

UZBEKISTAN

I. INTRODUCTION

1. The Legal Framework

1.1. The Constitution

The Republic of Uzbekistan is located in Central Asia. It has a population of about 24 million people. It is multi-ethnic. The majority are Uzbeks and Karakalpaks, with considerable groups of Russians, Tajiks, Kazakhs and Tatars and others.¹

Uzbekistan became independent from the Soviet Union on 31 August 1991. It is composed of 11 *wiloyatlar* (administrative divisions), 1 autonomous republic Karakalpakstan and 1 city. The present Constitution was adopted on 8 December 1992.

Basic human and civil rights, freedoms and duties are stipulated in part two of the Constitution. This part contains a list of general guarantees of personal rights and freedoms, including the right to life and the prohibition of torture, political as well as economic and social rights. Article 44 of the Constitution entitles everyone to legally defend his/her rights and freedoms and stipulates that everyone shall have the right to appeal any unlawful action of state bodies, officials and public associations.

The judicial system is comprised of the Constitutional Court of the Republic, the Supreme Court as well as regional, district, town, city, Tashkent city courts and arbitration courts.² The Constitutional Court has, inter alia, the power to judge the constitutionality of laws of the Republic and other acts passed by the *Oliy Majlis*, decrees issued by the President, enactments of the government and ordinances of local authorities. It is also empowered to judge the constitutionality of treaty obligations and to interpret the Constitution and other laws.³ The Supreme Court is the highest judicial body for civil, criminal and administrative law. Its rulings are final and binding throughout Uzbekistan.⁴ The Constitution lays down the principle of independence of the judiciary and of judges.⁵

1.2. Incorporation and Status of International Law in Domestic Law

The Republic of Uzbekistan is party to the following relevant international treaties:

- Genocide Convention (9 September 1990)

¹ See for general information Initial Report of States Parties due in 1996: Uzbekistan, UN Doc. CAT/C/32/Add.3, 24 August 1999, paras.7-40.

² Article 107 of the Constitution.

³ Article 108, 109 of the Constitution.

⁴ Article 110 of the Constitution.

⁵ Articles 106 and 112 of the Constitution.

- Geneva Conventions and both Protocols (8 October 1993)
- CRC (29 June 1994)
- CEDAW (18 August 1995)
- Convention against Torture (31 August 1995)
- ICCPR (28 September 1995)
- CERD (28 September 1995)
- Optional Protocol to the ICCPR (28 December 1995)

The Constitution does not specifically address the relation between international and Uzbek law and the status of international law in the Uzbek legal system. While the Preamble states that the people of Uzbekistan recognise the primacy of generally recognized norms of international law, Article 15 of the Constitution stipulates the unconditional supremacy of the Constitution and laws of the Republic of Uzbekistan, without, however, specifying whether this includes supremacy vis-à-vis norms of international law. In practice, every law contains a provision recognising the supremacy of international treaties over national norms in case of conflict. While these clauses appear to assume that international treaties are part of the law of the land, neither legislation nor jurisprudence provide any clear guidance on whether this is indeed the case and, if so, under what circumstances international treaties are self-executing.⁶ Uzbekistan has not adopted any legislation specifically implementing the Convention against Torture, especially the provisions of Article 1.

2. Practice of Torture: Context, Occurrence, Responses

2.1. The practice of torture

During the period when Yurii Andropov⁷ was General Secretary of the CPSS in the 1980s, Uzbekistan was singled out for the fight against corruption. In the course of this official campaign, torture was one of the main means of extracting confessions and was also used to repress and discourage political dissent.

Since 1991, governments generally considered to be authoritarian have ruled Uzbekistan. Following the election in 1992, the Uzbek president Karimov embarked on a campaign against the secular opposition, in particular the Erk party and the Birlik Popular Movement. Most opposition members were harassed, intimidated, persecuted and many were forced to flee the country. In recent years, the government has faced increasing opposition, in particular from Islamic groups, such as IMU and Hizb-ut-Tahrir, who campaign for its overthrow. Following the events in the USA on 11 September 2001, the government has intensified its crackdown on all those suspected of opposing it. This renewed campaign against so-called terrorism has resulted in a curtailment of civil and political liberties and has been accompanied

⁶ See Replies to additional questions concerning the report on the implementation of the International Covenant on Civil and Political Rights, in: Comments by the Government of Uzbekistan on the concluding observations: Uzbekistan, UN Doc. CCPR/CO/71/UZB/Add.1, 17 October 2002, Question 2: "Do the courts try cases invoking international treaties ratified by the Republic of Uzbekistan? If so, please give examples." Answer: "No such cases have been tried in the Republic of Uzbekistan. It should be noted, however, that international standards have been incorporated into domestic law and international norms are accordingly borne in mind when trying cases in the courts."

⁷ General Secretary of the Communist Party of USSR, successor of Brejnev.

by serious human rights violations, such as extra-judicial killings and disappearances,⁸ and increased imposition of the death sentence.

From 1991 onwards, there have been consistent reports of torture carried out by law enforcement personnel. The bulk of allegations of torture concern the police forces, while the national security service, staff of psychiatric hospitals and the military police have also reportedly resorted to the use of torture. Prison conditions are said to be far below international standards and political, in particular religious, prisoners are reportedly subjected to particularly cruel treatment.⁹ A wide range of individuals are said to have suffered torture. Members of banned political and religious groups, ordinary criminal suspects, inmates of prison and labour camps and refugees from Tajikistan have been subjected to torture. Torture has been employed as a means to punish, intimidate and break down the political and religious opposition to the government and to obtain statements and confessions. Given the inadequacy of investigation methods, law enforcement agencies rely heavily on forced statements and confessions. Torture and ill-treatment have also been used to discourage human rights defenders.¹⁰ Moreover, torture has been employed as a means of extorting money.¹¹ Reportedly, sexual minorities and women, particularly casual workers, have been targeted and subjected to various forms of torture, including sexual torture.¹² A broad arsenal of torture methods have been used¹³ which have, in several cases, reportedly resulted in the death of the victims.¹⁴

2.2. Domestic Responses

Uzbekistan acceded to several international human rights treaties in the 1990s. It was the first Central Asian State to ratify the UN "big six," and has been active in amending its legislation to take the obligations flowing from these treaties into

⁸ Amnesty International, Uzbekistan, *The Rhetoric of Human Rights Protection: Briefing for the United Nations Human Rights Committee*, June 2001, AI Index: EUR 62/006/2001, p.9.

⁹ IHF, *Human Rights in the OSCE Region: The Balkans, The Caucasus, Europe, Central Asia and North America*, Report 2002 (Events of 2001), pp. 362, 363.

¹⁰ International League for Human Rights, *Uzbekistan Government Observance of the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment in 1996-2002*, Alternative NGO Report, presented at the 28th Session of the UN Committee against Torture, 29 April-17 May 2002, Prepared by the International League for Human Rights in cooperation with the Human Rights Center MEMORIAL (Moscow), citing information from Uzbek human rights NGOs (hereinafter Alternative NGO Report), p.6.

¹¹ This has also been acknowledged by Mr. Saidov, Uzbekistan, during the Consideration of Reports submitted by States Parties under Article 19 of the Convention: Summary Record of the first part (public) of the 50th meeting: Uzbekistan, UN Doc. CAT/C/SR.509, 7 May 2002, para.22: "An analysis of the complaints received by the Office of the Human Rights Commissioner (Ombudsman) had revealed persistent gross violations of articles 26 and 116 of the Constitution (which covered presumption of innocence and the citizen's right to defence); perfunctory disposal of cases by the courts, often with over reliance on the case for the prosecution; extortion by law-enforcement officers; use of unlawful methods, including torture, by law-enforcement officers; and cases in which officials had taken unfair advantage of people's legal illiteracy."

¹² See Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted in accordance with Commission resolution 2002/38, Addendum, Mission to Uzbekistan, UN Doc. E/CN.4/2003/68/Add.2, 3 February 2003, para.42.

¹³ See Alternative NGO report, *supra*, p.7 and Human Rights Watch, Uzbekistan, "And it was hell all over again...", *Torture in Uzbekistan*, December 2000, Section on Torture, listing beatings, asphyxiation, electric shock, rape and other forms of sexual violence, deprivation of sleep, food and water, other abuses, psychological pressure and Cruel and degrading treatment and threats.

¹⁴ Alternative NGO report, *supra*, p.8; IHF Report, *supra*, p.362, according to which 70 people died as a result of torture in the period 2000-2002. See for earlier cases HRW, "Hell", *supra*, and for updates press releases by Human Rights Watch and Amnesty International.

account. A number of cases against Uzbekistan are now pending at the UN Human Rights Committee.

It has also, according to its report to the Committee against Torture, reformed its laws and administrative practices to suppress torture. It set up several bodies, such as the National Centre for Human Rights and the Ombudsman, empowered to carry out human rights research and monitoring and, in the case of the Ombudsman, to examine complaints.¹⁵ In the two reports submitted to the Committee against Torture, Uzbekistan acknowledged the persistence of torture and outlined several measures, in particular the training of law enforcement personnel, employed with a view to prevent torture.

The authoritarian nature of the State and lack of an independent media has impacted upon public accountability. After 11 September 2001, the Uzbek government is seeking to justify the use of measures that infringe human rights in the fight against "terrorism." While not expressly condoning torture, such a may be seen by law enforcement personnel as effectively doing so in the absence of adequate and effective safeguards against torture.¹⁶

2.3. International Responses

Uzbekistan has been repeatedly criticised by international bodies, individual states and international human rights organisations for the persistence of torture and the prevailing impunity.

The Special Rapporteur on Torture visited Uzbekistan from 24 November to 6 December 2002 and came, inter alia, to the following conclusions: "the Special Rapporteur believes, on the basis of the numerous testimonies (including on a number of deaths in custody) he received during the mission, not least from those whose evident fear led them to request anonymity and who thus had nothing to gain personally from making their allegations, that torture or similar ill-treatment is systematic as defined by the Committee against Torture... While the Special Rapporteur notes that some official authorities acknowledged the existence of incidental practices of torture, the Special Rapporteur has no doubt that the system of torture is condoned, if not encouraged, at the level of the heads of the places of detention where it takes place or the chief investigators... The result is that impunity largely prevails among those charged with investigating suspected criminal activities."¹⁷

The Committee against Torture recently expressed its concerns about various aspects of the law and practice in relation to Uzbekistan's obligations under the CAT, in particular about: "(a) the particularly numerous, ongoing and consistent allegations of particularly brutal acts of torture and other cruel, inhuman or degrading treatment or punishment committed by law enforcement personnel; (b)

¹⁵ See Consideration of Report submitted by States Parties under Article 19 of the Convention, Second periodic reports of States parties due in 2000, Addendum, Uzbekistan, UN Doc. CAT/C/53/Add.1, 16 November 2001.

¹⁶ See, *In the Name of Counter-Terrorism: Human Rights Abuses Worldwide, A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights*, 25 March 2003, III: Country Studies, Uzbekistan.

¹⁷ See Report of the Special Rapporteur on the question of torture, Theo van Boven, submitted in accordance with Commission resolution 2002/38, Addendum, Mission to Uzbekistan, UN Doc. E/CN.4/2003/68/Add.2, 3 February 2003, paras. 68 and 69. See for his list of recommendations, paras. 70 and 71 *ibid*.

the lack of adequate access for persons deprived of their liberty, immediately after they are apprehended, to independent counsel, a doctor or medical examiner and family members, an important safeguard against torture; (c) the insufficient level of independence and effectiveness of the procuracy, in particular as the Procurator has the competence to exercise oversight on the appropriateness of the duration of pre-trial detention, which can be extended up to 12 months; (d) A lack of practical training for (i) doctors in the detection of signs of torture or ill-treatment of persons who have been or are in custody, and (ii) law enforcement personnel and judges in initiating prompt and impartial investigations; (e) the insufficient independence of the judiciary; (f) The de facto refusal of judges to take account of evidence of torture and ill-treatment provided by the accused, so that there are neither investigations nor prosecutions; (g) The fact that the definition of torture in the Criminal Code of the State party is incomplete and, therefore, not in full conformity with article 1 of the Convention¹⁸ and in 1999: "The particularly large number of complaints of torture and maltreatment and the small number of subsequent convictions."¹⁹ These concerns were echoed by the Human Rights Committee.²⁰ The UN Special Representative on Human Rights Defenders also expressed concerns about the harassment of human rights defenders in Uzbekistan.²¹

2. PROHIBITION OF TORTURE UNDER DOMESTIC LAW

Article 26 (2) of the Constitution expressly prohibits torture: "No one may be subject to torture, violence or any other cruel or humiliating treatment." Article 25 (1) stipulates that "everyone shall have the right of freedom and personal inviolability."

Article 17 of the Criminal Procedure Code (hereinafter CPC) adopted on 22 September 1994 contains an express prohibition of torture: "Judges, prosecutors, investigators and interrogators carrying out initial inquiries or pre-trial investigations are under an obligation to respect the honour and dignity of persons involved in a case... No one shall be subjected to torture (*pytka*), violence, or other cruel, humiliating or degrading treatment. It is prohibited to perform acts or hand down judgements which humiliate or demean a person, will lead to the dissemination of details of his private life, thereby endangering the person's health, or cause unjustified physical or mental suffering." Article 22 CPC prohibits ill-treatment to extract confessions: "Obtaining testimony of a suspect, accused persons, defendant, victim, witness, or any other party to a case by the use of force, threats, violations of their rights or other illegal means are prohibited." Moreover, Article 88 CPC provides: "In obtaining evidence, it is prohibited: To perform acts which endanger life or health or are intended to humiliate or demean; To solicit testimony, explanations or

¹⁸ Conclusions and Recommendations of the Committee against Torture: Uzbekistan, 8 May 2002; UN Doc. CAT/C/XXVIII/Concl.2. (Concluding Observations/Comments), para.5.

¹⁹ Conclusions and Recommendations of the Committee against Torture: Uzbekistan, 19 November 1999; UN Doc. A/55/44, paras.76-81. (Concluding Observations/Comments), para.80 (b).

²⁰ Concluding observations of the Human Rights Committee: Uzbekistan, 26 April 2001, UN Doc. CCPR/CO/71/UZB (Concluding Observations/Comments), para. 7: "Taking into account article 7 of the Covenant, the Committee is gravely concerned about consistent allegations of widespread torture, inhuman treatment and abuse of power by law enforcement officials. The Committee is also concerned about the limited number of investigations into allegations of torture."

²¹ See Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on human rights defenders, pursuant to the Commission on Human Rights resolution 2000/61, UN Doc. E/CN.4/2002/106, 27 February 2002, paras. 392 et seq.

conclusions, to perform experiments, to prepare and circulate documents or objects using violence, threats, deception or other unlawful means.”²² Finally, Article 215 of the CPC prohibits inhumane treatment of persons detained, remanded in custody or placed in a medical institution.

Article 10 (3) of the Law on the Courts stipulates that: “No one may be subjected to torture, violence or other cruel and degrading treatment.”

Though torture is explicitly prohibited in the Constitution and statutory law, there is no definition of torture, neither in legislation nor in jurisprudence.

3. CRIMINAL ACCOUNTABILITY OF PERPETRATORS OF TORTURE

1. The substantive law: Criminal offences and punishment

The Criminal Code of the Republic of Uzbekistan (hereafter CC) does not include the criminal offence of torture. However, there are several offences that can be used to prosecute those responsible for acts of torture. Article 235 prohibits the compelling of testimony by mental or physical pressure on the suspect, accused, witness, victim, or expert by means of a threat, infliction of blows, beatings, torture (*istyazaniye*),²³ causing of torment, infliction of light or average gravity bodily injuries, other illegal actions committed by the person conducting an inquiry, investigator, or procurator for the purpose of compelling to give testimony”.²⁴ Compelling confessions is punishable by arrest for up to six months, or by deprivation of freedom of up to five years and, if it entails grave consequences, by deprivation of freedom from five to eight years.

Punishment for the intentional infliction of bodily harm will depend on the severity of the injuries caused. In cases of ‘light injuries,’ it is punishable by a fine, correctional work or short-term detention.²⁵ In cases of ‘medium’ injuries, it is punishable by imprisonment for up to three years, and in aggravating circumstances, up to five years.²⁶ Premeditated grievous bodily injury carries a punishment of imprisonment from five to twelve years.²⁷ The intentional infliction of bodily harm during arrest

²² Art. 88 CPC. Art. 88(2) CPC prohibits: 1) to commit actions, which can be dangerous to life and health, or degrading; 2) to compel to make confessions, statements or testimonies by force, threat, deception, or other illegal means; 3) to conduct investigating actions from 10:00 pm till 6:00 am. Also Art. 88(3) prohibits stripping up of a person in front of the inquiry officer, investigator, procurator, judge of opposite sex, except doctor or forensic expert. According to Art. 107 CPC the duration of the interrogation should not exceed eight hours during one day, including one hour for break and food.

²³ Butler, William E. in: Butler, William E. (ed.), *Uzbekistan Legal Texts*, Kluwer, Hague, Boston, London, 1999, p.188. According to Professor Bill Bowring, Professor at the London Metropolitan University, the term “*istyazaniye*” is usually translated into English as “torture” but is distinguished in Russian from “*pytka*”. The UN Convention is translated into Russian as the Convention against *pytka* rather than *istyanzaniye*. *Pytka* is more severe than *istyanzaniye*. Both *pytka* and *istyanzaniye* are generally understood to involve the use of physical force.

²⁴ Translation by Butler, *ibid*.

²⁵ Article 109 CC. Light bodily injuries are defined as those which do not entail the short-term impairment of health or insignificant stable loss of capacity to labour.

²⁶ Article 105 CC, for those injuries causing prolonged impairment of health in duration of more than twenty-one days, but not more than four months, or a significant stable loss of general capacity to labour of from ten up to thirty-three percent.

²⁷ Article 104 CC. For this Article to apply, the bodily injury must have endangered life at the moment of the causing of injury or entailed the loss of vision, speech, hearing, or any organ whatever or the complete loss of functions by the organ, mental illness, or other impairment of health combined with the loss of general capacity to labour of more

carries a punishment of up to 2 years of corrective labour or up to 6 months of imprisonment.²⁸ The use of ill-treatment (*istyazaniye*),²⁹ which does not cause serious or 'medium' bodily harm as defined in Articles 104 and 105 of the Code, is punishable by up to two years of corrective labour and by imprisonment for up to three years.³⁰ The infliction of physical suffering and/or confinement in conditions constituting a danger to life or health in the course of an unlawful deprivation of liberty carries a punishment of up to five years imprisonment.³¹ Abuse of power and exceeding authority carries a punishment of up to five years imprisonment.³²

Homicide is punishable by imprisonment for ten to fifteen years.³³ Homicide under aggravating circumstances may be punished by life imprisonment or the death penalty.³⁴ If the intentional causing of death is committed when exceeding measures necessary for the detention of a person who committed a socially dangerous act, it is punishable by correctional work for up to three years imprisonment.³⁵ Causing death through negligence is punishable by correctional work for up to two years or by imprisonment for up to three years.³⁶

Rape and 'gratification of unnatural sexual desires' by force are both punishable by three to twenty years imprisonment or by the death penalty, depending on the existence of any of specified aggravated circumstances.³⁷ Rape in custody is not considered to constitute an aggravated circumstance. The CC also contains lists crimes that violate the laws and customs of war³⁸ and genocide.³⁹

Disciplinary punishments are provided for in the internal regulations of each law enforcement agency. These regulations are considered to be for internal use only (classified) and are not available to the public.

than 33%, or an interruption of pregnancy or irreparable disfigurement of the body. Article 104 contains two further categories of the same offence if aggravating circumstances are present.

²⁸ Article 108 CC.

²⁹ Butler, *supra*, translates the conduct constituting the offence as "the systematic infliction of blows or other actions bearing the character of torture".

³⁰ Article 110 (1) CC. The punishment shall be correctional tasks for from two up to three years or deprivation of freedom for up to five years if the action was committed with respect to a minor, a woman known by the guilty person to be in a state of pregnancy and a person known by the guilty person to be in a helpless state.

³¹ Article 138 CC.

³² Article 206 CC: "The exceeding of power or official powers, that is, the intentional commission by an official of actions going beyond the limits of powers granted to him by a laws which has caused large-scale damage or material harm to the rights or to the interests of citizens protected by a law or to State or social interests,; shall be punished by deprivation of a specified right for up to five years, or by correctional tasks for up to three years, or by deprivation of freedom for up to five years with or without confiscation of property."

³³ Article 97 (1) CC.

³⁴ Article 97 (2) CC.

³⁵ Article 101 CC.

³⁶ Article 102 CC.

³⁷ Article 118 (4) CC and 119 (4) CC respectively.

³⁸ Article 152 CC: "A violation of the laws and customs of war expressed in torture, physical elimination of the civilian population or prisoners-of-war, impressing the civilian population for compulsory work or other purposes, ... and likewise the giving of an order concerning the performance of such actions- shall be punished by deprivation of freedom for from ten up to twenty years with confiscation of property [as amended by Law of 29 August 1998]."

³⁹ Article 153 CC, punishable by imprisonment from ten to twenty years, or by the death penalty with confiscation of property.

2. The Procedural Law

2.1. Immunities

There are no laws providing for immunity for perpetrators of torture however, perpetrators were not expressly excluded from the Presidential Decree on Amnesty of 30 April 1999.⁴⁰

2.2. Statutes of limitations

Statute of limitations apply to all crimes except crimes against peace and security of humanity, i.e. propaganda of war, aggression, breach of laws and customs of war, genocide, mercenary, terrorism and incitement to national, racial and religious hatred (Arts. 150-156 CC).⁴¹ The statute of limitations for crimes punishable by up to three years imprisonment is three years, five years for crimes punishable by up to five years imprisonment, ten years for crimes punishable by up to ten years imprisonment and fifteen years for crimes carrying a punishment of up to twenty years imprisonment and the death penalty. The statute of limitations applicable in a case of torture will depend on the degree of injuries caused by torture.⁴²

2.3. Investigations into torture

2.3.1. Criminal Proceedings

A torture survivor may lodge a complaint to the head of the police station or the procurator, who supervises pre-trial investigations. The complaint may be brought orally or in writing.⁴³ There is no right of *habeas corpus* and a detainee cannot complain before a judge when challenging the legality of detention as all decisions concerning pre-trial detention fall within the sole competence of the procurator.⁴⁴ A detainee held in pre-trial detention or a person acting on his/her behalf may lodge a complaint with a senior investigator, the head of the competent Minister of Internal Affairs (MVD), the National Security Service (SNB) internal investigations department, a civil procurator if brought against MVD officers or a military procurator if the complaint concerns an SNB officer.⁴⁵

As a general rule, investigators of the Ministry of Internal Affairs, the National Security Service, the Procurator's Office, a procurator or a judge may initiate an investigation into crimes.⁴⁶ The Procurator's office⁴⁷ has the exclusive competence to

⁴⁰ See for details 2001 State Report to Committee against Torture, paras. 39-45.

⁴¹ Article 64 CC.

⁴² See the various criminal offences described above.

⁴³ See Articles 53, 323, 324 CPC of Uzbekistan, 1 April 1995, last amended on 30 August 2001 (hereinafter CPC).

⁴⁴ See on this point the 2003 Report of the Special Rapporteur, *supra*, para.11.

⁴⁵ See overview of complaints procedure, *ibid.*, para.29.

⁴⁶ Article 321 CPC.

⁴⁷ Each Procurator's office (district, province, republican level) has its own investigators, who investigate only those offences, which are prescribed to the exclusive jurisdiction of the Procurator's office, including offences committed by law enforcement personnel.

investigate criminal cases against law enforcement officials.⁴⁸ The commanders of military units investigate crimes committed by their subordinates in the exercise of their functions.⁴⁹

Appeals and other information about the commission of offences are registered and considered within three days.⁵⁰ The competent agencies are required to investigate crimes *ex officio* if there are sufficient grounds. However, in cases of rape and gratification of unnatural desire by force, the investigation is contingent upon a complaint by the victim.⁵¹

The procurator can take certain measures, such as taking the suspect into custody.⁵² If the suspect is a public official, he/she may be suspended from his/her position if the investigating authority considers that it would otherwise impede the investigation.⁵³

Investigations should not last longer than three months but this period can, in exceptional circumstances, be prolonged by the Procurator General, to up to one year.⁵⁴ Investigating officers and judges may order a forensic medical examination.⁵⁵ Such a procedure is mandatory in cases of injury or death of the victim.⁵⁶ Detainees' defence lawyers have the right to request an independent medical examination in cases of alleged torture and ill-treatment.⁵⁷ However, only official government forensic specialists, in practice, the Forensic Medical Specialist Service funded by the Ministry of Health, may furnish medical reports as evidence.⁵⁸ The admission into evidence of medical reports prepared by independent experts is at the discretion of the investigator or court.

The investigating authority cannot proceed with an investigation if there are no grounds to charge the suspect.⁵⁹ The victim has a right to lodge an appeal against a decision to refuse or discontinue the investigation with the procurator at the district level and then to the hierarchically superior procurator up to the Procurator General.⁶⁰ While there are several provisions and ruling providing citizens with the right to complain about a violation of their rights,⁶¹ this right does not apply during

⁴⁸ Article 345 CPC.

⁴⁹ Article 38 (2) CPC.

⁵⁰ Article 329 CPC.

⁵¹ Article 15, 321 and 325 CPC.

⁵² See Chapter 27 and 28 CPC.

⁵³ See Chapter 29 CPC.

⁵⁴ Article 351 CPC.

⁵⁵ Article 180 CPC.

⁵⁶ Article 173 CPC.

⁵⁷ Art. 6 of the Law on Advocate Institution (Advokatura), 27 December 1996.

⁵⁸ Article 174 CPC. In exceptional cases, specialists from other state institutions may provide such evidence, but it is up to the agency authorizing the examination in the course of the investigation to determine if an outside expert should be consulted due to the exceptional nature of the case.

⁵⁹ Such grounds are listed in Articles 83 and 84 CPC.

⁶⁰ Article 382 CPC.

⁶¹ Article 1 of the Law On Complaining to the Court about Actions and Decisions, which Violate Rights and Freedoms of Citizens, 30 August 1995 (hereafter Law on Judicial Complaining) states: "Any citizen is entitled to bring a complaint before a court of law if he considers that his rights and freedoms have been violated by the unlawful

the pre-trial investigation.⁶² It is only after the completion of the pre-trial investigation that the defendant has the ability to challenge the decision taken by the investigating authority.⁶³

There is no specific law providing for victims' rights and protection but the CPC provides for a number of procedural rights, such as the right to have a legal representative and to participate through his/her legal representative in the proceedings. After being recognised as a crime victim on the basis of a decision of the investigator, procurator or court,⁶⁴ a torture survivor has the right to give testimony, to participate in investigative measures, to submit petitions, to get acquainted with materials of the case upon the end of the investigation, to participate in the trial and to support the accusation by submitting evidence.⁶⁵

2.3.2. Role of the Ombudsman

The office of the Ombudsman was established on the basis of the Act on the Commissioner for Human Rights of the *Oliy Majlis* (Ombudsman) of 24 April 1997. The Ombudsman is empowered to investigate human rights violations,⁶⁶ and has the power to recommend measures to put an end to the human rights violation and/or to restore the rights in question. The Ombudsman does not have the power to undertake such investigations itself.⁶⁷

actions or decisions of State bodies, enterprises, institutions, organizations, social associations, self-governing bodies of citizens or officials." Article 4 stipulates that: "A citizen is entitled to file a complaint against actions or decisions that violate his rights and freedoms either directly with a court or with the higher authority or official concerned." Such a complaint can also be based on Ruling No.1 by the Plenum of the Supreme Court of 20 December 1996 On the Powers of the Judiciary where it was held that courts are competent to take decisions on any questions arising out of a legal dispute, including complaints about the illegal actions of state agencies, officials and social organizations.

⁶² According to Art. 3 of the Law on Judicial Complaining, all actions of officials can be complained about to the court except those which are subject to another procedure of judicial review, which is established by law. Such procedure is, according to Rule 2 by the Plenum of the Supreme Court of the Republic of Uzbekistan of 20 December 1996 "On the Powers of the Judiciary", the one established by the CPC.

⁶³ Article 396 in conjunction with Article 392 CPC.

⁶⁴ A victim is anyone who has suffered moral, physical or material damage as a result of the offence committed.

⁶⁵ Article 55 CPC, Rights and obligations of the victim: "The victim has a right: to give testimonies; to produce evidence; to submit petitions and challenges; to speak his mother language and use services of the interpreter; to have a representative in order to stand his interests; to participate upon the permission of the inquiry officer or the investigator in the investigating actions; to study at end of the pre-trial investigation with all materials of the case and write out of it necessary information; to participate at the sessions of the court of the first, appellate, cassation and supervisory instances; to submit complaints about actions and rulings of the inquiry officer, investigator, procurator and the court; to support, personally or through his representative, the accusation in court; to study the protocol of the court session and to propose corrections on it; to know about complaints and protests brought on the case, and to submit counter objections (amended by the para.8 section I of the Law #163-II, 14.12.2000). The victim is obliged: to appear upon the summons of the inquiry officer, the investigator, the procurator and the court; to give truthful testimonies; not to impede the ascertaining of the truth by means of destruction, falsification of evidences, by persuasion of witnesses or by other unlawful actions; to produce evidence on the request of the inquiry officer, investigator, procurator and the court; to follow the procedure during the course of investigation and the court hearing of the case. If the victim fails to appear without justifying reasons, he can be subjected to compulsory delivery as it is provided by articles 261-264 of the present Code. The victim shall bear a responsibility established by law for refusal to give testimonies or for giving intentionally false testimonies. In the cases concerning the crimes, which caused death of the victim, the rights and obligations provided by the present article shall be fulfilled by his close relatives and other persons, who have been recognized as lawful representatives of the dead by the pre-trial investigation agencies or the court."

⁶⁶ See Law on Ombudsman, 24 April 1997.

⁶⁷ Ibid.

2.4. Trials

In case of an indictment,⁶⁸ the District or City Criminal Courts are competent to hear the case.⁶⁹ If the alleged perpetrator is a member of the military, the case is to be heard by a military court, which applies the Penal Code and the Charter of Military Service in the establishment of the facts.⁷⁰ The guilt of the accused is to be established according to the rules on substantiation of evidence.⁷¹ A convicted person has the right to petition the court to postpone the execution of the sentence, not to execute the sentence because of illness or invalidity, to be conditionally released or to commute the remaining part of the punishment to a less severe punishment.⁷² The President may issue an amnesty or grant a pardon to citizens convicted by the courts.⁷³

3. Practice

3.1. Complaints

The government has issued official statistics relating to the number of complaints of human rights violations. These statistics are of limited use, however, as they do not specify the nature of the violations.⁷⁴ While relatively few complaints appear to have been brought before law enforcement agencies, a considerable number have been lodged with the Ombudsman and the Centre for Human Rights.⁷⁵

Members of enforcement agencies are reported to have used intimidation to dissuade survivors and other witnesses from lodging complaints and to withdraw those complaints that had already been filed. Perpetrators have reportedly also lodged counterclaims against the victims, alleging criminal conduct, such as false and ungrounded accusations.⁷⁶ Furthermore, human rights defenders have repeatedly been subjected to harassment for their activities.⁷⁷

⁶⁸ See Article 361 CPC.

⁶⁹ See Chapter 48 CPC. See for particulars of trials Chapters 50 to 54 CPC.

⁷⁰ Article 41 of the Courts Act of 14 December 2000.

⁷¹ See Chapter 52 and 53 CPC on trial proceedings and Article 82 and Chapter 9 CPC on rules of evidence.

⁷² Article 532 CPC.

⁷³ Article 93 (20) of the Constitution.

⁷⁴ See both reports submitted by Uzbekistan to the Committee against Torture, *supra*. See also Alternative NGO report, cited *supra* in I, 2.1. *supra*, p.12, that statistics about complaints and convictions concerning torture cases should be regularly published.

⁷⁵ In 2001, the Ombudsman received 4,472 complaints, a number of which concerned unlawful actions by law enforcement officials. In the first 11 months of 2002, the Ombudsman received a total of six complaints about unlawful acts of law enforcement agencies. See 2003 Report by Special Rapporteur, *supra*, para.32. The Ombudsman's Office received 231 complaints about unlawful conduct of law enforcement officers in 1997 and 533 in 1998. As revealed by a study of the complaints, most related to the use of physical or mental violence by investigators during the investigation phase. The National Centre of Human Rights received 161 complaints of human rights violations in 1998, 36 of which concerned unlawful conduct of officers of the internal affairs authorities. See 1999 State Report, *supra*, paras.52-55. See also 2001 State Report to the Committee against Torture, para.234.

⁷⁶ For e.g. under Article 237 CC. See HRW, "Hell", *supra*.

⁷⁷ See *ibid*. Shovruk Ruzimuradov, head of the Kahkadarya branch of the HRSU died in July 2001 while in police custody. While the police claimed that he hanged himself in his prison cell, his body bore signs of extensive bruising, indicating that he died as a result of torture, AI Concerns in Europe. 1999 illegal detention and physical abuse of Mikhail Ardzinov, AI, Rhetoric of Human Rights, p.5 and HRW, Leaving no witnesses, Uzbekistan's campaign against human rights defenders, March 2000.

3.2. Investigations

Authorities are perceived to be reluctant to investigate complaints of torture, especially given that complaints are often to be investigated by the very office whose officials are alleged of involvement in the acts of torture. Even though information from various sources indicates that the overall number of complaints relating to torture and ill-treatment to various bodies is considerable (see 3.1. above), the figures released by the Procurator's office concerning actual investigations are comparatively low.⁷⁸

In 1999, there were 36 investigations into allegations of torture, eight of which were against officials belonging to the Ministry of Internal Affairs and 29 against the officials belonging to the Office of the Procurator. No law enforcement officials were charged.⁷⁹ The relatively small number of complaints to the Office of the Procurator is attributed to the refusal of officials to investigate such complaints.⁸⁰ Usually, investigations and prosecutions are conducted slowly without any tangible result. On other occasions, they are conducted exceptionally quickly, sometimes within a week, and are usually not publicly known as torture cases. In some instances, there have been no replies to complaints so that it is unclear what kind of action the investigating bodies have taken, if any.

Investigations themselves appear to have been deficient. The Procurator's office has in several cases failed to refer victims to medical experts for examinations and have reportedly been intimidated not to document cases of torture. Also, there are reports that private doctors have been routinely denied access to detainees during pre-trial detention.⁸¹ Victims and their lawyers, out of fear of repercussions, have apparently been reluctant to request and use medical evidence of torture.⁸² In several cases of death in custody ostensibly resulting from torture, the investigating authorities cited suicide or natural causes as the cause of death. Consequently, most cases have been closed for lack of evidence. This also applies to cases that have been referred to the investigating authorities by the Ombudsman.⁸³

Courts have rarely reacted to allegations made by accused that their confessions and statements have been obtained by means of torture. The CPC does not contain an express prohibition of confessions and statements obtained by means of torture. There are however several provisions prohibiting torture as a means of

⁷⁸ See 2001 State Report to the Committee against Torture, *supra*, paras.115 et seq.

⁷⁹ Alternative NGO report, *supra*, p.17.

⁸⁰ *Ibid.*, p.18. See also 2001 State Report to the Committee against Torture, *supra*, para. 231: "Despite the existence of laws regarding appeals and the procedure for filing complaints in a court against unlawful actions by officials, there have been instances in which some law-enforcement bodies have in practice ignored appeals by citizens or treated them in a purely formal manner. Such instances have also occurred in the work of middle-ranking and higher judicial bodies. To remedy this situation, the Supreme Court adopted a Plenary Decision on 27 December 1998 concerning judicial practice when dealing with cases involving the consideration of appeals and complaints by citizens."

⁸¹ See 2003 Report of Special Rapporteur, para.45.

⁸² Alternative NGO report, *supra*, p.20. See also HRW, "Hell", *supra*.

⁸³ However, the Ombudsman stated to the Special Rapporteur that as a result of the review of complaints lodged with the Ombudsman office, public officials had been dismissed and investigations had taken place. See 2003 Report of Special Rapporteur, *supra*, para.32.

investigation.⁸⁴ The Supreme Court ruled in its Plenary Decision No.2 of 2 May 1997 that "any evidence obtained unlawfully shall have no legal validity and cannot form the basis of a judgment."⁸⁵ In spite of this, there appears to be a general practice of courts to disregard allegations of torture by the accused or solely asking the alleged perpetrators to testify in court and of not initiating independent investigations following such a complaint.⁸⁶ There is also no compulsory medical examination of defendants and witnesses who in court proceedings claim to have been subjected to torture.⁸⁷ Furthermore, defendants who raise allegations of torture in court face a high risk of repeated ill-treatment at the hands of the police since they are commonly still in police custody.⁸⁸

3.3. Prosecutions: Indictments, convictions, sentencing

With regard to trials of those charged with acts amounting to torture, there have been few convictions, especially if compared to the number of complaints.⁸⁹ This low conviction rate is for many observers attributable to the influence the government has over judicial decision-making.⁹⁰

In most of the instances where perpetrators of torture were convicted and received prison sentences, the cases related to torture resulting in death of the victim.⁹¹ This is illustrated by a recent case, decided on 30 January 2002, where the Tashkent city court convicted four police officers to twenty years imprisonment and confiscation of property⁹² for causing the death of Ravshan Khaitov as a result of torture. In another case reported by the Special Rapporteur on Torture, the Tashkent Military Court sentenced two SNB officers to 15 years imprisonment and one SNB officer to five years imprisonment for murder, after they confessed to beating Ali Muhammed Mamadaliev to death in November 2001.⁹³

⁸⁴ See supra, II. The Special Rapporteur also noted articles 95 and 463 CPC, which have been mentioned to him by legal practitioners and the Acting Chairman of the Supreme Court, as relevant norms with regard to the inadmissibility of evidence gathered by illegal means and the need to confirm confessions by other corroborative evidence. See Report of Special Rapporteur, supra, paras.25 and 26.

⁸⁵ 'Evidence obtained unlawfully' refers to evidence obtained through the use of unlawful investigative methods, through mental or physical duress or in violation of other rules of criminal procedure. See CAT/C/53/Add. 1, p.46, para.243.

⁸⁶ This has in fact been acknowledged by Uzbekistan in CAT/C/53/Add.1, p.16, para. 60. See also Alternative NGO report, supra, pp.13, 23 giving a concrete example of a trial in 2000. At p.5, the report highlights the fact that confessions obtained through the use of unlawful investigative methods are usually the basic proof in a criminal trial. See also HRW, "Hell", supra, citing one case in which the procurator dropped the charges when the defendant alleged that his confession had been obtained by means of torture. See also HRW, Uzbekistan: Alleged Torture Victim Sentenced To Death, 4 December 2002. See also 2003 Report of Special Rapporteur, supra, para.27.

⁸⁷ Alternative NGO report, supra, p.14.

⁸⁸ See concrete examples described in HRW, "Hell", supra.

⁸⁹ See 5 b and 5 d, Conclusions CAT, 19/11/1999.

⁹⁰ See on this point the 2003 report of the Special Rapporteur, paras. 46 and 58. See also the official reaction by Uzbekistan to concerns raised by the Human Rights Committee in its replies to additional questions, supra, Question 8.

⁹¹ In 1997, a major and a sergeant were sentenced to 3 and 6 years imprisonment respectively for beating up a truck driver after an unsuccessful attempt to extort a bribe. In 1998, a police officer was convicted for causing the death of man in detention in Namangan. In June 2000, the Almalyk City Court sentenced a prison guard to six years imprisonment for beating a prisoner to death (Articles 103 and 104). See for details, HRW, "Hell", supra. On 25 February 1998, according to information provided by the Government of Uzbekistan, eleven law enforcement officers were sentenced to lengthy periods of imprisonment for offences under articles 230, 234 and 235 CC (Prosecution of an innocent party, Unlawful arrest and Coercion to testify). See, 1999 State Report, supra, para.49.

⁹² Articles 104, 138, 206 and 235 CC.

⁹³ See 2003 Report by Special Rapporteur, supra, Appendix II, pp.52,53.

Perpetrators of torture have in several cases received disciplinary punishments, including dismissal from their position or demotion.⁹⁴ However, numerous cases have been reported where alleged perpetrators of torture have not only kept their positions, but have even been promoted.⁹⁵

IV. CLAIMING REPARATION FOR TORTURE

1. Available Remedies

1.1. Constitution

Neither the Constitution nor statutory laws contain any express provision for reparation for acts of torture and violence by law enforcement officials.⁹⁶ A torture survivor may, however, under certain circumstances, be able to claim reparation under the Civil Code and/or the CPC.

1.2. Civil Law

The Civil Code stipulates that the state compensates any damage caused to citizens⁹⁷ or legal persons as a result of an unlawful act or omission of its agencies or officials acting for these agencies⁹⁸ regardless of any culpability of the official.⁹⁹ The State is primarily liable for damages caused by unlawful acts of its officials.¹⁰⁰ It is fully liable for any damages arising out of unlawful acts committed by investigating authorities, the procurator's office and the court. The liability shall be determined in accordance with the procedure established by law other than the civil code.¹⁰¹

The following forms of reparation for unlawful acts of state officials are recognised in the civil code:

- In case of bodily harm, compensation for lost income and compensation of all expenses arising from the injury, such as medical treatment, purchase of

⁹⁴ Twenty officers were dismissed from office in 1999 for the use of violence and other prohibited investigative methods according to the National Centre for Human Rights, cited in Alternative NGO report, *supra*, p.15. See also information provided by the Government of Uzbekistan in its 2001 State Report to the Committee against Torture, *supra*, para. 115: "According to statistics provided by the Procurator's Office, criminal proceedings were brought against eight officials of internal affairs administrations in 1999 as a result of citizens' complaints of unlawful acts by officials of internal affairs bodies. Following the hearing of the cases, two were dismissed from their posts and six were disciplined"; para.116:" The following sanctions were taken against 29 procuratorial officials who permitted unlawful methods of conducting an investigation: 11 were dismissed from their posts and 18 were disciplined."

⁹⁵ Alternative NGO report, *supra*, p.15.

⁹⁶ CAT/C/53/Add.1, p.45, para.238: While there are some general rules ... under the heading "Compensation for injury caused by detention", the legislation of the Republic of Uzbekistan does not contain any special provision for fair and adequate compensation of victims of acts of torture or violence."

⁹⁷ The term citizens includes pursuant to Article 16 Uzbek citizens, stateless persons and foreign nationals.

⁹⁸ Article 15 Civil Code.

⁹⁹ Article 990 Civil Code.

¹⁰⁰ See Articles 15 and 1001 Civil Code.

¹⁰¹ Article 991 Civil Code.

medicine etc.¹⁰² In case of death of the family provider, his/her dependants are entitled to compensation.¹⁰³

- Moral damages are to be compensated in case of the culpability of the wrongdoer or, regardless of any culpability, if the damage has been caused through unlawful conviction or fine or unlawful arrest or detention.¹⁰⁴ It is also to be compensated in any other cases provided by law. The courts have discretion in determining the amount of moral damages. Physical and mental suffering as well as the culpability of the person causing the injuries are to be taken into account.¹⁰⁵
- The State may have recourse against the responsible public official only if the latter has been convicted of a criminal offence for the act which gave rise to damages.¹⁰⁶

A claim for damages against a State agency or agent must be brought before the competent civil district court, which is located within the area of the residence of the victim or the area of the official or agency allegedly responsible for the violation.¹⁰⁷ The statute of limitations for claims for damages is three years.¹⁰⁸ While it does not apply to reparation claims for crimes and for damages to life or health of citizens the latter claims for damages will only be satisfied for a period of three years before filing a suit.¹⁰⁹

A plaintiff in a civil case is required to pay a fee equal to 5 monthly minimum wages set by the Cabinet of Ministers.¹¹⁰ There is no system of legal aid in Uzbekistan for such claims.

Each party has to prove the circumstances that it relies on as grounds for its claim and rebuttal.¹¹¹ The burden of prove can therefore be easily shifted from one party to another when there is *prima facie* evidence. The outcome of the civil suit is independent of the verdict of any parallel criminal trial. The court shall assess the evidence on its 'subjective conviction,' which should be based on law and on thorough, comprehensive and impartial consideration of the circumstances of the case presented during the hearing.¹¹² The losing party bears all costs of the successful party, including legal costs.

¹⁰² Article 1006-1008 Civil Code.

¹⁰³ Article 1009, 1010 Civil Code. In calculating the amount of damages, the monthly income of the deceased, pension rights and other maintenance claims are to be taken into account.

¹⁰⁴ Article 1021 Civil Code. See also Decision No.7 of the Supreme Court of Uzbekistan of 28 April 2000 on certain matters relating to the application of the law on compensation for moral harm.

¹⁰⁵ Article 1022 Civil Code. The nature of the physical and moral suffering is to be determined by taking into consideration the factual circumstances in which the damage was inflicted and the specific characteristics of the injured person.

¹⁰⁶ Article 1001 Civil Code.

¹⁰⁷ Article 267 Civil Procedure Code.

¹⁰⁸ Article 150 Civil Code.

¹⁰⁹ Article 163 Civil Code.

¹¹⁰ Article 1 (b) of the resolution of the Cabinet of Ministers on State fees and costs, 2 November 1994, last amended on 22 August 2001.

¹¹¹ Article 57 Civil Procedure Code.

¹¹² Article 67 Civil Procedure Code.

Awards are enforced by bailiffs on the basis of a court order.¹¹³ The minimum amount of income and goods that are considered to be necessary for subsistence are exempt from enforcement.¹¹⁴ In the event that compensation is to be paid by the state, the same rules apply but there will be no exemptions.¹¹⁵

1.3. Criminal Law

Damage caused to a person as a result of the violation of his/her rights in the course of an investigation or trial should be compensated in the terms stipulated by the CPC.¹¹⁶ Article 235 of the CPC provides for a right to reparation for damages suffered only in cases where a person has been acquitted or where proceedings were terminated on the grounds laid down in Art. 83 CPC.¹¹⁷ If a person was acquitted or a case was dropped on these grounds, he/she is entitled to forms of restitution, compensation and measures aimed at reintegration into society as specified but neither satisfaction nor guarantees of non-repetition.¹¹⁸ Consequently, if the person was lawfully arrested or detained or prosecuted with or without deprivation of liberty then he/she will not have an express right to compensation on this basis. Compensation can be claimed in a simplified procedure following a dismissal of the initial case or an acquittal and will be awarded by court ruling.¹¹⁹

The CPC allows for civil suits to be joined to the criminal trial though only for claims related to property damage.¹²⁰ Thus, torture survivors will not be able to avail themselves of this remedy.

2. Practice

There are no statistics as to how many torture-related claims have been brought to government bodies or before Uzbek courts. No cases are known in which torture survivors or relatives of torture victims have received any form of compensation or other forms of reparation.¹²¹

¹¹³ Article 371 Civil Procedure Code.

¹¹⁴ Article 25 Civil Code.

¹¹⁵ Articles 79 and 80 Civil Code.

¹¹⁶ Article 18 (6) CPC: "Damages that have been caused to a person as a result of the violation of his rights and freedoms during the conduct of legal proceedings shall be remedied on the grounds and in accordance with the procedure established by the present Code."

¹¹⁷ Article 83 CPC lists the general rules on rehabilitation: "The suspect, the accused, the defendant shall be acquitted and rehabilitated in case: of absence of the event of crime on which the case has been brought, the investigation and court examination conducted; of absence of corpus delicti; he is not implicated to the crime." Article 235 CPC reads: "Damage inflicted to the detainee by the unlawful detention shall be entirely indemnified if an acquittal was granted or the case was dismissed upon the grounds stipulated by article 83 of this Code."

¹¹⁸ See Articles 301-313 CPC.

¹¹⁹ See Chapter 38 CPC.

¹²⁰ Chapter 33 of the CPC (Art. 275-286 CPC).

¹²¹ See Alternative NGO report, *supra*, p.16 and 23: "Victims of acts of torture or violence do not obtain compensation for their sufferings. There has been no case so far wherein the need for redress for moral injury by unlawful acts was adopted by the court. The fact is actually confirmed by the National Centre for Human Rights report. The contributors do not provide for any single case of compensation." The State Report to the Committee against Torture does not refer to any cases either, *supra*.

The fact that torture survivors have apparently not or hardly applied to government bodies for compensation for torture has, in the light of the considerable number of torture related complaints and the reported extent of torture, demonstrates that torture survivors are either not sufficiently aware of their rights or distrust the authorities.¹²² In the absence of a simple and accessible procedure for reparation, the only available option for torture survivors and relatives of torture victims are civil courts. Given the high costs involved in pursuing such claims, the lack of legal aid and the considerable evidentiary hurdles in light of the lack of official investigations into claims of torture, it is not surprising that most torture survivors appear to refrain from claiming compensation before civil courts. Human rights organisations are not allowed to operate freely, making it difficult for torture survivors to find support in pursuing their claims.¹²³

Even though some torture survivors appear to have brought claims before civil courts recently, no further assessment of the available mechanisms is possible given the lack of practice.

V. GOVERNMENT REPARATION MEASURES

There is no government reparation measure in place for victims of present acts of torture and ill-treatment.¹²⁴ There are also no independent treatment centres for torture survivors in Uzbekistan. Victims of persecution, including but not specifically victims of torture, during the communist years, namely during Stalin's and Andropov's reign in the 1980s, are entitled to a programme of benefits which includes free medical aid.

VI. LEGAL REMEDIES IN CASES OF TORTURE COMMITTED IN THIRD COUNTRIES

1. Prosecution of acts of torture committed in third countries

The jurisdiction of Uzbekistan is confined to crimes committed within its territory. A crime is considered to have been committed in Uzbekistan if it has been committed outside Uzbekistan but the criminal result arises in Uzbekistan.¹²⁵ The only exception to this principle is the active personality principle which is recognised in a qualified form in Article 12 of the CC.¹²⁶ Universal jurisdiction may possibly be exercised in

¹²² See the information provided by the Government of Uzbekistan, 2001 State Report to the Committee against Torture, supra, para.117: "According to statistics provided by the Procurator's Office, no applications were received by law-enforcement agencies for compensation for damage done as a result of the use of torture or unlawful treatment."

¹²³ Uzbekistan has so far only legalised one human rights group, the Independent Human Rights Organisation on 4 March 2002. All other human rights organisations are banned and can only operate surreptitiously.

¹²⁴ There is also no government compensation scheme for victims of crime.

¹²⁵ Article 11 CC: "A crime committed within the territory of Uzbekistan is an act which: a) Is begun, completed or broken off within the territory of Uzbekistan; b) Is committed outside Uzbekistan, but whose criminal result arises within Uzbek territory; c) Is committed within the territory of Uzbekistan, but whose criminal result arises outside the country; d) Constitutes in conjunction or combination with other acts a crime part of which is committed within the territory of Uzbekistan."

¹²⁶ "Citizens of the Republic of Uzbekistan and stateless persons permanently resident in Uzbekistan who have committed a crime in the territory of another State shall be liable under the present Code if they have not served a sentence passed upon them by a court in the State in whose territory the crime was committed."

cases of torture, where the suspect is not extradited, on the basis of Article 12 (4) which provides that "Foreign citizens, and also stateless persons who do not reside permanently in Uzbekistan, shall be subject to responsibility for crimes committed beyond its limits under the present Code only in instances provided for by international treaties or agreements", thus seemingly allowing for the application of Article 5 of the Convention against Torture.¹²⁷

Foreign diplomats enjoy immunity from criminal proceedings pursuant to Article 4 CPC.

Extradition is generally governed by procedures laid down in bilateral agreements.¹²⁸ According to model rules for such agreements, extradition is possible for acts which are offences under the law of both contracting parties, and for which the prescribed penalty is imprisonment for more than one year or more serious punishment. Consequently, on the part of Uzbekistan, acts of torture would be extraditable since they carry a minimum punishment of more than one year imprisonment. There are several grounds on which extradition may be refused, in particular in cases where the person whose extradition has been requested is a national of Uzbekistan, unless provided otherwise by an international treaty.¹²⁹

There are no known cases in which a perpetrator of torture committed outside of Uzbekistan has been prosecuted in Uzbekistan or extradited to a third country.

2. Claiming reparation for acts of torture committed in third countries

According to Art. 31 Civil Procedure Law, any person may sue another person for damages if the defendant is citizen or has his domicile or habitual residence in Uzbekistan. The jurisdiction of the courts of Uzbekistan might also be based on the place of the tort, i.e. which includes both the place where the action occurred as well as the place where the actual damages arose.

Should the Uzbek courts find that they have jurisdiction on any of these grounds, the applicable law would be that of the place where the tort was committed or where any circumstances giving rise to the claim for damages occurred, or, if both parties are nationals of the same state, the law of that state.¹³⁰

There is no law on state immunity and no pertinent jurisprudence as to whether States would be granted immunity in such cases.

There have been no cases in which survivors of torture committed abroad have brought civil suits against their torturers or foreign States responsible for torture.

¹²⁷ However, this is doubtful since the 2001 Country Report to the Committee against Torture, *supra*, does not refer to this possibility, paras. 103, 104.

¹²⁸ See Articles 8-10 CPC.

¹²⁹ Article 10 (1) CPC. See for an overview of the Uzbek law and procedures on extradition, the Uzbekistan 2001 country report to the Committee against Torture, paras. 122-134.

¹³⁰ Article 1194 Civil Code.