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Uzbekistan: Violence, Repression and Denial of Economic, Social and Cultural Rights

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1. PRELIMINARY OBSERVATIONS

The Republic of Uzbekistan ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on September 28th 1995. During its 28th session (29 April – 17 May 2002), the United Nations Committee against Torture is going to review the second periodical report submitted by Uzbekistan on the measures it has taken to implement the CAT. The review and the constructive dialogue conducted by the Committee will therefore look at issues relevant to the implementation of the CAT for the period going from November 1999 to April 2002.

States Party to the CAT shall submit “reports on the measures they have taken to give effect to their undertaking under this Convention” to the Committee against Torture.¹ Article 2 of the CAT recognises that “each State Party shall take effective legislative, administrative, judicial *or other measures* to prevent acts of torture in any territory under its jurisdiction”. The term “other measures” can therefore clearly contemplate steps taken by the State Party to address the socio-economic context. Indeed, as this report will highlight, issues related with poverty and the enjoyment of economic, social and cultural rights is all too relevant with issues falling directly and immediately within the Committee’s mandate.

Today, Uzbekistan is also a Party to a number of other international human rights covenants and conventions with related provisions on torture and other cruel, inhuman or degrading treatment or punishment and on economic, social and cultural rights: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of Racial Discrimination (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

The Republic of Uzbekistan is also a Party to the Optional Protocol to the ICCPR which provides for individual complaints procedure, but has not yet recognized the Competence of the Committee on the Elimination of Racial Discrimination and of the Committee Against Torture to receive similar complaints, as specified under Article 14 of the CERD and Article 22 of the CAT. Moreover, Uzbekistan has not signed the Second Optional Protocol to the ICCPR regarding the abolition of the death penalty, the Optional Protocol to the CEDAW recognizing the competence of the Committee on the Elimination of Discrimination against Women to receive complaints submitted by or on behalf of individuals or group of individuals. Finally, Uzbekistan has not yet signed the Convention on the Protection of All Migrant Workers and Member of Their Families (MWC).

With regard to labour rights, the Republic of Uzbekistan has ratified ILO Conventions No. 29 and 105 on the elimination of forced and compulsory labour, ILO Conventions No. 100 and 111 on the elimination of discrimination in respect of employment and occupation. It must also be pointed out that although being a Party to

¹ See article 19

ILO Convention No. 98 on the right to organize and collective bargaining, Uzbekistan has never ratified ILO Convention No. 87 on freedom of association and protection of the right to organize. Finally, Uzbekistan has not ratified ILO Conventions No. 138 and No. 182 on the abolition of child labour.

On December 8th 1992, the Republic of Uzbekistan adopted a new Constitution, whose preamble solemnly declares “adherence to human rights” and recognizes the “priority of the general accepted norms of the international law”.² Part two of the Constitution, under the title “ Basic Human and Civil Rights, Freedoms and Duties”, lists Civil and Political Rights,³ as well as Economic, Social and Cultural Rights.⁴

The Republic of Uzbekistan, with a population of just fewer than 24.5 million people, is one of the four largest countries to emerge from the former Soviet Union. Most of the population - 15.3 million - lives in rural area, while the urban population numbers 9.2 million.⁵ Uzbekistan is a multi-ethnic country, with more than 120 nationalities and ethnic groups. The majority of the population is Uzbek (77.2%). Other ethnic groups that make up more than 1 percent of the total population include Russians (5.2%), Tajiks (4.8%), Kazakhs (4.0%) and Tatars (1.4%), while 88 percent of the population are Muslim (mostly Sunni), 9 percent are Russian Orthodox, with other faiths accounting for the remaining 3 percent.⁶

Uzbekistan became independent on September 1st 1991. According to the Constitution, adopted on 8 December 1992, Uzbekistan is a sovereign democratic republic based on the principle of the separation of powers into a legislative, an executive and a judiciary. President Islam Karimov took office in the 1991 elections and had his stay extended until 2000 by a popular referendum in 1995. The parliament subsequently voted to extend Karimov’s first term, thus making him eligible to run again in 2000. On 9 January 2000 he was re-elected with 91.9% of the votes cast. The OSCE expressed a negative opinion on the way in which this election took place.⁷

Generally speaking, Uzbekistan is experimenting, today, an authoritative derive where all dissenting or alternative voices are being repressed, relying on a heavy security apparatus and intelligence forces and resorting to methods such as arbitrary arrests and detentions, unfair trials and state violence. The country is also suffering from an “ideological emptiness” in which the symbols of the soviet era have been replaced by a blind nationalism lacking historical roots. Along with ongoing economic and social deterioration, these different factors tend to create an explosive situation where any prospect for improvement in the respect and enjoyment of human rights is compromised.

² Constitution of the Republic of Uzbekistan, <http://www.gov.uz/apru/library/consru.htm>

³ Article 26 states that “No one may be subject to torture, violence or any other cruel or humiliating treatment”.

⁴ Part two of the Constitution provides for the right to property (Art. 36), the right to work (Art. 37), the right to form trade unions (Art. 34), the right to a paid rest (Art. 38), the right to social security (Art. 39), the right to health (Art. 40), the right to education (Art. 41) and the prohibition of forced labour (Art. 37).

⁵ United Nations Development Program (UNDP) Uzbekistan Country Information, 2002

⁶ *Ibid.*

⁷ Hrair Balyan, the head of the Organization for the Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights, on January 7th 2000 said to Radio Free Europe/Free Liberty: “[...] we are not observing the presidential elections in Uzbekistan because we do not think in any way, shape or form there is viable competition for this post. Our view in terms of elections in Uzbekistan has not changed since the parliamentary elections and we still think that Uzbekistan falls far short of OSCE commitments in terms of fulfilling obligations for democratic elections”

The emergence of Islamic movements, along with the use, by the authorities, of the “fundamentalist” threat to justify a violent repression might well constitute, today, one of the most worrying developments in Uzbekistan, be it with regard to the regional stability as well as to the protection of human rights, and in particular to the protection against torture and other cruel, inhuman or degrading treatment or punishment. This vicious circle of brutalisation that is emerging is intrinsically linked to the situation of extreme poverty and destitution prevalent throughout the country and affecting some regions disproportionately. The current approach of the Uzbek authorities, focusing on security measures and failing to address the issue of poverty, is in fact leading to increased support to “Islamic” movements which are reportedly providing people with food, schoolbooks and other social services. As such, the repression, torture, imprisonment, unfair trials and other abuses that take place in the name of the fight against religious fundamentalism are indissociable from the issues of poverty, inequality and enjoyment of economic, social and cultural rights.

A careful review of the socio-economic context, in the light of the population’s enjoyment of economic, social and cultural rights, highlights other worrying developments in the Uzbek society, in terms of certain groups’ vulnerability to poverty and destitution, but also to violence perpetrated by state agents or by private individuals with the acquiescence of the State. Here again, the emergence of repression, cruel, inhuman or degrading treatments and abuses is intrinsically linked to the socio-economic conditions that the victims are experiencing. This is notably the case with street children, child labour and internal migrant workers.

2. GENERAL OBSERVATIONS: AN OVERVIEW OF THE UZBEK SOCIO-ECONOMIC CONTEXT

Since gaining independence in 1991, Uzbekistan has been pursuing a course of extensive economic reforms towards establishing a market-oriented economy. The government’s commitment to a gradual transition to a free market economy is reflected in the Uzbek Constitution, whose article 53 guarantees “freedom of economic activity, entrepreneurship and labour with due regard for the priority of consumers’ rights, as well as equality and protection of all forms of legal ownership”.

Overall, the transition has resulted in a significant fall in living standards for most of the population and has been accompanied by a decline in production, a rise in unemployment, increased poverty among the population and finally growing income differentiation and inequality. Indeed, the economic reforms have been carried out in a manner that serves the financial and economic interests of the authorities, which retain a widespread control over the whole economy. In general, the authorities have been unable to cope with the economic and social deterioration.

2.1. Increased poverty among the population

Along with the economic reforms that have been implemented since 1991, the phenomena of extreme poverty, unknown during the Soviet era, has emerged in Uzbekistan. In this case, people experiencing extreme poverty do not have access to basic services such as health, water and education, are often unemployed and do not have proper housing.

According to official statistical data from the Family Budget Survey (FBS) of the Uzbek Ministry of Macroeconomics and Statistics, about 14 percent of the population and 11 percent of households were considered poor in 1999.⁸ These figures represent a decline in poverty when compared to the Soviet era, where poverty in Uzbekistan was estimated at 44 percent of the working population (57 percent in rural collective farm households and 39 percent in urban worker households).⁹

However, during the Soviet period, the majority of the population considered to be living in poverty did not suffer from absolute poverty. Indeed, most of them had jobs or other sources of income, had adequate housing and enjoyed free health care and education. The decline in the level of government services such as childcare, health and education after the independence renders the experience of poverty far worse than during the Soviet period. According to the Household Budget Survey (HBS) of the Uzbek Ministry of Macroeconomics and Statistics, in the first half of 1999, 40 percent of the population of Uzbekistan was identified as poor and receiving allowances.¹⁰

In terms of changes with regard to the Soviet period, the phenomena of poverty is affecting groups that, traditionally, did not experience these living conditions. Today, many people belonging traditionally to the middle class are affected by or rendered vulnerable to poverty.

Indeed, 10 -15 years ago, three distinguishable social classes formed the bulk of the Uzbek socio-economic strata (the poor, the middle class and the rich) with the middle class comprising 80 to 85 percent of the population. Recent interviews reveal that today the socio-economic strata includes some new categories of the “very rich” and the “destitute” and that the former middle class, including doctors, teachers, scientists and employees of enterprises are thrown into poverty.¹¹

⁸ ASIAN DEVELOPMENT BANK (ADB), *Women in Uzbekistan*, Chapter 1- Uzbekistan in Transition, 2001

⁹ ASIAN DEVELOPMENT BANK (ADB), *Poverty Impact Assessment*, Supplementary Appendix of the *Report and Recommendation to the President on the Second Small and Medium Enterprise Project*, December 2000.

¹⁰ *Supra* note 8

¹¹ EXPERT SOCIAL RESEARCH CENTRE, *Consultations with the Poor*, p.6 This was a participatory poverty assessment study conducted as part of the United Nations Development Program (UNDP) World Development Report 2001

2.2. Increased inequalities

Along with the increased number of people falling into poverty and the emergence of extreme poverty that affects an important portion of the population, inequalities are on the rise and follow regional, ethnic and groups lines. Very often these different categories tend to support themselves.

Today, the Uzbek society is characterized by strong inequalities in term of income distribution. Indeed, statistical data provided by the 2001 Human Development Report of the UNDP highlights that the poorest 20 percent of the population only own 7.4 percent of the national income, while the richest 20 percent own 40.9 percent.¹² Moreover, the Central Asian represent more than 79 percent of the Uzbek population and 92 percent of those living in poverty, while the Slavs make up 16 percent of the population and only 4 percent of the poor.¹³

Regional differences and urban-rural divide are also significant. Incidence of poverty is much higher in the predominantly rural regions of the Ferghana Valley and the Karakalpakstan and Surkhandarya regions than in the city of Tashkent. For instance, in 1998, 47 percent of the rural population in the Ferghana valley and 70 percent of the rural Karakalpakstan were considered as poor, as compared to 10 percent of urban Tashkent.¹⁴ Similarly, the average per capita income in Tashkent city is 4.2 times the level of the rural region of Surkhandarya. Not surprisingly, the consumption of meat and dairy produce is also higher in Tashkent city than in the region of Surkhandarya (2.5 and 1.6 times higher, respectively).¹⁵ Moreover, in 1996, the average monthly wage of an agricultural worker represented only 54.2 percent of the average wage at the national level, and only 41 percent and respectively 29.5 percent of the wage paid to workers in the industrial and construction/communication sectors.¹⁶ Finally, the regional distribution of social assistance also indicates areas of greatest need. For instance, the largest number of families receiving social assistance in 1997 was in the rural Karakalpakstan and Surkhandarya regions, where 49 percent of families received some assistance compared to 28 percent of families in the region of Bukhara and 31 percent in Tashkent.¹⁷

2.3. The situation of women

Article 18 of the Constitution guarantees equality before the law without distinction of sex, race, nationality, language, religion, social origin, convictions or individual and social status. This article explicitly recognises that men and women are equal under the law. Moreover, article 46 stipulates that women and men shall have equal rights.

¹² UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) *Human Development Report 2001*, <http://www.undp.org/hdr2001>

¹³ *Ibid.*

¹⁴ EXPERT SOCIAL RESEARCH CENTRE, *Uzbekistan Gender Study in Transition*, October 1998

¹⁵ ASIAN DEVELOPMENT BANK (ADB), *Country Economic Review*, August 1999

¹⁶ *Supra* note 8

¹⁷ *Ibid.*

However, the current situation in Uzbekistan in terms of existing legislation, attitudes, traditional practices and beliefs tends to place women in an inferior position, a situation that has widespread and serious implications regarding their socio-economic position within the Uzbek society and their participation in the decision-making.

Indeed, the low proportion of women in decision-making posts and posts of responsibility in Uzbekistan is alarming. For instance, according to the 2001 UNDP Human Development Report, women only represent 4.4 percent of the staff at the ministerial level.¹⁸ Moreover, while women make up for more than half of the population, only 4 percent of women are represented in Parliament (22 members out of 250). Overall women are not represented in the highest decision-making positions (see also part 2.4. of OMCT's report on violence against women in Uzbekistan).¹⁹ Consequently, as a social group, women are practically isolated from the decision-making levels in the legislature and politics. The lack of opportunity to make decisions in the political, economic, social and cultural spheres has serious consequences for the advancement of women and the full realisation of their economic, social and cultural rights.

Illiteracy and the general lack of education represent a major obstacle for women. While women's literacy is very high in Uzbekistan, traditional practices such as early marriages as well as the current belief that the place of women should be at home and within the family tend to have a negative impact on women's ability to receive training. Moreover, due to the economic crisis and poverty that is affecting the country, many families do not have the resources to guarantee the education of all their children. Women, due to traditional images, are often the first to suffer from such a situation (see also OMCT's report on violence against women in Uzbekistan). In consequence, especially in rural areas, women's lack of skills, qualifications and technical training often prevent them from earning money, making them highly dependent on their husband and their families, as well as more vulnerable to poverty. Moreover, this situation often forces women who have to work to find a job in the informal sector, in low-paid jobs with no social protection at all.

As the majority of the population lives in rural areas, land continues to represent one of the main productive resources in the country. Access to land and land ownership represent, therefore, essential elements towards socio-economic empowerment. The current Uzbek legislation on land issues seriously restricts women's access to land, having therefore a direct impact on their socio-economic empowerment and ability to carry out economic activities independently. Indeed, the 1990 Law of the Republic of Uzbekistan on Land (as amended) describes land rights in terms of a household unit.²⁰ Under this approach, women's land rights are associated with their marital status as land titles or other documents related to land ownership are issued on a household basis with the head of the household unit being listed in the official documents or registers.²¹ The head of the household being most of the time the eldest man of the family unit, a woman can only have access to land through her

¹⁸ UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP), Human Development Indicators, 2001, in *Supra* note 12, p. 228

¹⁹ FAO, *Sharing Power and Decision Making*, at www.fao.org/docrep

²⁰ RURAL DEVELOPMENT INSTITUTE, *Women and Land in Eastern Europe and Central Asia*, 1999, p. 3

²¹ *Ibid.*

spouse. In the case of divorce or decease, it is likely that the woman will not get the land's ownership. This means that in most cases women find themselves either in a situation of total dependence or of grave poverty.

With regard to the transition to market economy, women's socio-economic status has been affected by the shrinking economy and downsizing or closure of state-enterprises of the Soviet era. While employment remains crucial for women's economic status, employers generally give preference to male workers who are considered as being more mobile and available than women. Moreover, the current labour legislation that grants benefits to women has the perverted effect of preventing employers from hiring women. Consequently, while women make up more than half of the population, unemployment of women is at least one and a half times that of men.²² Due to their lack of training and skills as well as to de facto discrimination in the formal sector, many women are ending up working in the informal sector in small wholesale and retail trade, rendering services such as cleaning, washing, baking, etc. Lack of social protection and social benefits, precariousness of working conditions, low salaries and vulnerability to abuses of all sorts characterise the daily life of women working in this sector.

Overall, poverty in Uzbekistan is undergoing a process of feminisation.²³ Indeed, women are today suffering from economic and social deprivation as a result of unemployment, insufficient income-generating opportunities and limited access to productive resources such as land. Such a situation tends to maintain women in a subordinate role and in a lower socio-economic and political status, increasing their dependence on their husband and family, rendering them more vulnerable to poverty, violence perpetrated within the family and the community and to trafficking. (See OMCT's report on violence against women in Uzbekistan).

3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN NATIONAL LAW

Chapter Nine of the Constitution of the Republic of Uzbekistan, under the title "Basic Human and Civil Rights, Freedoms and Duties", lists economic, social and cultural rights including the right to own property (article 36), the right to work and the prohibition of any forced labour (article 37), the right to a paid rest (article 38), the right to social security (article 39), the right to receive skilled medical care (article 40) and the right to education (article 41) and the right to form trade unions (article 34). Article 42 guarantees "the right to enjoy cultural benefits" proclaiming that "the state shall promote the cultural, scientific and technical development of society". Article 63 recognises the family as the primary unit of society that shall have the right to state and societal protection, while article 46 guarantees equal rights of men and women.

As it stands, the Uzbek Constitution shows several short cuts with regard to the protection of economic, social and cultural rights. First of all, the Constitution fails to incorporate important economic, social and cultural rights

²² *Supra* note 18

²³ *Supra* note 8

such as the right to adequate housing, the right to food, the right to adequate clothing and the right to strike. Moreover, several problems are arising with regard to the economic, social and cultural rights that are enshrined in the Constitution as the provisions fail to reflect or only reflect partially the guarantees and requirements provided for in the ICESCR. Overall, these shortages raise serious concern with regard to the implementation of economic, social and cultural rights at the national level, the scope of the rights enshrined in the Constitution, their justiciability and a victim's ability to get reparation and compensation in case of violation.

For instance, regarding the right to education, the Constitution, in its article 41, fails to stipulate that primary education shall be compulsory and free. Indeed, the phrasing of that article only stipulates that free secondary education shall be guaranteed. While such formulation could imply that primary education shall also be free, it is very difficult to draw such a conclusion. Even if that is the case, this does not solve the absence of any reference to the compulsory nature of primary education. Similarly, the scope and the beneficiaries of the right to social security are seriously limited by article 39 of the Constitution, falling short, therefore, to meet the criteria enshrined in the ICESCR. Indeed, under the Uzbek Constitution, the provision of social security is limited to old age, and in the event of disability or loss of the breadwinner, as well as in some other cases specified by law.

With regard to the right to health, the Constitution limits its scope to the right to the provision of skilled medical care, failing therefore to recognise the other dimensions of this right. With regard to the right for anyone to form and join trade unions, article 56 tends to seriously limit the right to form trade unions by stating that "trade unions (...) registered in accordance with procedures prescribed by law shall have the status of public associations (...)". Moreover, article 57 restricts the founding and functioning of trade unions by prohibiting activities that tend, among others, to come out against the sovereignty, territorial integrity and security of the Republic, as well as advocate social and religious hostility. Given the very broad nature of these restrictions, it can be feared that any activity can fall into these restrictive categories.

4. THE RIGHT TO ADEQUATE HOUSING

The housing situation in Uzbekistan is characterised by a severe shortage of affordable housing, as well as by an increased number of persons and families, in the urban areas, living in the street or in slums. Cases of evictions and demolitions of houses remain frequent in the cities, with the authorities failing to provide adequate compensation to the affected persons or families.

4.1. The housing situation

After the break-up of the Soviet Union, the State withdrew from providing housing for its citizens. Since the beginning of the 1990's, almost all state-owned apartments have been privatised, meaning that the provision of housing to urban inhabitants was done through various bank loans and housing cooperative societies.²⁴ Affordable housing has thus become a serious problem. Low-income housing exists but in insufficient quantity to meet the demand.

This shortage of housing is not being addressed properly by the state and the local authorities, whose main priority seems to be the construction of office buildings and commercial facilities. A conversation between the Legal Aid Society representatives and an official in Tashkent highlighted that while applicants for tenancy have been put on a waiting list, no accommodation has ever been provided for them due to the shortage of housing. In this regard, some applicants have been unsuccessfully waiting for housing allocation since 1992. Due to this shortage of housing, two or three families are often sharing the same apartment, resulting, frequently, in situations where domestic disputes among family members, involving violence, occur.

- In September 2001, N. contacted the Legal Aid Society as he and his family were living with his brothers and their families in the same apartment in very bad conditions. Having asked the Hokimiyat for another apartment, he is on a waiting list since 1992 and hasn't received an apartment yet. Given the limited space disputes are arising, which lead to violence among the different inhabitants of the flat.

Due to this scarcity of affordable housing, an increasing number of people are ending up living in slums or in the streets. Lack of drinking water, electricity, sewage and heating are common in the slums where the inhabitants suffer from diseases such as intestinal infections, skin diseases and tuberculosis. It is not uncommon to find their dead bodies among the garbage in the streets. In the worst cases, people who cannot afford to live in a slum are found in the street and find refuge in cellars, garages, deserted houses or ruins in the wintertime. The lack of official data on homeless people or people living in slums, along with the absence of shelter centers highlights the authorities unwillingness to address this issue.

- People living in the Jukovskaya street of Tashkent have contacted the Legal Aid Society, as there was a man who died in their street. They reported to the Legal Aid Society that this man had no house and was living among the garbage.
- A female former prisoner came to the Legal Aid Society as she was living in the street and had no house. She was suffering from skin disease and tuberculosis.

²⁴ WORLD BANK, *Consultations with the Poor*, World Development Report 2000/1 on Poverty and Development

4.2. House demolitions

As mentioned, the Uzbek Constitution does not explicitly recognise the right to adequate housing. Article 36 of the Constitution guarantees the right to property and article 53 adds that “ private property [...] shall be inviolable and protected by the state. An owner may be deprived of his property solely in the cases and in accordance with the procedure prescribed by law.” It must also be recalled that in any case the state retains the property of the land on which the houses are built. Thus, evictions are usually carried out for reasons of public utility, such as development and infrastructure projects, urban renewal and city beautification programs.

Articles 27 to 31 of the Housing Code of the Republic of Uzbekistan lay down the principles and procedures regulating the demolition of private houses and the subsequent measures that must be undertaken by the state in order to compensate those who have been subjected to evictions or relocations. Article 27 guarantees that in cases of house demolitions by the State for reasons of public utility, homeowners are entitled to compensation measures, which typically take two alternative forms: cash payment or relocation into an equivalent housing.

Regrettably, practice shows that these two remedies have usually been implemented in a way that has proven insufficient and unsatisfactory for the victims of eviction. Indeed, the sum offered as compensation is on average 50-60 times less than the real market value of the demolished houses. As a result, the inadequacy of this solution generally leaves the affected persons no other choice than to accept relocation in other areas, a remedy that also falls short from being an appropriate compensation. Indeed, in exchange for the demolished houses, the alternative housing offered usually consists of an apartment located in the suburbs of the cities. In practice, people are in fact never relocated in a house. In case of refusal or opposition to this procedure, the people do not get anything.

- In August 2001, spouses B. came to the Legal Aid Society explaining that the Hokimiyat had decided to demolish their house located in the Pushkin street (centre of Tashkent) to construct a highway. In exchange for the demolished house, the spouses received a flat in Sergeli (a suburb of the city), while the financial compensation they could have received would not have covered the value of the house and the money that they spent to build it. Due to the psychological pressure the husband became ill and had a heart attack.
- In September 2000, M. came to the Legal Aid Society explaining that the house she had in the Hamza district of Tashkent had to be demolished. The authorities offered her an apartment in the Sergeli district (a suburb of the city). Given that the value of this apartment did not correspond to that of her house and that she did not wanted to change neighbourhoods (she was born in the Hazma district) she refused the proposed flat. She also refused the financial compensation that was not equivalent to the house's value. As a result, the Hokimiyat appealed to the Court for forced removal.

5. THE RIGHT TO WORK

Article 37 of the Constitution of the Republic of Uzbekistan states that “everyone shall have the right to work, including the right to choose their occupation. Every citizen shall be entitled to fair conditions of labour and protection against unemployment in accordance with the procedure prescribed by law”.

The minimum wage in Uzbekistan, raised in April 2002, represents approximately 5 US dollars per month or one fifth of the average Uzbek salary. No worker is reportedly being paid less than the minimum wage. However, this level of income does not guarantee an adequate standard of living for the workers and their families. In this respect, the minimum wage should be approximately 35 times higher than its current level to guarantee an adequate standard of living to the workers and their families.

5.1. Discrimination

With regard to employment discrimination, article 46 of the Constitution states that “women and men shall have equal rights”. In addition, article 6 of the Labour Code declares that all citizens have equal employment opportunities and that any restriction or privilege based on sex, race etc. must be regarded as discriminatory and therefore be prohibited. Labour legislation also provides that gender discrimination in retribution is illegal and that discrimination against women in reason of their pregnancy or their children is prohibited.

Notwithstanding the abovementioned provisions, in practice employment discrimination against women with regard to access to work do occur. Available data indicates that the unemployment of women is at least one and a half times that of men. Moreover, although article 240 of the labour law denying employment or reducing the salary of a woman on the grounds of pregnancy or having children, in reality a woman without children is preferred over a woman with young children and pregnant women are rarely hired. For instance, Mrs. K came to the Legal Aid Society because she was denied employment, as she was pregnant. In general, women are sooner or more easily fired than men. Men are promoted more quickly than women with the result that their salaries and status are higher compared to women with the same experience and qualifications. (see also part 2.3. on this issue)

Former inmates are also often discriminated against and preference is often given to a person who did not undergo a prison sentence. Consequently, they often face difficulties in successfully being reintegrated as productive members of society. Regrettably the State has not undertaken any action towards implementing programs facilitating the reintegration in the labour market of former inmates.

- In July 2001, former prisoner A. came to the Legal Aid Society because no employees accepted him, as he had been condemned. After his release he tried to get a *propiska* but could not obtain it, meaning that he does not have any permanent job.

Finally, disabled people also face discrimination by employers. While the labour legislation provides subsidies to employers whose companies will have at least 50 percent of the overall workforce made up of disabled workers, few employers will take the risk of hiring disabled persons as up to 50 percent of their workforce in order to get the subsidies. Consequently, disabled people are mostly employed in sectors or industries requiring few qualifications and skills such as the assembly of paper boxes.

5.2. Level of unemployment

Statistics regarding the level of unemployment in Uzbekistan show the fact that there are two forms of unemployment throughout the country: one reflected in the official data and the unofficial one. These two forms of unemployment give two different and opposite pictures of the Uzbek employment situation and can be explained by the fact that the official data only take into account the workers who are registered with the state employment office.

According to the official numbers provided by the Ministry of Macroeconomics and Statistics, the unemployment rate in Uzbekistan in June 2001 attained 4.78 percent of the work force. According to the UNDP numbers, only 0.5 percent of the work force was unemployed in 1999.²⁵

As these figures do not take into account the workers who are unemployed but not registered with the state employment office, they do not reflect the real situation of unemployment. Indeed, as the unemployment office has proven ineffective in providing help to jobseekers, most of the people who look for a job do not even care to register with the employment office. As a result, official statistics leave out all those who do not register with the employment office so that the reported unemployment consists only of those who are registered as unemployed. In this respect, the Human Rights Society of Uzbekistan estimates that the unemployment rate reaches 38 percent.

Overall, the State's policy to address this situation has so far proven ineffective and the rate of creation of new workplaces has not kept the pace of the swelling unemployment. For instance, there is absolutely no system devised to develop employable skills and to train workers, especially those coming from the agricultural sector, with a view to meeting the changing labour market demands.

²⁵ *Supra* note 18

5.3. Regional and urban-rural disparities

With regard to urban-rural divide and particular regions, the unemployment rate in rural areas is twice as much as in urban areas.²⁶ This is mostly due to the more favourable economic and social conditions within cities²⁷ and to the population growth rate, two times higher in the rural areas than in the urban ones. Moreover, in certain areas of the country, such as Karakalpakstan and Novoi, the level of unemployment is respectively 4 and 7 times higher than the national average unemployment rate.²⁸

5.4. The informal sector and the situation of the *mardikors*

Due to the high level of unemployment throughout the country, the number of workers engaged in the informal sector represents a significant share of the population, rising from 21.9 % in 1994 to 38.1 % in 1999.²⁹ The majority of the youth work in the informal sector even if they have professional qualifications. Work in the informal sector is generally characterized by the most precarious conditions, with no access to social security, no health insurance and earning just enough to satisfy basic needs.

An example of the precariousness faced by workers in the informal sector can be observed in Tashkent, where workers without special qualifications, the so-called *mardikors*, are “selling themselves” in five markets scattered throughout the capital. *Mardikors* are usually employed only for 2 or 3 days without any written contract, the engagements of the parties being expressed orally. The daily wage of a *mardikor* varies from 1000 to 2000 soms (1.5 – 3 US dollars), the rest of the salary being provided by the employer in the form of meals. In these circumstances, the *mardikors* are not covered by any health insurance or social security scheme and they have absolutely no legal protection against the employers’ frequent abuses. For instance, if a *mardikor* is being hurt during work he will not get any indemnity, neither from the authorities nor from the employer. Very often, after the days of work, the employers refuse to pay the *mardikors* who cannot prove anything, as there is no written contract. So far, the authorities are ignoring this problem and haven’t taken any initiative to put an end to these exploitative working conditions.

- *Mardikor* D. reports that in December 2001, with another *mardikor*, they were hired by a man in order to repair an iron gate, located in the Tashkent’s suburbs. It was agreed that they would receive 7000 soums (approximately 10 US dollars) but no written contract had been signed. At the end of the job, they only received 1200 soums (approximately 1.7 US dollars) and were expelled from their employer’s house.

²⁶ *Ibid.*

²⁷ Human Development Index is 0.725 in urban areas and 0.696 in rural areas, *Supra* note 18

²⁸ *Ibid.*

²⁹ *Ibid.*

- Mrs A. came to Tashkent in December 2001 and started working as a *mardikor* as she had not received a residence permit. She is living in the Tashkent region and is earning about 1000-15000 soums per day (approximately 1.5 US dollars). She reports that in many instances she did not get paid for all the work she carried out.

5.5. Child labour

According to Article 77 of the New Labour Code of Uzbekistan (1996), the minimum age for work is set at 16. However, the Code provides for some exceptions to this rule: children from 14 can work provided that there is a written agreement of their parents or guardians, that the work is not harmful for their health and safety, and that the work does not prevent the children from going to school. The Labour Ministry has an inspection service, which is responsible for enforcing compliance with these regulations and enforce them effectively.

However, while the New Labour Code provides protection of children against exploitation, controls over these regulations are not accurately carried out. In fact, many children start working from the age of 10. Moreover, no definition of “worst form of child labour” exists under the current legislation. In this regard, it must be recalled that Uzbekistan has not yet ratified the ILO Convention No. 138 on Minimum Age and the ILO Convention No. 182 on the Worst Forms of Child Labour.

In rural areas, every year during the cotton harvest, many children are employed as cotton pickers without having the possibility of attending school at the same time. In 1998, a representative of the regional trade union in Bukhara, during a visit of the International Confederation of Free Trade Unions (ICFTU), recognized that “our children are virtually slaves of the State”, referring to the fact that local authorities in Bukhara still allowed children to work in the cotton fields. Despite the rapid mechanization of the cotton industry, the practice of child labour working in the cotton fields continues to go on. Indeed, during cotton harvesting, all classes in rural areas are avoided and children are work in the fields. From the spring season pupils start to work in the cotton fields, being attracted as free labourers by the authorities under the cover of “state-supported educative activities”. In this regard, the official of the Human Rights Society in the Djizak region reports that 6 out of the 9 school months, children are working for free in the fields. Overall, children working in the cotton fields are exposed to hazardous and hard working conditions.

- On May 10th 2001, a car accident happened in the Djizac region, with 35 children (from school No. 12 of the region, 8th year of education) in the bus. These children were reportedly going to work in a cotton field. As a result of the car crash, 5 girls were wounded.³⁰

³⁰ Internews, May 2001

The exploitation of child labour takes place not only in the agricultural sector but also in other areas. Indeed, children are often employed in markets and shops to sell alcohol, cigarettes and other goods. Their remuneration is generally very low and barely covers meals and day-to-day needs. In the worst cases children are employed also in illegal activities such as prostitution and robberies.

In general children end up working at a young age because of the deteriorating socio-economic conditions of their families. In this poverty-driven situation, an additional source of income is, most of the time, of vital importance and it is therefore not uncommon that parents themselves force their children to drop out of school and go to work.

5.6. Internal migrant workers and the system of the *propiska*

The deteriorating situation in terms of general living conditions in rural areas has led to a gradually increasing level of urbanization in Uzbekistan over the last decade. This process is mainly due to the migration of people from rural provinces, such as Ferghana, Namangan, Andijan, Surkhandarya and Kashkadarya, to cities, notably to Samarkand and Tashkent City. Migrations of considerable proportions can also be observed from cities like Angren, Chirchik, Yangiyeul and Navoi, whose industries have been affected by the demise of the Soviet-style economy, resulting in massive downsizing and unemployment. Consequently, many peoples are forced to move to the main urban centres, especially Tashkent, to find some temporary job and survive.

Today there are an important number of workers in the territory of the Republic. However, precise data on their number is very difficult to obtain, as the authorities do not disclose this information.

Citizens of Uzbekistan must obtain a residence permit from local authorities called *propiska* in order to resettle in a new city. Without this permit, which can be either temporary or permanent, a person is barred from housing or employment and is also subjected to imprisonment for violation of the passport regime. Thus, this system has the effect of turning an Uzbek citizen into a *de facto* illegal alien when he moves his place of residence within the territory of his own State without obtaining a *propiska*.

The passport regime – determined by the Presidential Decrees and the Cabinet of Ministers' Resolution- poses several conditions to get a permanent residency permit in Tashkent, where most of the internal migrant workers are heading. Serious hurdles and numerous requirements make it almost impossible to get a *propiska*. While the procedures request that the demand be applied with the department of entrance-departure and citizenship, which then direct the demand to the Commission of the Hokimiyat, few persons obtain the permit through this official way. Those who do not obtain the residency permit through the official process, almost the majority, have to buy

their permit. Bribing public officials is often the only way migrant workers have to receive a permanent *propiska*, where a bribe in Tashkent to obtain the permit costs up to 2000 US dollars.

Consequently, the majority of internal migrant workers in Tashkent remain in illegality, with no temporary or permanent residential permits.

The extreme difficulty in obtaining a *propiska* and the illegal situation in which the internal migrant workers find themselves often unleashes a cycle of violations of rights of various nature. This phenomenon can be clearly observed in Tashkent, where migrants without *propiska* are often victims of blackmail and extortion by local officials and police authorities, which receive bribes just to turn a blind eye on the workers' illegal status.

Furthermore, given the fact that employers are aware of the illegal status of the migrant workers without *propiska*, they usually take advantage of this situation underpaying them - or not paying them at all. In many instances, police authorities close their eyes on these abuses, and workers, conscious of their illegal condition, are not in the position to file complaints against their employer.

In this respect, there are many black market labour exchanges in Tashkent where, every morning, several thousands of people go to find a job. As mentioned under the part 5.5., these internal migrant workers are ready to perform any job for a very low amount of money. As competition among the job seekers is very high, the prices given for the work tend to be very insignificant.

- In response to an Uzbek's citizen application for a permanent *propiska* in Tashkent, the Commission of the Hokimiyat decided that there was no necessity to give him the permit and declared that if he wanted to get one he had to pay the sum of 2000 US dollars. Not being in possession of this sum, the man did not receive a Tashkent residency permit.
- An Uzbek citizen who arrived in Tashkent from a rural area in September 2001 and is currently living in an unfinished house paying a rent of 200 to 300 soums (approximately 0.5 US dollars) per day. As he has no *propiska*, he is afraid of receiving penalties for having infringed the Uzbek passport's regime and is avoiding the militia. Having no legal permit, he is ready to perform any kind of work, earning around 1000-2000 soums per day (approximately 2 US dollars). This man reported to the Legal Aid Society that his employer made a deal with the police in order to let him work. However, local policemen are keeping him in their files (one policeman photocopied his passport) and it sometimes the militia takes all the money he won during a day, leaving him with no resources.

6. TRADE UNION RIGHTS

Article 34 of the Constitution of Uzbekistan guarantees that all citizens “shall have the right to form trade unions” and that “membership in trade unions is optional” (art. 59). The Constitution further states that trade unions have the status of public associations (art. 56) and that they may be dissolved, banned or subjected to restricted activity solely by the sentence of a court (art. 62). Moreover, trade union rights are enshrined in the Law on Trade Unions adopted in 1992.

As mentioned (see part 3), articles 56 and 57 tend to seriously limit the creation and work of trade unions either by preventing the registration process or under the rationale that their activities threaten the sovereignty, the territorial integrity and security of the Republic or advocates social and religious hostility.

With regard to the holding of demonstrations, article 33 of the Constitution states that “ all citizens have the right to engage in public life by holding rallies, meetings and demonstrations”. The same article allows the authorities to suspend or ban rallies, meetings and demonstrations on grounds of security, and to restrict at its discretion such rights.

In practice, the right to organise is mainly limited by arbitrary measures regarding the registration procedures, as, according to article 56 of the Constitution, trade unions must be registered in accordance with procedures prescribed by law. As a consequence, the existing body of law and its implementation cannot guarantee the independence of trade unions, with the effect that the existing trade union and its sub-divisions are quasi-governmental organisations.

Such a situation is particularly worrying as freedom of association is not only an essential right which allows everyone to express themselves, to exchange and to construct a common social project, but it is also a fundamental requirement to guarantee fair and human conditions of work.

7. THE RIGHT TO HEALTH

While article 40 of the Constitution states that “everyone shall have the right to receive skilled medical care”, this provision limits the constitutional guarantees regarding the right to health to the sole dimension of access to medical care. At the legislative level the national health care system has been implemented through a number of laws, such as the ones “On health care”, “On prevention of HIV” and “On state sanitary inspections”. Article 13 of the Law on health care specifically states that citizens of the Republic of Uzbekistan have an inalienable right to health.

Since independence in 1991, the health care system in Uzbekistan has been moving more and more from central planning and government financing to mixed public and private system. The implementation of economic reforms has involved cut backs in public expenditures on health, the proportion of the GDP spent on health care having declined from 4.6 percent in 1990 to 3.4 percent in 1998.³¹ While there are two types of hospitals in Uzbekistan, ones where patients need to pay the services and the ones that are free of charge, one can observe the emergence of unofficial costs in the hospitals that are meant, in theory, to be free. Indeed, in these hospitals, people have increasingly had to pay for health services and drugs, thus creating dramatic disadvantages to people with lower income levels. Poverty has increasingly become a serious impediment to appropriate medical treatment, particularly for extended hospital stays.

For instance, despite the fact that medical treatment in hospital has to be provided free of charge, patients face unofficial costs for doctors and nurses of such an amount that they are often prevented from getting the adequate treatment. Indeed, most of the time, hospitalized patients have to pay doctors and medical staff in order to receive the adequate treatment. This phenomenon is closely related to the very low level of salaries of medical personnel in the public sector, thus the staff often tries to earn extra incomes by extorting payments from patients. Moreover, patients are asked to buy medicine (even the most elementary items such as bandages and analgesic) needed for the treatment either in drugstores outside the hospital or from doctors inside the very same hospital. Even more astonishing, patients have been denied a surgical operation because they were not able to pay the surgical fee - set by the surgeon himself - and because they were not able to provide for the necessary medicine such as bandages and spirit. As long as the patient does not provide the doctor with the medicine and the amount of money he asks for, the operation is postponed and the patient does not receive medical treatment, even in an emergency situation. In one case, a patient suffering from cancer was denied hospitalization and treatment at the Oncological Clinic of Tashkent, as he could not afford to pay the medical staff and the medicine.

When the person receives medical treatment, the services are often of very low quality, due to the lack of qualified medical personnel and to the insufficient funding of public health care institutions, and to the low wages of medical workers. In general, medical institutions are lacking the appropriate medical equipment and medical tools, medicines and sanitary equipment. Regarding the medical staff, the wage of medical workers depends on the qualifications and the title of the person and can go from 7000 to 20'000 Soums per month (10 to 28 US dollars), which does not cover the food expenses for one person and for one month.³² Overall, doctors are working around 10 to 12 hours per day and as they receive a salary that does not ensure them the minimum to live, they extort money from the patients and speculate with medical products.

In parallel with the public health system, private institutions have emerged, differing in terms of the costs and quality of the service from the public ones. The majority of the population, with a low level of income, has no access to these private centres.

³¹ *Ibid.*

³² For instance, one kilogram of meat costs 1500 Soums

8. THE RIGHT TO EDUCATION

Article 41 of the Constitution of Uzbekistan states that “ everyone shall have the right to education”. As mentioned, this provision fails to stipulate that primary education shall be compulsory and free. Indeed, the phrasing of that article only stipulates that free secondary education shall be guaranteed. However, the 1997 Law on Education stipulates that primary education is mandatory and free of charge.

Overall, the transition to market economy asked for new curricula, new teaching methods, professional qualifications and employable skills. In 1997, the Parliament of Uzbekistan adopted a new Law on Education and approved new strategic National Programme on Personnel Training. At the present time, the Government of Uzbekistan is at the first implementation stage of this national programme, which should be completed in the year 2005. The reform envisages an educational system which consists of a nine-year free and compulsory education; three years of special education, during which students are free to choose between two kinds of vocational education - academic lyceum or vocational college-; higher education, which has two stages or programs - Bachelor of Science and Master of Science.

The gross primary school enrolment ratio in Uzbekistan has remained constant since independence, displaying a slight increase during the 1990s, rising from 82 % for males and 81 % for females in 1990 to 86 % for males and 85 % for females in 1999 (see also part 2.3.).³³ However, the transition period has seen difficulties with a decrease of public expenditure in education within the general GNP volume from 9.2 % in 1987 to 7.7 % in 1997.³⁴ The public expenditure on educational structure has also diminished as a proportion of GDP for procurement of equipment, technical supply and maintenance from 0.32 % to 0.25 %.³⁵

Despite the constitutional guarantee on non-discrimination, discrimination against religious Muslims is more and more frequent in Uzbek schools. Not only schoolgirls have been expelled from educational institutions because they were wearing headscarves, but also teachers have been victims of threats of losing their job because of the observance of that custom. In this regard, the UN Special Rapporteur on the Right to Education, on June 14th 2000, addressed a letter to the Government of Uzbekistan concerning alleged expulsions of schoolgirls owing to their wearing of headscarves. Following the Government’s silence, the letter was re-sent on November 20th 2000.³⁶

- In January 2001, a girl of 17 years old has come to the Legal Aid Society and complained about the fact that while she had been successfully accepted to the Tashkent University, the University’s administration gave her the following ultimatum: to take off her headscarf off or not to be accepted as a student. The

³³ *Supra* note 18

³⁴ *Ibid.*

³⁵ UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANISATION (UNESCO) *World Education Forum, Country Reports: Uzbekistan, 2000*

³⁶ UN DOC E/CN.4/2001/52 Para. 25

University explained to her that this requirement is based upon the University's internal rules, which prohibit wearing a headscarf.

- Two college students have contacted the Legal Aid Society as the College administration prohibited them wearing long dresses and headscarves. As they continued to wear them, they were compelled not to do so by the administration
- In March 1998, a woman teacher of French at the Tashkent University complained that the University's Administration was prohibiting her wearing a headscarf. Indeed, she was put before the choice of either taking off her headscarf or of being compelled to do so. As she did not agree to take off her headscarf, she was compelled by the University that force her to write a statement according to which she took her headscarf off on her own will.

While the law stipulates that primary education shall be free of charge, informal costs are very frequent as parents have generally to pay fees to repair the school premises and for the school material. Moreover, financial constraints and an overall decrease in family income constitute, today, the main factors preventing children from attending educational institutions, including primary ones. Indeed, the number of children who drop out of school and start working in order to provide an additional source of income for their families has considerably risen. Official statistics on the matter do not exist but this phenomenon can be clearly observed all around Uzbekistan. Finally, as mentioned under 5.5, many children do not attend school during the cotton harvest period.

- A child of 16 years old without father and raised by his mother, had to wear old clothes due to the lack of resources, including his father's, to go to school. As his schoolmates were laughing at him constantly, the boy started to miss classes and started to steal. Having been caught in April 2000, he was detained as a preventive measure. Following the intervention of the Legal Aid Society, the boy was released.

Another matter of concern is the access to pre-school education. Due to the increase of the pre-school fees, which now are the equivalent of 50 percent of the minimum salary, along with the overall decline in family income, the number of children attending pre-school education dropped from 30 percent in 1992 to 16 percent in 1998.³⁷ Practically speaking, more than 3 million children are not attending pre-schools. There is therefore a considerable gap between the educational level of the first grade children who have attended pre-schools and those who have not. This situation tends to particularly affect rural children. Indeed, due to the difficult financial conditions of the rural families, only one in every ten children in the rural area has a chance to attend a pre-school institution.³⁸

³⁷ *Supra* note 35

³⁸ *Ibid.*

In terms of quality, the public educational system faces several constraints that have a direct impact on the value of education received by children, especially at the primary level. Low wages, lack of qualified personnel, poor infrastructure and insufficient schoolbooks, lack of textbooks and basic material are but some of the factors that directly affect the quality of education delivered in Uzbek public schools. This situation is particularly felt in rural areas of the country.

For instance, in 2001, the monthly average salary of a teacher amounted to 13700 Soms (approximately 20 US dollars). As the majority of teachers have a pedagogical specialization, the low level of wages they receive tends to steer them towards more attractive and better-paid employment fields. As a result, there is today a lack of high-skilled staff in educational public institutions. The low wages also often imply that the teachers supplement their salary by accepting bribes from students in exchange for good marks and diplomas. Thus students practically do not have to study in order to learn and basically do not receive any real education at school. This phenomenon appears to be common and widespread in Uzbekistan.

9. THE SOCIO-ECONOMIC CONTEXT AND THE PROTECTION AGAINST TORTURE

9.1. Street children

The negative effect of the economic crisis (see parts 2, 4, 5, 6, 7 and 8) and the subsequent deterioration of the family unit have resulted in an increasing number of street children in Tashkent and other Uzbek cities. Most children living in the street are working there as street vendors.

During the summer, these children generally sleep in gardens, parks or on garage roofs, while during the winter they find shelter in cellars and basements where the central heating system runs. It has been reported that a child was burned alive while sleeping in an oven where traditional Uzbek breads (somsa) are usually baked.

The Government addresses this situation by mostly resorting to repressive measures, resulting, very often, in the detention of children. Indeed, when street children come into contact with law enforcement officials it is not because they are liable to be charged with crimes, but exclusively because they live or work in the streets. Cases of ill treatment and torture are being reported in this regard. Ill-treatment also occurs between the children themselves.

When not being detained, given the fact that foster care and other forms of family-based alternative care are not sufficiently developed and available, children are being placed in institutions such as the so-called "infants' homes", which because of lack of resources, provide children with very low quality housing and care.³⁹

³⁹ *Ibid.* para. 41

- A. arrived in Tashkent from Tajikistan in October 2001 when he was 13 years old and has been living since in the streets. He has no passport, cannot study and no permanent job. A. decided to leave his mother because she was beating him. He tried to go back to her place twice but she did not accept him.
- D. is 14 years old and is living in the street. He left his home in October 2001 after his mother escaped as her husband was beating her. His father was an alcoholic and was beating him and his 4 brothers and sisters.
- When A. was 12, his mother was condemned for the murder of her roommate and imprisoned. Consequently, A. and his younger sister were placed in an orphanage from where he escaped. Today, A. is living in the street with no document and no work, sniffing glue, performing small thefts and begging.
- A. was living with his mother in the city of Zarafshane. When her mother was condemned and imprisoned, he was placed in an orphanage where he was beaten and from where he escaped. He is living in the street since October 2001 and sleeping in cellars or garages. He is engaged in begging to survive and is sniffing glue.

9.2. Poverty, religious fundamentalism and state repression

Approximately 88 % of the population of Uzbekistan is Muslim. During the Soviet era the Muslim Board of Central Asia and Kazakhstan controlled Islamic worship and study, regulating the registration of mosques, appointing imams to lead local congregations and dictating the content of sermons and Islamic practice.⁴⁰ The agency survived Uzbekistan's transition to independence in 1991, becoming the Muslim Board of Uzbekistan and retaining its responsibility for the regulation and restriction of the population's religious beliefs and practices. Independence gave rise to a revival of popular interest in Islam and imams began to preach without deference to the Muslim Board, communities founded mosques that were not registered with the board and a variety of Islamic literature not approved by the board became available.⁴¹ During the second half of the nineties, the Uzbek government tried to regain strict state control over religious activity and the murders of several police officers and government officials in 1997 provided the pretext for the government to crackdown heavily on religious Muslims, portraying them as a threat to the country's stability.⁴² In May 1998, the Law on Freedom of Conscience and Religious Organizations, together with amendments to Uzbekistan's criminal and administrative codes, banned all religious activity and organizations not registered with the state, including private religious education and the

⁴⁰ Human Rights Watch, Memorandum to the U.S. Government regarding religious persecution in Uzbekistan, August 2001

⁴¹ *Ibid.*

⁴² *Ibid.*

distribution of literature deemed extremist and set out criminal penalties for leaders who failed to register their groups.⁴³

The Government's crackdown targets those perceived by authorities to be adherents of "Wahhabism", a terms suggesting a radical form of Sunni Islamic belief.⁴⁴ The government has misapplied this term to refer to religious observance that takes place outside strict state controls. Thus, the label is applied to those who engage in private prayer or study of religion, beyond state control. The Government also labels as "Wahhabi» any person suspected of following or having been associated with Muslim leaders who have been critical of the Government.⁴⁵ Aside from "Wahhabism" and its supposed leaders, the Government targets specific Islamic organizations, primarily the unregistered group Hizb ut-Tahrir (Party of Liberation), which has been defined as an "illegal religious organization", and the Islamic Movement of Uzbekistan (IMU), a group of militants active in the easternmost province of Ferghana Valley, responsible for armed incursions into Uzbekistan territory in 1999 and 2000.⁴⁶

Since 1997, the measures taken by the authorities have led to the closing down of hundreds of mosques, while more than 7000 Muslims, militants and believers have allegedly been imprisoned.⁴⁷ In pursuing its systematic religious persecution against independent Muslims and believers, the government has engaged in severe and repeated abuses that include unlawful arrests, detention without trial, incommunicado detentions, extra-judicial executions, torture, unfair trials and incarceration of non-violent believers (see also OMCT's Comments on the Report of the State of Uzbekistan Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).⁴⁸

For instance, the famous Uzbek writer Emin Usman died in detention in the premises of the Ministry of Internal Affairs (MVD) of Uzbekistan on 28 February 2001. While the authorities presented his death as a suicide, according to one of the relatives who was able to see the deceased "there was a deep bloody wound on the back of his head". According to another source of information, the whole body "was covered with bruises". According to the medical certificate, the cause of Usman's death was stated as "brain tumour". Mr. Emin Usman was allegedly on a "black list" of the Uzbek special services for many years because of his religious beliefs and his public activity among ethnic Uygurs.⁴⁹

Similarly, Rustam Norbaev died in detention on March 18th 2000. An investigation into his death by the district militia department (ROVD) concluded that he had hanged himself. However, according to the people who carried

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

⁴⁷ *Le Monde Diplomatique, L'Etoile Montante Ouzbèke*, Novembre 2001

⁴⁸ *Supra* note 40; UN Working Group on Arbitrary Detention: U.N. Doc. E/CN.4/2001/14, paras 4,7,56,57 and U.N. Doc E/CN.4/2001/14/Add.a, Opinion No. 27/1999; UN Working Group on Enforced or Involuntary Disappearances: U.N. Doc. E/CN.4/2001/86, para 16, 17, 102; UN Special Rapporteur on Torture: U.N. Doc. E/CN.4/2001/66, paras 1224-1266

⁴⁹ OMCT Urgent Appeal, UZB 190301, 19 March 2001

out the Muslim rituals on his body before his burial, there were numerous signs of torture over his body. Arrested on March 13th 2000 on suspicion of belonging to the “Hizb-ut-Tahir” party.⁵⁰

This wave of repression carried out by the authorities against non-violent Muslims believers tends to reinforce the population’s adherence to a more radical form of Islam. Moreover, both issues –the state’s repression and the increased appeal exercised by a more radical form of Islam on the population- have to be seen against the background of the ongoing economic crisis, its effects and the authorities’ failure to properly address the problem of poverty. Indeed, destitution and extreme poverty can lead the population to welcoming the support of the “Wahhabists”, who have reportedly provided people with food supplies, financial resources and schoolbooks.⁵¹ The Government’s much publicized threat of religious fundamentalism may eventually turn into a self-fulfilling prophecy, as the State’s failure to properly address poverty and other socio-economic issues nurtures insecurity and discontent among the most destitute sectors of the population, contributing to an increased and radicalized opposition and therefore unleashing repressive actions, unfair trials, imprisonment and torture.

9.2.1. The Ferghana Valley

Today, the Ferghana valley is one of the Uzbek regions where the State’s repression is occurring on a large scale. The militarisation of the region is taking place under the banner of fighting international terrorism and notably the Islamic Movement of Uzbekistan (IMU) and the *Hizb ut-Tahrir*.

The Ferghana valley is divided between Kyrgystan (the baktan, Osh and Jalalabad regions), Uzbekistan (the Andijan, Ferghana and Namangan regions) and Tajikistan (the Sogdi, former Leninabad, region). The total population of the valley is over 10.4 million, more than one-fifth of the whole population of Central Asia. Out of the total Uzbek population, 27 percent lives in the Ferghana valley.⁵²

The social situation in the region is characterised by a high level of unemployment, demographic explosion, and a monopolistic economic approach through which all the profits extracted from the cotton culture remains in the hands of the authorities, thus undermining the livelihood of local producers. A deep economic crisis is currently affecting the Uzbek part of the Ferghana valley, bearing a great potential for social unrest. For instance, according to the Institute for Regional Studies in Bishkek, 35 percent of all people under 25 were unemployed in 1995.⁵³

An early warning study carried out by the Institute of Ethnology and Anthropology, the Forum on Early Warning and Early Response and the Swiss Peace Foundation acknowledge that rapid social stratification, shortage of

⁵⁰ OMCT Urgent Appeal, UZB 030400, 3 April 2000

⁵¹ International Helsinki Federation (IHF), Mission to Central Asia Report, July 18th 2001

⁵² FEWER, *Early Warning Report on the Ferghana Valley*, December 2001, p. 2

⁵³ *Ibid.*

resources –particularly land and water- agrarian overpopulation, poverty and unemployment all contribute to the rise of political Islamic movements and their attraction among the population, especially the young people.⁵⁴ Indeed, these movements, beyond presenting an alternative political agenda, also have a marked social dimension.

One can therefore observe, in the Ferghana valley, a vicious circle of brutalisation where poverty fuels support to movements that the authorities consider as “fundamentalists”, thus applying against them strong methods of repression. In turn, this repression is carried out at the detriment of measures addressing the rampant poverty and democratic principles, thus reinforcing the attraction of the Islamic movements calling for an alternative political and social order.

In terms of repression, the Uzbek authorities are carrying out, throughout the valley, a campaign of illegal and indiscriminate arrests, detentions, trials, torture and other forms of cruel, inhuman or degrading treatment.

9.2.2. Forced displacement of populations and mass deportations

Serious and different repressive measures, in terms of forced displacement of population and mass deportations, are also taking place in other areas of the country. These actions, taken against the population of entire villages, constitute a form of collective punishment of entire villages on suspicion of some inhabitants’ alleged sympathies for the Islamic Movement of Uzbekistan (IMU) since fighting between IMU members and the army has taken place on the border with Tajikistan for the control of that territory.⁵⁵ Again, these developments have to be seen against the socio-economic background prevalent in the region as similar dynamics like the ones observed in the case of the Ferghana valley are in place, leading to a vicious circle of brutalisation.

On August 5th 2000, approximately 1300 Uzbek citizens of Tajik ethnicity, inhabitants of five villages in the mountainous districts of the Surkhandaria region, were forcibly deported from their villages by the military and resettled in the steppes of the Sherabad region, about 250 miles away. State authorities explained that the action was taken in order to improve the living conditions of the people concerned. Nonetheless, villagers were taken by surprise in the morning, forced to embark on military helicopters, had to leave their homes without their belongings, while their villages were subsequently destroyed.⁵⁶

Another case of mass displacement is reported to have taken place in 2001. Indeed, around 4000 people residents of ten villages near the Tajik border have been displaced under similar conditions, probably on suspicion of some inhabitants’ alleged sympathies for the Islamic Movement of Uzbekistan (IMU). The displaced persons have been relocated in locations where they have no contacts with the outside world and where it is very

⁵⁴ *Ibid.*

⁵⁵ *Supra* note 51

⁵⁶ *Ibid.*; U.N. Doc. CCPR/CO/71/UZB, *Concluding Observations of the Human Rights Committee: Uzbekistan*, 26/04/2001, para 16

difficult for Uzbek human rights organisation to monitor their whereabouts and well being. So far these persons have been obviously prevented from returning to their place of origin, while Human Rights Watch reports that their homes have been razed to create a *cordon sanitaire* along the border.⁵⁷

The circumstance, rational and way in which these forcibly displacements have been conducted highlight that these measures have been carried out as a form of collective punishment of entire villages for alleged participation or support to the Islamic Movement of Uzbekistan (IMU).

In the case *Selçuk and Asker v. Turkey*, the European Court for Human Rights (ECHR) ruled that the destruction of the defendants' homes constitutes a form of ill treatment, in breach of article 3 of the Convention, which states that "no one shall be subjected to torture or to inhuman or degrading treatment or punishment."⁵⁸

In determining the occurrence of ill treatment, the ECHR recalled that it must attain this a minimum level of severity, dependent upon the circumstances. In the *Selçuk and Asker* case, the ECHR judged that these circumstances allowed qualifying a home destruction, i.e. a violation of a right typically categorised as belonging to economic, social and cultural, as a form of inhuman and degrading treatment. The fact that the victims were old, left with nothing following the destruction of their house, as well as in a difficult position, given their age, to provide for themselves and find another shelter, were determinative factors in the decision of the ECHR.

On this basis, the reflection of the ECHR can be applied to other situations, which combine similar features of destitution and vulnerability resulting from the actions of the State.

The forcible displacement of entire villages represents the same pattern: they leave the victims in serious destitution and deprive them from their means of subsistence and livelihood, with no available recourses. Moreover, the way the displacements are carried out -without prior notice and taking people by surprise and in the presence of the military- along with the fact that the displaced villagers are prevented to return to their villages and are being located in locations where they cannot have contact with the exterior constitute in itself an additional factor of stress and suffering.

These different elements highlight the degree of suffering, both physical and psychological brought by these policies. Consequently, given that the implementation of such measures results in situations of extreme suffering allows to conclude that they constitute a form of cruel, inhuman or degrading treatment or punishment, in violation of the CAT.

⁵⁷ HUMAN RIGHTS WATCH, *Annual Report 2002*

⁵⁸ European Court for Human Rights, *Case of Selçuk and Asker v. Turkey* (12/1997/796/998-999), paras 79-80. See also, *Bilgin v Turkey*, 16 November 2000 para. 100-102; and *Dulas v Turkey*, 30 January 2001 para. 54-55.

9.3. Poverty and access to justice

Article 116 of the Constitution states that “ Any defendant shall have the right to defence. The right to legal assistance shall be guaranteed at any stage of the investigation and judicial proceedings. Legal assistance to citizens [...] shall be given by the College of Barristers”. The Uzbek criminal legislation also provides that people who cannot afford to pay legal fees are entitled to receive free legal assistance through lawyers assigned by the State.

In practice, the legal framework has not been adequately implemented by the State and the system devised to provide free legal assistance to low-income persons in criminal cases has proven ineffective. Lawyers who accept to undertake the defence of indigent defendants are remunerated by the State with a symbolic fee that most of the time does not even cover transportation expenses. Moreover, the payment of fees is subject to very long and complicated bureaucratic procedures. These factors generally make the legal assistance to indigent defendants both professionally and financially unattractive to lawyers. As a result, lawyers assigned to indigent defendants are usually young lawyers who have just graduated from law school and have no experience in the profession. In fact, these young lawyers accept to undertake the defence just to gain professional experience but the quality of the service provided is, in terms of skills and motivation, very poor. In some cases indigent people were left without legal assistance and therefore tried in the most evident violation of their right to a legal defence.

Cases of fabrication of evidence and procedural documents against the defendant by lawyers assigned by the authorities in collusion with the investigators are also being reported. In such cases, the defendant doesn't have the resources to get the support of another lawyer. However, it happens that when another non-assigned lawyer wants to take up the case, it is being refused by the law enforcement officials.

- The accused Z. had been provided free legal assistance by the State. However, Z. saw his lawyer only at the end of the preliminary investigation. Indeed, at this moment, the assigned lawyer signed the protocols for carrying out the investigation on the case of Z., while this should have been done two weeks before. The investigation was therefore conducted without objectivity and without respecting the protocols, leaving Z. without protection. (August 2001)
- Defendant S.' assigned lawyer signed the investigation document without consulting or meeting with S. Another lawyer tried to provide S. with normal services in order to defend him, but the law enforcement officials did not allow him to do so. In the court proceedings, the fact that the assigned lawyer signed the investigation documents without meeting with the defendant and was not disclosed and this was used as evidence to find S. guilty. (2001)
- The Legal Aid Society took up the case of M. as his assigned lawyer and the investigators falsified the investigation documents and signed them without even seeing M. (January 2000)

The legal system has thus developed a two-sided justice: people who can afford to hire professionally experienced lawyers have a better chance of upholding their rights whereas indigent people face greater risks of seeing their access to justice seriously prevented due to socio-economic factors.

For the time being, the State is not considering developing of an efficient and well-functioning legal system in which free legal assistance is provided to indigent people, therefore poverty currently represents a direct barrier to justice for the poorer sectors of the population. Due to the inadequacy of governmental guarantees of free legal assistance in criminal cases, civil society has begun to set up structures aimed at guaranteeing access to justice to indigent defendants. Nowadays, the Legal Aid Society is the only non-governmental organization providing for professional legal assistance to indigent people.

10. CONCLUDING OBSERVATIONS AND RECOMMENDATIONS

The number of cases of torture, extra-judicial killings and other forms of cruel, inhuman or degrading treatment or punishment can be significantly diminished through the adoption of adequate legal, judicial and administrative measures, and better control over the repressive apparatus (see OMCT's Comments on the Report of the State of Uzbekistan Concerning the Implementation of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). However, the dynamics currently in place in Uzbekistan require broader answers and encompassing solutions. The authorities' repressive and overwhelmingly alarmist response to the "Islamic fundamentalist threat", their use of this factor to suppress any socio-political critique and the real socio-economic problem that tends to fuel the population's support to a more radical understanding of Islam shows the important role played by poverty and inequalities in this equation. Any way out of this vicious circle of brutalisation will have to address these factors.

Abuses faced by workers in the informal sector, by internal migrant workers, street children and children involved in working activities find their origin in the effects of the ongoing economic crisis that is affecting Uzbekistan: inadequate health care and educational systems, increased unemployment and involvement of the labour force in informal sector activities, lack of adequate and affordable housing and an increasing part of the population that cannot access basic and essential services such as health and education. The authorities' failure to cope with this socio-economic context, along with the population's distress have left the door wide-open to different types of abuses that include cases of torture and other cruel, inhuman or degrading treatments or punishments.

In a situation of socio-economic despair, exploitation and abuses –by State agents or private individuals with the acquiescence of the State- are commonplace. In this context, a sustainable protection against torture and other forms of cruel, inhuman or degrading treatment or punishment without living conditions guaranteeing the enjoyment of economic, social and cultural rights is unsustainable. The eradication of violence against women

and of the exploitation of children is inaccessible without equal access to productive resources and basic services such as health and education. In the light of the current Uzbek situation, this logic is inescapable.

Similarly, poverty, increased inequalities and denial of economic, social and cultural rights have to form part of any attempt to break the vicious circle of brutalisation and repression that is in place in Uzbekistan and that targets any dissenting voice or Muslim believer. As observed, the use of repressive measures and of the rhetoric on an alleged “fundamentalist” threat, while most of the populations sees no changes at all in its living conditions, contributes to reinforce the appeal exerted by Islamic movement -moderate and more radical ones- among the population, calling for a new social order and replacing the welfare role of the State.

In this regard, the United Nations Special Rapporteur on Torture, in his 2000 interim report to the General Assembly (A/55/290), stressed that the question of poverty “is all too relevant to issues falling within his mandate”, observing that as long as national societies and the international community fail to address the problems of the poor, the marginalized and the vulnerable, they are contributing to a vicious circle of brutalisation in which any prospect for the eradication of torture is unsustainable.

Consequently, a sustainable protection against torture and other cruel, inhuman or degrading treatment or punishment in Uzbekistan requires the adoption of socio-economic and legislative measures aiming at guaranteeing the enjoyment of economic, social and cultural rights throughout the country. Moreover, certain violations that have taken place and that are being closely related to the elements presented in this report also need to be addressed by the government in terms of reparation and compensation of the victims.

In this respect, OMCT and LAS would recommend to the State party, according to article 2 of the CAT, to take into consideration economic, social and cultural rights in any initiative aiming at guaranteeing the full implementation of the CAT at the national level.

Moreover, OMCT and LAS also believe that specific measures, as understood under article 2 of the CAT, have to be taken by the authorities in the socio-economic realm. These include:

- To take immediate steps to guarantee, through legal, judicial and administrative measures the justiciability of economic, social and cultural rights;
- To pay attention to the situation of population in rural areas and in particular to the ones living in the Fergana Valley, as well as in the Karakalpakstan and Surkhandarya regions and develop special strategies, policies and programmes aimed at guaranteeing their full enjoyment of economic, social and cultural rights including the right to work, the right to education and the right to health;

- To pay attention to the specific situation of women and develop special strategies, policies and programmes aimed at ensuring their access to capital and other productive resources, including land, as well as to educational, employment and social opportunities;
- To pay attention to persons working in the informal sector and develop special strategies, policies and programmes aimed at preventing abuses and at extending labour and social protection to this sector;
- To pay a particular attention to the problem of street children and develop special strategies, policies and programmes aimed at preventing abuses and ensuring that they are provided with adequate food, clothing, housing, health care and educational opportunities;
- To undertake a study on the causes and scope of the street children phenomena and establish a comprehensive strategy in cooperation with civil society in order to prevent and reduce this phenomena;
- To prohibit child labour, in particular in the cotton fields and in the agricultural sector, to establish a procedure to receive complaints and to undertake a study on the causes and scope of this phenomena and establish a comprehensive strategy in cooperation with civil society and the International Labour Organisation (ILO) in order to prevent and reduce it;
- To stop immediately any further action to forcibly displace people from their homes and villages, to compensate the individuals concerned for the loss of their property and the ill-treatment involved in the forcible displacement and to take steps in order to guarantee their return to their place of origin;
- To condemn the practice of forcible and mass displacement of population as a form of cruel, inhuman or degrading treatment in violation of article 16 of the CAT;
- To pay particular attention to the lack of access to justice for indigent persons and to develop special strategies, policies and programmes aimed at ensuring their access equal access to justice;
- To take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the enjoyment of human rights and all fields of economic, political, social and cultural life;
- To abolish the *propiska* system;
- To take effective measures in order to guarantee the transparency of the national budget and the government's spending, as well as citizens' participation in the elaboration, decision-making and implementation of socio-economic policies;

- To take measures in order to guarantee the enjoyment of the right to adequate housing throughout the country, including:
 - § the modification of the Housing Code with a view to define precisely the concept of adequate compensation, as well as the duty to provide such a compensation and to guarantee the implementation of the law;
 - § the creation of centres for homeless people;
 - § the establishment and implementation of a housing policy;

- To take effective measures to guarantee the non-discriminatory enjoyment of the right to work, including those aimed at raising the minimum wage in order to guarantee to the workers and their families and adequate standard of living;

- To take effective measures in order to guarantee the enjoyment of the right to education, including measures to improve enrolment rates, school infrastructure and teachers' salaries;

- To take effective measures in order to guarantee the enjoyment of the right to health, including the removal of informal costs to access health services and medicine, as well as the improvement of health infrastructure and medical personnel's salaries;

- To take effective measures in order to guarantee the enjoyment of trade union rights and the right of freedom of association.