human rights defenders and journalists. Having spent up to 10 years in prison, just as their sentence is about to come to an end, these detainees are accused by the prison authorities of minor violations of prison regulations and are sentenced to additional prison terms. These extended sentences, often for several years and for absurd reasons such as “does not get up quickly enough when ordered to do so by the warden”, or for “unsufficiently peeling carrots”, have a devastating effect on those concerned. They have been psychologically broken by so many years in prison and then lose all hope and in some cases commit suicide in their cells.

In March 2014, human rights defender Ganikhon Mamatkhanov was due to leave prison having served a five-year sentence. His son was informed by the prison authorities that the sentence had been extended for three more years as his father had “gone to the toilet without permission” on three occasions. 61-year-old Murod Juraev, a former member of parliament, was sentenced in 1995 and had his prison term extended four times, in 2003, 2006, 2009 and 2012. The reasons for these additional sentences were ludicrous, and most likely invented: entering the dormitory without changing his slippers; exchanging tea for tobacco; smoking outside the designated area. Initially sentenced to 12 years in prison, Juraev successively served a total of almost 20 years in detention as a result of the four additional sentences. His family say he has now lost all hope of release.

Torture is used to extract confessions as part of police investigations or to gather false testimonies and information on third parties thought to belong to outlawed parties or movements. This practice is encouraged through a system that promotes officers based on the number of cases solved. The result is that an individual may be tortured to “confess” his role in a crime that has been entirely fabricated by the secu-

rity forces. Such practices are also used to silence critics, crackdown on and punish political and religious activities as well as the defence of human rights, and even to kill independent members of civil society, as in the case of Abdurasul Khudoinazarov. This human rights defender and chairman of the Angren branch of the Ezgulik NGO fought corruption among the law enforcement authorities. He was arrested in 2005 on false grounds and sentenced to 9 years' imprisonment in 2006. He was violently tortured and ill-treated while in detention, driving him to attempt suicide following a hunger strike in 2008. The UN described his imprisonment as arbitrary and as an act of revenge for his activities as a human rights defender. He died in June 2014 having been refused all medical care while in prison.

LAW AND LEGAL PRACTICE

The Uzbek authorities have never publicly condemned torture and have refused to respect their international obligations to prevent and punish acts of torture. At the highest levels of State, there is no willingness to combat this phenomenon, which is now institutionalised. Uzbekistan's representatives have described as "politically motivated" reports concerning torture and human rights violations in the country, including those produced by the UN.

Legal definition of torture

Uzbekistan ratified the United Nations Convention against Torture in 1995. Article 235 of the country's Criminal Code provides a definition of torture. It is inadequate, however. It does not include acts perpetrated by an individual acting in an official capacity but who is not a State official; this includes acts carried out at the instigation of or with the consent or acquiescence of a public official (for example, a detainee who strikes a fellow detainee at the instigation of prison wardens). Nor does it provide for the liability of State officials who have knowledge of or approve acts of torture. A decision by the Supreme Court in 2008 informs the national courts that the definition given in the United Nations Convention against Torture takes precedence over national legislation.⁵ Yet this ruling has never been implemented in practice. Judges, investigators and law enforcement officials are unaware of the ruling, according to Uzbek human rights defenders and lawyers.

Confessions obtained under torture are prohibited by Articles 88 and 94 of the Code of Criminal Procedure and by a Supreme Court ruling.⁶ Yet such confessions continue to be used by judges handing down sentences, often as the only legal basis.

Article 173 stipulates that judges who observe visible traces of beatings or other injuries must demand a forensic medical examination. In practice, however, this requirement is hardly ever implemented.

The maximum prison sentence under the terms of Article 235 is eight years' imprisonment where the consequences of the crime are "serious", and three to five years in other cases. These sentences are too lenient and are not proportionate to the seriousness of the crime.

Uzbekistan has undergone several periodic reviews by UN bodies in which it has denied or considerably understated the use of torture. The government refuses all visits by independent experts and UN special rapporteurs, as in the case of the rapporteur on torture who has been denied all access since his visit in 2002, despite repeated requests.

Punishment of perpetrators of torture

The authorities fail to launch an investigation in most cases involving torture allegations. There is neither the political nor the judicial will to prosecute State officials responsible for such acts.

Various legislative and judicial reforms have been introduced since 2010 with a view to strengthening the legal guarantees offered to persons deprived of their liberty. These reforms should make it possible to prevent acts of torture, but not only are the provisions largely insufficient, the main problem is that they are not being applied.

It is very difficult to file a complaint in Uzbekistan. There are no independent mechanisms in place to examine complaints of acts of torture perpetrated by State officials. Victims are required to contact either the superiors of those accused or the office of the public prosecutor. The public prosecutor falls under the authority of the office of the President. His role is to conduct preliminary criminal investigations while at the same time representing the State before the courts, thereby creating a conflict of interest. He cannot initiate judicial procedures for certain acts of torture while using confessions obtained through the same methods in another criminal case.

The role of defence lawyers is fraught with difficulty. The right to benefit from the assistance of a lawyer, a fundamental legal guarantee, is constantly breached in torture cases. And when the families of torture victims hire an independent lawyer, they are subjected to pressure by the law enforcement authorities to end the relationship,

forcing them to use lawyers who follow the implicit rules of the system, turning a blind eye to any evidence of torture and convincing their clients to “cooperate” with the investigators. Legislative reforms introduced in recent years have threatened to undermine the independence of bar associations, which fall entirely under the authority of the Justice Ministry. Recurring reports suggest that law enforcement officials prevent independent lawyers from gaining access to clients remanded in custody or in detention and that they regularly send them to another detention centre to deflect attention. The same is true of trials: lawyers are not always notified of the date and location of hearings in an effort to distance them from proceedings. Finally, many of them have had their licences revoked and are no longer able to practice.

There is no independent mechanism in place for the inspection of detention centres. No non-governmental organisations are allowed into prison facilities. Only the International Committee of the Red Cross (ICRC) had such authorisation, but in April 2013 it was forced to end all such visits in Uzbekistan as it was no longer able to visit detainees under standard procedures. ACAT had received information in previous years that prisoners had been hidden or transferred during visits by the ICRC to several prison facilities. There were also reports that prison officials generated a climate of fear as scheduled visits by the ICRC approached by severely punishing detainees in order to dissuade them from giving testimony of violations to ICRC delegates. Collective punishments in the form of reprisals were also used against all prisoners in the colony following a visit by the ICRC.

According to official statistics, between 2010 and 2013 the authorities registered 336 complaints of torture and ill-treatment carried out by law enforcement officials. 45 individuals are said to have been prosecuted and found guilty of torture during the same period.⁷ There is no publicly available information to verify these figures or which could explain why 87% of complaints were not investigated and did not lead to a conviction. Nor is there any indication of the number of prison sentences or fines handed out by judges to those responsible for torture. Similarly, no information is available about the duration of prison sentences or the number of amnesties given to those concerned.

Taken together, these measures result in near total impunity for torturers in Uzbekistan, thereby allowing torture practices to continue systematically and on a much larger scale than the token figures published by the authorities.

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- [1] See for example *Yakubov v. Russia* (Application no. 7265/10, 8 November 2011, para. 82).
- [2] "It should be noted that the accusations concerning multiple cases of torture of detainees by the law enforcement agencies are unfounded", stated one Uzbek diplomat in November 2013, when Uzbekistan was being reviewed by the United Nations Committee against Torture. United Nations Committee against Torture, *Information received from Uzbekistan on follow-up to the concluding observations*, April 2014, CAT/C/UZB/CO/4/Add.1, para. 17 <http://daccess-ods.un.org/TMP/8617941.73717499.html>.
- [3] *Mutabar Tadjibayeva v. Republic of Uzbekistan*, Individual Communication to the United Nations Human Rights Committee, 18 December 2012: http://www.redress.org/downloads/UN-HRC_-_Communication_Mutabar-Tadjibayeva-v-Uzbekistan_REDACTED.pdf.
- [4] BBC World Service, Uzbekistan's policy of secretly sterilising women, by Natalia Antelava: <http://www.bbc.com/news/magazine-17612550>, April 2012; United Nations Committee against Torture, Concluding Observations on the fourth periodic report of Uzbekistan, December 2013, para. 24.
- [5] Decision during a plenary session of the Supreme Court of Uzbekistan, reached on 14 July 2008 and entitled "Judicial review of criminal cases relating to the use of torture and other cruel, inhuman or degrading treatment or punishment under the terms of Article 235 of the Criminal Code of the Republic of Uzbekistan".
- [6] See the decision reached during a plenary session of the Supreme Court on 19 December 2003, relating to the application by the courts of laws guaranteeing the right to a defence for persons suspected or accused of offences.
- [7] Uzbekistan's reply to the list of issues submitted by the United Nations Committee against Torture, CAT/C/UZB/Q/4/Add.2, 3 July 2013.

ACAT is a human rights organization founded in 1974 and a recognized public-interest foundation. Basing its action on international law, ACAT-France fights against torture, capital punishment and for the protection of all victims, regardless of their ethnicity, ideology and religion, through a network of 35,000 members.