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Concluding observations of the Human Rights Committee: Uzbekistan

Addendum

Information received from Uzbekistan on the implementation of the concluding observations of the Committee*

[11 February 2013]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

Comments and observations on the list of questions on the implementation by Uzbekistan of paragraphs 8, 11, 14 and 24 of the concluding observations of the Human Rights Committee following its consideration of the third periodic report of Uzbekistan

Information on paragraph 8 of the Committee's concluding observations (CEDAW/C/RUS/CO/3)

1. This issue was fully discussed during the meetings between the group of experts of Uzbekistan and the delegation of the European Union, which took place from 11 to 16 December 2006 and from 1 to 4 April 2007. At the meetings, the European Union representatives were briefed in detail on the outcome of the inquiry into the Andijon events, including the proportionality of the use of firearms by law enforcement officers, and received exhaustive responses to their questions. They travelled to Andijon, where they visited the sites of the terrorist acts, and were informed of the sequence of events. At the end of the meetings, Mr. P. Oinonen, head of the European Union delegation, noted that, in their reports, the NGOs and human rights organizations had focused mainly on the consequences of the terrorist attacks, and had addressed the attacks by the gunmen to a lesser extent. The European experts thus came to the unequivocal conclusion that the Andijon events were a serious terrorist attack against Uzbekistan.

Information on paragraph 11 of the concluding observations

2. National legislation provides for the protection of human rights and freedoms. The Constitution establishes in its article 26 that no one may be subjected to torture or other cruel or inhuman treatment, in line with the provisions of article 5 of the Universal Declaration of Human Rights (10 December 1948).

3. As a party to many of the United Nations treaties in this field, Uzbekistan consistently fulfils its international commitments and develops its own policy on these issues. The main criterion in this process is the precedence of the norms and requirements of the international treaties and the recommendations of the United Nations treaty bodies. Particular attention is paid to the international norms and principles enshrined in the 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights of 1966, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and other international treaties; national plans of action are under way to implement the recommendations of the treaty bodies.

4. For example, in line with the national plan, an Act of 30 August 2003 amended article 235 of the Criminal Code, including in it a definition of torture and other cruel, inhuman or degrading treatment and establishing liability for them.

5. The procedure for the admission and consideration of complaints, including those concerning improper actions by law enforcement officers, is laid out in legislation.

6. Specifically, under article 329 of the Code of Criminal Procedure, any statements, reports or other information concerning offences must be registered and resolved immediately and, if necessary, it must be verified within 10 days whether sufficient and lawful grounds exist for bringing a criminal case directly or through the inquiry agencies.

7. In accordance with the 2008 agreements between the Office of the Procurator-General and the Human Rights Commissioner of the Oliy Majlis and the National Centre for Human Rights, representatives of those organizations are invited to carry out

independent inquiries into any allegations of human rights violations committed by members of law enforcement bodies.

8. An effective interdepartmental working group was set up by the Government in 2004 to monitor the observance of human rights and freedoms by law enforcement and other State agencies. The members of the working group include senior staff of the law enforcement agencies, the Ministry of Foreign Affairs, the National Centre for Human Rights, the Secretariat of the Office of the Human Rights Commissioner of the Oliy Majlis and civil society institutions.

9. During its meetings, the working group considers statements, including those submitted to the Office of the United Nations High Commissioner for Human Rights, concerning unlawful actions by law enforcement officers, checks them and then adopts appropriate decisions.

10. With the participation of national institutions and the general public, it carefully examines communications from citizens concerning the use of torture and other degrading treatment by law enforcement officers. This is one element of public monitoring of the criminal process. Furthermore, the investigation of statements concerning the use of unlawful methods is one of the tasks of the special units for maintaining internal security (special staff inspection units), which report to the head of the law enforcement agency. These units are independent, since combating, exposing and investigating crime are not part of their functions and they are not subordinate to anti-crime agencies.

11. Protecting the human rights and freedoms enshrined in the Constitution is a priority in the work of the procuratorial agencies. The Procurator-General has passed an order making it obligatory to comply strictly with international norms in exercising procuratorial oversight of respect for human rights legislation.

12. In order to prevent the occurrence of cases of unlawful treatment of detainees and convicted prisoners, the procuratorial authorities carry out checks every 10 days on the legality of the detention of prisoners held in custody by the internal affairs agencies. In addition, procurators carry out monthly checks of persons held in remand units, during which any complaints or statements received from persons held in pretrial detention and convicted prisoners are verified. Where violations are found to have occurred, appropriate measures are taken.

13. The use of evidence obtained under duress is prohibited in Uzbekistan. Pursuant to article 17 of the Code of Criminal Procedure, no one may be subjected to torture, violence or any other cruel or degrading treatment.

14. Only such information as is found, verified and evaluated in accordance with national criminal procedural legislation may be used to establish the truth.

15. Article 22 of the Code of Criminal Procedure prohibits the coercion of a suspect, accused person, defendant, victim, witness or other person involved in a case into giving testimony by means of violence, threats, infringement of their rights or other illegal measures.

16. During assessment of the evidence, the testimony of a person suspected of having committed the offence or recognition of guilt by the accused may be used as a basis for prosecution only if supported by all the evidence. The facts established by the testimony of a suspect or accused person, as well as other evidence, must be verified and assessed in connection with all the circumstances of the case, both in the case of recognition of guilt, and where the accused denies guilt (Code of Criminal Procedure, art. 112).

17. The Plenum of the Supreme Court, in its decision of 19 December 2003 on the application by the courts of laws that guarantee the right of suspects and accused persons to

a defence, stated that evidence obtained by methods that violate human rights, including the use of torture, cannot be accepted in criminal cases.

18. The decision adopted by the Plenum of the Supreme Court on 24 September 2004 on certain issues arising in the application of criminal procedural law relating to the admissibility of evidence provides that testimony, including confessions, obtained by the use of torture, violence or other cruel, inhuman or degrading treatment or punishment, or by deception or other unlawful methods, is inadmissible as evidence.

19. In its decisions, the Supreme Court refers to the provisions of international human rights instruments. In turn, clarification issued by the Plenum of the Supreme Court on the application of legislation is mandatory on the courts, other bodies, enterprises, institutions, organizations and officials applying the legislation concerned (Courts Act, art. 21).

20. If the use of torture and other unlawful acts do occur, prisoners' statements in respect of such occurrences are immediately verified, appropriate measures are taken and all perpetrators guilty of using illegal methods are prosecuted in accordance with national legislation.

21. Consideration may be given to the possibility of reinforcing liability under article 235 of the Criminal Code.

22. National legislation provides for the grounds for an individual's rehabilitation, as well as the consequences, together with the procedure for compensation and the restoration of other rights. Under article 83 of the Code of Criminal Procedure, a suspect, accused person or defendant is acquitted and subject to rehabilitation in the absence of any event constituting the offence on which the criminal case, investigation or court case was based; where there are no constituent elements of a crime in his or her acts; or if he or she did not take part in committing an offence. After rehabilitation, an individual has the right to compensation for loss of or damage to property and reparation of moral injury caused by unlawful detention, unlawful remand in custody as a preventive measure, unlawful suspension from duties in connection with the charges, or unlawful placement in a medical establishment (Code of Criminal Procedure, section 7, arts. 301–313).

23. Article 991 of the Civil Code governs liability for harm caused by unlawful actions of the initial inquiry, investigation or procuratorial agencies, or the court.

24. It states that officials are liable for the harm caused to a citizen by unjust conviction, unlawful prosecution, unlawful preventive detention or extraction of a pledge of good conduct, or unlawful detention as an administrative penalty; the State will pay full compensation as prescribed by law irrespective of whether the guilty parties were officials conducting the initial inquiry or pretrial investigation or were employed by the procuratorial agencies or the courts. The court may decide to make the officials who caused the harm responsible for the compensation.

25. Harm caused to a citizen or a legal entity as a result of other illegal activities by the initial inquiry, investigation or procuratorial agencies or the court shall be compensated in accordance with standard procedure, unless otherwise provided by law.

26. Compensation for moral harm is also established in a decision, dated 28 April 2000, of the Plenum of the Supreme Court on certain issues relating to the application of the law on compensation for moral harm.

27. Article 91 of the Code of Criminal Procedure provides for the use of audio and video recordings, film, photographs and other methods to record evidence. Detectives, investigators or the court employ the appropriate professionals for such work. Where such methods are used, a comment to that effect is included in the report of the investigation or

the court sessions, as appropriate, with a note of the specifications of the instruments, devices, appliances and materials used.

28. The Act on Pretrial Detention during Criminal Proceedings, adopted on 5 October 2011, establishes the procedure and conditions of detention for persons arrested on suspicion of having committed an offence and persons who have been remanded in custody as a preventive measure; there are safeguards for their rights and legitimate interests.

29. The issue of equipping temporary remand centres, police cells and prisons with special technology, including audio and video monitoring equipment, is currently being studied with the aim of preventing unlawful treatment of parties to criminal proceedings.

30. In Uzbekistan, there are guaranteed rights to medical and psychological assistance for victims of torture. Thus, if a victim of torture submits a statement concerning the use by law enforcement bodies of unlawful methods of treatment and punishment, an official examination is conducted and, if bodily injury is found, a forensic medical examination is called for (Code of Criminal Procedure, chaps. 17 and 22). A victim of torture may receive any necessary treatment in a health-care facility, as well as psychological help from a specialist. If a victim of torture has been sentenced to deprivation of liberty, the treatment and psychological assistance are provided in the prison medical section.

31. The Ministry of Internal Affairs has furthermore adopted a comprehensive programme to improve the situation in police cells, with the introduction in 2006 of video surveillance cameras into police cells and prison remand units.

32. In each criminal case, the investigating officers of the internal affairs investigating teams must ensure during questioning that they ask whether the officers conducting the initial inquiry committed any unlawful acts against the suspect or accused person. If the answer is in the affirmative, a thorough internal investigation must be conducted.

33. Senior officials of the Ministry of Internal Affairs carry out a thorough review of every identified case of use of physical force, ill-treatment or violation of the rights and legal interests of detainees. The perpetrators are subjected to severe disciplinary measures; they are usually dismissed from the internal affairs agencies, and the official review file must be handed over to the procuratorial authorities.

34. To ensure that the physical condition of persons held in places of detention is monitored, and that any possible unlawful treatment of them is detected, since 2004, the Ministry of Internal Affairs Central Penal Correction Department has introduced regular training for medical and other staff of the prison system in new methods for identifying signs of torture; the training programme also includes study of the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol).

35. In 2004, the Central Penal Correction Department, in conjunction with the World Health Organization and the International Rehabilitation Council for Torture Victims, ran an educational project to train prison medical staff in the identification, evaluation and documentation of alleged cases of torture. The project trained 97 medical professionals (69 doctors and 28 mid-grade medical staff).

36. In December 2008, the Central Penal Correction Department, together with the Ministry of Health and the Regional Office for Central Asia of the United Nations Office on Drugs and Crime (in Tashkent), organized a training seminar on the identification, assessment and documentation of cases of torture and other types of unlawful treatment. This event was held for 35 medical and 15 non-medical staff of correctional institutions and for 15 forensic medical specialists from the Ministry of Health.

37. Since 2010, in-service training has been provided for prison doctors within the forensic medical department of the Ministry of Health Tashkent Institute of Advanced Medical Education, where they study the following topic: “The forensic aspects of identifying medical and biological signs of torture and unlawful treatment”.

38. Since 2004, more than 190 prison medical staff have been trained in identifying, evaluating and documenting cases of torture and other forms of unlawful treatment, and in ways of treating and rehabilitating victims.

39. When examining detainees or convicted prisoners, doctors working in the country’s prisons pay particular attention to identifying any signs of the use of physical force or ill-treatment, which must be noted and documented. The final conclusion as to whether unwarranted methods of treatment or “torture” have been used is drawn by Ministry of Health forensic medical experts.

Information on paragraph 14 of the concluding observations

40. The Code of Criminal Procedure establishes the grounds and procedure for the detention of this category of persons for 72 hours. During this period, the person must undergo a medical examination, the procedural steps must be taken to consolidate evidence implicating the detainee, material must be submitted to the procurator with an application for the imposition of preventive measures in the form of detention, and the procurator must transmit to the court an order with the material no later than 12 hours prior to the expiration of the period of detention.

41. The court may extend the period of detention for a further 48 hours, after which it is decided whether a criminal case will be brought against the detainee and whether preventive measures should be taken or the person released from custody.

42. In exceptional cases, the court may decide to apply remand in custody as a preventive measure against a detained suspect. The suspect must, however, be charged within 10 days of the day of detention, or the preventive measure is overturned and the person released from custody (Code of Criminal Procedure, art. 226).

43. Article 9 of the International Covenant on Civil and Political Rights does not provide for set periods of detention, specifying only that a detainee must be brought promptly before a court. In this connection, the period of 72 hours provided for by legislation is at this stage the most acceptable for the collection and examination of evidence implicating or exonerating the detainee.

44. The institution of habeas corpus was introduced in 2008 with the adoption of a Presidential Decree on the transfer to the courts of the authority to order remand in custody.

45. The relevant amendments were made to legislation, and a Decision of the Plenum of the Supreme Court of 14 November 2007 gives guidelines clarifying the application by the courts of remand in custody as a preventive measure in pretrial proceedings.

46. A joint directive by the senior procuratorial staff, the Ministry of Internal Affairs, the national security service and the Supreme Court of 17 August 2010 on further strengthening the protection of civil rights and freedoms in the application of preventive remand in custody and sentencing to imprisonment provides for constant monitoring of the legality and validity of judicial decisions on the application of such preventive measures during pretrial proceedings.

47. Widespread use of the institution of habeas corpus is an important factor in the judicial protection of the human rights and freedoms enshrined in the Constitution.

48. However, pursuant to the Act of 31 December 2008, which amended some legislation of Uzbekistan in connection with improving the institution of the Bar, from the

time of detention, a detainee enjoys all the rights of a suspect, including the right for his or her counsel to participate without hindrance in the case, the enjoyment of rights under article 48 of the Code of Criminal Procedure Code, regardless of whether a criminal case has been brought or it has been decided that the individual will be involved as a suspect and detained, the right to know of what he or she is suspected, the right to testify, or to refuse to testify, in respect of that suspicion and any other circumstances of the case, and also the right to know that his or her testimony may be used as evidence in criminal proceedings against him or her, and that he or she may make use of the right to make a phone call or send a message to a lawyer or a close relative to inform them of the detention and the location.

Information on paragraph 24 of the concluding observations

49. The Committee's opinion, as specified in the part of this paragraph related to harassment of and assaults on journalists and representatives of NGOs, as well as their prosecution for professional activities, does not reflect reality.

50. Journalists and representatives of NGOs are not prosecuted for their professional activities in the country; if they approach the competent authorities in respect of unlawful acts against them related to their professional activities, their statements are reviewed in accordance with national legislation; when such allegations are confirmed, the appropriate measures are taken, including the institution of criminal proceedings.