



UZBEKISTAN

“No One Left to Witness”

Torture, the Failure of Habeas Corpus, and the Silencing
of Lawyers in Uzbekistan

HUMAN
RIGHTS
WATCH



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Silencing of Lawyers in Uzbekistan**

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Map of Uzbekistan



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Summary

For centuries, Uzbekistan was famed as a hub of trade and rich cultural exchange on the Silk Road connecting China to Western Europe. More recently, however, the Central Asian country has come to be known for something far darker: torture.

Perhaps nothing brings the torture epidemic that plagues Uzbekistan's police stations and prisons into more terrifying focus than photographs that local human rights defenders circulated in 2002 of Muzafar Avazov, a religious prisoner who died after he was submerged in boiling water by his prison interrogators. Those who saw Avazov's body reported seeing a large, bloody wound on the back of his head, heavy bruising on his forehead and side of his neck, and hands with no fingernails.

In 2003, a report by the United Nations special rapporteur on torture concluded that torture in Uzbekistan's criminal justice system was both "systematic" and "widespread," often occurring immediately after a person's detention, during interrogation, when a person has no access to a lawyer, and is far from a judge's oversight. The report put Uzbekistan's abysmal human rights record and pervasive torture problem in pre-trial and prison facilities squarely on the international agenda, prompting the United States, European Union, and other key institutions such as the European Bank for Reconstruction and Development (EBRD) to set concrete human rights requirements for the Uzbek government to meet to enhance bilateral relations and further public sector investment.

Uzbekistan's human rights crisis deepened further on May 13, 2005 when Uzbek government forces shot and killed hundreds of civilians, most of them unarmed, in the eastern city of Andijan. The Uzbek government's staunch refusal to permit an independent investigation into the sweeping use of force, and its wide crackdown on civil society after Andijan, propelled the EU, and later the US government, to condemn these abuses publicly and impose targeted sanctions.

Then, on January 1, 2008, after years of international pressure to improve its rights record and implement reforms, the Uzbek government returned to one of the special rapporteur's main recommendations: introducing the right of habeas corpus, or judicial review of pre-trial detention. In January 2009, the government expanded, in law at least, procedural rights for pre-trial detainees, including a right of access to counsel and instructing police to administer "Miranda" warnings to suspects in custody.

Such measures should have heralded a new and more positive era for Uzbekistan. They did not. Despite improvements on paper, and the Uzbek government's claims that it is committed to fighting torture, depressingly little has changed in Uzbekistan in the four years since habeas corpus was adopted.

Nearly a decade since the special rapporteur determined that torture in Uzbekistan was "systematic" and "widespread," and almost seven years since the Andijan massacre, Uzbekistan's atrocious human rights record and the position of its independent civil society activists continue to worsen. The Uzbek government has used the passage of habeas corpus and other reforms as public relations tools, touting the laws as signs of its ongoing "liberalization" of the criminal justice system. But there is no evidence the Uzbek government is committed to implementing the laws that it has passed or to ending torture in practice.

In fact, in several important respects, the situation has deteriorated. The government has moved to dismantle the independent legal profession and has closed off the country to independent monitoring and human rights work. Arrests and persecution of political and human rights activists have increased, and credible reports of arbitrary detention and torture of detainees, including several suspicious deaths in custody, have continued. The crackdown on independent Muslims has proved unrelenting, and the government has remained persistent in its refusal to allow domestic and international NGOs, including Human Rights Watch, to operate without interference from authorities. One respected criminal defense lawyer in Tashkent recently described this sense of deepening crisis. Torture in pre-trial detention remains widespread and may even be on the rise, she found, the only difference now is that there is "no one left to witness" ongoing abuses.

Meanwhile, Uzbek officials have become increasingly adept at deflecting calls for improvements, citing the establishment of "National Action" plans and various "human rights" posts within government ministries as "progress." Uzbek delegations regularly visit the UN to report on the passage of hollow legal reforms that are not implemented in practice. Amidst these long-running and serious abuses, the US and EU's swift and proactive responses in the past year to violent crackdowns in authoritarian Middle East and North African countries contrast starkly with the lack of a clear human rights strategy for Uzbekistan.

Based on over 100 interviews with torture victims, their relatives, lawyers, human rights defenders, scholars, and government officials in Uzbekistan between 2009 and 2011, this

report focuses on three issues: the failure of habeas corpus, the persistence of torture in pre-trial detention, and the dismantling of the independent legal profession in Uzbekistan.

The report examines whether habeas corpus has had an impact on torture in pre-trial detention, whether it meets Uzbekistan's obligations under international law, and analyzes how additional procedural rights crucial to preventing torture, such as access to counsel, are implemented in practice. It also documents the use of various forms of torture and ill-treatment in pre-trial detention since habeas corpus and other reforms were adopted, such as beatings with rubber truncheons and water-filled bottles, electric shock, hanging by wrists and ankles, rape and sexual humiliation, asphyxiation with plastic bags and gas masks, and threats of physical harm to loved ones. Finally, the report documents the authorities' crackdown on Uzbekistan's fledgling legal profession, particularly against criminal defense lawyers who have dared to raise allegations of torture and take on politically sensitive cases.

Human Rights Watch found that in the four years since its enactment, habeas corpus exists largely on paper. Habeas corpus (literally: "you may have the body") is a writ or legal action which guarantees that a detainee must be brought to court so the court can determine the lawfulness (both the legality and the necessity) of a person's continued detention after arrest. It is a core international right meant to prevent arbitrary detention, which international law and legal systems across the world recognize as a crucial safeguard against torture. But in Uzbekistan arbitrary detention is the rule rather than the exception. In practice, habeas corpus does little to protect detainees in Uzbekistan from torture and ill-treatment.

Uzbek courts approve prosecutors' applications for detention in most cases, often adopting government-proposed sentences verbatim, without independent review. The operative legal standard is so narrow that it violates habeas corpus' fundamental principle—to ensure a judge reviews the lawfulness of detention. Courts also lack discretion to impose less restrictive alternatives to detention, such as bail or house arrest.

Under Uzbek law, police and investigators can hold suspects up to 72 hours before bringing them before a judge for a habeas corpus hearing, a period in excess of that deemed compatible with human rights norms. Moreover, authorities often use various methods, including bogus administrative charges, to avoid bringing detainees before a court for significantly longer periods. Access to counsel and counsel of one's choice are violated at critical stages of the investigation, including interrogation and the habeas corpus hearing itself, which is a closed proceeding.

According to practicing lawyers, habeas corpus hearings are superficial exercises, lacking essential due process guarantees, such as a recusal procedure for judges who will later hear the same criminal case. Although habeas corpus requires authorities to physically produce the detainee before the court (as per the literal meaning of the term), hearings in Uzbekistan sometimes occur without the detainee present, especially in politically-motivated cases, robbing the procedure of its essential purpose.

In other cases, under the banner of “habeas corpus” proceedings, prosecutors ask judges to rubber stamp the pending detention of an individual who is not yet in custody. Once the individual is arrested the previous hearing is used to justify denying them an opportunity to challenge their continued detention in a proper habeas corpus hearing—what some local lawyers have called “habeas without corpus.”

The January 2009 amendments to the criminal procedure code that ostensibly expanded rights for pre-trial detainees turned out to be just as illusory as habeas corpus. They extended “Miranda” protections to pre-trial detainees, which require informing them of their right to remain silent, the potential use of their testimony against them in court, and their right to speak to an attorney or have one appointed by the state. The amendments also guaranteed the right to call one’s lawyer or close family member immediately after arrest, the right to consult with a lawyer from the moment of detention, and abolished the earlier requirement that lawyers receive written permission from the prosecutor before being able to visit clients in detention.

Torture—the second focus of the report—also remains widespread. As this report shows, police and security agents continue to use torture to coerce detainees to implicate themselves or others, viewing it as an effective instrument for securing convictions and meeting internal quotas. While used against suspected opponents of the government, torture is also applied to detainees for “common” crimes. As before habeas corpus, confessions obtained under torture are often the sole basis for convictions. Judges still fail to investigate torture allegations, to exclude evidence obtained through torture or without counsel present, or to hold perpetrators accountable.

Some lawyers, victims, and activists report that torture may be on the rise given Uzbekistan’s deepening government-imposed isolation since the 2005 Andijan massacre and the absence of any independent monitoring of torture on the ground. Since Andijan, the government has relentlessly sought to stamp out all independent human rights activity, imprisoning and harassing activists who attempt to document torture, and has even tortured some of them as well. It has persistently refused to allow the UN special

rapporteur on torture and other UN human rights experts to visit the country, despite their repeated requests for access, and does not allow international human rights groups or independent media outlets to operate.

An important measure of the Uzbek government's lack of commitment to implement habeas corpus or combat torture is its campaign to extend its control over the legal profession—the third focus of this report. In January 2009, a new law restructuring the legal profession abolished the previously independent bar associations, and subordinated their replacement to the government. All lawyers were required to re-apply for their licenses to practice law and to re-take a bar examination every three years.

The new law, which violates guarantees in the Uzbek Constitution and international standards on the independence of lawyers, has resulted in the government's co-opting the entire profession. As interviews with practicing and disbarred lawyers show, several lawyers who consistently take on politically sensitive cases or raise allegations of torture have been disbarred, and there has been a chilling effect on those who remain licensed to practice.

During this same period the governments traditionally viewed as champions of the cause of human rights in Uzbekistan—the US, EU, and its key members—have muted their criticism of the government's worsening human rights record, including its continuing and widespread use of torture. Driven by a short-term interest in Uzbekistan's strategic importance as a conduit of supplies and troops for the war in Afghanistan, the US and the EU have failed to respond to Uzbekistan's deepening human rights crisis and the government's continued gutting of independent civil society.

Even though their core human rights demands have never been met, Washington, Brussels, and other key international actors have largely abandoned the firm stances they adopted immediately after the May 2005 killings by Uzbek government forces in Andijan. They have been eager to accept the adoption of habeas corpus and other so-called reforms as signs of “progress,” relegating concerns about specific human rights cases to closed-door discussions and to “dialogues” away from the view of the public realm and even further from the view of ordinary Uzbeks who confront harsh treatment.

But this policy of “engagement without strings” is a short-term strategy that has compounded Uzbekistan's deepening human rights crisis. Indeed, such undue praise for hollow reform combined with increasingly quiet diplomacy has allowed the country's torture epidemic to worsen and has further imperiled Uzbekistan's embattled human rights

activists and lawyers, sending an unmistakable signal to the Uzbek government that brutalizing the population and stonewalling civil society are cost-free.

Human Rights Watch calls on the Uzbek government to address its pervasive torture problem by implementing the specific recommendations outlined in this report. These include ensuring that habeas corpus is implemented in line with international standards, that procedural rights such as access to counsel are protected, and that the independence of the legal profession is upheld.

Given the Uzbek government's long record of defying calls to implement meaningful reform, the US, EU, key EU member states, and other stakeholders should convey a clear and consistent message to Uzbek President Islam Karimov that they expect concrete, demonstrable evidence that his government is implementing habeas corpus as it should be, in accordance with international standards, upholding procedural rights in pre-trial detention, and protecting the independence of lawyers, in addition to addressing other serious human rights violations.

Washington and Brussels and other key actors should publicly acknowledge Uzbekistan's systematic retrenchment on rights and the urgent need to fundamentally shift their approach. As part of this shift, they should set clear timelines and follow through with concrete policy consequences should core human rights abuses repeatedly identified by the UN, US, EU and other bodies remain unaddressed.

Without a fundamental shift in approach and absent sustained, public international pressure with respect to ending torture, the situation in Uzbekistan is sure to get worse, and the horrific fate suffered by Muzafar Avazov and countless other torture victims is certain to be repeated.

Recommendations

To the Government of Uzbekistan

- **Comply with the Convention against Torture** and other Cruel, Inhuman or Degrading Treatment or Punishment.
- **Ratify the Optional Protocol to the Convention against Torture**, which requires Uzbekistan to permit visits by the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (“SPT”), and to establish an independent national preventive mechanism for the prevention of torture at the domestic level.
- **Fully implement the February 2003 recommendations issued by the UN special rapporteur on torture** following his visit to Uzbekistan in 2002; ensure habeas corpus is implemented in line with the International Covenant on Civil and Political Rights (ICCPR), and take steps to ensure the legal profession’s independence.

Specifically, we urge the government to:

Uphold the Right of Habeas Corpus

- Amend the Criminal Procedure Code to **make clear that a habeas corpus hearing requires a judge to determine the existence of a reasonable suspicion for detention** and evidentiary justification for continued detention, and requires them to order a person’s release if the lawfulness of continued detention is not established. Any standing orders should reinforce for judges their responsibility to assess the lawfulness of the detention during a habeas hearing.
- Amend the Criminal Procedure Code so that **a judge is obligated to initiate an investigation when provided with prima facie evidence of torture** and ill-treatment in pre-trial detention during habeas corpus hearings.
- Amend the Criminal Procedure Code so that judges have the **discretion to apply less restrictive alternatives to detention during habeas corpus hearings**, including guarantees of appropriate conduct that would allow defendants to be released pending trial.
- In line with international standards, **reduce from 72 hours to not more than 48 hours** the time that a detainee, whether detained on criminal or administrative grounds, can be held before being brought to the habeas corpus hearing.

- **Allow outside participants**, such as family members, human rights organizations, media, representatives of diplomatic missions, and international organizations access to habeas corpus hearings.
- **Ensure every detainee's right to a lawyer of their choice** in habeas corpus hearings and allow defense lawyers to meet with their clients and review evidence prior to the hearing.
- **Ensure that judges who preside over habeas corpus hearings do not preside over the trial in the same criminal case**, for example, by designating some judges exclusively to conduct such hearings.
- Amend the Criminal Procedure Code to **make the government's evidence on the necessity of continued detention available to defense lawyers immediately**, rather than placing the burden on them to obtain this material.

Prevent Torture and Protect Procedural Rights

- Implement provisions in the Criminal Procedure Code that **provide detainees full and unimpeded access to counsel of their choice** during all phases of investigation and trial.
- **Ensure that all detainees are made aware of their rights in detention**, in the form of a declaration or charter given to any person detained or called in for informal questioning and displayed in a visible place in cells and/or investigation rooms.
- **Instruct police, security agents, investigators, prosecutors, judges, and all government officials that torture will not be tolerated** and will lead to strict disciplinary action and criminal prosecution.
- Issue instructions to police to **strictly observe due process** when detaining persons.
- **Do not use the Code of Administrative Offences as the basis to detain anyone for longer than 48 hours** before being brought before a judge.
- Ensure that **confessions obtained under torture** cease to be admitted as evidence in court.
- **Ratify the Optional Protocol to the Convention against Torture**, and guarantee that a body such as the Ombudsperson for Human Rights can act as an independent national preventive mechanism, as required by the treaty.
- **Ensure that individuals have the right in practice to bring cases of alleged torture to an independent authority** for prompt and thorough investigation, and that they are not subject to intimidation or retaliation as a result of their complaint. Empower and permit the Ombudsperson for Human Rights to act as an independent body to receive and conduct effective investigations into allegations of torture.

- **Ensure that law enforcement officers who have allegedly mistreated or tortured detainees are prosecuted** and, if found guilty, subjected to appropriate penalties.
- **Ensure that torture allegations raised at trial are investigated** and documented in detail in any judgment and transcript of the proceedings.
- **Ensure unhindered access to trials and detention facilities** for human rights organizations and extend invitations to the UN special rapporteur on torture and all UN special procedures who have requested access.
- **Permit registration of local human rights groups and the re-registration of foreign NGOs**, including granting visas to their staff, and hold regular consultations with civil society groups to discuss implementation and enforcement of the Convention against Torture.

Ensure the Legal Profession's Independence

- **Ensure that the Chamber of Lawyers is fully independent and self-governing** so that defense lawyers may adequately represent the interests of their clients and the legal profession.
- **Remove the Ministry of Justice's authority to appoint and dismiss the chairperson** of the Chamber and institute free elections for this position.
- **Institute free elections of the regional chairpersons** of the Chamber of Lawyers and ensure that they exercise their functions free of external interference.
- **Remove the provision of the law on the legal profession that prohibits the existence of any other professional lawyers' organizations** with functions similar to the Chamber of Lawyers.
- **Change the composition of disciplinary committees within the Chamber of Lawyers** to ensure that government authorities do not participate in or retain significant influence over the disciplinary proceedings of lawyers.
- Ensure that the **licensing and discipline of lawyers is free of political considerations** or other arbitrary factors.
- If a law license is denied or revoked, **communicate the grounds on which the decision was made in detail**, and allow for review by an independent appellate body.
- **Reinstate law licenses** for those defense lawyers whose licenses were revoked as a result of their previous human rights work.

To the European Union and EU Member States

Given Uzbekistan's persistent failure to meet the human rights criteria articulated by EU foreign ministers and reaffirmed in a number of EU Foreign Affairs Council (FAC) conclusions, most recently in October 2010, **the FAC should ensure that the human rights situation in Uzbekistan remains firmly on its agenda and that EU responses to continued abuse and impunity are evaluated by the FAC on a regular basis.**

Specifically, the FAC Should:

- Determine ways to **give real meaning to its pledge** to make “the depth and quality” of the relationship directly “depend[ent] on Uzbek reforms and progress.”
- The EU High Representative and EU foreign ministers should **set a timeline for Uzbek government compliance with the FAC criteria and consider the specific policy consequences that would follow should it not, such as instituting targeted restrictive measures against Uzbek government entities and individuals responsible for grave human rights violations in the country.** Such measures should include imposing visa bans and asset freezes with respect to individuals responsible for torture and ill-treatment and the impunity with which these abuses occur, the imprisonment of human rights defenders, journalists, and political opposition figures, and the repression and harassment of independent civil society.

Other Specific Measures That the EU Can Take:

- Given the Uzbek government's longstanding and systematic failure to cooperate with UN human rights bodies, including non-implementation of recommendations by treaty bodies and special procedures and refusal to issue invitations despite the latter's repeated requests for country visits, and given the continued pattern of serious and widespread human rights violations in Uzbekistan, **support the establishment by the Human Rights Council of an international reporting mechanism, such as a special rapporteur on the situation of human rights in Uzbekistan.**
- Press the Uzbek government to **permit the registration of local human rights groups and the re-registration of foreign NGOs,** including through granting visas and accreditation to their staff.
- The European Commission should **exclude Uzbekistan from the EU's Generalized System of Preferences (GSP),** which provides import tax exemptions on goods from Uzbekistan.
- Representatives of the recently-established EU diplomatic mission and of EU member states in Tashkent should **monitor closely and respond to the Uzbek government's**

record on torture, including through the regular monitoring of trials, keeping records of allegations of torture, raising with the authorities concerns about specific cases of torture, following up on the government's response to such cases, and requesting periodic visits to places of detention.

- **Ensure that independent local civil society activists and legal experts are involved in initiatives undertaken within the framework of the EU's Rule of Law Initiative in Uzbekistan**, including by ensuring their ability to meaningfully participate in the monitoring and implementation of habeas corpus, or criminal procedure rights for pretrial detainees. Make public the content and outcomes of EU-supported initiatives in this area and conduct periodic, public assessments of their effectiveness.
- **Raise concerns related to torture, habeas corpus, and the independence of lawyers at every opportunity, including but not limited to the EU-Uzbekistan human rights dialogue**, making publicly available the specific questions raised during the dialogue in this regard, and the concrete steps the Uzbek government should take to address the concerns of the EU and EU member states in this area.
- High-level officials at the member state level should use high-level bilateral meetings to raise their concerns regarding the human rights record, set a timeline for Uzbek government compliance with the EU FAC criteria, and consider the specific policy consequences that would follow should it not, such as the institution of targeted restrictive measures against Uzbek government entities and individuals responsible for grave human rights violations in the country.

To the United States

Given Uzbekistan's persistent refusal to make "substantial and continuing progress" in its human rights record as outlined in the Consolidated Appropriations Act, or to meaningfully address the problem of torture and ill-treatment and other egregious abuses documented by the US Department of State in its annual country reports on human rights and by the US Commission on International Religious Freedom, the US government should **urgently place the human rights situation in Uzbekistan more prominently on its bilateral agenda**. It should:

- **Set a timeline within which the Uzbek government is expected to undertake concrete human rights improvements.**
- **Make clear specific policy consequences that will follow if it does not.** Such consequences should include imposing targeted restrictive measures such as asset freezes and visa bans (some of which already exist) against Uzbek government entities and individuals responsible for grave human rights violations

in the country, including those responsible for torture and ill-treatment, the imprisonment of human rights defenders, journalists, and political opposition figures, and the repression and harassment of independent civil society.

Other Specific Measures That the US Can Take

- **Withhold security assistance, including direct military aid,** to the Uzbek government until it takes meaningful steps to combat torture and address other human rights abuses, such as the steps recommended to the government above.
- Given the Uzbek government's longstanding and systematic failure to cooperate with United Nations human rights bodies, including non-implementation of recommendations by treaty bodies and special procedures and refusal to issue invitations despite the latter's repeated requests for country visits, and given the continued pattern of serious and widespread human rights violations in Uzbekistan, **support the establishment by the Human Rights Council of an international reporting mechanism, such as a special rapporteur on the situation of human rights in Uzbekistan.**
- Press the Uzbek government to **permit the registration of local human rights groups and the re-registration of foreign NGOs,** including through granting visas and accreditation to their staff.
- US embassy officials should **monitor closely and respond to the Uzbek government's record on torture,** including through regular monitoring of trials, keeping records of allegations of torture, raising with the authorities concerns about specific cases of torture, following up on the government's response to such cases, and requesting periodic visits to places of detention.
- **Raise concerns related to torture, habeas corpus, and the independence of lawyers at every opportunity of US-Uzbek dialogue, including but not limited to the US-Uzbekistan Annual Bilateral Consultations,** making publicly available the specific questions raised, and the concrete steps the Uzbek government should take to address US concerns in this area.
- **Lift the waiver in place on existing sanctions, including a ban on visits to the US by high-level officials,** which are outlined in the designation by the State Department that Uzbekistan is a "country of particular concern" for its systematic violations of religious freedom, including for the use of torture.
- **Disclose information about US military contracts with Uzbek companies and state entities and regularly audit any US taxpayer funds that are paid or provided to Uzbek companies or the Uzbek government,** so that the US Congress and Uzbek civil

society can ensure that those funds have been used for their intended purpose and are not lost to mismanagement or corruption. Audits should be made publicly available.

To the United Nations

- Given the Uzbek government's longstanding and systematic failure to cooperate with United Nations human rights bodies, including non-implementation of recommendations by treaty bodies and special procedures and refusal to issue invitations despite the latter's repeated requests for country visits, and given the continued pattern of serious and widespread human rights violations in Uzbekistan, **the Human Rights Council should create an international reporting mechanism, such as a special rapporteur on the situation of human rights in Uzbekistan.**
- **Relevant UN special procedures, including the special rapporteurs on torture and on the independence of judges and lawyers, should renew their pending requests for invitations to visit Uzbekistan, and use every opportunity to highlight concern and request information** from the Uzbek government, in the form of public press releases, urgent appeals and communications about the situation in Uzbekistan relating to their mandates.
- **Relevant UN treaty bodies should take up concerns relating to torture, habeas corpus, and the independence of lawyers in their periodic reviews of Uzbekistan,** building on the welcome emphasis on these issues by the Human Rights Committee and Committee against Torture, as reflected in their respective concluding observations resulting from their 2007 and 2010 reviews of Uzbekistan.
- **UN member states should make full use of the Universal Periodic Review process to raise concerns related to torture, habeas corpus, and the independence of lawyers,** building on the recommendations issued by relevant UN bodies and formulated in this report, and urge the Uzbek government to take the steps necessary to address the concerns identified.

Methodology

Human Rights Watch has conducted research on torture and ill-treatment and the functioning of the criminal justice system in Uzbekistan for many years. This report is based on over 100 in-depth interviews by Human Rights Watch in Uzbekistan between October and December 2010, during several research trips conducted in 2009 and interviews outside of Uzbekistan in 2011. Follow-up interviews and desk research were also conducted through November 2011.

Human Rights Watch interviewed victims and witnesses of torture and ill-treatment, their relatives, lawyers, legal experts, including a former justice of Uzbekistan's Supreme Court, and local human rights defenders. Human Rights Watch also interviewed Tashkent-based diplomats, representatives of international organizations, and also met with six Uzbek government officials.

Human Rights Watch identified the victims and witnesses of abuses with the assistance of Uzbek lawyers and human rights defenders, as well as through media reports. In some cases, lawyers provided Human Rights Watch with their colleagues' contact information. Interviews were conducted in English and Russian by researchers who are fluent in both languages. Some interviews were conducted in Uzbek, during which a translator for Human Rights Watch (a native speaker of Uzbek) translated into English and Russian.

While some interviewees' real names are used, others' identities have been withheld due to concern for their security or at their own request. These interviewees have been assigned a pseudonym consisting of a randomly chosen first name and a last initial that is the same as the first letter of the first name, e.g., Alisher A. There is no continuity of pseudonyms with other Human Rights Watch reports on Uzbekistan.

This report also makes use of the Uzbek government's official reports to UN human rights bodies, as well as meetings with representatives of the Ministry of Foreign Affairs and Office of Ombudsperson for Human Rights in November and December 2010 when Human Rights Watch's representative was still based in Tashkent. Despite Human Rights Watch's repeated requests, representatives of the government-controlled National Human Rights Center and officials of the Ministry of Justice would not agree to meet to discuss Human Rights Watch's work in Uzbekistan.

In November 2011, Human Rights Watch sent letters to Uzbekistan’s minister of internal affairs, the prosecutor general, minister of justice, minister of foreign affairs, ombudsperson for human rights, and government-controlled National Human Rights Center to obtain their response to the findings documented in this report as well as relevant data, including statistics on the number of habeas corpus petitions for pre-trial detention, investigations into torture allegations, and on the numbers of lawyers who have lost their licenses as a result of the restructuring of the legal profession in 2009. At this writing Human Rights Watch had not received replies to its November 10, 2011 letter from any of the above-listed Uzbek government bodies. Human Rights Watch’s letter to the government can be found in the appendix to this report.

Human Rights Watch has faced considerable obstacles conducting research for this report and monitoring the human rights situation in Uzbekistan. Government surveillance made it difficult for us to travel widely, in several cases causing us to terminate interviews or meetings out of concern for the safety of interviewees. Since the Andijan massacre of May 13, 2005, and the sweeping crackdown on civil society that the Uzbek government launched in its wake, Uzbek and foreign human rights defenders, including Human Rights Watch, have faced an increasingly oppressive environment that has severely restricted the ability to operate in Uzbekistan.

In June 2011, after years of obstructing Human Rights Watch’s work in Uzbekistan, the Supreme Court granted the Ministry of Justice’s petition to “liquidate” the registration of our Tashkent representative office, which was established in 1996. The liquidation of Human Rights Watch’s office registration followed the Ministry of Justice’s denial of work accreditation to Human Rights Watch’s Tashkent office director six months earlier in December 2010. The accreditation denial was conveyed in a letter stating that Human Rights Watch had an “established practice” of “ignoring Uzbekistan’s national legislation” and that its staff “lack[] experience cooperating with Uzbekistan” and “working in the region as a whole.” The letter did not specify what laws Human Rights Watch allegedly violated and was similar to the letter received in July 2008 by the representative’s predecessor, who was denied accreditation on the ground that he “did not understand Uzbek culture or traditions.”

Uzbek authorities earlier made it impossible for Human Rights Watch to maintain a continuous presence in Uzbekistan since July 2008, as they first denied accreditation and then banned entry into the country for Human Rights Watch’s previous representative. Since 2004, the Uzbek government has obstructed the work of the Tashkent office by

denying visas and/or accreditation to virtually every Human Rights Watch staff member and threatening criminal charges against one staff member.

In July 2009, authorities deported a Human Rights Watch research consultant upon her arrival in Tashkent, and in December 2009 a Human Rights Watch researcher was the subject of a violent attack in the southern city of Karshi that appeared to have been orchestrated by the authorities.

Human Rights Watch will not abandon investigating human rights abuses in Uzbekistan. We are particularly concerned about the impact our forced closure will have on Uzbekistan's beleaguered and increasingly isolated community of human rights activists, independent journalists, and lawyers, who continue to face unrelenting harassment, intimidation, threats or worse simply for pursuing their human rights activities.

I. Background

The failure of habeas corpus, the persistence of torture in pre-trial custody after its passage, and the silencing of lawyers are features of a long-running human rights crisis in Uzbekistan, which has deepened during the twenty years since the Central Asian nation emerged from the collapsed Soviet Union.

Starting in 1992, the Uzbek government, led by President Islam Karimov, began to attack, jail, and drive into exile political opponents. It has remained one of the world's most repressive in the more than two decades of Karimov's authoritarian rule.

In the late 1990s and early 2000s, the government unleashed a sweeping campaign to imprison thousands of Muslims accused of overbroad and ill-defined charges of "religious extremism."¹ The next major turning point came on May 13, 2005, when government forces shot and killed hundreds of civilians, most of them unarmed, in the eastern city of Andijan. Authorities unleashed a fierce crackdown on domestic civil society groups, imprisoning dozens of human rights defenders and others for speaking out about and calling for accountability for the killings.²

The crackdown on civil society has continued until today, with at least 11 rights activists, and numerous journalists and political opposition figures still in prison. Thousands are serving long prison sentences for alleged religious extremism.³

"Systematic Torture" and the Call for Habeas Corpus

By the late 1990s and early 2000s, widespread torture of detainees, common in criminal investigations, had become an unmistakable feature of the Uzbek government's crackdown against independent Islam.⁴ Authorities' broad campaign to imprison thousands of men perceived to be "religious extremists" met with scrutiny from an

¹ For more information see Human Rights Watch, *Creating Enemies of the State: Religious Prosecution in Uzbekistan*, March 2004, <http://www.hrw.org/reports/2004/03/29/creating-enemies-state-o>.

² For more details see Human Rights Watch, *"Saving its Secrets:" Government Repression in Andijan*, May 2008, <http://www.hrw.org/reports/2008/05/11/saving-its-secrets-o>; Human Rights Watch, *Burying the Truth: Uzbekistan Rewrites the Story of the Andijan Massacre*, vol. 17, no. 6(D), September 2006, <http://www.hrw.org/en/reports/2005/09/18/burying-truth>; Natalia Antelava, "Uzbek exiles mark Andijan deaths," BBC News, May 13, 2007, <http://news.bbc.co.uk/2/hi/asia-pacific/6650907.stm> (accessed October 11, 2011).

³ United States Commission on International Religious Freedom, *USCIRF Annual Report 2011 – Countries of Particular Concern*, May 2011, <http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf> (accessed October 31, 2011).

⁴ Human Rights Watch, *"And it Was Hell All over Again:" Torture in Uzbekistan*, vol. 12, no. 12(D), December 2000, <http://www.hrw.org/reports/2000/12/01/and-it-was-hell-all-over-again-torture-uzbekistan>.

increasingly assertive civil society. As a result, horrific images of deaths in custody with signs of torture started to emerge, such as that of Muzafar Avazov, a religious prisoner who died after apparently being submerged in boiling water.⁵

As a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Uzbek government must submit periodic reports on its adherence to the Convention to the UN Committee Against Torture (CAT).⁶ In June 2002, CAT expressed concern over 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.”⁷ It made 15 recommendations including, among others, a call for authorities to ensure prompt, impartial, and full investigations into torture allegations; ensure that evidence obtained by torture is inadmissible; and guarantee detainees access to a lawyer, doctor, and family members from the actual time they are detained.⁸

Several months later, the Uzbek government took the important step of issuing an invitation to the UN’s special rapporteur on torture and other cruel, inhuman degrading treatment or punishment.⁹ His fact-finding visit in November 2002 raised hopes that it would trigger fundamental changes toward eradicating the practice of torture in Uzbekistan. The special rapporteur’s report, published in February 2003, characterized Uzbekistan’s pervasive torture problem as “systematic,” and made 22 recommendations for combating it.¹⁰ Similar to the CAT recommendations, the special rapporteur’s report called on Uzbek authorities to issue a public condemnation of torture at the highest level

⁵ For more details see “Uzbekistan: Two Brutal Deaths in Custody,” Human Rights Watch news release, August 9, 2002, <http://www.hrw.org/news/2002/08/09/uzbekistan-two-brutal-deaths-custody>; Amnesty International, Amnesty International Report 2003 - Uzbekistan, May 28, 2003, <http://www.unhcr.org/refworld/docid/3edb47e3o.html> (accessed 11 October 2011).

⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Uzbekistan became party to the Convention on August 31, 1995.

⁷ United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, Republic of Uzbekistan,” CAT/C/CR/28/7, June 6, 2002, <http://tb.ohchr.org/default.aspx?Symbol=CAT/C/CR/28/7>, (accessed October 11, 2011).

⁸ Ibid.

⁹ At the time of the mission to Uzbekistan, the Special Rapporteur on torture was Theo van Boven; he was replaced by Manfred Nowak on December 1, 2004, who served until November 2010 when he was replaced by the current special rapporteur, Juan Mendez.

¹⁰ United Nation Economic and Social Council, Civil and Political Rights, Including the Questions of Torture and Detention, Torture and other cruel, inhuman or degrading treatment. UN Commission on Human Rights, Report of the Special Rapporteur on the question of torture, Theo van Boven, Visit to Uzbekistan, E/CN.4/2003/68/Add.2. February 3, 2003, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/29dof1eaf87cf3eac1256ce9005a0170?Opendocument> (accessed October 12, 2011).

and to ensure access to counsel. He also emphasized the central importance of an additional recommendation as a safeguard against torture in pre-trial detention: the introduction of the core international right of habeas corpus.¹¹

Documenting Torture in a Closed Country

Since the special rapporteur's report, the Uzbek government has never acknowledged the "systematic" nature of torture in the criminal justice system. As discussed in later sections, its version of habeas corpus and other procedural reforms did not lead to any meaningful improvements.

Instead, what emerged in the intervening years was the Uzbek government's well-established pattern of introducing seemingly progressive reforms—often on the eve of review by UN treaty bodies—without actualizing them in practice, and in some cases, even undermining them with contradictory regulations.¹²

At the UN and in bilateral negotiations, the Uzbek government has used habeas corpus and other so-called reforms as public relations tools, often to deflect criticism and as a substitute for substantive responses to specific queries. For example, on March 11, 2011, during a general debate at the UN Human Rights Council, responding to an NGO report on the use of torture in the country, Uzbekistan's representative replied that "[t]he legal enshrinement of habeas corpus and the abolition of the death penalty in Uzbekistan were further evidence of the commitment of Uzbekistan to implement recommendations received under its Universal Periodic Review process."¹³

At the same time, the challenge of documenting and assessing the full scope of torture has grown immensely in post-Andijan Uzbekistan, as the government has systematically shut

¹¹ Ibid.

¹² A key example has been the Uzbek government's effort to curtail the independence of the legal profession just one year after introducing habeas corpus, abolishing independent bar associations, and subordinating their replacement to the Ministry of Justice. Another has been the creation of "human rights posts" and "resources centers" within various power ministries, such as the Ministry of Internal Affairs' "human rights protection department," which have evidenced no apparent independent authority or willingness to check the continuing practices of torture and ill-treatment that are still so prevalent among the rank-and-file police who work for the ministry. See "Interior Ministry opens human rights resource center," Governmental Portal of the Republic of Uzbekistan, <http://www.gov.uz/en/press/society/11714> (accessed November 8, 2011). The government has held a number of conferences, roundtables and trainings, some attended by international experts, and it has created special "human rights" posts within several key Ministries such as the MVD and MOJ. Similarly, while Uzbekistan abolished the death penalty and ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights in 2008, the incidence of disappearance and torture of political dissidents and violations of civil and political rights remains high.

¹³ United Nations Human Rights Council, Human Rights Council continues general debate on the promotion and protection of all human rights, March 11, 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10840&LangID=E> (accessed October 11, 2011).

down independent civil society, putting many activists behind bars. Some imprisoned rights defenders, such as Gaibullo Jalilov and Akzam Turgunov, who had documented the torture of others, have been subjected to the same since their imprisonment.¹⁴

Independent groups that still attempt to report on torture, such as the Human Rights Society of Uzbekistan or the Human Rights Alliance, remain unregistered by the government, leaving them vulnerable to harassment, including house arrest and other forms of government-orchestrated violence and intimidation. *Ezgulik* (Goodness), the country's single active independent human rights group with official registration, faces crippling defamation cases and in 2010 had its office burglarized and confidential database of abuse victims' testimonies stolen in an incident that appeared to be orchestrated by authorities.¹⁵



Defendants charged with terrorism sit in the Uzbek Supreme Court in Tashkent, September 20, 2005, in connection with the May 13, 2005 Andijan events. Rights activists documented the torture and ill-treatment in pre-trial detention of persons charged with involvement in the events. © 2005 Agence France Presse

¹⁴ "Uzbekistan's Imprisoned Human Rights Defenders," Human Rights Watch news release, May 12, 2011, <http://www.hrw.org/news/2011/05/12/uzbekistans-imprisoned-human-rights-defenders>

¹⁵ "Uzbekistan: Burglary at Rights Group's Office: Stop Crackdown on Human Rights Activists," Human Rights Watch news release, May 24, 2010, <http://www.hrw.org/news/2010/05/24/uzbekistan-burglary-rights-group-s-office>.

The picture has been no better for international human rights groups or media outlets that were based in Uzbekistan and regularly worked to bring torture to light or to strengthen the capacity of the legal profession and local media. Beginning in 2004, and increasing rapidly after Andijan, the government forced the closure of numerous organizations, including the Open Society Institute, the BBC, Deutsche Welle, Radio Free Europe/Radio Liberty, Internews, Freedom House, Counterpart International, the American Bar Association, and many others. None of the organizations that were forced to end their operations have resumed their activities in Uzbekistan.

In June 2011, the government closed Human Rights Watch's Tashkent office, ending its 15-year field presence in the country.¹⁶ A significant focus of Human Rights Watch's Tashkent office since 1996 has been to document allegations of torture and ill-treatment in prisons, police and National Security Services custody, and make recommendations to the Uzbek government and other actors on improving the situation. The Uzbek government also continues to deny access to the UN special rapporteur on torture, as well as nine other UN experts who have sought country visits.

Government-imposed isolation has significantly hampered the task of quantifying the true scope of torture in today's Uzbekistan, enabling authorities to increasingly control information. But as this report shows, numerous, credible reports of torture and ill-treatment continue to emerge.¹⁷ They indicate that any detainee, whether held on suspicion of committing an "ordinary" crime such as murder or robbery, or of being affiliated with groups that the government has branded "extremist," is at risk of torture.

Fading International Pressure

In recent years governments traditionally viewed as champions of the cause of human rights in Uzbekistan—the United States, the European Union, and its key members such as Germany, France, and the United Kingdom—muted their public criticism of the Uzbek government's worsening human rights record and largely abandoned the firm stances they had adopted in the immediate aftermath of the May 2005 killings by Uzbek government forces of hundreds of largely peaceful civilians in Andijan.

¹⁶ Sophia Kishkovsky, "Rights Watch Group Forced to Shut Its Uzbek Office," *New York Times*, March 15, 2011, <http://www.nytimes.com/2011/03/16/world/asia/16iht-uzbek16.html> (accessed October 12, 2011).

¹⁷ Surat Ikramov, head of the Initiative Group of Independent Human Rights Defenders, based in Tashkent, reported that 39 people died in places of detention in 2010 alone, most likely as a result of torture. See: Umida Niyazova, *Uzbek Prison Brutality Continues Unchecked*, Institute for War and Peace Reporting, January 17, 2011, <http://iwpr.net/report-news/uzbek-prison-brutality-continues-unchecked> (accessed October 11, 2011); see also, Pavol Stracansky, *UZBEKISTAN Muslims Face Horrific Torture in Jails*, Inter Press Service, January 11, 2011, <http://ipsnews.net/news.asp?idnews=54082> (accessed October 11, 2011).

Faced with an intransigent President Karimov who flatly rejected calls to conduct an independent investigation into the Andijan events or improve the human rights situation, the US and the EU, rather than attach meaningful policy consequences, backed away from key demands they had advanced regarding Andijan and the problem of torture. Instead of making the fulfillment of key human rights benchmarks a condition for deeper economic and military ties, Washington, Brussels, Berlin and other key actors have fully embraced policies of “quiet diplomacy” and so-called “constructive engagement” with Tashkent.

This policy shift took several years to emerge. But the West’s increasingly soft approach on rights in Uzbekistan became even more pronounced in 2011 when it contrasted starkly with the stance of the Obama administration and EU officials during the Arab Spring on the need to support the freedom of peoples who had struggled under repressive political systems and long-serving authoritarian rulers.

Advocates of “constructive engagement” have argued that public criticism is ineffective and only serves to alienate the target government. But as this report shows, wide-ranging abuses such as torture and the crackdown on independent civil society have only worsened during the last several years, and constructive engagement has resembled more a policy of “engagement without strings.” The result of abandoning pressure has been to leave Uzbekistan’s beleaguered human rights community, independent lawyers, and victims of abuses even further isolated.

European Union: Sanctions and Human Rights Criteria

The EU imposed sanctions on Uzbekistan in October 2005, in response to Tashkent’s refusal to agree to an international commission of inquiry into the government massacre in Andijan and the fierce crackdown on civil society that ensued.¹⁸ The sanctions originally consisted of a visa ban on 12 Uzbek officials the EU considered “directly responsible for the indiscriminate and disproportionate use of force in Andijan,” an arms embargo, and partial suspension of the Partnership and Cooperation Agreement (PCA), the framework that regulates the EU’s relationship with Uzbekistan. This was the first time the EU had suspended parts of a PCA with another country over human rights concerns.

¹⁸ “Council Common Position of 14 November 2005 concerning restrictive measures against Uzbekistan,” 2005/792/CFSP, Official Journal L 299/72, December 16, 2005, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:299:0072:0079:EN:PDF> (accessed October 31, 2011); see also “General Affairs and External Relations,” Council of the European Union press release, C/05/242, October 3, 2005, <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/05/242&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed October 31, 2011).

The EU lifted the partial suspension of the partnership agreement in November 2006, and then took the names of four officials off the visa ban list in May 2007. In October 2007, while extending the sanctions for another 12 months, it suspended the visa ban for six months, justifying the move as a constructive gesture aimed at encouraging the Uzbek government to undertake the necessary reforms. In April 2008, EU foreign ministers extended the suspension of the visa ban for another six months, only to drop the ban altogether in October 2008, leaving in place only the arms embargo. Core EU demands for human rights progress including accountability for the Andijan killings, release of political prisoners and allowing national and international NGOs to work freely were never met.

The EU's sanctions were largely symbolic. But they offered a strong message of support to the victims of human rights abuses.¹⁹ However, almost as soon as sanctions were adopted, several EU states, most notably Germany, set about openly undermining them, sending mixed messages that further weakened any role the sanctions did play. Instead of conveying a clear message to Tashkent that their relationship with the EU is predicated upon human rights improvements and accountability for serious abuses, German diplomats effectively undermined EU leverage by openly arguing that sanctions and the human rights criteria linked to easing them were ineffective policy tools that only served to alienate the Uzbek government.

Germany: Anti-Sanctions, Pro-Termez

Nothing better illustrates the EU's lax attitude than Germany's actions concerning former Uzbek interior minister Zokir Almatov, who was one of the main architects of the Uzbek government's response to the Andijan protesters. Although there was a ban on twelve Uzbek government officials' travel to the EU, with Almatov topping the list, Germany granted him a visa on humanitarian grounds for medical treatment at a clinic in Hannover just days before the list of names subject to the EU visa ban was formally announced. Germany's failure to accompany this highly controversial move by a public statement clarifying its stance as fully backing the sanctions served a serious blow to their effectiveness, and constituted a blatant violation of the spirit of the visa ban. A group of Uzbeks who were tortured in government custody in connection with the Andijan events filed a complaint in Germany in late 2005, seeking to force the German government to investigate Almatov and other top Uzbek officials for crimes against humanity. Germany's federal prosecutor rejected the complaint in December 2005 on the ground that Almatov

¹⁹ Ian MacWilliam, "Uzbek opposition lauds sanctions," BBC, October 4, 2005, <http://news.bbc.co.uk/2/hi/asia-pacific/4308340.stm> (accessed October 31, 2011).

had already left the country. The same month Almatov returned to Uzbekistan and was shortly thereafter replaced as interior minister.²⁰

Germany's approach to human rights in Uzbekistan and its efforts to undercut EU sanctions and pressure on Tashkent have been guided by its desire to secure use of airbase in the southern Uzbek town of Termez from which it could transit troops and supplies to Afghanistan. Perhaps the most significant evidence of the German government's lack of political commitment to uphold the human rights criteria outlined by the EU is its payment of millions of euros to the Uzbek government for use of the Termez airbase during the same period when the EU had imposed sanctions.

According to sources in the Bundestag, Germany paid a total of €67.9 million from 2005 to 2009 to use the Termez base. Payments rose each year the sanctions were in place and fell in 2008, when the sanctions were almost completely lifted. Payments in 2010 totaled €25.9 million, and are expected to continue as long as Germany uses the base.²¹ According to figures from the German Ministry of Defense, operational costs for the Termez base totaled an estimated €88 million between February 2002 and the end of 2010.²²

German officials criticized and worked to undercut the EU's sanctions and the human rights criteria linked to easing them, arguing that they were ineffective policy tools that only served to alienate the Uzbek government. However, the government never explained publicly whether it considered alternatives to Termez, and if so why it ruled them out in favor of supporting a government that continues to commit grave human rights abuses.²³

²⁰ Human Rights Watch, *Germany and Accountability for Crimes Against Humanity in Uzbekistan: Questions and Answers*, December 2005, <http://www.hrw.org/english/docs/2005/12/15/uzbeki12294.htm>.

²¹ "Germany: Use Visit to Press Uzbekistan on Rights, Closer Ties Should Be Pegged to Concrete Improvements," Human Rights Watch news release, <http://www.hrw.org/news/2011/05/20/germany-use-visit-press-uzbekistan-rights>, (accessed October 31, 2011). On April 13, 2010, Germany signed an agreement with Uzbekistan authorizing an annual payment of 15.96 million euros to Uzbekistan for the transit of personnel and goods through its territory. Germany made its first annual payment to the Uzbek Ministry of Finance in January 2011.

²² Letter from Thomas Kossendey, Parliamentary State Secretary to the Ministry of Defense, to Mrs. Viola von Cramon, Member of the German Bundestag, April 15, 2011. This letter was originally published on the Bundestag website, but the German Ministry of Defense later stated that the information is confidential and asked the letter be removed from the Bundestag website. Deidre Tynan, "Uzbekistan: Tashkent Tries to Stuff Termez Genie Back in the Bottle," *Eurasianet.org*, August 4, 2011, (accessed November 23, 2011). The statistics from the letter are still publicly available in German: AG Freidenforschung, <http://www.ag-friedensforschung.de/themen/Bundeswehr/BT1705638-Auszug.pdf>, (accessed November 23, 2011).

²³ Some German legislators are increasingly voicing their disagreement with the Foreign Office's "quiet" approach to human rights in Uzbekistan. On May 19, 2011, four Bundestag members urged Chancellor Angela Merkel to raise the cases of imprisoned human rights defenders in her government's interactions with Uzbekistan. Led by Viola von Cramon, the legislators said that "the Uzbek government has a long record violating the basic rights of its citizens," and declared that the "German government's engagement with the Uzbek government must include a consistent and frank dialogue regarding its ongoing human rights violations." Letter by Members of the Bundestag, Germany's Parliament, urging Chancellor Merkel to Raise the Cases of Akzam Turgunov and 12 Other Imprisoned Human Rights Defenders, May 19, 2011, <http://www.freedom-now.org/wp-content/uploads/2011/05/Letter-to-Chancellor-Angela-Merkel-Eng-5.19.11.pdf> (accessed October 31, 2011).

“Positive Steps” and “Dialogue”

On October 27, 2009, EU foreign ministers lifted the remaining arms embargo, the last remaining component of the sanctions. In a move that could only have encouraged Uzbek government intransigence, the EU justified the lifting of the sanctions by referring to “positive steps” taken by the Uzbek government.²⁴ These included “efforts to improve detention conditions, the introduction of habeas corpus, the ratification of conventions ... continuation of judicial reform,” Uzbekistan’s “active participation” in the EU Rule of Law Initiative, and “the consolidation of the dialogue on human rights between the EU and Uzbekistan.”²⁵

While it is beyond the scope of this report to address each area the EU cited as a “positive step,” it was clear that by October 2009 neither habeas corpus nor other judicial reforms were resulting in substantive progress. On the contrary, at the moment sanctions were lifted, Uzbek government repression continued unabated.



Dilmurod Saidov, a human rights defender and independent journalist who sought to expose government corruption, is currently in prison. His lawyer, Ruhiddin Komilov, said he was not allowed into the courtroom during the 2009 habeas corpus hearing for Saidov. © 2009 Uznews

For example, in September 2009, authorities sentenced independent journalist Dilmurod Saidov to 12-and-half years in prison. Credible reports of torture and ill-treatment of detainees, including suspicious deaths in custody, continued to emerge, and the Uzbek government announced a compulsory relicensing of lawyers, which appeared to be used to revoke the licenses of those who defend individuals persecuted on political grounds. The European Court of Human Rights continued to rule that to send a detainee to Uzbekistan would be a breach of the prohibition on exposing an individual to the risk of torture, enshrined in article 3 of the European Convention on Human Rights and article 4 of the EU Charter on Fundamental Rights.²⁶

²⁴ See: Conclusions of the EU General Affairs and External Relations Council, 2971st Council Meeting, October 27, 2009, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/gena/110805.pdf (accessed October 31, 2011).

²⁵ Ibid.

²⁶ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November

More than two years since the dropping of sanctions, the rapprochement between the EU and Tashkent has failed to produce meaningful human rights improvements. Apart from a rhetorical commitment to promote human rights as part of the relationship, this policy appears to have boiled down to nothing beyond the so-called “human rights dialogues” that the EU pursues with each Central Asian government. These annual talks are closed negotiations at a relatively low level that produce no public announcement of specific commitments and appear to have no bearing on the overall relationship.²⁷

Furthermore, the dialogues have often been used by Uzbek officials to avoid human rights concerns raised in other more significant settings such as higher-level bilateral negotiations, serving to weaken the EU’s human rights policy rather than strengthening it.²⁸ Uzbekistan’s increasingly embattled local human rights defenders report that the EU-Uzbekistan human rights dialogues have done nothing to improve conditions for them on the ground. Furthermore, activists say that the lack of any public commitments and the closed nature of the dialogues process leave them without any sense of what specific human rights improvements the EU is pressing their government to make.²⁹

United States: Restrictions on Aid for a “Country of Particular Concern”

The US Department of State has documented Uzbekistan’s atrocious rights record in its annual country reports on human rights since the country emerged from the Soviet Union. Since 2004, Congress had expressly restricted assistance to Uzbekistan, including military aid, based on the absence of “substantial and continuing progress” in its record.³⁰ It further tightened those restrictions after the Andijan events and helped organize an airlift and resettlement to the US of hundreds of Uzbek refugees who fled from the violence into neighboring Kyrgyzstan.³¹

1950, ETS No.5; Charter of Fundamental Rights of the European Union, 2000/C 3641/01.

²⁷ Veronika Szente Goldston, “Destructive Engagement,” Transitions Online, January 26, 2011, <http://www.hrw.org/news/2011/01/26/destructive-engagement> (accessed December 10, 2011).

²⁸ For example, a French diplomat explained that when human rights issues were raised with the Uzbek delegation during bilateral negotiations in Paris with the French Foreign Ministry in late 2010 the Uzbek side responded that “it would be better to save these discussions” for the EU-Uzbekistan human rights dialogue coming up the following year. Human Rights Watch phone interview with [name withheld], December 6, 2010.

²⁹ Human Rights Watch interviews with Sukhrobjon Ismoilov, Expert Working Group and Vasila Inoyatova, Ezgulik human rights organization, Warsaw, September 29 and 30, 2011.

³⁰ FY2004 Consolidated Appropriations Act 2004 (H.R. 2673), sec. 568(a), <http://www.gpo.gov/fdsys/pkg/BILLS-108hr2673enr/pdf/BILLS-108hr2673enr.pdf> (accessed October 31, 2011).

³¹ In 2006, the Senate introduced a condition that the Uzbek government should permit an international investigation of violence against civilians in Andijan in May 2005. In FY2008, the Senate added another condition that if the Secretary of State had credible evidence that Uzbek officials might be linked to the “deliberate killings of civilians in Andijon ... or for other gross violations of human rights,” (P.L. 110-161), these individuals would be ineligible for admission to the US.

Uzbek human rights defenders were buoyed by the visit of Senators John McCain, Lindsey Graham, and John Sununu to Uzbekistan two weeks after the Andijan events.³² Not a single Uzbek government official agreed to meet the senators during their trip.³³ Calling for a “complete investigation,” McCain told a press conference at the US embassy in Tashkent:

We find the recent events to be shocking but not unexpected in a country that does not allow the exercise of human rights and democracy.... [T]he United States must make this government understand that the relationship is very difficult, if not impossible, if a government continues to repress its people. And history shows that continued repression of human rights leads to tragedies such as the one that just took place.³⁴

Echoing his remarks, Senator Sununu stated:

This level of political and economic repression is unsustainable. It will only serve to stimulate discontent and unrest among the people in Uzbekistan, prevent them from achieving real economic independence and prosperity, and prevent the United States and Uzbekistan from achieving any type of normal or significant relationship.³⁵

In addition to the congressional restrictions, since 2006 the State Department has designated Uzbekistan a “Country of Particular Concern” based on the findings of the bipartisan Commission on International Religious Freedom (USCIRF) that Uzbekistan systematically violates religious freedom. USCIRF’s annual reports have repeatedly documented the pervasive practice of torture against thousands of persons in pre-trial detention and prison who are accused of, or sentenced on charges of, “religious extremism.”³⁶

³² Human Rights Watch interview with Andijan-based human rights activist Saidjahon Zainabitdinov, Tashkent, December 21, 2010.

³³ Bruce Pannier, “Uzbekistan: Officials Refuse To Meet With U.S. Senate Delegation,” Radio Free Europe/Radio Liberty, May 30, 2005, <http://www.rferl.org/content/article/1059052.html> (accessed October 31, 2011).

³⁴ “Senators McCain, Sununu and Graham Visit Uzbekistan, (05/29/2005),” Embassy of the United States of America in Tashkent, Uzbekistan press release, May 29, 2005, <http://uzbekistan.usembassy.gov/pr-052905.html> (accessed October 31, 2011).

³⁵ Ibid.

³⁶ USCIRF Annual Report 2011 – Countries of Particular Concern, May 2011, <http://www.uscifr.gov/images/book%20with%20cover%20for%20web.pdf> (accessed October 31, 2011), pp. 181-195.

Afghanistan and the End of Congressional Sanctions

Despite these stated concerns on human rights, as the war in Afghanistan has intensified, the US-Uzbekistan relationship has increasingly become dominated by the Department of Defense (DOD), which uses routes through Uzbekistan as part of the Northern Distribution Network (NDN) to supply its forces in Afghanistan.

Seen as a critical stop in the NDN, the US has sent non-lethal supplies to Afghanistan through Uzbek territory since 2009, as an alternative to what are viewed as unstable supply lines through Pakistan. As US officials sought to resuscitate military cooperation with Tashkent in the context of the NDN, they moved from publicly criticizing President Karimov over human rights abuses and instead, like the EU and several member states, embraced a quiet, behind-the-scenes approach.

Dozens of diplomatic cables released by Wikileaks show that beginning around late 2007, the US embassy in Tashkent consistently advocated the view that US officials should avoid chastising the Uzbek government over its continued record of torture and imprisonment of dissidents, and use carrots instead of sticks to advance the US-Uzbekistan relationship.³⁷ For example, one cable dated October 15, 2009, suggests that US diplomats let the Uzbek Foreign Ministry dictate the agenda of the highest level US-Uzbekistan bilateral talks, known as the Annual Bilateral Consultations (ABCs), so that the most pressing human rights issues—including child labor, religious freedom, or the status of NGOs—which would irritate the Uzbek side would not be explicitly included. The cable explains:

“[Uzbek Foreign Minister Vladimir] Norov suggested that [US Assistant Secretary for South and Central Asian Affairs Robert] Blake should not raise the issues of child labor, religious freedom or the status of [non-governmental organizations] NGOs in Uzbekistan with President Karimov.... The key here is to work these issues into the agenda without making specific references to them, which we believe is achievable and will serve US interests....³⁸

³⁷ Wikileaks, "Uzbekistan: Officials Cite Areas for Human Rights Cooperation: Government Open to "Constructive Dialogue" on Human Rights," October 24, 2008, <http://wikileaks.org/cable/2008/10/08TASHKENT1225.html#> (accessed November 8, 2011); Wikileaks, "Uzbekistan: The Way Forward on Human Rights," April 6, 2009, <http://wikileaks.org/cable/2009/04/09TASHKENT451.html#> (accessed November 8, 2011); Wikileaks, "Uzbekistan and Human Rights: The Lessons of Sanjar Umarov's Release," November 30, 2009, <http://wikileaks.org/cable/2009/11/09TASHKENT1599.html#> (accessed November 8, 2011).

³⁸ Wikileaks, "Managing Uzbek Redlines in Bilateral Consultations," October 15, 2009, <http://wikileaks.org/cable/2009/10/09TASHKENT1535.html> (accessed October 31, 2011).

Concerns about human rights were aired during a meeting between Blake and Uzbek officials, the cable noted, but the discussion occurred behind closed doors. Language in another August 14, 2009 cable suggests that US embassy officials attempted to find less controversial and more modest areas in which to make progress on human rights rather than openly raise the most pressing—and potentially irritating—concerns such as religious freedom, torture, and registering NGOs. As the cable noted:

Our challenge is to keep forward progress on these [rights] issues that is sufficient to relieve the periodic pressure from some quarters to take a harder line on Uzbekistan.³⁹

Wikileaks cables also demonstrate that President Karimov has used his cooperation in the NDN as leverage against US pressure on human rights. For example, when the State Department gave a “Woman of Courage” award to the formerly imprisoned Uzbek rights activist Mutabar Tajibaeva in 2009, President Karimov “flew into a rage” and implied in a meeting with the US ambassador that he might pull his cooperation on the NDN.⁴⁰

By the fall of 2011, it appeared the NDN had become the paramount concern of US government policy in Uzbekistan. In a particularly troubling move, despite the Uzbek government’s clear absence of political will to make improvements, the Obama administration sought to waive Congress’ long-standing restrictions on providing military aid to Tashkent.⁴¹

As with the EU’s soft approach, the US government’s pursuit of quiet diplomacy has not resulted in substantive changes in Uzbekistan’s record. But the message being sent to Uzbekistan’s beleaguered human rights defenders and ordinary citizens has been that the US officials who visit Tashkent are no longer speaking in the terms they once did: instead of calling attention to the Andijan massacre, torture, or the lack of basic civil and political freedoms, they appear to be speaking to a much narrower audience—President Karimov.

³⁹ Wikileaks, “Uzbekistan: Scenesetter for the Visit of General Petraeus,” August 14, 2009, <http://www.wikileaks.org/cable/2009/08/09TASHKENT1447.html> (accessed October 31, 2011).

⁴⁰ See: Catherine Fitzpatrick, “Tashkent Gets WikiLeaked: Gulnara is “Most Hated Person in the Country,” *Eurasianet.org* December 13, 2010, <http://www.eurasianet.org/node/62557> (accessed October 31, 2011).

⁴¹ For more details see Joshua Kucera, “Uzbekistan: Military Aid to Tashkent Would Help Protect NDN – State Department,” *Eurasianet.org*, September 28, 2011, <http://www.eurasianet.org/node/64237> (accessed October 31, 2011); Justin Elliott, “Obama Cozies Up to Central Asian Dictator,” *Salon.com*, September 17, 2011, http://politics.salon.com/2011/09/17/uzbekistan_afghanistan/ (accessed October 31, 2011); Nurhan Kocaoglu, “Uzbek Military Aid Raises Human Rights Concerns,” *Washington Times*, October 6, 2011, <http://www.washingtontimes.com/news/2011/oct/6/uzbek-military-aid-raises-human-rights-concerns/> (accessed October 31, 2011).

This imbalance between realpolitik and rights seemed to be on full display during a trip US Secretary of State Hillary Clinton made to Tashkent to meet with President Karimov in October 2011. In contrast to other stops on her diplomatic tour through Central Asia, Clinton gave no public remarks in Uzbekistan in which she addressed human rights concerns. Instead, a senior US official's exchange with the traveling press corps in Tashkent directly following Clinton's meeting with President Karimov revealed the extent to which the US government's position had changed from an insistence on making concrete rights improvements to accepting empty promises of reform:

Q: [O]n human rights in general, was there anything that came up here in Uzbekistan? [S]pecifically —

A: Yeah. I mean, I think I already described that.

Q: I know you did, but — how did [Karimov] respond to that? When this comes up, does he just blow it off? Does he —

A: No, no. Not at all.

Q: He wants to live [sic] a legacy for his kids and grandkids you just said.

A: Exactly. He wasn't defensive at all.

Q: But do you believe this?

A: Yeah. I do believe him.⁴²

⁴² Transcript of News Conference, United States Department of State, Tashkent, Uzbekistan, October 22, 2011, <http://www.state.gov/r/pa/prs/ps/2011/10/175988.htm> (accessed November 8, 2011).

II. The Failure of Habeas Corpus

When we sought habeas corpus we didn't expect that all that would happen would be a replacement by the court of the prosecutor. The individual was supposed to be protected from arbitrary detention, but habeas corpus has done nothing to stop it.

—Tashkent-based lawyer [name withheld], Tashkent, November 24, 2010

The president always states that human rights are at the core of our society. But habeas corpus works in the interests of the system—the state and the prosecution—not in the interests of the defendant.

—Ziyodullo Z., father of torture victim, Tashkent, December 19, 2010

We have become accustomed to saying often that the adoption of habeas corpus was a huge step forward for Uzbekistan, but was it? Habeas corpus here completely violates the letter and the spirit of the International Covenant on Civil and Political Rights.

—Western diplomat [name withheld], Tashkent, November 24, 2010

Habeas corpus (literally “you may have the body”) is a writ or legal action through which a court is obliged to determine the lawfulness of a person’s detention, and is understood in legal systems across the globe to be crucial safeguard against arbitrary detention. Habeas corpus should entail examination of both the legality of a person’s detention and its necessity under the law.

The Uzbek government regularly points to the country’s adoption of habeas corpus in January 2008—in addition to the abolition of the death penalty adopted the same year—to demonstrate what it says is its commitment to improving its human rights record and combating the problem of torture.

In his November 2010 address to both houses of parliament, for example, President Karimov hailed the introduction of habeas corpus as a marker of the progressive “liberalization” of the criminal justice system and as “an important factor in the defense of constitutional rights and freedoms of the individual, and his inviolability.”⁴³

⁴³ “The Concept of further deepening the democratic reforms and establishing the civil society in the country,” Address by the President of the Republic of Uzbekistan Islam Karimov at the joint session of the Legislative Chamber and the Senate of

However, numerous lawyers, legal experts, detainees, relatives of detainees, and international observers in Uzbekistan say that nearly four years after its adoption, habeas corpus remains largely a formality that has done little to protect detainee rights or prevent torture in pre-trial detention.

In Uzbekistan, despite the requirement that individuals should not be automatically remanded to custody to await trial, detention is the rule, rather than the exception. Uzbekistan's courts approve requests for detention in virtually every case, often handing down decisions that mirror the wording of the prosecutors' requests.

The fundamental principle of habeas corpus is to ensure judicial review of the *lawfulness* of detention, which is predicated on an examination of both the legality and the necessity of the continued deprivation of liberty. But habeas corpus under Uzbek law, both as written and as implemented, fails to fulfill this essential purpose. Habeas corpus provisions in the Criminal Procedure Code outline what amounts to a narrow “bail test,” which practically ensures that a request for detention will be approved. At the same time, the law does not give courts the discretion to employ less restrictive alternatives to detention, such as bail or house arrest.

The length of time that a person can be held in detention under Uzbek law before a habeas corpus hearing is 72 hours, which exceeds the period acceptable under human rights norms. Authorities also use various methods, including bogus administrative charges, to avoid bringing detainees promptly before a court for habeas corpus review. Detainees are routinely denied access to counsel throughout the criminal investigation, including interrogation and the habeas corpus hearing itself, which is closed to the public.

Habeas corpus hearings are superficial and lack essential due process guarantees, such as a procedure for recusing judges who will later hear the same criminal case. Judges tasked with implementing habeas corpus lack independence and remain fundamentally beholden to the instructions of prosecutors who, since the Soviet period, have remained the most powerful institution in the criminal justice system. In certain cases, especially those that appear politically motivated, judges may even issue pre-trial detention orders in absentia, leaving no time for appeal once a suspect is taken into custody. One lawyer described this practice as amounting to a “habeas corpus with no corpus”—having a body with no body.⁴⁴

the Oliy Majlis of the Republic of Uzbekistan, November 12, 2010, <http://www.ssrc.uz/concep-en.php> (accessed October 12, 2011).

⁴⁴ Human Rights Watch interview with lawyer Sergei Maiorov, Tashkent, November 30, 2010.

This section demonstrates the myriad ways that Uzbekistan’s habeas corpus law fails to meet international standards, both written and in practice, and details how the serious gaps in the law enable torture and ill-treatment to persist.

Habeas Corpus Amendments

Rather than a constituting a single law, habeas corpus consists of a series of amendments to the Uzbek Constitution and Criminal Procedure Code. The amendments transferred authority from the prosecutor to the courts to approve an individual’s pre-trial detention. The basic principle of habeas corpus is now found in article 18(2) of the Criminal Procedure Code, which states that “no one shall be subject to arrest or detention other than on the basis of a court decision.”⁴⁵

Under article 243 of the Criminal Procedure Code, a prosecutor must bring an individual before a court to review the lawfulness of detention within 72 hours of arrest. A prosecutor or investigator acting under the prosecutor’s authority must submit a petition and any accompanying evidence to the court no later than 60 hours after an individual has been taken into custody.⁴⁶ The court then has 12 hours to review the materials before the habeas corpus hearing.

The Criminal Procedure Code states that pre-trial detention should be used only in “exceptional cases,”⁴⁷ authorizing its use for persons suspected of or charged with intentional crimes punishable by a term of imprisonment of more than three years or crimes of negligence punishable by a term of imprisonment of more than five years.⁴⁸ However, the code also provides that “in exceptional cases” pre-trial detention can be used for crimes carrying lesser terms of imprisonment, effectively allowing it to be used indiscriminately.⁴⁹

A Core International Human Right

The concept of ‘habeas corpus’ has a long history in common law tradition. In civil law traditions measures such as *amparos de libertad* (“protections of liberty”) encompass the idea of habeas corpus and other related rights. Whatever the label given to the procedure by which an individual who has been detained must be brought before a judicial officer to

⁴⁵ Criminal Procedure Code of Uzbekistan, Law No. 2013-XII as amended (hereafter “Criminal Procedure Code”), art. 18.

⁴⁶ Criminal Procedure Code, art. 243.

⁴⁷ *Ibid.*, art. 226.

⁴⁸ *Ibid.*, art. 242.

⁴⁹ *Ibid.*, art. 242.

have the lawfulness of their detention established, it provides an assurance of personal liberty and an instrument for the prevention of arbitrary imprisonment.

Habeas corpus' importance as a critical safeguard can be understood in two ways. In the most literal sense of the right, it protects the physical integrity of the individual by compelling the person's appearance before the court. This obligation to physically produce detainees before the court should prevent detaining officials from engaging in behavior such as torture or holding the person in secret.⁵⁰ More importantly, however, the history of habeas corpus suggests a focus on the actions of the detaining official, as well as the detainee. Habeas corpus gives the court an opportunity to establish "that the detaining official is acting within his or her legal authority in detaining the individual" and provides a "judicial check on executive authority ... [that] ensures compliance with the rule of law."⁵¹

The right to habeas corpus is enshrined in article 9(4) of the International Covenant on Civil and Political Rights (ICCPR), which provides:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.⁵²

The review must be independent, effective, not just pro forma, and provide a real inquiry into the necessity of detention and include the possibility of the reviewing court ordering release should the detention be found unlawful.⁵³

⁵⁰ Brian Farrell, "Access to Habeas Corpus: a Human Rights Analysis of U.S. Practices in the War on Terrorism," *Transnational Law and Contemporary Problems*, vol. 20, no. 3 (2011), p. 6.

⁵¹ *Ibid.*

⁵² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Uzbekistan on September 28, 1995, art. 9(4); ; See also: European Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force September 3, 1953, as amended by Protocols nos 3, 5, 8, and 11 which entered into force on September 21, 1970, December 20, 1971, January 1, 1990, and November 1, 1998, respectively, art. 5(3) ("Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.") The Human Rights Committee underscored the importance of habeas corpus in its General Comment 29, explaining that to ensure the existence of non-derogable rights under the ICCPR, states should not be allowed to derogate from the right to habeas corpus even in times of emergency. UN Human Rights Committee, General Comment 29, States of Emergency (article 4), August 31, 2001, [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/\\$FILE/Go144470.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/71eba4be3974b4f7c1256ae200517361/$FILE/Go144470.pdf) (accessed October 12, 2011), paras. 15-16.

⁵³ Human Rights Committee, Decision: *A v. Australia*, No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, April 30, 1997, <http://www1.umn.edu/humanrts/undocs/html/560-1993.html> (accessed August 25, 2011), para. 9.5. (stating "what is

The “lawfulness” determination is based on two factors. First, detention should be legal in that it must comply with the substantive and procedural domestic laws of a state.⁵⁴ Second, it must not be “arbitrary,” meaning it must be reasonable and necessary under the circumstances.⁵⁵ In *Womah Mukong v. Cameroon*, the UN Human Rights Committee made clear it understands arbitrariness broadly to include “elements of inappropriateness, injustice, lack of predictability, and due process of law.”⁵⁶ To some extent, a determination of the lawfulness of detention rests on determining whether a “reasonable suspicion” existed to make the initial arrest.

While not binding on Uzbekistan, the jurisprudence of the European Court of Human Rights (ECtHR) is instructive. In *K.-F. v. Germany*, the court held that “the reasonableness of the suspicion on which an arrest must be based forms an essential part of the safeguard against arbitrary arrest and detention.”⁵⁷ This was important, the court reasoned, because “[h]aving a ‘reasonable suspicion’ pre-supposes the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offense.”⁵⁸

decisive for the purposes of art. 9, para. 4, is that such review is, in its effects, real and not merely formal.”); See also: Human Rights Committee, Decision: *Torres v. Finland*, No. 291/1988, UN Doc. A/45/40, April 5, 1990, <http://www.unhcr.org/refworld/country,,HRC,,FIN,,47fdaf5d,o.html> (accessed August 25, 2011) (stating article 9, para. 4, “envisages that the legality of detention will be determined by a court so as to ensure a higher degree of objectivity and independence...”); The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment defines “judicial or other authority” as “a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.” Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), adopted December 9, 1988, G.A. Res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988), Principle 11(f). The requirement in Principle 11 is in addition to the requirement in Principle 32 that “[a] detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.” Body of Principles, 32(1); The Working Group on Arbitrary Detention defined “judicial or other authority” as “a judicial or other authority which is duly empowered by law and has a status and length of mandate affording sufficient guarantees of competence, impartiality and independence.” UN Human Rights Council, Report of the Working Group on Arbitrary Detention, U.N. Doc. A/HRC/7/4, Jan. 10, 2008, para. 52.

⁵⁴ Human Rights Committee, Decision: *A v. Australia*, No. 560/1993, U.N. Doc. CCPR/C/59/D/560/1993, April 30, 1997, <http://www1.umn.edu/humanrts/undocs/html/560-1993.html> (accessed August 18, 2011).

⁵⁵ ICCPR, art. 9(1); Human Rights Committee, Decision: *Van Alphen v. The Netherlands*, No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988, July 23, 1990, <http://www1.umn.edu/humanrts/undocs/session39/305.1988.html> (accessed August 28, 2011).

⁵⁶ UN Human Rights Committee, Decision: *Womah Mukong v. Cameroon*, No. 458/1991, U.N. Doc. CCPR/C/51/D/458/1991, August 10, 1994, <http://www1.umn.edu/humanrts/undocs/html/458-1991.html> (accessed August 18, 2011).

⁵⁷ *K.-F. v. Germany*, European Court of Human Rights, Case No. 144/1996/765/9626 Judgment of November 27, 1997, ECHR 1997-VII, paras. 56-57.

⁵⁸ *Ibid.* As the court reiterated in a later case, “[t]he persistence of reasonable suspicion that the person arrested has committed an offence is a condition sine qua non for the lawfulness of the continued detention....” *Labita v. Italy* {GC}, European Court of Human Rights, no. 26772/95, Judgment of April 6, 2000, ECHR 2000-IV, para. 153.

Uzbekistan’s Narrow Legal Standard

Uzbekistan’s habeas corpus falls far short of these international standards. Lawyers, scholars, former detainees and prisoners, and international observers report that while Uzbek courts may comply with the formalities of the habeas corpus law in many cases, the mechanism itself fails its primary purpose to ensure the *lawfulness* of detention.

A narrow standard of judicial review, combined with the overly broad category of crimes for which detention is authorized, allows courts to order detention based on instructions from prosecutors and investigators in nearly every case. A legal scholar who participated in a government-sponsored working group in that helped draft the habeas corpus amendments before their passage described the legal standard as follows:

The essence of habeas corpus is that the court reviews the lawfulness of a person’s detention. But here judges don’t require prosecutors to show the justification for a person’s detention or examine its underlying circumstances. They don’t weigh the evidence presented, nor evaluate whether detention, as opposed to another remedy, is truly necessary. Detention is a given and courts simply sign off on the requests made by prosecutors.⁵⁹

Uzbekistan’s habeas corpus lacks guidelines to ensure that an individual’s continued detention is not arbitrary. While Uzbek law states the court should review the “validity of the materials submitted by the prosecutor,” there is no requirement that the court establish a “reasonable suspicion,” by reviewing admissible evidence, that the individual actually committed the crime with which he is being charged.⁶⁰ The law similarly does not identify the evidentiary burden the prosecutor should meet to show that detention is necessary and reasonable such that it outweighs the individual’s right to liberty. Furthermore, judges are not required to consider whether “reasonable suspicion” existed to justify a person’s initial arrest.

⁵⁹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 24, 2010.

⁶⁰ Criminal Procedure Code, art. 245(2).

As a result, rather than being a safeguard against arbitrary detention, habeas corpus in Uzbekistan is entirely symbolic. Courts ignore their duty to protect detainees' rights and instead act as a rubber stamp for prosecutors. One lawyer who has attended many habeas corpus hearings described them as superficial and, at times, farcical "judicial theater":

Habeas hearings are 10 minutes, 20 minutes maximum. The prosecutor comes in and robotically presents information about the crime the person is suspected or accused of having committed. There is no analysis. The judge doesn't probe the prosecutor for evidence or arguments. Then the judge exits, only to emerge five minutes later with a ready decision in hand. Sometimes you can see the prosecutor hand the judge a flash drive that contains his petition in electronic form. Then when you read the judge's order, you can see that the commas are in the same exact place as in the [prosecutor's] petition, as well as the same typos!⁶¹

Several prominent and veteran Tashkent-based defense lawyers echoed this view. A defense lawyer who has defended many state-prosecuted human rights defenders said:

In dozens of hearings, I have never seen a judge who did not approve a request for an individual's detention since the habeas reforms were adopted. In the West, habeas corpus means that you will actually have the legality of a person's detention and actions of the police reviewed, but here habeas corpus has nothing to do with this. The proper procedure would allow defense counsel to point out procedural mistakes of the prosecutors and investigators, but in practice this does not occur. Judges simply don't care.⁶²

Another well-respected criminal lawyer who specializes in the nationwide defense of individuals charged with extremism charges agreed, "We represent to the court that our clients have no connection to the accusations; that there is insufficient evidence to prosecute. They don't listen."⁶³

An official with an international organization who has studied Uzbekistan's habeas corpus noted the need to amend the law:

⁶¹ Human Rights Watch interview with legal expert [name withheld], Tashkent, November 13, 2010.

⁶² Human Rights Watch interview with lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

⁶³ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 5, 2010.

In Uzbekistan’s literal legal culture the absence of language directing a judge to test the lawfulness of detention means that they simply won’t do it, even though they theoretically could under the discretion provided them by the [Criminal Procedure] Code. This duty has to be made explicit because the fundamental question, ‘Do you have sufficient or reasonable grounds for the person’s detention?’ is not being asked.⁶⁴

Another key problem is the lack of an understanding by many Uzbek officials, including judges, of the need for genuinely adversarial habeas corpus proceedings that will test the claims made by prosecutors. For example, Human Rights Watch interviewed a legal scholar who attended a government-sponsored conference in 2007 to discuss habeas corpus before the law was adopted. Lawyers and judges discussed the proper legal standard in an open session. A Supreme Court judge attending the session asked the scholar: “Why are you so worried about having the court review the lawfulness of detention? If a prosecutor submits a petition to the court, then by definition it is well-founded!”⁶⁵

Another serious problem is that the law allows courts to authorize detention in almost any case. As noted above, in addition to authorizing detention for crimes punishable by terms of more than three (intentional) or five (negligent) years of imprisonment, Uzbekistan’s habeas corpus also provides for detention in “in exceptional cases,” including when:

1. An accused person has evaded criminal investigation or trial;
2. The identity of an arrested suspect or accused person has not been established;
3. The accused violated a previously applied security measure;
4. An arrested suspect or accused person does not permanently reside in the Republic of Uzbekistan; and
5. The offense in question was committed while the suspect or accused was serving a term of detention or imprisonment.⁶⁶

As one Uzbek legal expert observed, “potentially any person, whether he is accused of committing an intentional crime or a crime of negligence no matter what the term of imprisonment, may be placed in detention as an ‘exceptional case.’”⁶⁷

⁶⁴ Human Rights Watch interview with representative of international organization [name withheld], Tashkent, November 14, 2010.

⁶⁵ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 14, 2010.

⁶⁶ Criminal Procedure Code, art. 242.

⁶⁷ Human Rights Watch interview with lawyer [name withheld], Tashkent, December 17, 2010.

Lawyers and legal experts report that prosecutors routinely charge suspects with crimes that carry sentences of over three or five years, even where no evidence supports the charges, in order to ensure that detention will be authorized at the habeas corpus hearing. Prosecutors have an incentive to use this method since judges do not probe the evidence. As one expert said:

There is no discussion of the facts at the habeas corpus hearing such as ‘why did you detain him?’ or ‘was it legal?’ Instead, the court reviews the petition and says, ‘Okay, keep him locked up.’ The court and prosecutors both understand that the time the person is detained will be used to legitimize the habeas corpus ruling after the fact.⁶⁸

No Alternatives to Detention

A major shortcoming of habeas corpus in Uzbekistan is that judges have no power to consider alternatives to detention.

Under article 243 of the Criminal Procedural Code, the court is tasked only with deciding whether to approve, reject, or prolong pre-trial detention. It has no authority to apply less restrictive alternatives to detention, such as setting bail, ordering house arrest, or obtaining a written guarantee not to leave the jurisdiction, which remain the exclusive province of prosecutorial discretion.⁶⁹

Article 9(3) of the ICCPR provides that:

[I]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.⁷⁰

⁶⁸ Human Rights Watch interview with lawyer [name withheld], Tashkent, December 17, 2010.

⁶⁹ Criminal Procedure Code, arts. 237 and 240.

⁷⁰ See also Basic Principles on Detention, Principle 36(2) (“The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.”); Principle 39 (“Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.”); see also Tokyo Principles (United Nations Standard Minimum Rules for Non-custodial Measures, 1990), rule 2.3 and 6.1.

Furthermore, both the UN Human Rights Committee and the ECtHR have recognized it is essential to consider the availability of less restrictive alternatives as part of a habeas corpus inquiry.⁷¹ The ECtHR has frequently found a violation of article 5 § 3 of the convention (right to habeas corpus) in cases concerning the Russian Federation, for example, where domestic courts have approved a person’s detention by relying on the gravity of charges without addressing specific facts or considering alternative preventive measures.⁷²

Uzbekistan’s habeas corpus law also violates the key principle that detention not be viewed as an exclusive remedy. Uzbek courts use an “all or nothing” test and approve detention on the ground that a person may present a flight risk, even where substantial evidence exists to refute this claim. A lawyer who specializes in commercial disputes and economic crimes observed:

Petitions [for pre-trial detention] never contain a specific showing as to why the person presents a flight risk. Basic questions like: Has he ever tried to flee? Does he own a home, a business, or have family members residing here? Has he tried to destroy evidence? The petitions are superficial.... Even when I attempt to prove that my client will not flee—that he has a family, friends, financial resources, is registered or owns property in the area—the court ignores me.⁷³

Another lawyer agreed that detention is a *fait accompli*. “If a prosecutor even hints that a person could flee, they will be detained.”⁷⁴

An official with an international organization who has researched habeas corpus told Human Rights Watch:

⁷¹ Hill v. Spain see Communication No. 526/1993, U.N. Doc. CCPR/C/59/D/526/1993; see European Court of Human Rights, *Panchenko v. Russia*, no. 45100/98, Judgment of 8 February 2005, para. 102 (“when deciding whether a person should be released or detained, the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial”); See also: *Sulaoja v. Estonia*, no. 55939/00, Judgment of February 15, 2005, para. 64; and *Jabłoński v. Poland*, no. 33492/96, Judgment of December 21, 2000, para. 83.

⁷² See *Belevitskiy v. Russia*, European Court of Human Rights, no. 72967/01, Judgment of March 1, 2007, para. 99; *Khudobin v. Russia*, European Court of Human Rights, no. 59696/00, ECHR 2006-XII, para. 103; *Khudoyorov v. Russia*, European Court of Human Rights, no. 6847/02, Judgment of November 8, 2005, ECHR 2005, para. 172; *Mamedova v. Russia*, European Court of Human Rights, no. 7064/05, Judgment of June 1, 2006, para. 72; *Dolgova v. Russia*, European Court of Human Rights, no. 11886/05, Judgment of March 2, 2006, para. 38; *Rokhlina v. Russia*, European Court of Human Rights, no. 54071/00, Judgment of April 7, 2005, para 63; and *Smirnova v. Russia*, European Court of Human Rights, nos. 46133/99, and 48183/99, Judgment of October 24, 2003, ECHR 2003-IX, para. 56.

⁷³ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 24, 2010.

⁷⁴ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 14, 2010.

Uzbek judges are not allowed to consider bail, house arrest, or any other alternatives to detention, so they are left with a simple choice: do I free them or keep them locked up? What if I get into trouble for letting him go? I should just play it safe since my term is only for five years.⁷⁵

Pre-Trial Detention: The Rule, Not the Exception

Under international law, detention should only be applied as a measure of last resort, and only where grounds exist to believe that only depriving the accused of their liberty would guarantee unimpeded proceedings.⁷⁶ Persons facing criminal prosecution should be allowed to present guarantees of appropriate conduct that allow them to retain their freedom throughout the proceedings.⁷⁷

The UN Human Rights Committee holds a similar view. In *Hill v. Spain* (1993), the committee reaffirmed its prior jurisprudence “that *pre-trial detention should be the exception* and that bail should be granted, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State party.”⁷⁸

But lawyers and observers of Uzbekistan’s criminal justice system believe that pre-trial detention appears to have become even more common since habeas corpus was adopted, now that prosecutors no longer have the sole discretion to decide whether to detain an individual. According to several lawyers, prosecutors were more willing to consider the merits of their arguments against detention than courts. They say that judges, who lack independence and still have less power than prosecutors, are unable or unwilling to do so.

Lawyer and human rights activist Shuhrat Ganiev described the problem:

⁷⁵ Human Rights Watch interview with representative of international organization, [name withheld] Tashkent, November 27, 2010. Judges in Uzbekistan are appointed by the executive branch to serve for terms of five years.

⁷⁶ ICCPR, art. 9(3). “[I]t shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.”

⁷⁷ The Committee of Ministers of the Council of Europe also recommends that “the remand in custody of persons suspected of an offence shall be the exception rather than the norm” and spells out conditions necessary for pre-trial detention, including: a reasonable suspicion that the person committed an offense; substantial reasons to believe that, if released, he would either abscond, or commit a serious offense, or interfere with the course of justice, or pose a serious threat to public order; and there is no possibility of using alternative measures. Council of Europe, Recommendation Rec. (2006) 13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place, and the provision of safeguards against abuse, September 27, 2006, <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1041281&Site=CM> (accessed August 21, 2011) .

⁷⁸ UN Human Rights Committee, Decision: *Hill v. Spain*, op. cit., para. 12.3. (emphasis added)

Under the Soviet Union, a monopoly was created in which the prosecutor was in charge of pre-trial detention, investigation, and trial. Courts were not independent structures. Habeas corpus was supposed to add legitimacy to the courts' autonomy but instead it has led to a more bureaucratic system, in which the last word is still that of the prosecutor.⁷⁹

One lawyer who has defended hundreds of Muslims charged with religion-related offenses said, "At least prosecutors would talk to us [before habeas corpus] and consider our arguments. But I have never seen a judge not approve a pre-trial detention order."⁸⁰ Lawyer Ruhiddin Komilov similarly states:

Habeas corpus has really given us nothing. In my experience, a good defense lawyer could help two or maybe three of his clients out of 10 avoid detention, or at least free them temporarily on bail. But now it is nearly impossible to avoid detention. Judges simply have no incentive to do otherwise.⁸¹

Most Detention Petitions Approved

It is not possible to verify whether detention has become a more frequently applied remedy since the introduction of habeas corpus because the Uzbek government refuses to release statistics on the earlier period when prosecutors had sole authority to approve detention. However, government statistics released since habeas corpus was introduced show that an overwhelming number of prosecutors' petitions are approved.⁸² The prosecutor general's office announced that in 2008 prosecutors petitioned the courts 16,610 times for pre-trial detention orders. Of these, 16,338 petitions were granted and only 248 were rejected.⁸³

In his November 2010 address to both houses of parliament, President Karimov said courts had refused a total of 700 petitions for pre-trial detention since habeas corpus' adoption. While the president did not mention the total number of petitions submitted, the figures

⁷⁹ Human Rights Watch interview with lawyer Shuhrat Ganiev, Tashkent, December 12, 2010.

⁸⁰ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 5, 2010.

⁸¹ Human Rights Watch interview with lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

⁸² Over the course of 2008-2009, 7% of the persons brought before the courts on petitions for pre-trial detention were suspects, while 93% of them at the time of habeas corpus hearings had been formally charged with crimes.

⁸³ The Ministry of Foreign Affairs of the Republic of Uzbekistan, "Protection of citizens' rights and freedoms is the primary goal of the judicial reform" ("Zashita Prav i Svobod Grazhdan – Glavnaya Zel' Sudebno-Pravovikh Reform"), March 6, 2009, http://mfa.uz/rus/pressa_i_media_servis/060309r_5.mgr (accessed November 9, 2011).

from 2008 are a helpful indication of the overall percentage of requests for detention approved.⁸⁴ If the number of pre-trial petitions made in 2009 and 2010 were roughly the same as in 2008, it means courts reject less than 2 percent of all detention petitions.

Consistent with this estimate, Western diplomats shared Uzbek government statistics with Human Rights Watch, showing that roughly 98 percent of all petitions for pre-trial detention are granted.⁸⁵ Appeals to overturn an order authorizing pre-trial detention are almost never granted.⁸⁶ One Tashkent-based diplomat said:

[T]he government says the reason for the extremely high number of granted petitions is the high level of professionalism of the courts, but the real reason is the exact opposite. The courts entirely lack independence and therefore have no incentive to reject [petitions].⁸⁷

Length of Detention

An essential element of habeas corpus under international law is the requirement that a detainee be brought before a judicial body “promptly” or “without delay.”⁸⁸ Principle 38 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereinafter “UN Body of Principles”) also states that a person detained on a criminal charge shall be entitled to trial “within a reasonable time or to release pending trial.”⁸⁹ Habeas corpus presents the first opportunity for a detainee and their counsel to petition for release and to raise concerns of ill-treatment or torture, which often occur in the initial hours or days following arrest.

While the period between arrest and delivery to the court may vary, ICCPR General Comment No. 8 clarifies that “delays must not exceed a few days.”⁹⁰ Moreover, the Human

⁸⁴ For years 2008-2011, $16,338 * 3 = 49,014$. $49,014 / 700 = .014$. This means that roughly 1 percent of the petitions were denied and 99 percent were granted.

⁸⁵ Human Rights Watch interview with [name withheld], Tashkent, November 14, 2010.

⁸⁶ Human Rights Watch interview with lawyer Sukhrobjon Ismoilov, Expert Working Group, Tashkent, November 9, 2010.

⁸⁷ Human Rights Watch interview with [name withheld], Tashkent, November 14, 2010.

⁸⁸ ICCPR, art. 9(4), (“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide *without delay* on the lawfulness of his detention and order his release if the detention is not lawful.”) (emphasis added); European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5(3) (“Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought *promptly* before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.”)

⁸⁹ Body of Principles, Principle 17.

⁹⁰ UN Human Rights Committee, General Comment 8, Right to liberty and security of persons, June 30, 1982, , [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/f4253f9572cd4700c12563ed00483bec?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/f4253f9572cd4700c12563ed00483bec?Opendocument) (accessed August 18, 2011), para. 2; See also United Nations Human Rights Committee, “Consideration of Reports Submitted by States Parties

Rights Committee has consistently considered suspect legal provisions that permit up to 48-hour detention without access to court.⁹¹

Uzbek law allows an individual to be detained for up to 72 hours before they must be brought before a court to determine the lawfulness of detention. In addition, a prosecutor may apply for an additional 48 hours to collect further evidence on the issue of whether the suspect or accused should be detained, allowing for a total of 120 hours of detention prior to habeas corpus review.⁹²

As part of its periodic review in 2010 of the Uzbek government's compliance with the ICCPR, the Human Rights Committee⁹³ "reiterate[d] its concern that the length of custody for which a suspect or an accused may be held without being brought before a judge—72 hours—is excessive."⁹⁴ It called on the Uzbek government to "amend its legislation to ensure that length of custody is fully in line with the provisions of article 9 of the Covenant."⁹⁵

Lawyers claim the 72-hour detention and 48-hour extension rules give police and prosecutors extra time in which to intimidate and pressure detainees into signing forced confessions. One lawyer said:

The law doesn't clarify the basis for this [48-hour] extension. We are left not knowing how to argue against it. In reality, these are two more days when your client can be entirely out of your reach, giving the authorities time to 'work him over' (*obrabotat*).⁹⁶

under Article 40 of the Covenant, Including Observations of the Human Rights Committee," CCPR/C/79/Add.89, April 6, 1998, <http://www.unhcr.org/refworld/country,,,CONCOBSERVATIONS,ZWE,456d621e2,3df37bf64,o.html> (accessed August 28, 2011), para. 17 (Committee stated that pre-trial custody should not exceed 48 hours without a court order.)

⁹¹ See the Concluding Observations of the Human Rights Committee in e.g. CCPR/CO/69/KWT (HRC, 2000), para. 21; CCPR/CO/72/CZE (HRC, 2001), para. 17; CCPR/CO/79/LKA (HRC, 2003) para. 13, CCPR/CO/82/MAR (HRC, 2004) para. 15; CCPR/C/UKR/CO/6 (HRC, 2006) para. 8; CCPR/C/MDA/CO/2 (HRC, 2009) para. 19; CCPR/C/HUN/CO/5 (HRC, 2010) para. 13; CCPR/C/SLV/CO/6 (HRC, 2010) PARA. 14.

⁹² Criminal Procedure Code, art. 243.

⁹³ See also: UN Body of Principles, Principle 15 ("notwithstanding the exceptions... communication of a detained or imprisoned person with the outside world, and in particular, his family or counsel shall not be denied for more than a matter of days").

⁹⁴ United Nations Human Rights Committee, "Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee, Uzbekistan," CCPR/C/USA/CO/3, April 7, 2010, <http://www.unhcr.org/refworld/docid/45c3obb2o.html> (accessed November 9, 2011).

⁹⁵ *Ibid.*

⁹⁶ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

Police and investigators also violate detainees' rights to be brought to court even within 72 hours. Under article 225 of the Criminal Procedure Code, police must immediately draw up a record (*protokol*) of arrest as soon as a suspect is brought into custody.⁹⁷ The record must include information on the crime police suspect the detainee of having committed, as well as the date and time of arrest.⁹⁸ In practice, police and investigators often purposely avoid registering the time of detention for several hours, or even days. Failure to register arrests in a timely fashion allows police more time to coerce a confession while a detainee remains isolated—a practice that grossly interferes with a prompt judicial review of detention. According to one lawyer:

I've had cases where a client tells me he was arrested in the morning, but the police report (*protokol*) reads 10 p.m. In my experience, judges simply ignore this at the hearing. As a lawyer I understand that if I'm detained that I have to be released as soon as the 73rd hour arrives and I haven't been brought to court. But my clients don't know this.⁹⁹

Another lawyer added: "I've had more than one case where the investigator has forged not just the time but even the date of detention."¹⁰⁰

Police also routinely summon someone they wish to arrest to the station as a "witness" without registering their detention in order to first extract a confession. Since the person appeared voluntarily, Uzbek law does not place limits on the amount of time they can stay at the station, nor does it oblige police to register the individual's appearance. In other cases, police forcibly arrest persons as witnesses without registering them as suspects until after the detainee has already been in custody for a day or more. One lawyer said:

My client was detained at home and transported by convoy to the police precinct in handcuffs. He was questioned as a 'witness' for almost two days before they registered him. But as soon as he was deprived of his ability to leave freely, they should have considered him 'detained.'¹⁰¹

⁹⁷ Criminal Procedure Code, art. 221.

⁹⁸ Ibid.

⁹⁹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 24, 2010.

¹⁰⁰ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

¹⁰¹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 29, 2010.

Although article 217 of the Criminal Procedure Code requires police, prosecutors, or courts to inform relatives or other persons named by the detainee of a detention within 24 hours, this provision is often ignored. Family members may search for days before receiving confirmation that their relatives are in custody. In some cases, police may even deny they are holding a suspect in order to throw fearful family members off the trail.

Using Administrative Charges to Avoid Habeas Corpus Review

According to lawyers and rights activists, authorities also use administrative charges to evade judicial review of detention.¹⁰² Police are known to detain suspects under the Code of Administrative Offenses for misdemeanors such as “petty hooliganism,” or by accusing individuals they have “invited” to the police station of such acts, which amounts to arbitrary detention. While Uzbek law guarantees criminal suspects in custody immediate access to a lawyer, the law is less clear on the right to meet with a lawyer for those held under the Code of Administrative Offenses. For example, lawyers are not mandatory for administrative court hearings.

According to Ruhiddin Komilov, an experienced criminal defense lawyer in Tashkent, authorities often use administrative charges to circumvent habeas corpus:

Authorities charge a person with an administrative offense such as hooliganism or resisting arrest. Using this pretext, they can hold him for 15 days and develop whatever evidence they need in that time. Once they have extracted the necessary confessions, they can then bring formal criminal charges, and only then trigger the habeas corpus requirement.¹⁰³

Human rights monitor Surat Ikramov reported the same:

Hooliganism or charges of resisting arrest are often used to detain a person on administrative charges for 10 to 15 days in SIZOs (investigative isolation

¹⁰² Codes of Administrative Offenses (CAO) tend to regulate offensive behavior considered in other common law systems as misdemeanors or summary offences, or in civil law as “contraventions,” less serious than crimes or “delicts.” As such, although these offences bear the label “administrative,” for the purposes of human rights law they are considered criminal offences and the full range of due process rights attach to anyone detained on suspicion of having committed an offence under a CAO. See the European Court of Human Rights in e.g. *Lauko v. Slovakia*, European Court of Human Rights, no. 4/1998/907/1119, Judgment of September 2, 1998, Reports 1998-VI, para. 58; *Ziliberberg v Moldova*, European Court of Human Rights, no. 61821/00 Judgment of February 1, 2005, para. 33; *Sergey Zolotukhin v Russia*, European Court of Human Rights, No. 14939/03, Judgment of February 10, 2009, para. 52- 57. Therefore, the practice whereby a person can be subject to detention for lengthy periods (ie longer than 48 hours) without due process is incompatible with the right to liberty and security.

¹⁰³ Human Rights Watch interview with lawyer Ruhiddin Komilov, Tashkent, November 24, 2010.

cells). They do this to keep them locked up. From the first moment of detention the fabrication of charges and torture of the individual can begin. Close family members are not informed about the whereabouts of their relative. Investigators use these 15 days to unlawfully develop evidence against the person or get him to incriminate himself.¹⁰⁴

Any detainee, whether on the basis of criminal procedural or administrative grounds, should be brought before a judge no later than 48 hours from the moment of actual deprivation of liberty and, together with their chosen or appointed counsel, take part in the review of the lawfulness of their detention.¹⁰⁵

Violation of Right to an Impartial Tribunal

A further problem is that habeas corpus in Uzbekistan does not prohibit a judge who presides over a habeas corpus hearing from later hearing the same criminal case at trial.¹⁰⁶ Article 14 of the ICCPR provides that “everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹⁰⁷ It further states that “[e]veryone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”¹⁰⁸

But in Uzbekistan, the same judge who reviews the lawfulness of detention later—and in theory has therefore already reached a preliminary conclusion on the soundness of the evidence underlying an individual’s detention—may also later preside over the trial and pronounce a verdict in the case.

Failure to designate the function of habeas corpus to a judge other than the one who will determine the merits of the same case seriously compromises the right of detainees to appear before an independent and impartial tribunal and the presumption of innocence.¹⁰⁹

¹⁰⁴ Human Rights Watch interview with head of the Initiative Group of Independent Human Rights Defenders of Uzbekistan (IGIHRD), Tashkent, November 24, 2010.

¹⁰⁵ See e.g. Human Rights Committee Concluding Observations, Tajikistan, CCPR/CO/84/TJK July 18, 2005, para. 13.

¹⁰⁶ Criminal Procedure Code, art. 243.

¹⁰⁷ ICCPR, art. 14(1); See also: *Hauschildt v. Denmark*, European Court of Human Rights, Series A No 154, Judgment of May 24, 1989, paras. 52-53.

¹⁰⁸ ICCPR, art. 14(2).

¹⁰⁹ See Manfred Nowak, UN Covenant on Civil and Political Rights: CCPR Commentary p. 330 (2d ed. 2005), “...the judge must conduct the criminal trial without having previously having formed an opinion on the guilt or innocence of the accused”. Even if a judge has not, subjectively, formed such a prior opinion, the appearance that he may have pre-judged the guilt of a defendant undermines the principle of impartiality.

“[I]t is crucial that the same judge who reviews the legality of pre-trial detention not have the case come back to him at a later stage,” Anvar Mamedov, a former judge of Uzbekistan’s Supreme Court now in private practice, stated. “Otherwise, how could he be expected to remain impartial?”¹¹⁰

Lawyers interviewed said the current procedure undermines the fairness of the habeas corpus proceeding and prejudices the defense. Ruhiddin Komilov said:

It is absurd that the same judge presides over habeas corpus and the criminal trial. If a judge has approved the detention, then what incentive does he later have to essentially reverse himself in declaring the defendant innocent? All roads lead to one place. If a judge pronounces him innocent that would be contradicting his prior order!¹¹¹

Sukhrobjon Ismoilov, a lawyer who heads the NGO Expert Working Group, told Human Rights Watch that the current habeas corpus law violates provisions in the Criminal Procedure Code that allow for a judge’s recusal (*otvod*). Furthermore, the current framework increases the likelihood that an individual will be detained and later convicted:

[T]he absence of a specialized habeas corpus bench is a barrier to the full implementation of habeas corpus, and compliance with the ICCPR. Judges don’t want to rule against themselves and consequently this increases the likelihood that once a person has been detained they will be eventually convicted and sentenced.¹¹²

The lack of separation between habeas corpus and trial judges is compounded by a lack of judicial independence.¹¹³ A diplomat who represents a Western embassy in Tashkent and

¹¹⁰ Human Rights Watch interview with lawyer Anvar Mamedov, Tashkent, November 11, 2010.

¹¹¹ Human Rights Watch interview with lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

¹¹² Human Rights Watch interview with lawyer Sukhrobjon Ismoilov, Tashkent, November 8, 2010.

¹¹³ In its 2002 conclusions, CAT raised 10 subjects of concern. One of them was the “the insufficient independence of the judiciary” and another “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.” See United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and Recommendations of the Committee against Torture, Republic of Uzbekistan,” CAT/C/CR/28/7, June 6, 2002, <http://daccessdds.un.org/doc/UNDOC/GEN/Go2/424/49/PDF/Go242449.pdf?OpenElement>, (accessed August 28, 2011). The UN Special Rapporteur on torture called upon the Uzbek government to “take the necessary measures to establish and ensure the independence of the judiciary in the performance of their duties in conformity with international standards, notably the United Nations Basic Principles on the Independence of the Judiciary.” United Nation Economic and Social Council, Civil and Political Rights, Including the Questions of Torture and Detention, Torture and other cruel, inhuman or

routinely monitors trials said: “Judges are simply not willing to reject prosecutors’ petitions for pre-trial detention because of their lack of independence, lack of [life] tenure, and weak position as compared to the procuracy.”¹¹⁴ Rustam Tyuleganov, a defense attorney and former prosecutor, summarized the problem:

Habeas or no habeas, the predominance of the agencies involved in prosecution [Ministry of Internal Affairs, the National Security Service, and general prosecutor] remains unquestionable. A judge once took me back to his chambers after a hearing and told me that he knew my client should not be detained. But, he said, ‘if I don’t detain and the convict him, they will take my home away.’¹¹⁵

Closed Hearings

An important aspect of Uzbekistan’s habeas corpus law that undermines its overall fairness is the closed nature of the proceeding.¹¹⁶

According to article 19 of the Criminal Procedure Code, hearings on criminal cases shall be public except when state secrets or sexual or juvenile crimes are concerned.¹¹⁷ Article 14 of the ICCPR also makes clear that “everyone shall be entitled to a fair and public hearing.” The UN Human Rights Committee has held that this phrase means that:

[B]oth domestic legislation and judicial practice must provide for the possibility of the public attending, if members of the public so wish [and that] courts must make information on time and venue of the oral hearings available to the public and provide for adequate facilities for the attendance of interested members of the public, within reasonable limits....¹¹⁸

degrading treatment. UN Commission on Human Rights, Report of the Special Rapporteur on the question of torture, Theo van Boven, Visit to Uzbekistan, E/CN.4/2003/68/Add.2. February 3, 2003, <http://www.unhcr.ch/Huridocda/Huridoca.nsf/o/29dof1eaf87cf3eac1256ce9005a0170?Opendocument>, (accessed October 12, 2011).

¹¹⁴ Human Rights Watch interview with Western diplomat [name withheld], Tashkent, November 24, 2010.

¹¹⁵ Human Rights Watch interview with lawyer Rustam Tyuleganov, Tashkent, November 8, 2010.

¹¹⁶ Criminal Procedure Code, art. 243.

¹¹⁷ Criminal Procedure Code, art. 19.

¹¹⁸ UN Human Rights Committee, Decision: *G. A. van Meurs v. The Netherlands*, No. 215/1986, U.N. Doc. CCPR/C/39/D/215/1986, July, 23, 1990, <http://www1.umn.edu/humanrts/undocs/session39/215-1986.html> (accessed August 18, 2011), paras. 6.1–6.2.

The closed nature of Uzbekistan’s habeas corpus proceedings reduces the pressure on judges to review the lawfulness of detention carefully or to respond to complaints about procedural violations. It also makes it less likely that a court will examine allegations of torture or ill-treatment.

While a public hearing with the presence of relatives and observers does not guarantee that a detainee will feel secure enough to raise issues such as torture, a closed hearing makes it impossible for relatives or independent groups even to know whether the defendant has raised any allegations of ill-treatment.

Human Rights Watch learned that even diplomats and representatives of international organizations such as the UN who have requested permission to monitor habeas corpus hearings have been denied access.¹¹⁹ The director of a Tashkent-based NGO that publishes research on legal issues said that even academic scrutiny of habeas corpus can result in an NGO’s liquidation or loss of registration. “We have to be very careful how we analyze habeas corpus. If we write about the law—or any aspect of the justice system—we have to do it in a roundabout and indirect way (*s kraya*), avoiding the truth. Otherwise, the authorities will shut us down immediately.”¹²⁰

Participation of Defense Lawyers

Uzbekistan’s habeas corpus law states that a defense lawyer may participate in the habeas corpus hearing “if the latter is taking part in the case.”¹²¹ But this wording signals that the presence of legal counsel at the hearing is conditional, not mandatory, and contravenes Uzbekistan’s international and domestic obligations to respect detainees’ rights to have access to counsel.

The right to counsel is an indispensable element of due process. While the Human Rights Committee has not squarely addressed the right to counsel in habeas corpus proceedings, it has implied that it exists.¹²² Article 9(3) of the ICCPR provides that in determining criminal charges every person shall be entitled “to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.”¹²³

¹¹⁹ Human Rights Watch interview with [name withheld], Tashkent, November 14, 2010.

¹²⁰ Human Rights Watch interview with [name withheld] Tashkent, November 8, 2010.

¹²¹ Criminal Procedure Code, art. 243.

¹²²In *Berry v. Jamaica*, the committee found a violation of article 9(4) of the ICCPR because the applicant was not afforded an opportunity to obtain a decision on the lawfulness of his detention, in particular, as a result of his lack of access to counsel. UN Human Rights Committee, Decision: *Berry v. Jamaica*, No. 330/1988, P 11.1, U.N. Doc. CCPR/C/50/D/330/1988, Apr. 26, 1994, <http://www1.umn.edu/humanrts/undocs/html/vws330.htm> (accessed October 9, 2011).

¹²³ ICCPR, art. 9(3).

The Body of Principles also makes clear that every person in detention is entitled a legal counsel’s assistance.¹²⁴ The European Court of Human Rights has held that the right to a lawyer commences from when a person is first detained.¹²⁵

Human Rights Watch learned from lawyers, detainees, and their relatives that habeas corpus hearings are often conducted without lawyers or a detainee’s counsel of choice participating. Detainees are often prevented from exercising their right to counsel of their choice or pressured to refuse the services of counsel altogether.¹²⁶ According to a local legal expert, the language of the habeas corpus law suggests that if a detainee “refuses” the services of a lawyer before or during his initial interrogation then the habeas corpus hearing will proceed without a lawyer. All lawyers whom Human Rights Watch interviewed said such “refusal” is likely to happen under duress.¹²⁷

When detainees *are* represented by counsel, it is often by state-appointed lawyers who either do not or cannot provide an effective defense. State-appointed defense lawyers in Uzbekistan are widely viewed by the public as allied with prosecutors because of their financial and ideological dependence on these structures for continued employment. In most cases, Human Rights Watch found that detainees were pressured to accept the services of a state-appointed defense lawyer. As one lawyer stated:

In my experience, independent lawyers—the lawyers the detainee would have chosen himself—do not take part in the hearings. Authorities create so many obstacles for detainees and lawyers to meet during those 72 hours or more [of detention] that participation of independent counsel is practically impossible. So hearings either happen without a lawyer altogether or with a state-appointed one.¹²⁸

“I have taken part in about five habeas corpus hearings,” another lawyer said. “But most detainees are simply unable to hire their own lawyers for the hearings because they are

¹²⁴ Body of Principles, Principle 17. The conditional participation of lawyers at habeas corpus hearings also contradicts the protection of the right to counsel found in Uzbek law, which makes the presence of counsel mandatory in any proceeding where a state prosecutor participates. Criminal Procedure Code, art. 51.

¹²⁵ In *John Murray v the United Kingdom*, the European Court held that the right to a fair trial “will normally require that the accused be allowed to benefit from the assistance of a lawyer already at the initial stages of police interrogation,” *John Murray v the United Kingdom*, European Court of Human Rights, no 18731/91, Judgment of February 8, 1996, Reports 1996-I, para. 63.

¹²⁶ Human Rights Watch interview with [name withheld], Tashkent, December 9, 2010.

¹²⁷ Human Rights Watch interview with [name withheld], Tashkent, November 14, 2010.

¹²⁸ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 29, 2010.

held virtually incommunicado up until that point and can't exercise their right to a first phone call. The only option they have is no lawyer, or a state-appointed lawyer, and often the latter option is worse than the former."¹²⁹

Detainees and their families tend not to trust state-appointed lawyers, who they report are disinterested in the case and often ignore serious procedural violations, including torture and ill-treatment. State-appointed lawyers are rarely prepared and, in some cases that Human Rights Watch has documented, have acted in a biased manner and not in their clients' interest, encouraging them, for example, to "ask forgiveness" and "confess."¹³⁰

One detainee described his state-appointed lawyer's behavior during his interrogation: "She just played video games on her computer while they interrogated me. She was a 'pocket' (*karmannyi*) lawyer who essentially followed the investigator's instructions to me and greatly prejudiced my interests."¹³¹

¹²⁹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

¹³⁰ Human Rights Watch interview with [name withheld], Tashkent, December 7, 2010.

¹³¹ Human Rights Watch interview with Farkhodhon Mukhtarov, Tashkent, December 6, 2010.

How One Lawyer's Efforts to Represent Her Client Were Blocked

Authorities sometimes prevent independent counsel from participating at habeas corpus hearings where a detainee has been subjected to torture or ill-treatment. One case documented by Human Rights Watch illustrates the types of measures authorities will take to prevent independent counsel from attending the hearing. A defense lawyer specializing in corruption and extremism cases across Uzbekistan said:

In March 2010, I was retained in a case the same day of my client's arrest. He was a highly-placed official within the local branch of the Ministry of Internal Affairs of the Parkent district [a suburb of Tashkent] and arrested on bribery and corruption charges. He was apprehended and immediately taken to the regional office of the prosecutor general for interrogation. He later told me that officers beat him along the way, breaking both of his ribs and even opening up a gash in his head.

That day I came to the Prosecutor General's office but they wouldn't let me in, saying I needed formal permission from the prosecutor on the case and that he was not there. At 10a.m. the next day I came back with a written protest in hand, informing the prosecutor and the court that no habeas corpus hearing should take place without my participation.

I learned that he had been taken to a hospital for treatment and went over there at 12 p.m. Right after I arrived to the hospital officers took him out of a back exit and back to the prosecutor-general's office. The next morning I went to the Parkent district court to try to gain entry to the habeas corpus hearing. To my amazement, they said the hearing had been held at 10 p.m. the previous night, and not even in the court which had jurisdiction over the alleged crime!¹³²

This story is not unique, especially in politically-sensitive cases concerning terrorism, corruption, or political activism. For example, lawyer Ruhiddin Komilov said he was not allowed into the courtroom during the 2009 habeas corpus hearing of his client, human rights defender and independent journalist, Dilmurod Saidov.¹³³

When lawyers do gain entry to habeas corpus hearings, they often face barriers preparing an adequate defense, such as lack of opportunity to hold confidential meetings with clients or review the evidence submitted with the petition for pre-trial detention. One serious gap in the habeas corpus mechanism is that it omits any requirement that the prosecutor or court make the petition for detention and supporting evidence available for defense counsel to review. While the Supreme Court of Uzbekistan has held that the prosecutor should grant the defense access to the relevant materials, it placed the burden to request such access on defense lawyers, which still leaves room for abuse.¹³⁴

¹³² Human Rights Watch interview with lawyer [name withheld], Tashkent, November 18, 2010.

¹³³ Human Rights Watch interview with lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

¹³⁴ Ruling No. 15 of the Supreme Court of Uzbekistan (“[B]ased on the constitutional right to a defense, the prosecutor should acquaint the suspect, accused, his counsel or his legal representative [with them] if they have made a motion to receive them.”)

Habeas without Corpus

Human Rights Watch has also documented several cases where authorities have sought and held habeas corpus hearings without the detainee even present, robbing habeas corpus of any meaning. Sometimes this happens where a suspect is in custody, but the court improperly proceeds with the hearing even though the prosecution does not make the detainee available. Uzbek law also allows a so-called habeas corpus hearing to occur in absentia if a court determines that a suspect or accused person has absconded.¹³⁵

International law does not prohibit the issuance of an arrest warrant in absentia when it is determined a suspect cannot be found. But the right to habeas corpus guarantees that once a person is apprehended they must be entitled to be brought before a court to determine the lawfulness of detention.¹³⁶ In Uzbekistan this does not happen. If the court authorizes the detention of an individual not yet in custody, as it usually does, the individual arrested can then be arrested and held without the right to another hearing in which they are present and can challenge their detention. Hence the reference among some Uzbek lawyers that there is “habeas without corpus”.

Sergei Maiorov, a highly respected lawyer in Tashkent who manages the Simay Kom law firm, has attended several habeas corpus hearings. He described one case in which the court approved pre-trial detention of a person who wasn't present:



Sergei Maiorov is a highly respected lawyer in Tashkent who manages the Simay kom law firm and has attended several habeas corpus hearings. Even though habeas corpus means “you may have the body,” Maiorov described a case where a court approved pre-trial detention for an individual who was not even present in the courtroom. © 2010 Steve Swerdlow/Human Rights Watch

¹³⁵ Criminal Procedure Code, art. 243; See also: Criminal Code, art. 365(4).

¹³⁶ ICCPR, art. 9(4).

The prosecutor thought that my client, who had been cooperating in the investigation, was hiding something from him and decided to apply for his detention. The judge approved and ordered his detention without even notifying him of the decision. Habeas corpus means that “you may have the body” and you can bring it before the court. But here there was no body to be brought before the court and the court approved detention anyway!¹³⁷

The case of Farkhodhon Mukhtarov, a human rights activist and member of the Human Rights Alliance of Uzbekistan, demonstrates that the above is far from an isolated incident. Until his arrest in July 2009, Mukhtarov offered legal advice and consultations to people whose social and economic rights had been violated. He also acted as a public defender in a number of cases and actively participated in public protests that the Human Rights Alliance staged on human rights abuses. Authorities accused Mukhtarov on trumped-up charges of fraud and bribery, allegedly for misappropriating money under false pretenses.



Farkhod Mukhtarov is a human rights defender who was wrongfully imprisoned in 2009 and later released. Farkhod demonstrates the position he was forced to squat in as guards kicked him and other inmates in the head as part of the prison intake procedure. © 2010 Steve Swerdlow/Human Rights Watch

¹³⁷ Human Rights Watch interview with lawyer Sergei Maiorov, Tashkent, December 1, 2010.

On July 14, the Yunusabad district court presided over by Judge Turobov held a habeas corpus hearing in absentia, issuing a warrant for Mukhtarov's arrest and detention:

The court concluded I was hiding and should therefore be detained, even though I had been voluntarily attending every interrogation session at the police station for weeks! Prosecutors had not even attempted to get me to sign a statement that I would not travel out of the jurisdiction (*podpiska o nevyezde*). I was sitting at home during the habeas corpus hearing! They could have summoned me to discuss the necessity of arrest but did not.¹³⁸

Once in custody, Mukhtarov was not entitled to another hearing that he could be informed about and attend, due to the rationale that his habeas hearing had already taken place.

Right to Appeal

Uzbek law only allows three days to appeal the grant of an order approving pre-trial detention.¹³⁹ If a pre-trial detention order was issued in absentia, this often leads to situations where detainees have already missed the three-day appeal window. An attorney who has attended many habeas corpus hearings explained:

I have seen more than one case where a judge issues an order approving pre-trial detention in absentia. But my client was at home, and not even attempting to hide! He was apprehended three weeks after the judge had granted the prosecutor's petition so had missed his window to appeal. I tried to file a motion requesting appellate review but it was denied on the basis that it was late.¹⁴⁰

¹³⁸ Human Rights Watch interview with human rights activist Farkhodhon Mukhtarov, Tashkent, December 6, 2010.

¹³⁹ Criminal Procedure Code, art. 247.

¹⁴⁰ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 24, 2010.

III. The Persistence of Torture

Torture happens left and right (*splosh' i riadom*) in Uzbekistan. Even after the government's reforms, torture is everywhere and permeates every aspect of the criminal justice system.

—Surat Ikramov, head of the Initiative Group of Independent Human Rights Defenders, Tashkent, November 14, 2010

After nine months I saw him for the first time at the jail. I almost didn't recognize him. He was still 183 centimeters [six feet] tall, but the rest of him was unrecognizable. When he sat down under the light I saw all the scars on his body....

—Wife of Abdumannob A., beaten in a Tashkent pre-trial facility on suspicion of espionage in 2008 and 2009, Tashkent, November 21, 2010

In recent years, Uzbek officials, including President Karimov, have consistently described the introduction of habeas corpus and other reforms as part of the ongoing “liberalization” of the criminal justice system.¹⁴¹

Guarantees of procedural rights for pre-trial detainees and their lawyers, including the right to counsel of one's choice, are crucial to combat Uzbekistan's torture epidemic. This is because ill-treatment often occurs in the first hours and days of detention, during interrogation, and before a person has come before a court.¹⁴² The right to counsel of one's choice is guaranteed in the International Covenant on Civil and Political Rights (ICCPR). The right to be free from torture is a peremptory norm of international law, and enshrined in the Universal Declaration of Human Rights, the ICCPR, and the Convention against Torture.¹⁴³

¹⁴¹ “The Concept of further deepening the democratic reforms and establishing the civil society in the country,” Address by the President of the Republic of Uzbekistan Islam Karimov at the joint session of the Legislative Chamber and the Senate of the Oliy Majlis of the Republic of Uzbekistan, November 12, 2010, <http://www.ssrc.uz/concep-en.php> (accessed August 30, 2011); Government of Uzbekistan, Third Periodic Report to the Human Rights Committee, CCPR/C/UZB/3, June 4, 2008, <http://www2.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR-C-UZB-3.doc> (accessed October 11, 2011).

¹⁴² See Human Rights Society of Uzbekistan, “Torture Occurs Within the First 72 Hours,” May 6, 2010, <http://en.hrsu.org/2010/04/17/torture-occurs-during-the-first-72-hours/> (accessed August 28, 2011).

¹⁴³ Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 71 (1948), art. 5; International Covenant on Civil and Political Rights *op. cit.*, arts. 14(1)(d) and 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by Uzbekistan on September 28, 1995.

In January 2009, the Uzbek government passed legislation that guaranteed a detainee's right to call a lawyer or close family member immediately after arrest,¹⁴⁴ clarified that a client has the right to see a defense lawyer from the moment of actual detention,¹⁴⁵ and abolished the earlier requirement that defense lawyers receive official written permission from prosecutors to access detained clients.¹⁴⁶

For the first time Uzbekistan also introduced the so-called "Miranda" rights, which stipulate that a person should be informed of their right to remain silent prior to interrogation; the fact that testimony they provide may be used against them in court; and that they have the right to speak to an attorney or have one appointed by the state.¹⁴⁷

Like habeas corpus, despite the progressive nature of these reforms on paper, the Uzbek government has failed to confront its torture epidemic in practice. On the contrary, torture shows no sign of abating as the deliberate practice of torture to extort confessions or to intimidate detainees remains habitual and widespread in Uzbekistan. Victims include those suspected of committing "ordinary" crimes, those accused of membership in banned political or religious organizations, or those involved in human rights work or independent journalism. Torture often continues in prison following conviction.

In at least seven cases decided since the beginning of 2008, the European Court of Human Rights has ruled that to send a detainee to Uzbekistan would be a breach of the prohibition on torture, on the basis that torture remains so pervasive in the country.¹⁴⁸ The court concluded that while Uzbekistan has had a reputation for ill-treatment in the past, no information had been provided to suggest that the current situation is any better.

¹⁴⁴ Criminal Procedure Code, arts. 46 and 48.

¹⁴⁵ *Ibid.*, art. 49(4).

¹⁴⁶ *Ibid.*, art. 52.

¹⁴⁷ *Ibid.* art.48.

¹⁴⁸ Consistently the Court considered has held that ill-treatment has been a persistent problem in Uzbekistan with "no concrete evidence ... produced to demonstrate any fundamental improvement in this area in this country for several years." The Court therefore concluded "that ill-treatment of detainees is a pervasive and enduring problem in Uzbekistan." See e.g. *Sultanov v Russia*, European Court of Human Rights, no. 15303/09, Judgment of November 4, 2010, para. 71; *Karimov v Russia*, European Court of Human Rights, no. 54219/08, Judgment of July 29, 2010, para. 99; *Abdulazhon Isakov v Russia*, European Court of Human Rights, no. 14049/08, Judgment of July 8, 2010, para. 109; *Yuldashev v. Russia*, European Court of Human Rights, no. 1248/09, Judgment of July 8, 2010, para. 84; *Garayev v Azerbaijan*, European Court of Human Rights, no. 53688/08, Judgment of June 10, 2010, para. 72; *Muminov v. Russia*, European Court of Human Rights, no. 42502/06, Judgment of December 11, 2008, para. 94; *Ismoilov and Others v. Russia*, European Court of Human Rights, no. 2947/06, Judgment of April 24, 2008, para. 122; *Yakubov v Russia*, no. 7265/10, European Court of Human Rights, Judgment of November 8, 2011.

Uzbekistan’s deepening isolation due to the government’s refusal to allow local and international NGOs to operate in the country has complicated efforts to assess the full scope of torture. However, one prominent defense lawyer who has represented hundreds of criminal defendants—echoing the opinion of other lawyers interviewed—said:

Based on the clients I visit in pre-trial detention, I believe torture has increased over the past several years. But the fact is there is simply no one left to witness what is happening and communicate it to the world.¹⁴⁹

Victims, their relatives, lawyers, human rights defenders, and other observers also report that since the adoption of habeas corpus and related reforms, police, and security agents continue to use torture to coerce detainees to implicate themselves or others and that confessions obtained under torture are still the sole basis for convictions. Despite the January 2009 amendments, detainees are still denied access to counsel and counsel of one’s choice during interrogation, the habeas corpus hearing, and even trial. Judges still fail to investigate torture allegations, to exclude evidence obtained through torture or in the absence of counsel, and do not hold perpetrators accountable.

Physical and Psychological Torture in Pre-Trial Custody

Human Rights Watch found that law enforcement officials in Uzbekistan abuse detainees using both physical and psychological torture. Methods commonly used include beatings with rubber truncheons, plastic bottles filled with water, and electric shock, hanging by wrists and ankles, rape and sexual humiliation, asphyxiation with plastic bags and gas masks, threats of physical harm to relatives, and denial of food or water.

During the course of the research for this report, Human Rights Watch documented numerous examples of physical and psychological torture in pre-trial custody following the enactment of habeas corpus and related procedural reforms. While an examination of torture in post-conviction facilities is beyond the scope of this report, Human Rights Watch also documented numerous instances of torture against prisoners.¹⁵⁰

¹⁴⁹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 2, 2010.

¹⁵⁰ Persons convicted on charges of so-called religious extremism or for the similarly overbroad category of “anti-constitutional activity,” shorthand for any political activity the government perceives to be threatening, are often the victims of torture in prison. Torture is often carried out by fellow inmates acting at the behest of prison authorities. In November 2010, relatives of Muslim religious prisoners serving sentences at Jaslyk colony, Uzbekistan’s most notorious prison, reported to Human Rights Watch that following a hunger strike, prison authorities tortured several inmates, including by undressing them naked in front of other inmates, beating and subjecting them to sexual humiliation. Human Rights Watch interview with [names withheld], Tashkent, December 13, 2010.

Beatings

Prolonged beatings are one of the most pervasive forms of torture in Uzbekistan. Beatings may begin the moment a suspect is arrested and are often used to subdue a person's will to resist. Victims report that police concentrate on the kidney area in the small of the back when beating and kicking detainees, thus leaving less bruising visible on the face and arms, while potentially causing serious physical damage in the longer term.

A lawyer who represented several dozen men accused of extremism in February 2010 described a typical pattern of beatings in pre-trial custody:

The defendants were detained by officers from the Gulistan city department of internal affairs (*GOVD*) and were immediately beaten before the habeas hearing. My clients' relatives who managed to get in the station warned me before I even got inside that they could hear the men screaming from outside the interrogation rooms.

I undressed one of my clients and realized that he had been beaten in places where the marks of his wounds wouldn't be visible. Another one of my clients was shaking and couldn't talk. They had been beaten on the head with rubber sticks (*dubinki*) and on the legs and in the kidneys (*po pochkam*). Their hair had been pulled. They were beaten with clubs and plastic water bottles filled with water.¹⁵¹

The same lawyer recalled the bloody beating of another client in April 2010:

He was taken to the Tashkent prosecutor's office and beaten in the hallway. They broke both his ribs and beat his head to the point that he lost consciousness and was covered in blood and bruises.¹⁵²

Use of torture appears to be designed to break a detainee's will so they will sign a prepared confession, or refrain from asserting his or her rights.¹⁵³ Human Rights Watch

¹⁵¹ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 18, 2010.

¹⁵² Human Rights Watch interview with lawyer [name withheld], Tashkent, November 18, 2010.

¹⁵³ Human Rights Watch has extensively documented in previous publications the use of torture to coerce false confessions, see for example "Deaths in Custody in Uzbekistan," Human Rights Watch Briefing Paper, April 4, 2003, <http://www.hrw.org/reports/2003/04/04/deaths-custody-uzbekistan>; Human Rights Watch, *Burying the Truth: Uzbekistan Rewrites the Story of the Andijan Massacre*, September 2005, vol. 17, no.6(D),

heard several stories of detainees being subject to abuse such as simulated asphyxiation and electric shock to force them to confess to offences like theft or implicate others.¹⁵⁴ One criminal lawyer described how one of his clients was tortured and ill-treated, forcing him to drop the services of independent counsel:

When I got in [to the detention facility] to see my client I noticed he couldn't walk. He lifted up his shirt sleeve and showed me bruises on his upper arm. I had seen him 10 days earlier and he had been perfectly healthy. He quietly recounted to me that all his ribs were broken.

I told my client I would raise this issue everywhere possible. But he told me I shouldn't do or say anything, as he feared for the safety of his family. He told me that every day *operativniki* come in and beat him.¹⁵⁵ He had lost hearing in one ear.

At the end of our conversation he said he would have to break off my [legal] representation. It was clear he had been forced to do this.¹⁵⁶

Police use blunt instruments, such as rubber truncheons and batons, or the ends of automatic weapons or rifles to beat detainees. A recent example of this practice occurred in the Samarkand region in the fall of 2010, when police detained Khusnitdin Kh. as a suspect in a murder investigation. Demanding that he sign a forced confession, Khusnitdin Kh. reported that more than a dozen police officers beat him with rubber truncheons, causing severe bruising and a laceration that required stitches. When police found the actual perpetrator of the crime a few days later, Khusnitdin Kh. was finally released.¹⁵⁷ After undergoing a medical exam and photographing his wounds, Khusnitdin Kh. filed a complaint with local authorities against the police officers who beat him. Instead of conducting an investigation, the same officers threatened Khusnitdin Kh. with retaliation and even jail time if he proceeded with his complaint.¹⁵⁸

Police sometimes use whatever object comes to hand. One interviewee said:

<http://hrw.org/reports/2005/uzbekistan0905/>; also Human Rights Watch, *Nowhere to Turn: Torture and Ill-treatment in Uzbekistan*, November 5, 2007, vol. 19, no. 6(D), <http://www.hrw.org/reports/2007/11/05/nowhere-turn>.

¹⁵⁴ See further at pp. 68-70.

¹⁵⁵ *Operativniki* is the colloquial labeling for *operativnye rabotniki*, or police operatives.

¹⁵⁶ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 29, 2010.

¹⁵⁷ Human Rights Watch telephone interviews with Khusnitdin Kh., Surat Ikramov, Bakhodir Namazov, and Mamatkul Mukhtarov, November 9, 2011.

¹⁵⁸ *Ibid.*

They [my three sisters] were all beaten at the police station. Khosiyat [my sister] told the ROVD [regional department of internal affairs] officers after they detained her that she would not say anything without a lawyer, and they hit her on the head with a criminal code book. She fell to the ground in a faint.¹⁵⁹

Another case involves Nodir N, a man first accused and now imprisoned on charges of treason, battery, and fraud. His mother, Rayhon R., recounted what Nodir N.'s attorney said when he first gained access to her son in detention:

Nodir N. was given a state-appointed defense lawyer, but he was interrogated on several occasions without her being present. By the time the lawyer arrived he had already been beaten badly. The lawyer said that when she first saw him, his hands were badly cut and bruised. He could hardly pick up a pen to write.¹⁶⁰

¹⁵⁹ Human Rights Watch interview with Abdusamat Soatov, Tashkent, November 21, 2010.

¹⁶⁰ Human Rights Watch interview with Rayhon R., Tashkent, November 22, 2010.

Torture of “Abdumannob A.”

While being beaten, sometimes by several officers at once, detainees may be handcuffed or otherwise immobilized in postures that allow torturers to access sensitive body areas. Police sometimes suspend victims by wrists, handcuffing them to the ceiling or a jail cell, at a height at which their feet do not fully touch the ground. For example, the wife of Abdumannob A., who was suspected of espionage, spoke of the beatings her husband endured in a Tashkent pre-trial facility at the end of 2008 and much of 2009:

He told me how officers would strap him to a chair during interrogations. They would pour cold water over his naked body, placing two high-speed fans on each side of him so that he would freeze. They would leave him like this for two to three hours. They did this so he would sign what they asked him to. But he wouldn't sign.

Officers would hang him from the ceiling by his wrists, and eight or nine people one after the other would beat him. When I saw him, it was obvious he had been hanged by the wrists. I could see the marks.

He told me that several times guards and detainees were brought into the interrogations and were given needles to poke under his nails. Guards handcuffed him to his cell once and burned his penis with newspapers that they had lit on fire, giving him a second-degree burn. Abdumannob was so distraught that he tried to cut his veins with his teeth. I still fear for his life.¹⁶¹

Asphyxiation

Asphyxiation continues to be used as a torture technique in pre-trial detention. Police place gas masks on suspects and close off the breathing tube valve in order to suffocate detainees.¹⁶² Relatives of some victims reported that police first dress the subject's head with cellophane plastic before placing the gas mask over the head.¹⁶³ Victims may be brought to the verge of unconsciousness or lose consciousness. Some witnesses have reported that police sprinkle chemical substances, such as powdered chlorine, in the gas mask tubes to increase the pain inflicted on the victim and accelerate suffocation.¹⁶⁴

Nodira N., the mother of a teenage boy who was detained in November 2010, said that police had placed a gas mask on her son's head to coerce him to sign a confession:

¹⁶¹ Human Rights Watch interview with wife of Abdumannob A., Tashkent, November 21, 2010.

¹⁶² Human Rights Watch interview with Zukhra Z., Tashkent, November 21, 2010.

¹⁶³ Human Rights Watch interview with lawyer [name withheld] and Zhanna Z., Tashkent, November 13, 2010.

¹⁶⁴ Human Rights Watch interview with [names withheld], Tashkent, November 18 and 19, 2010.

On November 25, I saw my son at the police station. I was bringing him food and clothing and was allowed to have 10 minutes with him at about 6 or 7 p.m. I saw a long bruise across his neck left by the gas mask. He told me that several officers had forced him to confess to having committed theft. They put cellophane over his head and then put a gas mask on him. He couldn't breathe and eventually signed the confession. "They beat me and accused me of theft and I had to confess to it," he told me.¹⁶⁵

Human Rights Watch met with the mother of an 18-year-old boy who was detained as a "witness" for allegedly participating in a street fight. She described how, according to her son, police had placed a gas mask on him, and forced him to sign a confession stating that another boy, who was 17-years-old, was also present at the fight.

There were no minors present at the time of the fight, but this way the police could add an additional charge against the defendants ('involvement of a juvenile in a criminal act'), which would allow them to seek greater prison time.¹⁶⁶

Electric Shock

Another torture technique long practiced in Uzbek police precincts and detention facilities is use of electric shock. Human Rights Watch documented the use of electric shock across a wide spectrum of criminal cases, ranging from common crimes such as theft to political and religious cases such as espionage.

Even where police and investigators have evidence that a suspect has committed a crime, torture is often used to secure confessions to additional crimes that carry more serious prison time. As one lawyer and rights defender explained:

Even after habeas corpus, the Soviet quota system (*palochnaya otchyotnost'*) still remains in place. According to this system, a policeman or investigator gets promoted—or reprimanded—based on the number of people he has arrested who actually get convicted and serve prison time. Torture is the easiest way to advance one's career and get to the right numbers.¹⁶⁷

¹⁶⁵ Human Rights Watch interview with Nodira N., Tashkent, December 10, 2010.

¹⁶⁶ Human Rights Watch interview with Gulnoza G., Tashkent, December 10, 2010.

¹⁶⁷ Human Rights Watch interview with lawyer Shuhrat Ganiev, Tashkent, December 12, 2010.

Such was the case of Iurii I., who was initially arrested in October 2009 for participating in a street brawl. His mother said:

My son later told our lawyer that he was interrogated outside the presence of counsel every day for 10 days at the GOVD [City Department of Internal Affairs]. He said he was being forced to sign a confession to several crimes in addition to the one for which he was charged: stealing passports and money and for breaking and entering.

Every day during the interrogations, he said, officers would tie electric shocks to different parts of his body.... While it is true that he got himself involved in a street fight, he never committed any of these other crimes of which he was accused.¹⁶⁸

In another case, Kamila K. described the marks of electric shock she witnessed on her son's body during his trial in March 2010. He was arrested for an alleged burglary in December 2009:

He told me and our lawyer that they [police] started to beat to get him to confess to two other burglaries. But when he refused, they connected wires to his ears and applied electric shocks. When I saw him in court in March 2010, there were black holes on his ears.¹⁶⁹

The wife of detainee Abdumannob A. similarly stated: "His [my husband's] testicles and mouth had been electric-shocked. They put him naked in a chair and would hook up electrodes to him every day during interrogations."¹⁷⁰

Rape and Other Sexual Violence

Victims and their lawyers state that police investigators and inmates working with them continue to commit and threaten to commit acts of sexual violence, including rape, against men and women in pre-trial detention. Police use sexual violence to degrade and humiliate, in addition to inflicting physical harm.

¹⁶⁸ Human Rights Watch interview with mother of Iurii I., Tashkent, November 21, 2010.

¹⁶⁹ Human Rights Watch interview with Kamila K., Tashkent, December 20, 2010.

¹⁷⁰ Human Rights Watch interview with wife of Abdumannob A., Tashkent, November 21, 2010.

To pressure Abdumannob A. to confess to charges of espionage, security agents “burned his penis with newspapers they had set on fire.”¹⁷¹ According to Abdumannob A.’s wife, “they threatened my husband that if he did not confess [to espionage] they would put another inmate infected with AIDS into his cell to rape him. Then, even though he never committed espionage, he broke down and signed.”¹⁷²

In August 2009, Malika M. was detained for several days at the Tashkent City Department of Internal Affairs, held on administrative charges, and questioned about the activities her husband and brother-in-law, who were accused of committing anti-state and “religious extremism” crimes. She described the abuses and threat of rape she endured:

Without identifying themselves, agents immediately began to interrogate me. They asked questions about my husband, how we met, who introduced us. The first one told me that after I spent some time in jail I would “get smarter” (*poumnet*), that I would start missing my kids, and that then we could talk again. He threatened me saying, ‘You have two children, remember them.’ The next morning I was woken up at 5 or 6 a.m., and five people started interrogating me all at once. I wasn’t allowed a lawyer. They started shouting and getting angry, saying that I was not being truthful. They threatened to rape me and I had a seizure.¹⁷³

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Human Rights Watch interview with Malika M., Tashkent, November 28, 2010.

Rape of Rayhon, Khosiyat, and Nargiza Soatova

The horrific case of the gang rape of sisters in pre-trial custody in 2009 and the Uzbek government's failure to pursue justice for the victims illustrates the culture of impunity for torture that still persists in Uzbekistan despite the introduction of legal reforms.

Three sisters, Rayhon, Nargiza, and Khosiyat Soatova, were detained on May 9, 2009, after a physical altercation with the mistress of Nargiza's husband. The sisters' brother, Abdusamat Soatov, told Human Rights Watch:

On May 9 we gathered at our apartment for a family celebration like we do every year on the national holiday [Day of Memory and Remembrance]. Police showed up and arrested Nargiza, and an hour later more police came and took my two younger sisters. I went to the police station but they wouldn't let me in to see my sisters, saying it was "closed for the holiday." Around 8 p.m. a guard finally let me in and I was able to see the eldest sister, Nargiza, for about 10 minutes. She was crying and said she had been beaten up. I asked if she had seen our two sisters and she said 'no.' All the officers around us had been drinking.¹⁷⁴

Rayhon and Khosiyat were originally detained as witnesses and not as accomplices to any crime. All three sisters were later accused of being involved in the altercation and charged with robbery, intentional damage to property, and unlawful acquisition of documents. The three women were held overnight at the Mirzo-Ulugbek police station, questioned separately, and released in the evening on May 10, 2009. According to Abdusamat, Khosiyat requested a lawyer during questioning and police hit her with a criminal code book. The family was able to secure their temporary release the next day:

They let my sisters go at 8 p.m. that evening. Nargiza cried out that she had been raped and beaten at the police station. At first, I didn't believe her but then she showed me bruises on her arms and legs. All of my sisters were crying hysterically.¹⁷⁵

According to family members, both Nargiza and Rayhon were raped that first night in custody. Rayhon told her family that two officers brought her upstairs from the basement cell where she was being held for further questioning. Rayhon remembered a tall man entering the room and calling her a prostitute. He and two other officers raped her before she lost consciousness. Rayhon also told her family that police threatened to rape her sister Khosiyat and then rape her if she did not write down exactly what they dictated to her.

Five days later, Nargiza, Khosiyat, and Nargiza were again placed under arrest and taken into custody and then brought before a court for a habeas corpus hearing. The court did not examine whether they had been tortured in pre-trial custody. The case was passed from the jurisdiction of the Mirzo-Ulugbek police station to the Tashkent City Department of Internal Affairs (GUVD).

¹⁷⁴ Human Rights Watch interview with Abdusamat Soatov, Tashkent, November 21, 2010.

¹⁷⁵ Ibid.

Abdusamat stated that all three sisters were beaten and tortured again while in GUV D custody and were provided a state-appointed defense lawyer who openly assisted the prosecution:

Rayhon was raped while in a GUV D cell on June 24, 2009.... Umarkhonov suggested we hire a lawyer for the case and I went to speak with him. The lawyer told me that I should give them [the police] a lot of money. If I didn't, he said, 'things would be difficult for my sisters.' The investigator and the lawyer were working together.¹⁷⁶

On September 22, 2009, Nargiza, Rayhon and Khosiyat Soatova were convicted of hooliganism and robbery and sentenced to between six and eight years in prison. Khosiyat was eventually freed but so badly beaten that she spent two months in a hospital recovering before being released on bail.

In October 2009, authorities of the UYa 64/TX prison, where Rayhon was serving her sentence, confirmed that she was 20 to 21 weeks pregnant, having conceived the child in mid-May 2009, which coincides with the time when she reported being raped by police officers. Rayhon gave birth on December 17, 2009, to a child roughly two months premature.

In response to calls for an investigation by the Soatov's family and the human rights organization *Ezgulik* (Goodness), authorities eventually opened a criminal case in January 2010 against twelve police officers.¹⁷⁷ At that time, the UN special rapporteur on torture reiterated his request—outstanding for seven years—to be invited to Uzbekistan to investigate this case along with other torture allegations.

Four months later, however, the Uzbek government dropped the investigation, stating that Rayhon could not positively identify the perpetrators and that DNA evidence had failed to establish a connection between the alleged policemen and the baby.¹⁷⁸ Uzbek authorities continue to refuse access to the country to the special rapporteur on torture.¹⁷⁹

Ezgulik and the Soatov family, however, believe that authorities dropped the investigation to cover-up the reality of torture in the country. Abdusamat and his family are still seeking answers. "Of course Rayhon had trouble identifying the men. She was traumatized and was in a dark room. We've written to the president, the prosecutor general, and the Senate. Nothing has been done."¹⁸⁰

¹⁷⁶ Ibid.

¹⁷⁷ "UN wants investigation of Uzbekistan police rape claims," *BBC Uzbek Service*, January 22, 2010, <http://news.bbc.co.uk/2/hi/8472316.stm> (accessed July 21, 2011).

¹⁷⁸ "Charges Dropped Against Uzbek Police in Alleged Gang Rape," *Radio Free Europe/Radio Liberty*, April 22, 2010, http://www.rferl.org/content/Charges_Dropped_Against_Uzbek_Police_In_Alleged_Gang_Rape/2021771.html (accessed August 28, 2011).

¹⁷⁹ The Uzbek government continues to refuse access to all ten UN special procedures who have requested such access—the special rapporteurs on torture, on the situation of human rights defenders, on freedom of religion, on violence against women, on the independence of judges and lawyers, on extrajudicial, summary or arbitrary executions, on contemporary forms of slavery, on freedom of association and assembly, and the Working Groups on arbitrary detention and on enforced disappearances. The last time a UN special mechanism was granted access to visit Uzbekistan was in 2002.

¹⁸⁰ Human Rights Watch interview with Abdusamat Soatov, Tashkent, November 21, 2010.

Access to Counsel and the Right to Counsel of One's Choice

The government is fond of using the word 'liberalization' to refer to its reforms of the criminal justice sector. But there's nothing liberal about them. Detainees' and lawyers' rights are disrespected at every stage....

—Lawyer Sukhrobjon Ismoilov, Expert Working Group, Tashkent, November 8, 2010

Lack of access to a lawyer and counsel of one's choice in Uzbekistan enable conditions that can amount to incommunicado detention. These rights, combined with habeas corpus, are essential safeguards against torture in pre-trial custody. Accordingly, the ICCPR affirms the right to counsel in legal proceedings, as well as the right "to have adequate time and facilities for the preparation of... [one's] defence and to communicate with counsel of his own choosing."¹⁸¹ The UN Basic Principles on the Role of Lawyers also echo these requirements and further clarify that legal assistance must be provided immediately (defined as within 48 hours of arrest), must be confidential, and given without outside interference.¹⁸²

For this reason, amendments to the Criminal Procedure Code in January 2009 to guarantee these rights were as important for combating torture as habeas corpus. One Uzbek lawyer said that on paper the reforms were nothing short of "revolutionary."¹⁸³ But like habeas corpus, the amendments have proved illusory in reality, and are routinely ignored by police, investigators, prosecutors, and judges.

"Permission" to Visit a Client

Perhaps the most significant—yet to date unrealized—criminal procedure reform of the last few years involved the abolition of the requirement that lawyers receive written authorization (*dopusk*) from prosecutors and investigators to access their own clients.¹⁸⁴

Under article 49 of the Criminal Procedure Code, a lawyer should now be granted immediate access to his client at any stage of the criminal process, including from the

¹⁸¹ International Covenant on Civil and Political Rights, art. 14(1) and 14(3)(b).

¹⁸² Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27, to September 7, 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), Principles 1, 5, 6, 7 and 8. (Principle 7: "Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention." Principle 8: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.")

¹⁸³ Human Rights Watch interview with lawyer Sukhrobjon Ismoilov, Expert Working Group, Tashkent, November 8, 2010.

¹⁸⁴ Criminal Procedure Code, art. 49.

moment their client's arrest. Instead of written authorization, a lawyer must merely present proof of his representation (*order*), such as a retainer agreement signed by the lawyer and the family, to gain access to a facility where a client is held.¹⁸⁵

Were such a right guaranteed in practice, it would significantly reduce the amount of time detainees are left in incommunicado detention, where they are often interrogated outside the presence of counsel or counsel of their choice. However, in nearly every case of torture or ill-treatment in pre-trial custody Human Rights Watch documented for this report, the victim was either denied access to counsel during critical points of the proceedings or provided with a state-appointed defense lawyer who did not effectively represent them.

One lawyer who represented five defendants convicted in March 2010 on extremism charges described a typical scenario lawyers face when they attempt to visit their clients:

A large group [number withheld] of men was detained for allegedly forming an unsanctioned religious organization. One was accused of being a terrorist for allegedly attending a Ramadan dinner. After their arrest, I was contacted by some of their families and hired to represent some of the men. The authorities would not give me access to my clients until three days after their arrest.

The first day I went to the police department to see my clients I waited for five hours and presented my *order* [attorney-client retainer agreement] but the guards still would not let me in. I simply kept coming back and refused to leave the building until they let me in. I finally got inside after three days—after the habeas corpus hearing approving their detention for a five-month period had already occurred.¹⁸⁶

When she finally gained access to her clients, the lawyer discovered they had been beaten on the kidneys, head, and legs with water-filled rubber sticks and plastic bottles.¹⁸⁷

Such a scenario is not unusual. Another criminal defense lawyer spoke about a similar case from April 2010:

I came back every day to see my client and was told again and again I needed a signed authorization (*dopusk*). This process takes a lot of time,

¹⁸⁵ Ibid.

¹⁸⁶ Human Rights Watch interview with [name withheld], Tashkent, November 18, 2010.

¹⁸⁷ Ibid.

so I was only able to meet with my client 10 days into his detention, even though the family had presented me with a representation agreement (*orde*). ‘Why are these special letters required?’ I asked one investigator. He explained that the point is to limit the number of ‘outside people’ that have contact with a detainee. He said, ‘If someone were arrested and then had lots of lawyers coming in to see him all the time, then the detainee would end up most of the day sitting in an office and not in a holding cell, almost like a free man.’¹⁸⁸

Following this initial meeting with his client, the lawyer was systematically obstructed from seeing his client for the next six weeks, until the client was pressured to refuse his representation. He commented: “I was his lawyer for a month-and-a-half, and I was absolutely unable to help him. I was never able to see him.”¹⁸⁹

Despite unambiguous laws to the contrary, Uzbek authorities may indefinitely delay or obstruct lawyers’ efforts to meet with their clients for weeks or even months. Lawyers report that investigators and prosecutors are unresponsive to their efforts to access their clients and often deliberately avoid them. According to one lawyer, “[a]fter the habeas corpus hearing, I tried to visit my client at the Tashkent city jail, but they wouldn’t let me in without official permission. I tried contacting the investigator to resolve the situation and he avoided me for a week.”¹⁹⁰

Lawyers who attempt to carry out what should be the routine procedure of visiting a client face harassment and numerous bureaucratic obstacles. According to Sukhrobjon Ismoilov, head of the Expert Working Group think tank:

There are security guards who guard the detention facility who you have to pass through. They ask you who you are. You tell them that you're a lawyer, show them proof of your identity and your representation agreement (*orde*). They then tell you can't get in without the investigator's permission.

If you say that you want to speak to the boss and complain, they will just say no. If you're lucky you might have the investigator's phone number to

¹⁸⁸ Human Rights Watch interview with [name withheld], Tashkent, December 1, 2010.

¹⁸⁹ Ibid.

¹⁹⁰ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 18, 2010.

call and ask to inform the guards you are the lawyer on the case. And if he's in a good mood, then you might have some chance of seeing your client. It's only the lawyer that can spend hours upon hours who may have a chance of being successful.¹⁹¹

By the time that a lawyer is able to gain access to their client, irreparable harm during incommunicado detention has often already been done. As one lawyer said:

My client was held beyond 10 days without charge. He told me that the investigator and a state-appointed lawyer came to his cell—even they already knew I was appointed as his lawyer—and pressured him to sign a confession. They walked him through a long hallway to the interrogation where he could see officers beating up another suspect, punching him in the stomach. He immediately signed the confession.¹⁹²

Incommunicado Detention

Articles 46 and 48 of Uzbekistan's Criminal Procedure Code, amended in January 2009, provide suspects and defendants the right to call a close family member immediately after arrest.¹⁹³ However in practice police do not allow detainees to exercise their right to make a phone call, and do not otherwise inform a detainees family of their detention. Sometimes even when a relative enquires after the whereabouts of an individual who has been detained, the police will deny that the person is in detention at all. Refusing to acknowledge the detention of an individual or reveal the whereabouts of a person who has been deprived of liberty constitutes an enforced disappearance under international law, a serious human rights violation subject to criminal prosecution.¹⁹⁴

Umida U. told Human Rights Watch that she spent five days searching for her sons after they were detained in the southern city of Karshi in October 2010:

¹⁹¹ Human Rights Watch interview with lawyer Sukhrobjon Ismoilov, Tashkent, November 8, 2010.

¹⁹² Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

¹⁹³ Criminal Procedure Code, arts. 46 and 48.

¹⁹⁴ The International Convention for the Protection of All Persons from Enforced Disappearance (Doc.A/61/488. C.N.737.2008.TREATIES-12 of October 2, 2008) defines an enforced disappearance as: "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law" (Article 2). The Rome Statute of the International Criminal Court (A/CONF. 183/9) article 7 (2) (i) defines enforced disappearance as " the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

I looked for them myself.... First I visited the hospital and also the morgue.... We looked everywhere. Then we went to the police.... “They're not here. Your sons aren't here,” they said. I went to the SNB [National Security Service]. They said my sons weren't there. Then after five days, I was there [at the SNB] crying and started to argue with them, and then they told me that my sons were at the city police station.¹⁹⁵

Similarly, Lurii I. spent three days after his arrest in incommunicado detention at the district department of internal affairs, followed by another ten after the habeas corpus hearing in an unknown location. During this time, according to his mother, the authorities would not provide information on his whereabouts to either his lawyer nor his family, far less allow them to visit him. “I went to the jail to visit my son but he wasn't there. Where he was during those days and what was done with him I'll never know for sure.”¹⁹⁶

Malika M., whose case is described above, has been searching for her husband and brother-in-law for over two years.¹⁹⁷ Both are officially wanted on charges of “religious extremism.” Neighbors where the men were working say that plainclothes agents of the National Security Services (NSS) grabbed them while they were at work in August 2009, put wool bags over their heads and drove off.¹⁹⁸ Even though Malika M. filed a missing persons report, the Ministry of Internal Affairs refused to acknowledge receipt, even though by law they are the first port of call for someone reporting a disappearance. Malika M. herself was later detained, interrogated without a lawyer about the whereabouts of those she had reported missing, and threatened with rape and additional jail time if she asked more questions about their disappearance.¹⁹⁹

“Miranda” Rights

The “Miranda” warning, also referred to as Miranda rights, is a warning that police are required to give in the US to criminal suspects in police custody or in a custodial interrogation) before they are interrogated to inform them about their constitutional rights.²⁰⁰ Uzbek officials have touted their introduction of “Miranda” warnings in early

¹⁹⁵ Human Rights Watch interview with “Umida U.,” Tashkent, November 23, 2010.

¹⁹⁶ Human Rights Watch interview with mother of “Lurii I.,” Tashkent, November 21, 2010.

¹⁹⁷ Human Rights Watch interview with “Malika M.,” Tashkent, November 28, 2010.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ In *Miranda v. Arizona*, 384 U.S. 436 (1966), the US Supreme Court held that an elicited incriminating statement by a suspect will not constitute admissible evidence unless the suspect was informed of the right to decline to make self-incriminatory statements and the right to legal counsel (hence the so-called “Miranda rights”), and makes a knowing, intelligent and voluntary waiver of those rights.

2009 as further evidence of the “liberalization” of the criminal justice system, but there is little to no evidence that detainees are actually told of their rights or can exercise them.²⁰¹

The right to remain silent derives from article 14(g)(3) of the ICCPR, which guarantees the right “not to be compelled to testify against [oneself] or to confess guilt.”²⁰² The UN special rapporteur on torture described the right as one of the “essential procedural safeguards necessary to make... [the] prohibition [against torture] effective” and recognized its absence as a factor contributing to the practice of torture.²⁰³

Sukhrobjon Ismoilov, whose organization has surveyed lawyers on their experiences with the reforms, said:

People only know Miranda rights from watching Hollywood movies but never receive them when they are arrested in Uzbekistan. Unfortunately, the moment when people learn that they have received Miranda warnings is upon reading the confession they are being told to sign.²⁰⁴

A representative of an international organization in Tashkent who follows criminal justice issues echoed this observation:

It is just not true that police ask suspects after they are arrested whether they would like to see their lawyer or exercise their right to make a phone call. These things don’t happen. Investigators first ensure they get what they need from the detainee. They’ll keep the guy locked up, if necessary, for the entire time prior to the habeas corpus hearing. During this time, they often take suspects back to the crime scene, etc., and isolate them from the outside world while they incriminate themselves.²⁰⁵

²⁰¹ “Uzbekistan, Presenting Third Periodic Report, Highlights 2008 Death Penalty Ban, Says Wants to Work Closely with Human Rights Committee on all Areas of Concern,” United Nations press release, HR/CT/718, March 11th, 2010, <http://www.un.org/News/Press/docs/2010/hrct718.doc.htm> (accessed August 30, 2011).

²⁰² International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by Uzbekistan on September 28, 1995, art. 14(g)(3).

²⁰³ UN Commission on Human Rights, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, Visit to China, E/CN.4/2006/6/Add.6. March 10, 2006, <http://www2.ohchr.org/english/issues/torture/rapporteur/visits.htm> (accessed October 8, 2011), paras. 54 and 73.

²⁰⁴ Human Rights Watch interview with Sukhrobjon Ismoilov, Expert Working Group, Tashkent, November 8, 2010.

²⁰⁵ Human Rights Watch interview with [name withheld], Tashkent, December 4, 2010.



The Uzbek Supreme Court, pictured left, has issued rulings declaring inadmissible evidence procured on the basis of torture or where the suspect was deprived access to defense counsel as inadmissible. Despite these rulings, Uzbek courts continue to admit confessions procured through torture and to dismiss allegations of torture and ill-treatment. ©2010 Vladimir Husainov

Courts' Failure to Investigate Torture

International and Uzbek law require that allegations of torture be investigated, that coerced testimony is not admitted as evidence, and that perpetrators are prosecuted.²⁰⁶ As early as 2003 and 2004, respectively, the Uzbek Supreme Court issued two rulings

²⁰⁶ Article 15 of the Convention against Torture reads: "Each party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made." Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987. Article 321 of the Criminal Procedure Code mandates that "An inquiry officer, investigator, prosecutor, or court shall be obliged to initiate a criminal case of an offense in all the instances when there exist causes and sufficient grounds thereto." To investigate such allegations, judges, under article 180, judges can order a forensic medical examination. Article 180 reads: "Expert examination shall be ordered by a resolution of an inquiry officer or investigator, or by a finding of a court, and indicate the following: grounds to order forensic expert examination; physical evidence and other objects that will be made available to the examination, with indication of where, when and under what circumstances discovered and seized; and during the expert examination on the case—data underlying the forensic examiner's opinion; questions posed to the forensic examiner; name of the forensic agency, and the last name of the examiner. An expert examination may be assigned, if required, before the initiation of criminal case. A resolution or finding ordering expert examination shall be binding for persons concerned." Furthermore, article 173 of the Criminal Procedure Code mandates that "Appointment and conduction of an expert examination shall be mandatory to establish the following circumstances: 1. cause of death, or nature and heaviness of bodily injury; [...]"

declaring inadmissible evidence procured on the basis of torture or where the suspect was deprived access to a defense counsel.

However, Uzbek courts continue to ignore allegations of torture and ill-treatment. Despite the introduction of habeas corpus, Uzbek judges continue to abdicate their responsibility to check the power of prosecutors and safeguard due process. Uzbek courts fail to declare coerced testimony inadmissible, hold perpetrators accountable, or even allow victims to testify about what they have endured in pre-trial custody. If lawyers are able to raise torture allegations in open court, judges tend to dismiss or discount them, convicting detainees based on forced confessions.

A defense lawyer with decades of criminal defense experience described the sense of impunity for abuses:

The desperation about torture among the clients I see now is overwhelming. I often meet individuals in police custody who have clearly been ill-treated, with suspicious marks on their bodies. But when I meet with them in the interrogation room, they are so afraid of further torture, and so convinced that the court will not step in to help that they ask me not even to raise it. They understand that I can complain on their behalf to the court, but in the end *they* are the ones that have to stay in jail alone with the police officers, not the defense lawyer and not the judge.²⁰⁷

During the research for this report Human Rights Watch documented this judicial indifference to torture at habeas corpus hearings as well as at trial.

Empty Habeas Hearings

As discussed in the previous section, Uzbekistan's habeas corpus law lacks a standard of review to test the lawfulness of detention. Similarly, the law contains no requirement that judges examine conditions in pre-trial custody, including any allegations of torture. Nor is there any obligation on the court to investigate such allegations *sua sponte* ("of its own accord") when there are visible signs of ill-treatment on a detainee. Judges likewise do not use the habeas corpus hearing to ensure that a detainee had access to counsel or was informed of their procedural rights before interrogation.

²⁰⁷ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 2, 2010.

The lack of any explicit requirement that a court must investigate torture allegations is another critical gap in the law and undermines the fundamental goal the UN Committee against Torture, special rapporteur, and numerous other bodies sought to achieve when calling for the adoption of habeas corpus. As one Uzbek legal expert noted:

Habeas corpus in Uzbekistan is merely a bail test, nothing more. If we are fighting against torture in earnest, then habeas corpus judges should have a list of questions they should ask detainees, such as ‘How were you treated?’ ‘Were your rights read to you?’ ‘Were you subjected to any form of physical or psychological pressure?’²⁰⁸

Human rights defender and political activist Dilorom Isakova agrees. Instead of safeguarding due process, she noted, “Judges ignore torture. People are delivered to the habeas corpus hearings ‘prepared,’ that is, already tortured—even ready to confess guilt and be sentenced.”²⁰⁹

Trial

While habeas corpus hearings are closed to the public, a diminishing number of trials are still conducted in the open, allowing lawyers, relatives, testifying witnesses, and rarely, other observers to document the judicial indifference to torture. Despite the Supreme Court rulings barring the admission of evidence procured through coerced testimony and outside the presence of counsel, forced confessions continue to be used as the basis for criminal convictions.

Vladimir V. was detained in May 2010 on charges of robbery and later convicted at trial. His lawyer, Tursuna Pulatova, told Human Rights Watch:

Vladimir was detained for a month between arrest and trial. At trial he stood up in court and lifted his shirt. ROVD [district department of internal affairs] officers had ripped out one of his nipples during an interrogation. I asked the judge to order an independent medical examination. He denied my request.²¹⁰

²⁰⁸ Human Rights Watch interview with [name withheld], Tashkent, November 24, 2010.

²⁰⁹ Human Rights Watch interview with political activist Dilorom Isakova, Tashkent, November 5, 2010.

²¹⁰ Human Rights Watch interview with lawyer Tursuna Pulatova, Tashkent, November 13, 2010.

Iurii I.'s mother attended her son's trial in February 2010 and observed a similar response:

Even the prosecution's two main witnesses—the alleged victims of a beating by my son—testified that they were forced to sign statements dictated to them. My son had been forced to sign a confession after being beaten. But this did not matter to the judge, and he sentenced my son to 11 years in prison.²¹¹

Another torture victim, Bakhtiyor B., was sentenced despite a witness testifying that he had clearly been beaten during pre-trial custody. His mother said:

My son told the judge he had been tortured. The judge just smiled and asked [name withheld] if it looked like my son had been beaten since she last saw him [before arrest]. She answered that it was obvious that he had been beaten. But the judge just ignored her testimony.²¹²

Even when victims or their lawyers take the considerable risk of identifying who has tortured them, courts fail to hold the torturers accountable. According to one legal expert, even where judges question investigators or police, “they naturally deny that torture has occurred and that is the end of the matter.”²¹³



Lawyer Tursuna Pulatova's client was detained in May 2010 on charges of robbery and later convicted at trial. Her client lifted up his shirt at trial to show the judge that police had ripped out one of his nipples during interrogation, but the judge dismissed the evidence of torture and denied Pulatova's request for an independent medical examination. After many years of taking on such cases, Pulatova's legal license was stripped by authorities. © 2010 Elena Urlaeva

²¹¹ Human Rights Watch interview with mother of Iurii I., Tashkent, November 21, 2010.

²¹² Human Rights Watch interview with Kamila K., Tashkent, December 20, 2010.

²¹³ Human Rights Watch interview with [name withheld], Tashkent, November 24, 2010.

Torture of Obitkhoja O.

The case of Obitkhoja O. reflects a typical pattern of judicial indifference to torture. Obitkhoja O., a teenager, was arrested in early 2009 for alleged involvement in a theft and taken to a police station in a district of Tashkent. His mother told Human Rights Watch:

I went to the station that day to try to see my son and they wouldn't let me in. Within two days, we had found a lawyer. He went to the police station but they wouldn't let him in either.

She next saw her son three days later.

They let me into see him for all of five minutes. He was in the investigator's office with three other suspects and had signed a confession saying he had participated in the robbery. I almost didn't recognize him. His face was bruised. He had been beaten with rubber truncheons. His wrists had cuts on them from the handcuffs. My son couldn't say very much, as the investigator was there.

It was only later, once her son had been convicted, that Obitkhoja's mother learned the extent of the torture he had endured. Prior to the habeas corpus hearing, which was not held until six days after his arrest, investigators placed a gas mask several times over Obitkhoja's face. Two officers handcuffed his wrists and ankles, threw him up in the air and let him fall to the ground. He was also made to sit on a chair with his hands and legs tied while officers kicked him in the head until he "confessed" to participating in a string of robberies to which he had maintained he had no connection.

Obitkhoja's state-appointed defense lawyer was not present during interrogations. The lawyer Obitkhoja's family hired to represent him raised the fact Obitkhoja had been tortured at the habeas corpus hearing, but the court dismissed the claims and approved his detention.

At trial, Obitkhoja's lawyer again raised the torture he had suffered. Even the prosecutor conceded that torture had taken place and said that the officers who had tortured my son would be punished. But the judge still sentenced my son to nine years in jail for crimes he did not commit and did nothing to punish the officer.

IV. Dismantling Uzbekistan's Independent Legal Profession

The government doesn't want lawyers who will make a fuss about human rights. They want ones who will close their eyes to bogus charges or procedural violations.

—Disbarred lawyer Ruhiddin Komilov, Tashkent, November 14, 2010

The result of the 'reforms' of the legal profession is that we have lost the most democratic aspects of being lawyers: the right to regulate ourselves. It is clear why this was done: It is much easier to manipulate lawyers who have lost the right to govern themselves.

—Local Uzbek legal expert, Tashkent, November 14, 2010

It is a cruel irony that exactly a year after adopting habeas corpus, and at the same time as the Uzbek government touted enhanced rights for pre-trial detainees, it took steps to extend its control over the independent legal profession.

On January 1, 2009, a new law restructuring the legal profession took effect, abolishing the previously independent bar associations and subordinating their replacement to the Uzbek government.²¹⁴ It also required all lawyers to re-apply for their licenses to practice law, and to re-take a bar examination every three years.

Human Rights Watch learned from lawyers that the new law, which resulted in the disbarment or de-licensing of numerous independent attorneys, has achieved nothing less than the subordination of the legal profession to the executive branch, violating international and Uzbek law.

Three years after its passage, the law has seriously weakened the criminal defense bar, silencing outspoken advocates who had taken on politically sensitive cases and were willing to raise allegations of torture in court. Furthermore, the reforms have had a chilling effect on the entire legal practice. This undermines the government's claims that it is serious about combating torture.

²¹⁴ "Law on the institution of changes and additions in several legal acts of the Republic of Uzbekistan in connection with the creation of the Institute of the legal profession," N-ZRU-198, December 31, 2008.

International and Uzbek Law on the Independence of Lawyers

Lawyers, along with judges and prosecutors, play a significant role in maintaining the rule of law and protecting human rights.

The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to a fair trial and to one's choice of counsel, and an independent legal profession is necessary in order to ensure these rights.²¹⁵ The United Nations Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, describe this connection as: "adequate protection of all human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession."²¹⁶ The Basic Principles, though not binding international law, reflect the general international consensus on the importance of lawyers' independence.²¹⁷

The existence of an independent legal profession requires that lawyers have the freedom to carry out their work without relying on authorization or approval from governments. Basic Principle 24 specifies that:

[L]awyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.²¹⁸

²¹⁵ International Covenant on Civil and Political Rights, art. 14. The United Nations Human Rights Committee has also stressed independence in its General Comment: "[l]awyers should be able to counsel and to represent their clients in accordance with their established professional standards and judgment without any restrictions, influences, pressures or undue interference from any quarter." United Nations Human Rights Committee (Twenty-first session, 1984): "International Covenant on Civil and Political Rights General Comment No. 13: Equality before the courts and the right to a fair and public hearing by an independent court established by law (art. 14)," April 13, 1984, para. 9.

²¹⁶ Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990), preamble.

²¹⁷ See also UN Human Rights Council, "Independence and impartiality of the judiciary, jurors and assessors and the independence of lawyer," Resolution 15/3, A/HRC/RES/15/3 ("convinced that an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecutions are able to perform its functions accordingly and the integrity of the judicial system are prerequisites for the protection of human rights and the application of the rule of law and for ensuring fair trials that there is no discrimination in the administration of justice.") See also International Bar Association Standards for the Independence of the Legal Profession, adopted by the International Bar Association, 1990; IBA General Principles for the Legal Profession, adopted by the International Bar Association, September 20, 2006.

²¹⁸ Basic Principles on the Role of Lawyers, principle 24.

Principle 25 further states, “professional associations and lawyers shall cooperate with governments to ensure that everyone has effective and equal access to legal services, and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.”²¹⁹

Article 58 of Uzbekistan’s Constitution provides that “[t]he state shall safeguard the rights and lawful interests of public associations and provide them with equal legal possibilities for participating in public life. Interference by state bodies and officials in the activity of public associations, as well as interference by public associations in the activity of state bodies and officials is impermissible.” Uzbekistan has also passed a law “on Public Associations” and one “on Non-profit, Non-governmental Organizations,” which guarantee the independence of such institutions.²²⁰

From Bar Association to “Quasi-Ministry” of Lawyers

Article 12 of the new law on lawyers created the Chamber of Lawyers (*Palata Advokatoʻi*), an organization that all Uzbek defense and civil lawyers are obligated to join in order to practice law.²²¹ The Chamber of Lawyers is responsible for centralizing and coordinating the activities of all defense lawyers in Uzbekistan.

The Ministry of Justice has the power to appoint and dismiss the chamber’s chairperson,²²² who in turn is responsible for appointing all heads of the regional branches of the Chamber across the country.²²³

In May 2009, the UN special rapporteur on the independence of judges and lawyers expressed serious concern after the passage of the Bar Association reforms, and in particular—given the chairperson’s role in appointing subordinates—on the “competency of the Ministry of Justice to nominate the chairperson [of the Chamber of Lawyers].”²²⁴ The special rapporteur stressed that “the central role in the establishment and the work of the

²¹⁹ Ibid., principle 25.

²²⁰ See Constitution of Republic of Uzbekistan, art. 58; Law “on Public Associations,” art. 5; Law “on non-profit, non-governmental organizations,” section 4.

²²¹ The new law creating the Chamber of Lawyers and mandating that attorneys retake the bar exam to maintain their law licenses in practice only applies to defense and civil lawyers in private practice, as Uzbek judges and prosecutors are appointed by the executive branch.

²²² “Law on the institution of changes and additions in several legal acts of the Republic of Uzbekistan in connection with the creation of the Institute of the legal profession,” N-ZRU-198, December 31, 2008, art. 12-3.

²²³ Ibid. art. 12-4.

²²⁴ UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.1., May 29, 2009, para. 356.

legal profession should remain with the lawyers.” Taken together, the changes implemented by the new law “indicate an overarching role of the executive branch in the establishment and functioning of the legal profession, which violate the ... provisions of the Basic Principles of Lawyers.”²²⁵

Indeed, the law fundamentally subordinates all practicing lawyers to the Ministry of Justice. In the words of one well-respected Tashkent-based lawyer, it turned the former association into a “quasi-ministry” of lawyers, rather than an independent organization created and governed by lawyers themselves.²²⁶ “Our [Bar Association] leadership recognized the importance of having a centralized association with mandatory membership that could ensure professional standards,” the lawyer noted. “But we assumed that we would remain a self-governing body.”²²⁷ Another practicing lawyer described the reforms as “a full frontal assault on the independence of the legal profession.”²²⁸

Sergei Maiorov, a well-respected lawyer who runs the Simay Kom law firm deemed the existence of a lawyers’ association under the control of the Ministry of Justice “ridiculous.”

The Bar Association is supposed to be independent, like everywhere else in the world, and now the chairperson is elected on the recommendation of the Ministry of Justice, so a government bureaucrat is the head of the organization. That’s not right.²²⁹

Ruhiddin Komilov, a defense attorney who was disbarred as a result of the reforms and whose case is described in detail below, summed up the effect of the bar reforms: “[The government] should be defending the interests and rights of lawyers, but they turned our profession into a state apparatus. They basically made us into prosecutors.”²³⁰ Komilov’s sentiments were widely shared by other lawyers interviewed for this report.

Prohibition on Other Lawyers’ Associations

The law also prohibits the existence of any other professional lawyers’ organizations with similar functions and authority to those of the Chamber of Lawyers. As a result, the former

²²⁵ Ibid.

²²⁶ “Analysis of Legislation Regulating the Activity of the Legal Profession in Uzbekistan,” unpublished document on file with Human Rights Watch, p. 16.

²²⁷ Ibid., p. 9.

²²⁸ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

²²⁹ Human Rights Watch interview with lawyer Sergei Maiorov, Tashkent, November 30, 2010.

²³⁰ Human Rights Watch interview with disbarred lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

Association of Lawyers of Uzbekistan and Collegium of Advocates were both abolished. Each region had its own collegium, which had acted as a type of lawyers' guild, offering employment opportunities for lawyers, as well as acting as a body that represented their interests. The largest of the regional collegia was the Tashkent City Collegium, which had 600 lawyers.

Membership in the Association of Lawyers of Uzbekistan was voluntary, and the association had over 1,500 members, including some who had passed the bar exam but were not working as lawyers.²³¹ The association was created in 1997 and provided trainings for lawyers. Most lawyers in the collegium were also members of the association. However, unlike the Chamber of Lawyers, whose leadership is appointed by the Ministry of Justice, both lawyers' organizations were self-governing bodies that elected their own representatives and policed their own members.

The prohibition on other lawyers' organizations violates article 22 of the ICCPR, which guarantees the right to freedom of association. This restriction further violates Principle 23 of the Basic Principles, which entitles lawyers to "freedom of expression, belief, association and assembly," and Principle 24, which, as mentioned above, ensures lawyers' rights to "form and join self-governing professional associations."²³²

When similar situations have arisen in other countries, the UN Human Rights Committee, in its role monitoring the implementation of the ICCPR, has called attention to problems of executive control over lawyers.²³³ In 1997, for example, the committee expressed concern over Belarus' adoption of a presidential decree that required all lawyers to join a centralized collegium controlled by the Ministry of Justice, which also had the authority to license lawyers.²³⁴ The committee clarified that "the independence of the judiciary in the legal profession is essential for a sound administration of justice and for the maintenance of democracy and rule of law" and recommended that Belarus "take all appropriate

²³¹ Human Rights Watch interview with legal expert [name withheld], Tashkent, December 22, 2010.

²³² Basic Principles on the Role of Lawyers, principles 23 and 24.

²³³ Addressing a similar law on in Azerbaijan, the Human Rights Committee emphasized that it "may compromise lawyers' free and independent exercise of their functions" and suggested that Azerbaijan "ensure that the criteria for access to and the conditions of membership in the Bar do not compromise the independence of lawyers." United Nations Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee," Azerbaijan, CCPR/CO/73/AZE, November 12, 2001, <http://www.unhcr.ch/tbs/doc.nsf/o/43cbcde78do43a93c1256afb0032ceef?Opendocument> (accessed August 12, 2011), para. 14.

²³⁴ United Nations Human Rights Committee, "Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee," Belarus, CCPR/C/79/Add.86, November 19, 1997, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2de558868877738o80256553005oac48?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2de558868877738o80256553005oac48?Opendocument) (accessed August 11, 2011), para. 14.

measures, including review of the Constitution and the laws ... to ensure that judges and lawyers are independent of any political or other external pressure.”²³⁵

In the case of Libya, the committee raised “serious doubts ... as to the independence of the judiciary and the liberty of advocates to exercise their profession freely, without being in the employment of the State.”²³⁶ The committee recommended that “measures be taken to ensure full compliance with article 14 of the Covenant as well as with the United Nations Basic Principles on the Independence of the Judiciary and the Basic Principles on the Role of Lawyers.”²³⁷

In Uzbekistan, as in Belarus and Libya, the government’s decision to restructure the legal profession seriously undermines the independence of lawyers and compromises the right to a fair trial guaranteed by article 14 of the ICCPR.²³⁸ As one lawyer observed, “If the Bar Association had, to some extent, enjoyed semi-independent status, the new Chamber is under the complete control of the Ministry of Justice.”²³⁹

In April 2010 observations on the Uzbek government’s compliance with the ICCPR, the Human Rights Committee expressed concern that “the recent reform of the regulations governing defence lawyers has increased the role of the Ministry of Justice in matters related to the legal profession, including disciplining of lawyers.”²⁴⁰ The committee added it was concerned that lawyers’ licenses are only valid for three years, after which they are renewed by a qualification commission comprised of Ministry of Justice and the Lawyers’ Chamber representatives.²⁴¹

²³⁵ United Nations Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee,” Belarus, CCPR/C/79/Add.86, November 19, 1997, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2de558868877380802565530050ac48?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2de558868877380802565530050ac48?Opendocument) (accessed August 15, 2011), para. 14. See also United Nations Committee against Torture, “Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Conclusions and recommendations of the Committee against Torture, Belarus,” A/56/44, November 20, 2000, [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/A.56.44,paras.40-46.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/A.56.44,paras.40-46.En?Opendocument) (accessed October 5, 2011), para. 45 (“Presidential Decree No. 12, which restricts the independence of lawyers, subordinating them to the control of the Ministry of Justice and introducing obligatory membership in a State-controlled Collegium of Advocates, in direct contravention of the United Nations Basic Principles on the Role of Lawyers.”)

²³⁶ United Nations Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding observations of the Human Rights Committee,” Libyan Arab Jamahiriya, CCPR/C/79/Add.101, November 6, 1998, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G98/193/72/PDF/G9819372.pdf?OpenElement> (accessed August 15, 2011), para. 14.

²³⁷ Ibid.

²³⁸ ICCPR, art. 14.

²³⁹ Human Rights Watch phone interview with lawyer Nozima Kamalova, August 11, 2011.

²⁴⁰ United Nations Human Rights Committee, “Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee, Uzbekistan,” April 7, 2010, <http://www2.ohchr.org/english/bodies/hrc/hrcs98.htm> (accessed October 13, 2011).

²⁴¹ Ibid.

As shown below, bar association reform in Uzbekistan is being used as an instrument to control lawyers and weed out those fearless enough to take on human rights cases. It has also discouraged those who have kept their law licenses from raising torture in court.

Blacklisted Lawyers

On March 9, 2009, the Cabinet of Ministers passed a resolution requiring all Uzbek lawyers to retake the bar exam and receive new licenses in order to practice.

A prominent Tashkent legal expert who wrote an analysis of the law concluded that the resolution requiring re-licensing was unconstitutional.²⁴² The law restructuring the legal profession does not mention re-licensing, and the licenses that previously issued to all lawyers should have been of indefinite duration since they lacked expiration dates. In her view, therefore, the resolution contradicts the original law and is also unconstitutional because it violates the rights of already-practicing lawyers to work in their chosen profession.²⁴³ Along with 600 to 700 lawyers, in mid-2008, this expert co-organized an appeal to the Constitutional Court, Supreme Court, and both houses of parliament.

Lawyers who worked on politically sensitive cases or who had publicly protested the new law failed the exam, despite years of experience. Several lawyers interviewed by Human Rights Watch believed that the Uzbek authorities had decided before administering the exam who would fail. As one interviewee said, “They had a black list of lawyers that were not supposed to pass the exam.”²⁴⁴

Two of the most well-known lawyers disbarred due to the bar association reforms were outspoken criminal defense and human rights lawyers Ruhiddin Komilov and Rustam Tyuleganov.

²⁴² “Analysis of Legislation Regulating the Activity of the Legal Profession in Uzbekistan,” (2010), unpublished document on file with Human Rights Watch, p. 16.

²⁴³ Ibid.

²⁴⁴ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 14, 2010.



Ruhiddin Komilov is a highly respected Tashkent-based attorney. He is one of a group of lawyers who were disbarred in 2009 after being forced to take a re-licensing exam. The lawyers who lost their licenses were those who had defended political prisoners, human rights activists, or took on politically sensitive cases. © 2010 Steve Swerdlow/Human Rights Watch

*The Disbarment of Ruhiddin Komilov*²⁴⁵

Throughout his 18-year career as a trial lawyer, there is scarcely a human rights activist, journalist or opposition figure whom Ruhiddin Komilov did not defend, or human rights issue he was afraid to take on.

A self-proclaimed “lawyer by birth,” Komilov has long been renowned for his fearlessness. He practiced criminal law in the Tashkent Collegium of Lawyers before working in the law firm, Adolat Rakhmon.

Komilov’s many clients have included human rights activists Elena Urlaeva, Mutabar Tajibaeva, Saidjahon Zainabitdinov, and poet and dissident Yusuf Juma. He has also represented members of the outlawed *Birlik* political opposition party and in 2004 appealed the government’s refusal to register the party. In 2004, Komilov took on the cases of several men accused of organizing terrorist attacks in Tashkent. After the Andijan massacre of May 13, 2005, Komilov defended some of the men charged with membership in the *Akromiya* organization, which the government accused of seeking to violently overthrow the regime in favor of an Islamic state.

Komilov knew that his work to defend these individuals would invite even greater government scrutiny but believed strongly in the right of every person to a defense. “I did not judge these people,” Komilov told Human Rights Watch. “I was just fulfilling my duty to provide a defense to anyone who needed it. If someone comes to

you and asks for help, how can you turn them away?”²⁴⁶

In 2008 and 2009, Komilov worked on one of his last high-profile cases when he represented the family of rights activist Muzafar Tuichiev. Tuichiev had died while in police custody in the town of Angren. Komilov doggedly sought to expose the torture the family alleged Tuichiev had suffered at the hands of authorities and, in an extremely rare occurrence for Uzbekistan, several police officers were eventually dismissed from their posts.

At the time the bar association reforms became law, Komilov was representing imprisoned human rights defender and investigative journalist Dilmurod Saidov, who sought to expose government corruption. Saidov remains in prison.

In November 2008, as the proposed bar association reforms appeared certain to become law, Komilov helped co-organize a group of 600-700 lawyers to protest the law as unconstitutional. They made public appeals to the Parliament, the

²⁴⁵ Human Rights Watch interview with disbarred lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

²⁴⁶ Human Rights Watch interview with disbarred lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.

Supreme Court, and the Constitutional Court. “We considered the law unconstitutional as it meant our profession would become subordinate to the Ministry of Justice,” he said.

On May 6, 2009, along with 50 or 60 of his colleagues, Komilov took the compulsory bar exam for re-licensing. He said:

There were people taking the exam who didn’t even answer the questions, but they passed. They just were silent when asked questions.... I noticed that the proctors were paying more attention to me. They asked me more questions than anyone else.... I knew the answers to the questions immediately. I answered all of the oral questions in front of a 15-person commission....

The representative of Chamber told me as soon as I had finished the exam that I hadn’t passed. All the lawyers who are younger than I am, even my students, all passed.²⁴⁷

Komilov was immediately disbarred. He appealed the bar exam results in July 2009 but the decision was upheld. Asked why he thinks he was disbarred, Komilov said: “They [authorities] don’t need a lawyer like me. When I take a case, I make sure to defend it to the end. I never hold back.”

Komilov is still considered a jurist but cannot take on his own clients or defend persons in court. Even with his remaining status, Komilov has not been able to find steady work in the law. “No firms will take me. They hear information about me first.” Komilov said, adding that his fate should be a cautionary tale of the perils of the bar reforms for other lawyers: “Look at my example: With the help of this new law, they can take away the license of any lawyer who they don't like.”



Human rights activists and the mother of Muzafar Tuichiev, who died while in police custody under suspicious circumstances in 2008 in the town of Angren, protest outside the court. Photograph by © 2008 Uznews

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²⁴⁷ Human Rights Watch interview with disbarred lawyer Ruhiddin Komilov, Tashkent, November 14, 2010.



Rustam Tyuleganov is a prominent Tashkent-based lawyer who has represented many human rights defenders, including Akzam Turgunov, a lay public defender and rights activist who was charged with extortion in 2008 and sentenced to 10 years in prison. Tyuleganov was among the group of lawyers disbarred by the government in 2009. © 2010 Steve Swerdlow/Human Rights Watch

*Disbarment of Rustam Tyuleganov*²⁴⁸

If you are a prosecutor, Rustam Tyuleganov is probably the last lawyer you'd like to see on the other side of the courtroom. One of Uzbekistan's most experienced criminal defense and human rights lawyers, Tyuleganov got his start like many others who later went into private practice—as an investigator and prosecutor in the office of the prosecutor general during the Soviet period. In his 11 years there between 1975 and 1986, Tyuleganov developed a reputation for being aggressive but also scrupulously honest, which did not always sit well in a system beset with corruption.

The leadership did not always like me because I would drop cases that lacked sufficient evidence to prosecute. Once I reopened the case of a man imprisoned for 10 years for no particular reason without evidence. I had him exonerated and the man is still alive and working here in Tashkent.

In 1986, Tyuleganov lost his job after a distant relative who occupied a high position in the prosecutor's office was dismissed amid corruption allegations. Tyuleganov appealed the dismissal on the ground he was in no way connected, but his appeal was left unanswered.

After the fall of the Soviet Union in 1991, Tyuleganov began his own criminal defense practice in the Tashkent City Collegium and became very successful. With an insider's knowledge of the prosecution, he defended many ordinary citizens and business people, often publicly revealing instances of bribery and corruption among police, investigators, prosecutors, and even judges. He said:

If I defend someone who I believe is wrongly accused, I tell prosecutors and the judges straight out that an innocent person is being put on trial. I remind them that our Constitution prevents the state from convicting a person simply based on an assumption, and tell them that what they are doing contradicts the law. They often say, 'don't interfere.' Judges fear me because I know how to write correctly and write the truth.

In the late 1990s, as the Uzbek government cracked down on independent civil society and heightened its campaign against persons it accused of religious extremism, Tyuleganov came under scrutiny for taking on politically-sensitive cases. In 2003, prominent human rights activist and chronicler of religious persecution Surat Ikramov was kidnapped, severely beaten, bound in a sack, and thrown in a secluded ditch by unknown assailants. Tyuleganov took up his case and sought to open an investigation.

I wanted to represent him because he was attacked for his professional activity. I was the only one willing to take the case. After representing him, I started getting referrals for high-profile political cases.

²⁴⁸ Human Rights Watch interview with disbarred lawyer Rustam Tyuleganov, Tashkent, November 9, 2010.

One case was the defense, not of a human rights activist, but a popular songwriter, Dadakhan Khasanov. After the May 13, 2005 Andijan massacre Khasanov wrote underground songs urging the world not to forget the victims or the bloody events of that day. A policeman heard one of his songs on a bus ride and reported him for arrest. He was charged with insulting the president, “anti-constitutional” activities, and dissemination of illegal information, and was given a three-year suspended jail sentence.

True to his promise, Tyuleganov took on cases that other lawyers would not dare touch. In 2006, he represented former mufti and religious scholar Ruhiddin Fakhruddinov, who was accused of membership in the banned organization Hizb-ut-Tahrir and was later subjected to torture and ill-treatment in prison. In 2008, Tyuleganov represented Akzam Turgunov, a lay public defender and rights activist in pre-trial detention. After refusing to sign a confession, authorities poured boiling water on Turgunov’s body. Tyuleganov worked with former client Surat Ikramov to publish and disseminate information about the torture to the outside world.

Tyuleganov was in the process of representing his two last clients, human rights defender Akzam Turgunov and independent journalist Solijon Abdurakhmanov, when the bar association reforms became law. Both clients languish in prison on baseless charges.

Like Ruhiddin Komilov, Tyuleganov had been an outspoken critic of the proposed reforms and explained why he believes the government moved to restructure the bar:

Too many lawyers were actually fulfilling their duty to defend people. They defended the interests of their clients, the accused. They were preventing the authorities from imprisoning people with impunity. Instead of trying to look into the guilt of a person as they’re supposed to—that is, objectively—they just decided to destroy completely the independent legal profession and make it a government organ.

Tyuleganov had a good idea he might fail the bar exam when he took it in the spring of 2009:

It [the test] was given in a typical fashion, where you pick questions from a large collection of tickets and whatever is on your ticket you have to answer. There were more than 3000 possible questions. I answered questions in front of a five-person panel. I also had to answer five questions in written form. I answered all of them. Afterwards, they told me that I didn’t pass because I didn’t have enough knowledge. They didn’t tell me specifically what was wrong with my exam or why specifically I didn’t have enough knowledge and could not point out any particular mistakes.

At the time of the exam, Tyuleganov worked with 12 lawyers junior to him. “They’re all my subordinates—they’re younger than I am, they have less experience than I have, etc. But all of them passed the exam, and I didn’t.” Two-and-a-half-years later, Tyuleganov remains without his law license and is unable to represent any clients in criminal matters at trial.



Solijon Abdurakhmanov is an independent journalist who is currently in prison. Rustam Tyuleganov, who lost his license as a result of the legal reforms, was his defense lawyer. Abdurakhmanov’s brother also lost his license. © Abdurakhmanov Family



Melikhadji Kobilov is a lawyer and former political prisoner who served briefly in the Uzbek parliament as a deputy from an opposition party shortly after Uzbekistan declared its independence. Since 2005 Kobilov practiced criminal defense law and also took on cases defending farmers from land confiscation orders in Jizzakh province. Kobilov's cases often exposed corruption among law enforcement structures. In October 2009, Kobilov was stripped of his law license in connection with charges that he had procured false testimony of a witness, which local human rights activists said were baseless and in retaliation for his work. © 2011 Steve Swerdlow/ Human Rights Watch

Disbarred

While the government does not publish official statistics on bar passage rates for the legal profession, experts estimate that before the law's passage there were approximately 3,800 licensed attorneys in Uzbekistan, although a significant number were not practicing.²⁴⁹ One expert estimated that several hundred lawyers were disbarred after the bar association reforms, but says this number includes many lawyers who decided not to retake the exam and whose licenses were therefore automatically nullified.²⁵⁰ In any case, according to the expert, the number of lawyers following the reforms was “significantly reduced.”²⁵¹

Ruhiddin Komilov and Rustam Tyuleganov were not the only human rights lawyers to lose their licenses. The brother and lawyer of imprisoned journalist Solijon Abdurakhmanov, Bakhrom Abdurakhmanov, was disbarred as a result of the reforms. Another disbarred lawyer, who had run his own law firm for years and had taken cases relating to torture, religious and political issues, told Human Rights Watch:

The lawyers who worked on religious or political cases were failed so I knew I would be failed too. I was failed because I openly criticized law enforcement agencies which carried out their activities improperly. I was never involved in politics, nor do I want to be involved.²⁵²

²⁴⁹“Analysis of Legislation Regulating the Activity of the Legal Profession in Uzbekistan,” unpublished document on file with Human Rights Watch, p. 5-6.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Human Rights Watch interview with disbarred lawyer [name withheld], Tashkent, November 29, 2010.

One lawyer who had signed an open letter to President Karimov asking him not to pass the law stated: “We all understood that anyone who had signed the letter or spoke openly at the protest was at risk of being failed during the exam. I think my relative anonymity saved me from being noticed.”²⁵³

Some lawyers decided not to retake the bar exam because they foresaw the result or boycotted the exam as a way to protest what they viewed as the co-optation of their profession:

I didn’t take the exam, and therefore I didn’t get a license, because I didn’t want to be a lawyer in that type of system. I’m protesting. If those are the kind of lawyers that the country wants, I don’t want to be that type of lawyer.²⁵⁴

Sukhrobjon Ismoilov, an experienced lawyer who now runs the Expert Working Group, a think tank in Tashkent, was threatened for his work defending imprisoned political opposition leader Sanjar Umarov. After trying to visit with his client in detention and protesting authorities’ attempts to deny the visits in 2006, he received “a letter saying that [his] license should be revoked and that [his] status as a lawyer was ‘uncertain.’”²⁵⁵ Afterwards, he stopped working on similar cases and chose not to take the exam.

Nozima Kamalova, a former legal aid lawyer from Tashkent who recently returned to Uzbekistan after several years studying and teaching law in prestigious American law schools such as Harvard and Stanford, does not plan to take the exam:

I now have a degree from Stanford law but I don’t plan to practice law in Uzbekistan because of these reforms.... I’ll look for another job. Uzbek officials make it look as if they are working to create an independent court system but the aim is to make all lawyers wholly dependent on the government.... I don’t want to work as a lawyer for the government.²⁵⁶

Uzbekistan’s re-licensing initiative, which has prevented the most fearless lawyers from being able to defend their clients, violates international law and undermines the Uzbek government’s claims that it is serious about upholding the rights of detainees and

²⁵³ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

²⁵⁴ Human Rights Watch interview with legal expert [name withheld], Tashkent, November 14, 2010.

²⁵⁵ Human Rights Watch interview with lawyer Sukhrobjon Ismoilov, Tashkent, November 9, 2010.

²⁵⁶ Human Rights Watch phone interview with lawyer Nozima Kamalova, August 11, 2011.

combating torture. In May 2009, the special rapporteur on the independence of judges and lawyers specifically warned Uzbekistan that “provisions related to the current licensing scheme under the Ministry of Justice taken together with the compulsory membership of the newly established Chamber of Lawyers require urgent reconsideration so as to secure compliance with international standards.”²⁵⁷

Furthermore, the fact that only those particularly politically active lawyers did not pass the re-licensing exam suggests that the government specifically singled out certain lawyers based on their previous experience. This type of discrimination violates Basic Principle 18, which states that “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions.”²⁵⁸

Additionally, Principle 16 provides that lawyers “shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.”²⁵⁹ Noting “the increased number of complaints concerning Governments’ identification of lawyers with their clients’ causes,” the special rapporteur explained that such a practice “could be construed as intimidating and harassing the lawyers concerned.”²⁶⁰

Disciplinary Proceedings

Under the new law, the Ministry of Justice also retains significant control over disciplinary issues, as well as the licensing of lawyers. Disciplinary sanctions are imposed by a Qualifications Commission composed half of lawyers and half of representatives from the Ministry of Justice. Previously, Qualifications Commissions were also composed of equal percentages of lawyers and representatives from the Ministry of Justice. Currently, however, the only lawyers who can participate must already be members of the Chamber of Lawyers, which ensures that they have been properly “vetted” by the Ministry of Justice. Additionally, this system means that Ministry of Justice representatives have the power to call lawyers into disciplinary proceedings and can threaten to revoke their licenses.

²⁵⁷ UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.1., May 29, 2009, para. 357. The special rapporteur also mentioned that “in order to ensure the independence and self-governance of the legal profession, access to the profession must be governed by independent bodies established by the legal profession itself” and suggested that the Chamber of Lawyers have the “right to establish independent bodies regulating access to the legal profession.” UN Human Rights Council, Report of the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy, A/HRC/11/41/Add.1., May 29, 2009, para. 357.

²⁵⁸ Basic Principles on the Role of Lawyers. principle 18.

²⁵⁹ *Ibid.*, principle 16.

²⁶⁰ UN Commission on Human Rights, Report of the Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, E/CN.4/1998/39, February 12, 1998, para. 179.

One lawyer who had previously been involved in disciplinary inquiries at a collegium said:

[D]isciplinary proceedings were supposed to be governed by the lawyers themselves without the involvement of government bureaucrats. We lost everything and now the Chamber of Lawyers is fully responsible for all of it. If government officials have responsibility for disciplinary proceedings and they don't like a particular lawyer, they can just call somebody at Justice and take whatever measures they want such as depriving him of a license.²⁶¹

Government influence over disciplinary and licensing issues compromises the independence of the profession and violates Basic Principles 28 and 29. Principle 28 provides that “disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before court, and shall be subject to an independent judicial review.”²⁶² Additionally, Principle 29 requires that all disciplinary proceedings are determined “in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.”²⁶³ These principles, taken together, make clear that disciplinary proceedings, including re-licensing, should be conducted by lawyers themselves and should be free from any influence or interference by the Executive.²⁶⁴

A Chilling Effect

Regardless of how many individual lawyers have been disbarred, the changes instituted by Uzbekistan's new law have already had significant chilling effect. The most vocal advocates in the profession have been silenced through loss of their licenses. There are now fewer lawyers able or willing to take on politically sensitive cases. As a result, clients do not enjoy their full rights to a fair trial, as guaranteed by article 14 of the ICCPR.²⁶⁵

²⁶¹ Human Rights Watch interview with legal expert [name withheld], Tashkent, November 14, 2010.

²⁶² Basic Principles on the Role of Lawyers, principle 28.

²⁶³ *Ibid.*, principle 29.

²⁶⁴ See also Office of the High Commissioner for Human Rights in Corporation with the International Bar Association, “Human Rights in the Administration of Justice: a Manual on Human Rights for Judges, Prosecutors and Lawyers,” Professional Training Series No. 9, 2003, p. 157 <http://www1.umn.edu/humanrts/monitoring/hradmin.html> (accessed August 15, 2011) (“any disciplinary proceedings against lawyers who are accused of having failed to conduct themselves in accordance with recognized standards of ethics of the profession must be truly independent of the Executive and guarantee due process in the course of the proceedings”).

²⁶⁵ ICCPR, art. 14.

Many lawyers who spoke with Human Rights Watch described an increasingly restrictive atmosphere for licensed attorneys since the reforms. Moreover, the forced closure of many international organizations that had previously provided training and support for Uzbek lawyers, such as the American Bar Association, has added to the sense of isolation.

One attorney who has defended persons accused of religion-related offenses for many years stated:

I used to give press interviews and worked closely with human rights defenders. But now I don't even agree to participate in round table events organized within the embassies, because the slightest misstep could cost you your license.²⁶⁶

A lawyer who had defended similar clients for many years decided to flee the country at the end of 2010 due to the increasingly repressive environment in her profession. She said: "It has become too difficult to take on these cases. You are harassed and worried all the time that you could be targeted by authorities at their whim."²⁶⁷ As disbarred lawyer Rustam Tyuleganov stated:

Everyone is just sitting by quietly and not doing anything, because they're all afraid to lose their jobs. Clients are still paying their lawyers, but they're not receiving a real defense. The profession of defense lawyers is losing its power.²⁶⁸

Another lawyer agreed, observing that "[t]here are very few lawyers left who are willing to fight for their clients to the end."²⁶⁹

In addition to control over disciplinary proceedings, the Ministry of Justice will continue to administer the qualifying exam needed to receive a law license. While officially this exam is to be given every three years to all practicing lawyers, some lawyers fear that the exam or disciplinary proceedings will be used as an excuse to disbar any lawyer who decides to take on the "wrong" case or is "too effective" in defending their clients. One lawyer

²⁶⁶ Human Rights Watch interview with lawyer [name withheld], Tashkent November 2, 2010.

²⁶⁷ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 18, 2010.

²⁶⁸ Human Rights Watch interview with disbarred lawyer Rustam Tyuleganov, Tashkent, November 9, 2010.

²⁶⁹ Human Rights Watch interview with legal expert [name withheld], Tashkent, November 14, 2010.

described the qualifying exam as the Ministry of Justice’s tool to “purge the legal profession every three years.”²⁷⁰ As Rustam Tyuleganov added:

Lawyers are afraid to lose work if they make a big deal out of anything. That is, those who are considered “disobedient” can be forced to retake the qualifying exams every 3 years, and can lose their license.²⁷¹

A lawyer who successfully passed the exam:

After these reforms, we all understand that the Chamber [of Lawyers], the Ministry [of Justice], and authorities in general can take away our licenses at any time. They’ll find a way to initiate disciplinary proceedings against you ... even for simply taking on the wrong case.²⁷²

Sharing this view, another practicing lawyer in Tashkent described how she and her colleagues are increasingly wary of taking on “political” cases:

Now we are less sure of ourselves. When you are presented with any case, especially one where there could be someone accused of something political, you ask yourself: ‘Why get involved?’ (*zachem tuda lezt?*) There is a form of self-censorship that didn’t exist earlier.²⁷³

Another lawyer confessed that following the reforms she tries to “stay away (*ostat’sya podal’she*) from any case that involves the SNB [National Security Service]. Courtrooms have become more and more closed to us and to the public.”²⁷⁴

²⁷⁰ Human Rights Watch interview with legal expert [name withheld], Tashkent, November 14, 2010.

²⁷¹ Human Rights Watch interview with disbarred lawyer Rustam Tyuleganov, Tashkent, November 9, 2010.

²⁷² Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

²⁷³ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 29, 2010.

²⁷⁴ Human Rights Watch interview with lawyer [name withheld], Tashkent, November 26, 2010.

Acknowledgements

This report was researched and written by Steve Swerdlow, researcher in the Europe and Central Asia Division of Human Rights Watch, and representative of Human Rights Watch's Tashkent office until the Uzbek government forced its closure in spring 2011.

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This report is dedicated to the courageous representatives of Uzbekistan's independent civil society, both at liberty and in custody, and across various professions, who continue to work for human rights, justice, accountability, and change.

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Appendix: Human Rights Watch Letter to National Human Rights Center of Uzbekistan

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November 10, 2011

Mr. Akmal Saidov
Director
National Human Rights Center of Uzbekistan
5/3, Mustakillik Maidoni
Tashkent, Uzbekistan 100029

Dear Mr. Saidov,

Please accept my regards on behalf of Human Rights Watch.

Human Rights Watch is preparing a report on torture and ill-treatment in places of pre-trial detention in Uzbekistan, which will assess the implementation of the right to habeas corpus and other criminal procedural reforms in the pre-trial process, such as the right of access to counsel, which have been enacted by the government of Uzbekistan over the last four years. Our report will also address the reforms introduced during the same period which restructured the legal profession and mandated the re-licensing of all lawyers in Uzbekistan.

We are writing to ensure that our report properly reflects the views, policies, and practices of the government of Uzbekistan regarding these issues, and would also welcome the opportunity to discuss the findings of our research with you in person with representatives of the relevant government ministries and institutions in Tashkent.

Human Rights Watch, in its goal to defend and protect human rights worldwide, has been gathering information on these issues, and in pursuit of an objective and accurate report, asks that you send your views, comments, and any information, which will be accurately reflected in the upcoming report.

Human Rights Watch has documented and researched issues surrounding torture and ill-treatment in Uzbekistan for many years, and has monitored the implementation of habeas corpus and other criminal procedural reforms since their adoption four years ago. Based on our extensive research we have made the following findings with respect to three core issues: habeas corpus, torture, and the independent legal profession.

We hope you will provide your comments on the findings presented here as well as your responses to the set of detailed recommendations listed in the annex to this letter.

KEY FINDINGS

Habeas Corpus

Human Rights Watch found that in the four years since its enactment, habeas corpus exists largely on paper and does little to protect detainees from torture and ill-treatment. Habeas corpus is a core international right meant to prevent arbitrary detention. However, even following its adoption in Uzbekistan, pre-trial detention still appears to be the rule, rather than the exception.

We have found that Uzbek courts approve prosecutors' applications for detention in the vast majority of cases—above 90%—and that they often adopt government-proposed sentences verbatim, without independent review. The operative legal standard in the Uzbek Criminal Procedure Code is so narrow that it violates habeas corpus' fundamental principle—to ensure that a judge reviews the lawfulness of detention. Under the current law, courts lack discretion to impose less restrictive alternatives to detention, such as bail or house arrest, which are still the province of prosecutors.

The current habeas corpus mechanism is out of line with limits on the length of detention under human rights norms because it allows police and investigators to hold suspects up to 72 hours before bringing them before a judge. We have also documented many cases in which authorities use various methods, including bogus administrative charges, to avoid bringing detainees before a court for significantly longer periods. Access to counsel and counsel of one's choice are violated at critical stages of the investigation, including interrogation and the habeas corpus hearing itself, which is a closed proceeding.

According to practicing lawyers, habeas corpus hearings are superficial exercises, lacking essential due process guarantees, such as a recusal procedure for judges who will later hear the same criminal case. Although habeas corpus means "you may have the body" (its literal meaning), hearings in Uzbekistan sometimes occur without the detainee even being present, especially in politically-motivated cases, robbing the procedure of its essential purpose.

Credible Reports of Torture and Ill-Treatment; Denial of Access to Counsel

Guarantees of procedural rights for pre-trial detainees and their lawyers, including the right to counsel of one's choice, are crucial because torture and ill-treatment often occur in the first hours and days of detention, during interrogation, and before a person has come before a court. In January 2009, legislation amending the Criminal Procedure Code entered into force in Uzbekistan, which guaranteed a detainee's right to call a lawyer or close family member immediately after arrest; clarified that a client has the right to see a defense lawyer from the moment of actual detention; and abolished the earlier requirement that defense lawyers receive official written permission from prosecutors to access detained clients. Also introduced were the so-called "Miranda" rights, which stipulate that a person should be informed of their right to remain silent prior to interrogation; the fact that testimony they

provide may be used against them in court; and that they have the right to speak to an attorney or have one appointed by the state.

Like habeas corpus however, despite the progressive nature of these reforms on paper, Human Rights Watch has found that the Uzbek government has failed to implement them or to confront the problem of torture and ill-treatment in practice. On the contrary, according to our research, torture shows no sign of abating. Victims of torture and ill-treatment continue to include those suspected of committing “ordinary” crimes, those accused of membership in banned political or religious organizations, or those involved in human rights work or independent journalism. Torture often continues in prison following conviction.

Human Rights Watch has documented such torturous practices as beatings with rubber truncheons, electric shock, along with hanging by the hands and ankles and rape and sexual humiliation, which have occurred in the last four years since the adoption of reforms. These pre-trial detainees are regularly denied access to legal counsel and confessions obtained through torture continue to be used in conviction.

Uzbekistan’s deepening isolation due to the government’s refusal to allow local and international NGOs, including Human Rights Watch, to operate in the country has further complicated efforts to assess the full scope of torture.

Pre-trial detainees are still denied access to counsel and counsel of one’s choice during interrogation and the habeas corpus hearing. Habeas corpus and trial judges still fail to investigate allegations of torture and ill-treatment, to exclude evidence obtained through torture or in the absence of counsel, and do not hold perpetrators accountable.

Government Control of the Legal Profession

On January 1, 2009, a new law restructuring the legal profession took effect, abolishing the previously independent bar associations and subordinating their replacement to the Uzbek government. It also required all lawyers to re-apply for their licenses to practice law, and to retake a bar examination every three years.

Human Rights Watch has learned from lawyers that the new law, which resulted in the disbarment or de-licensing of numerous independent attorneys, has achieved nothing less than the subordination of the legal profession to the executive branch, violating international standards on the independence of lawyers as well as Uzbek law.

Three years after its passage, the law has seriously weakened the criminal defense bar, silencing outspoken advocates who had taken on politically sensitive cases and were willing to raise allegations of torture in court. Furthermore, the reforms have had a chilling effect on the entire legal practice. This appears to undermine further the Uzbek government’s claims that it is serious about combating torture.

Lawyers who worked on politically sensitive cases or who had publicly protested the new law failed the exam, despite years of experience. According to several lawyers interviewed by Human Rights Watch, Uzbek authorities had decided before administering the exam who

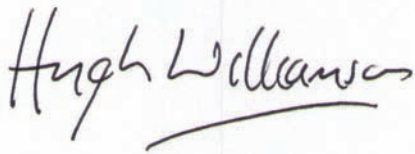
would fail. As one interviewee said, “They had a black list of lawyers that were not supposed to pass the exam.” Two of the most well-known lawyers disbarred due to the bar association reforms were outspoken criminal defense and human rights lawyers Ruhiddin Komilov and Rustam Tyuleganov in addition to others. To date, Human Rights Watch and other human rights organizations have been unable to obtain a complete listing of all of the lawyers in Uzbekistan who have lost their licenses as a result of the bar association reforms.

In addition to providing your responses to the above key findings, we also ask that you provide your response to the set of detailed Recommendations attached in the annex to this letter. We request that you respond with your comments by **November 28, 2011** so that your views, along with any information or materials you wish to send, may be accurately reflected in the upcoming report.

A response can be sent to me, in Uzbek, Russian, or English. Human Rights Watch would welcome the opportunity to meet with you and representatives of all the government ministries in Tashkent to discuss these issues, in addition to meeting with the Uzbek ambassador to Germany in Berlin in the coming weeks.

I thank you in advance for your cooperation.

Sincerely,

A handwritten signature in black ink that reads "Hugh Williamson". The signature is written in a cursive style with a long horizontal flourish at the bottom.

Hugh Williamson
Executive Director
Europe and Central Asia Division
Human Rights Watch

ANNEX

RECOMMENDATIONS TO THE GOVERNMENT OF UZBEKISTAN

Human Rights Watch calls on the Uzbek government to address the problem of torture by taking immediate steps to uphold its international human rights commitments. The government should comply with the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), implement in full the February 2003 recommendations issued by the UN special rapporteur on torture following his visit to Uzbekistan, ensure that habeas corpus is implemented in line with the International Covenant on Civil and Political Rights (ICCPR), and take measures to ensure the independence of the legal profession. Specifically, we urge the government to take the following measures:

Uphold the right of habeas corpus:

- Amend the Criminal Procedure Code to instruct judges to test the existence of a reasonable suspicion for detention and weigh admissible evidence during habeas corpus hearings, and to order a person's release if the lawfulness of continued detention is not established.
- Amend the Criminal Procedure Code to instruct judges to investigate evidence of torture and ill-treatment in pre-trial detention during habeas corpus hearings.
- Amend the Criminal Procedure Code to expressly allow judges the discretion to apply less restrictive alternatives to detention during habeas corpus hearings, including guarantees of appropriate conduct that would allow defendants to retain freedom throughout trial proceedings.
- Reduce the length of time that a detainee held on either criminal or administrative grounds, can be held before being brought to the habeas corpus hearing from 72 hours to a period no greater than 48 hours, in line with the international standards.
- Allow access to habeas corpus hearings by outside participants, such as family members, human rights organizations, the media, representatives of diplomatic missions, and international organizations.
- Ensure every detainee's right to a lawyer of their choice in habeas corpus hearings and allow defense lawyers to meet with their clients and review evidence prior to the hearing.
- Ensure that judges who preside over habeas corpus hearings do not oversee the trial in the same criminal case. This could be done by designating some judges to hear exclusively habeas hearings.
- Amend the Criminal Procedure Code to make state evidence on the necessity of continued detention available to defense lawyers immediately, rather than placing the burden on them to obtain this material.

Prevent torture and protect procedural rights:

- Implement provisions in the Criminal Procedure Code that provide detainees full and unimpeded access to counsel of their choice during all phases of investigation and trial.
- Ensure that all detainees are made aware of their rights in detention, which could be produced in the form of a declaration or charter given to any person detained or called in for informal questioning and displayed in a visible place in any cell or investigation room.
- Issue instructions to police, security agents, investigators, prosecutors, judges, and all government officials that torture will not be tolerated and will lead to strict disciplinary action and criminal prosecution.
- Ensure that no one suspected of or charged with an offence under the Code of Administrative Offences is held for any period longer than 48 hours before being brought before a judge and that administrative detention is not used as a means to detain individuals when there are not sufficient grounds for holding them as criminal suspects.
- Ensure that confessions obtained under torture are not admitted as evidence in court.

- Ensure that individuals have the right in practice to bring cases of alleged torture to an independent authority for prompt and thorough investigation, and that they are not subject to intimidation or retaliation as a result of their complaint.
- Ensure that law enforcement officers alleged to have mistreated or tortured detainees are prosecuted and, if found guilty, subjected to appropriate penalties.
- Ensure that if torture allegations are raised at trial, they are documented in detail in any judgment and transcript of the proceedings, and investigated.
- Ensure unhindered access to trials and detention facilities for human rights organizations and extend invitations to the UN special rapporteur on torture and all UN special procedures who have requested access.
- Permit the registration of local human rights groups and the re-registration of foreign NGOs, including granting visas to their staff, and hold regular consultations with civil society groups to discuss implementation and enforcement of the UN Convention against Torture.

Ensure the independence of the legal profession:

- Ensure that the Chamber of Lawyers is fully independent and self-governing so that defense lawyers may adequately represent the interests of their clients and the legal profession.
- Remove the authority of the Ministry of Justice to appoint and dismiss the chairperson of the Chamber and institute free elections for this position.
- Institute free elections of the regional chairpersons of the Chamber of Lawyers and ensure that they exercise their functions free of external interference.
- Remove the provision of the law on the legal profession that prohibits the existence of any other professional lawyers' organizations with functions similar to the Chamber of Lawyers.
- Change the composition of disciplinary committees within the Chamber of Lawyers to ensure that government authorities do not participate in or retain significant influence over the disciplinary proceedings of lawyers.
- Ensure that the licensing and discipline of lawyers is free of political considerations or other arbitrary factors.
- If a law license is denied or revoked, communicate the grounds on which the decision was made in detail, and allow for review by an independent appellate body.
- Reinstate law licenses for those defense lawyers whose licenses were revoked as a result of their previous human rights work.

“No One Left to Witness”

Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan

Uzbekistan has become synonymous in recent years with an abysmal rights record and a torture epidemic that plagues its police stations and prisons. United Nations bodies determined in 2003 that torture was “systematic” and “widespread” in Uzbekistan’s criminal justice system—a crisis that only deepened after the Uzbek government killed hundreds of protesters in the eastern city of Andijan in May 2005.

In 2008, the Uzbek government introduced the right of *habeas corpus*, or the judicial review of detention, followed by other procedural reforms, to its system of pre-trial detention. Such measures should have heralded a more positive era for Uzbekistan. They did not. Despite improvements on paper, and the government’s claims that it is committed to fighting torture, depressingly little has changed since habeas corpus was adopted.

There is no evidence the Uzbek government is committed to implementing the laws it has passed or to ending torture in practice. Indeed, in several respects, the situation has deteriorated. The government has dismantled the independent legal profession, disbarring lawyers who dare to take on torture cases. Persecution of human rights activists has increased, credible reports of arbitrary detention and torture, including suspicious deaths in custody, have continued, and the government will not allow domestic and international NGOs to operate in the country.

Uzbekistan’s increasing strategic importance as a key supply route for NATO troops in Afghanistan has led the United States, European Union, and key actors to soften their criticism of its authoritarian government in recent years, allowing an already bleak situation to worsen.

“No One Left to Witness”: Torture, the Failure of Habeas Corpus, and the Silencing of Lawyers in Uzbekistan documents the cost of the West’s increasingly complacent approach toward Uzbekistan and urges a fundamental shift in US and EU policy, making clear that concrete policy consequences, including targeted punitive measures, will follow absent concrete action to address serious human rights abuses.

Police officers check the internal passport of passers-by at the Chorsu bazaar in Tashkent. In Uzbekistan, the lack of local residence registration is an administrative offense that can lead to arrest and detention.

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