



Uzbekistan

**Written information for the List of Issues (LOI)
to be adopted at the 66th session of the
UN Committee against Torture**

1. Introduction

This report gives an overview of OMCT's main concerns regarding Uzbekistan's compliance with the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

OMCT provides this information in connection with the Committee against Torture's preparation of the List of Issues at the upcoming 66th session of the Committee, taking into account the Committee's 2013 concluding observations, the Committee's follow-up to the concluding observations in 2016, as well as the latest (the 5th) periodic report submitted by Uzbekistan under article 19 of the Convention.

OMCT intends to submit more detailed observations before the Committee's 68th session, at which Uzbekistan's 5th periodic report will be considered.

OMCT recognizes that since president Mirziyoyev took office two and a half years ago, the authorities have made significant efforts to improve the human rights situation in Uzbekistan and to comply with their international obligations, including under the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. (*hereinafter* the Convention)

However, we remain gravely concerned about the scope, the pace and, ultimately, the effectiveness of the wide-ranging reforms announced by the authorities.

2. Widespread torture and ill-treatment

In its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee expressed concern "about numerous, ongoing and consistent allegations that torture and ill-treatment are routinely used by law enforcement, investigative and prison officials, or at their instigation or with their consent, often to extract confessions or information to be used in criminal proceedings" (paragraph 7).

In order to "eradicate widespread torture and ill-treatment," the Committee recommended "as a matter of urgency" to the authorities to "carry out prompt, impartial and effective investigations into *all* allegations of torture and ill-treatment and prosecute and punish *all* those responsible" (emphasis added) and to "ensure that high level officials publicly and unambiguously condemn torture in all its forms" (Id.).

The Committee requested the authorities to provide additional information within one year. (2013 concluding observations, paragraph 31). In its 2016 follow-up to the concluding observations the Committee stated that it was not satisfied by the government's response of simply denying that torture was widespread.

OMCT welcomes the unambiguous condemnation of torture by the highest state officials in the past 2 years, along with several recent trials leading to the conviction of a number of state officials for their involvement in torture. However, we emphasize that the Committee

recommended that the State party should effectively investigate *all* torture complaints and prosecute *all* those responsible. This must necessarily include ending impunity for widespread torture committed under Mirziyoyev's predecessor.

OMCT is deeply concerned that Uzbekistan in its 5th periodic report continues to refuse to acknowledge that torture was widespread (paragraph 152). Yet, human rights organizations and individual human rights defenders inside Uzbekistan have told OMCT that they see little progress in investigations into torture cases from the past and, despite solemn declarations by the highest state officials, and that they continue to document fresh allegations of torture and ill-treatment on a regular basis.

Uzbekistan's slow pace of progress in implementing the Committee's 2013 recommendations aimed at eradicating widespread torture can be illustrated by the number of convictions under article 235 of the criminal code of Uzbekistan, which criminalizes torture.¹ Despite a substantial number of official complaints about torture, there have been far fewer trials against the perpetrators. This is directly confirmed by the statistical information provided by the authorities in their 5th periodic report (see paragraph 60). From this information it appears that only 14 individuals received a custodial sentence for torture in 2014, 13 in 2015, 4 in 2016 and 4 in the 1st quarter of 2017. OMCT submits that the statistical information is incomplete for multiple reasons: for 2014 and 2015 the statistics do not divide effective and suspended sentences, there is no indication of the length of the sentence and it is not clear if the convicted individuals were even state officials at the time of the crime.

Questions:

Therefore OMCT recommends the Committee to request complete statistical information showing the number of state officials convicted for torture respectively for other cruel, inhuman or degrading treatment or punishment under article 235, whether or not the convicted person was a state official at the time of the crime and if this was the case, the rank of these officials and the state body they belong(ed) to, the type of punishment received and, in case a prison sentence was imposed, the length of the sentence and whether the sentence was suspended/conditional or not. In addition, the authorities should specify if these convictions have become final and/or the convicted officials enjoyed a pardon, an amnesty or otherwise (in full or in part) avoided time in jail. The authorities should also provide statistical information beyond the 1st quarter of 2017 and, where applicable, indicate, any acquittals under article 235 and how this correlates with the general rate of acquittal in Uzbekistan.

Amid continuing reports of impunity for torture in Uzbekistan, OMCT believes the Committee should reiterate its previous request to the authorities, made in its 2013 concluding observations, to provide detailed information, including concrete cases, on how the authorities implemented the Committee's recommendations.

¹ On the compatibility of the definition of torture in domestic law with article 1 of the Convention, see below.

3. Harassment, arbitrary imprisonment and alleged torture of human rights defenders

Although the authorities released a number of human rights defenders, others still remain behind bars, along with thousands of individuals jailed on politically motivated charges.²

OMCT welcomes the fact that human rights defenders have become freer to conduct their work in the past 2 years but the legal framework, including legislation on NGOs, remains overly restrictive and human rights defenders routinely report various types of harassment, including treatment in contravention of the Convention. For example:

- the forced placement of Elena Urlaeva in a psychiatric facility in March 2017³;
- the arbitrary arrest of Agzam Turgunov on 29 August 2018⁴ Turgunov, who was released early in October 2017 after spending 9 years in prison on fabricated extortion charges, was also prevented from traveling to Warsaw for an OSCE meeting in September 2018⁵ and later complained about surveillance in October 2018 before he was finally allowed to travel abroad⁶;
- the arbitrary detention and alleged torture of independent journalist Bobomurod Abdullaev in September 2017.⁷ Abdullaev was convicted in May 2018 to a non-custodial sentence.⁸

Furthermore, in its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee recommended to "investigate promptly, thoroughly and impartially all allegations of harassment (...) of human rights defenders (...) and provide the victims with redress." (paragraph 8) In the same document the Committee requested follow up information from the government on this recommendation. (paragraph 31)

In its 2016 follow-up to the concluding observations, the Committee stated that "the information provided [by the authorities] does not address the recommendations and therefore considers that it has not been implemented." OMCT notes with concern that the 5th periodic report of Uzbekistan equally fails to address these issues.

Question:

OMCT recommends the Committee to ask what concrete steps the authorities have taken to investigate and punish officials responsible for the harassment, as well as how the authorities have provided redress.

² < <https://www.hrw.org/world-report/2019/country-chapters/uzbekistan> >

³ < <http://www.omct.org/human-rights-defenders/urgent-interventions/uzbekistan/2017/03/d24234/> >

⁴ < <http://www.omct.org/human-rights-defenders/urgent-interventions/uzbekistan/2017/03/d24234/> >

⁵ Id.

⁶ < <https://iphronline.org/uzbekistan-stop-harassing-human-rights-defenders.html> >

⁷ < <https://www.hrw.org/news/2018/05/07/uzbekistan-reporter-convicted-spared-jail> >

⁸ Id.

4. Effective investigation of acts of torture and ill-treatment

In 2013 the Committee requested specific information concerning the steps taken by the authorities to conduct effective investigations into allegations of torture and ill-treatment in several high-profile cases. (paragraphs 9 & 31) In its 2016 follow-up to the concluding observations the Committee noted that the authorities only provided information “that [did] not directly relate to the recommendation.”

OMCT is concerned that it was unable to find the information requested by the Committee in 2013 in Uzbekistan’s 5th periodic report, which was filed in early 2018.

Question:

OMCT recommends the Committee to request Uzbekistan to provide information on the steps taken to conduct effective investigations into allegations of torture and ill-treatment.

5. Definition of Torture

In its 2013 concluding observations on Uzbekistan’s 4th periodic report, the Committee found that the definition of torture in article 235 of the criminal code did not contain all of the elements contained in article 1 of the Convention (paragraph 10).

Although Uzbekistan amended article 235 in April 2018, OMCT notes with concern that the new version of article 235 still fails to incorporate all of the elements contained in article 1 of the convention. For example, contrary to article 1 of the Convention, article 235 seemingly limits the pool of victims of torture to individuals holding some sort of official status in criminal or administrative proceedings. Article 235 forbids the use of “unlawful pressure”, leaving open the possibility that certain acts falling under the scope of article 1 of the Convention, could be characterized as “lawful.” Finally, article 235 does not include “discrimination of any kind” and it is unclear if discrimination is only an aggravating circumstance but not a stand-alone purpose to qualify unlawful pressure as amounting to torture.

In addition to concerns over the definition of torture in domestic law, the Committee’s concluding observations in 2013 criticized the practice of granting amnesties to persons convicted of torture or ill-treatment. Although the Committee stressed in general comments nos. 2 & 3 that amnesties are incompatible with the Convention, Uzbekistan’s 5th periodic report refused to rule out such amnesties, while at the same mentioning that the topic will be discussed at a particular meeting of the National Centre for Human Rights, to be held in 2018 (paragraph 51). Elsewhere in the same report, the authorities mentioned legislative proposals to limit – but not rule out – the applicability of amnesty acts to persons convicted under article 235 of the criminal code (paragraph 71).

Questions:

Therefore, OMCT advises the Committee to request what further steps have been taken or will be taken by the authorities to bring the definition of torture in article 235 of the criminal code of Uzbekistan in full compliance with article 1 of the convention, and, secondly, if domestic law provides an unambiguous prohibition on amnesties for anybody involved/convicted for torture or ill-treatment.

Finally, the Committee might want to ask Uzbekistan to clarify if article 235 is subject to a statute of limitations and if so, is this compatible with the Convention and the Committee's general comments nos. 2 & 3.

6. Andijan

In its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee reiterated its previous recommendation that the authorities "should take effective measures to institute a full, effective and impartial inquiry into the events of May 2005 in Andijan, in order to ensure that alleged violations of the Convention are investigated and the individuals found responsible are properly punished and victims obtain redress. The Committee recommends that credible, independent experts conduct this inquiry and that the results be made available to the public" (paragraph 11).

In its 2014 reply to the Committee's concluding observations Uzbekistan flatly refused to allow an independent investigation and alleged that the use of force against "the terrorists" was proportional.

Question:

Recalling that according to an official account the authorities killed 187 people (but up to more three times more according to other sources) OMCT is deeply concerned that the 5th periodic report of Uzbekistan fails to mention Andijan altogether and therefore strongly urges the Committee to include the issue of an independent investigation into Andijan in the List of Issues.

7. Fundamental legal safeguards and habeas corpus

In its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee expressed "serious concern at the failure of the State party in practice to afford all persons deprived of their liberty with all fundamental legal safeguards from the very outset of detention (paragraph 13). The Committee was also concerned that according to article 226 of the criminal procedure code of Uzbekistan a person may be detained for 72-hour before being brought before a judge, which exceeds the 48-hour period recommended by the Committee. (paragraph 15)

The Committee issued several recommendations to the authorities to adopt measures to ensure these fundamental legal safeguards applied “in law and in practice” to everybody who was deprived of his or her liberty (paragraphs 13 & 15).

OMCT welcomes that Uzbekistan commenced to implement the Committee’s recommendations. For example, in September 2017 article 226 of the criminal procedure code was amended, limiting the period during which a person may be detained without being brought before a judge to 48 hours. However, we would like to draw the Committee’s attention to the fact that the 48-hour period enshrined in article 226 only starts running from the moment a person is brought to a police station or other law enforcement institution and thus not from the very outset of deprivation of liberty as the Committee recommended.

Other measures recommended by the Committee in its 2013 concluding observations, for example the mandatory presence of a lawyer of the detained person’s choice at habeas corpus hearings, have not been adopted. (5th periodic report, paragraph 184)

In 2013 the Committee requested the authorities to provide data on the number of cases in which public officials have been disciplined for violating fundamental legal safeguards to persons deprived of their liberty. Although Uzbekistan’s 5th periodic report provides some data (for example paragraphs 103 to 105), it is unclear how many of these cases involve the violation of what kind of fundamental legal safeguard.

Questions:

Therefore, OMCT urges the Committee to again include the items of fundamental legal safeguards and habeas corpus provisions in the List of Issues and to request Uzbekistan to provide information on what further measures it has taken to fully implement the Committee’s recommendations of 2013.

8. Independence of lawyers

In its 2013 concluding observations the Committee deplored the lack of independence of the Chamber of Advocates from the Ministry of Justice and the requirement that lawyers obtain recertification to practice law every 3 years and recommended to the authorities to amend its legislation (paragraph 14).

OMCT is deeply concerned that the authorities in their 5th periodic report stated that “[a]n examination of the Committee’s recommendations (para. 14) has demonstrated the unfounded nature of the allegations (paragraph 185).

Questions:

OMCT invites the Committee to include the concern regarding the lack of independence of lawyers in the list of issues and to ask the State party to provide information on whether it is going to implement the Committee’s recommendations made in 2013.

9. Evidence obtained through torture

In view of numerous allegations of torture for the purpose of obtaining a forced confession and the subsequent use of such confessions against the victim at her trial, the Committee made several specific recommendations, and requested the authorities to provide it with information on any cases in which confessions were ruled inadmissible. (paragraph 16)

In its 2016 follow-up to the concluding observations the Committee noted that the authorities only provided information “that [did] not relate directly to its recommendation.”

OMCT welcomes the adoption of presidential decree dated 30 November 2017 stating that evidence obtained through torture cannot be admissible in court.⁹ However, we believe that the guarantees provided on paper in this decree and other measures enumerated in paragraphs 187 to 197 of Uzbekistan’s 5th periodic report, should be tested on the ground in the court room. This requires information on concrete cases, as already requested by the Committee in 2013, including providing statistical data and concrete examples of instances where prosecutors or courts excluded such evidence, in particular forced confession.

The above-mentioned presidential decree contained one statistic (repeated in paragraph 89 of Uzbekistan’s 5th periodic report), namely that in the first 10 months of 2017 the courts acquitted 191 individuals, opposed to just 7 acquittals in the previous five years combined. However, it is unclear if all of these acquittals were due to inadmissibility of evidence (confessions) obtained through torture and ill-treatment.

Question:

Therefore, OMCT would like the Committee to request Uzbekistan to provide additional information as whether those acquittals were due to inadmissibility of evidence (statements) obtained through torture or other forms of ill-treatment.

10. Independent complaints mechanism

In 2013 the Committee recommended to the authorities “to ensure in law and in practice that every person has the right to complain of torture or ill-treatment to an effective and fully independent mechanism” (paragraph 17). In this regard, the Committee found the office of the ombudsperson of the Oliy Majlis of Uzbekistan to be ineffective and lacking independence (id.).

OMCT submits that the authorities failed to implement the Committee’s recommendation. In their latest (5th) periodic report the government, referring the parliamentary ombudsperson, claims that “[a]n independent system is in operation” (paragraph 171). However, human rights organizations and individual human rights defenders inside Uzbekistan have told OMCT that the ombudsperson is perceived as neither independent nor effective. This is

⁹ < <https://president.uz/ru/lists/view/1298> >

corroborated by the very low number (17) of torture complaints received by the ombudsperson in 2016 (see 5th periodic report, paragraph 171).

Question:

Accordingly, OMCT recommends the Committee to request Uzbekistan to provide additional information concerning the availability, in law and in practice, of an effective and independent complaint mechanism.

11. Conditions of detention and independent monitoring of places of detention

In its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee expressed concern at numerous reports of abuses in custody and deaths in detention. The Committee singled out the Jaslyk (Jasliq) detention facility (paragraph 19). The Committee was equally concerned by "the virtual absence of independent and regular monitoring of the places of detention." (paragraph 18)

As stated above, OMCT reiterates that in the context of Uzbekistan the parliamentary ombudsperson is not perceived as an independent institution. Therefore, we submit that Uzbekistan should immediately ratify OPCAT and with assistance from the SPT create a national preventive mechanism that fully complies to the international standards laid down in the OPCAT.

Questions:

OMCT invites the Committee to ask Uzbekistan to provide information on whether it has plans to ratify the OPCAT.

In addition, we would request the Committee to ask Uzbekistan to provide information as to whether it has invited the International Committee of the Red Cross to visit places of detention on its terms. (see paragraph 18 of the 2013 Committee's concluding observations)

12. Independence of the judiciary

In its 2013 concluding observations the Committee expressed concern that "the judiciary remains weak, inefficient and influenced by the executive" and recommended to the authorities to bring its legislation in line with the relevant international standards, like the Basic Principles on the Independence of the Judiciary¹⁰ (paragraph 21).

OMCT notes that the reforms enumerated in Uzbekistan's 5th periodic report fall short of the Committee's recommendation. For example, judges are appointed for an initial 5 year term, followed by a 10 year term and only then get indefinite appointments. (5th periodic report, paragraph 196)

¹⁰ < <https://www.ohchr.org/en/professionalinterest/pages/independencejudiciary.aspx> >

Question:

OMCT urges the Committee to include the independence of judges in the list of issues and to ask the State party to explain how it is going to fully implement the Committee's recommendations made in 2013.

13. Violence against women

In its 2013 concluding observations the Committee urged Uzbekistan to adopt specific legislative and other measures to prevent violence against women, including domestic violence, marital rape and forced sterilizations. (paragraphs 24 & 25)

Uzbekistan has ratified CEDAW. In its 2015 concluding observations on Uzbekistan's 5th periodic report, the Committee on the Elimination of Discrimination against Women "remain[ed] deeply concerned at the prevalence of violence against women" and the lack of progress in adopting a draft law that included a provision on domestic violence. (paragraph 17)

According to an OMCT contact in Uzbekistan the authorities only recently drafted a separate bill on domestic violence. Following a World Bank report published in March 2018 ranking Uzbekistan among the worst countries in the world in terms of protection of women and girls from violence, including domestic violence, a presidential decree issued on 2 July 2018 requested a draft law and in September 2018 a draft was published online for public discussion.¹¹ So far the draft has not become law and civil society has raised concerns about some provisions in the draft.

Questions:

OMCT urges Therefore, the Committee to ask Uzbekistan to clarify the current status of the draft law and to provide information on other steps taken to implement the Committee's earlier recommendations.

We further recommended the Committee to ask Uzbekistan which measures have been taken in exercising due diligence to prevent, stop or sanction violence against women or to provide reparations to victims.

14. International cooperation

In its 2013 concluding observations on Uzbekistan's 4th periodic report, the Committee recommended to the authorities to ratify OPCAT and the International Convention for the Protection of All Persons from Enforced Disappearance, to recognize the competence of the Committee to receive individual communications under article 22 of the Convention and to

¹¹ < <https://regulation.gov.uz/ru/document/658> >

issue a standing invitation to the special procedures of the Human Rights Council. (paragraphs 26,28 & 29)

According to the government's 5th periodic report submitted to the Committee, various authorities are studying the ratification of several international human rights instruments relevant to torture. (see for example paragraph 63 of the 5th periodic report)

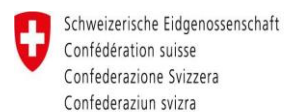
OMCT welcomes the visits to Uzbekistan by the UN High Commissioner for Human Rights in May 2017 and the Special Rapporteur on freedom of religion or belief in October 2017 but remains deeply concerned that more than 2 years after president Mirziyoyev came to power Uzbekistan has not implement the Committee's recommendations in full.

Questions:

OMCT recommends the Committee to ask Uzbekistan to provide information on whether it has plans to ratify the OPCAT and the International Convention for the Protection of All Persons from Enforced Disappearance.

OMCT further recommends the Committee to request Uzbekistan to provide information as to whether it has plans to recognize the competence of the Committee to receive individual communications under article 22 of the Convention and to issue a standing invitation to the special procedures of the Human Rights Council.

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