

**“Veritas” Youth Human Rights Movement – Individual UPR Submission – Uzbekistan –  
December 2008**

*The following submission was prepared based on the structure of the General Guidelines for the preparation of information under the UPR, adopted by the HRC at its 6<sup>th</sup> session, according to the decision 6/102.*

**A. Methodology and the broad consultation process followed for the preparation of information provided under the universal periodic review:**

The present submission outlines our comments on the upcoming review of Uzbekistan under the UPR procedure of the United Nations Human Rights Council scheduled in December 2008.

This report is built on the analysis of such human rights related issues as a) torture and similar ill-treatment; b) *habeas corpus* law implementation; c) implementation of the law on death penalty abolition; d) religious prisoners; e) unlimited access to and independent monitoring of the places of detention; f) persecution of the local civil society activists. The report indicates to the implications of those problems for the human rights situation in Uzbekistan.

The information, facts and individual cases given in this report are coming from the research carried out by the members of “Veritas” Youth Human Rights Movement from Uzbekistan. Lawyers of the Tashkent City Bar Association have greatly contributed in finding texts of the official legal and administrative regulations.

This submission was a collaborative effort of the activists of “Veritas” Youth Human Rights Movement who have researched national and international human rights standards applicable for Uzbekistan, collected information and individual cases of the alleged human rights victims, interviewed defense lawyers, judges, prosecutors, police officers and medical personnel.

During a two-month, in-country, a thorough research was conducted in Uzbekistan. Veritas and its partners carried out individual interviews with alleged human rights victims, their relatives, attorneys, human rights activists, law enforcement agents.

We should note different level of cooperation among different target groups of the research. For a variety of reasons some of the alleged human rights victims as well as personnel of state institutions, including judges, police officers, prosecutors and some doctors refused to cooperate.

Most victims interviewed agreed to speak regarding who, when and where abused their rights, but when asked to recount their experience in questionnaires, refused to answer. They explained that they feared being persecuted by the State authorities for their testimonies. Only some of the victims agreed to be interviewed when assured that the information they shared would be kept anonymous.

In conducting this research in total 28 persons agreed to respond to the questionnaires of which 19 agreed to full publication of questionnaire information and 9 persons to the publication of the questionnaire information anonymously. Of the 28 persons who answered the questionnaire 15 were alleged human rights victims (2 anonymous), 4 attorneys (1 anonymous), 4 relatives of victims (1 anonymous) and 5 acting police officers (all anonymous). All persons who agreed to full publication of the questionnaire information also agreed to mention their names in the research papers.

Besides filling in the questionnaires the research group has also studied the relevant national and international laws and standards for protecting and promoting human rights, official state reports to the UN treaty monitoring bodies, reports of the local and international human rights groups on the situation with human rights in Uzbekistan.

**B. Background of the country under review and framework:**

Uzbekistan is party to several UN Human Rights treaties (*See Appendix # 1 for the chart on “Status of ratification of international human rights treaties by Uzbekistan”*). As such, several reports were examined by the UN Treaty Bodies which expressed their concerns over the violations of human rights. Recently, the UN Human Rights Committee, established under the UN International Covenant on Civil

and Political Rights (ICCPR), and the Committee Against Torture, established under the UN Convention Against Torture (CAT), adopted Concluding Observations which reveal several subjects of concerns. Uzbekistan was visited by the UN Special Rapporteur on Torture in 2002, who pointed the systematic use of torture in the country.

Starting January 2008 two laws on *habeas corpus* and abolition of death penalty have entered into force. However, independent monitoring of the situation with implementation of those new laws reveal a lot of problems. More detailed analysis of those problems concerning enactment of *habeas corpus* institution and abolition of death penalty in Uzbekistan will be presented in Paragraph C of this submission. For further more detailed analysis on these two issues please See Appendixes # 2 and # 3.

#### Legal and Institutional Structure

The legal and institutional system suffers from a number of the following structural problems:

- Even though the Uzbek legislation, including the Constitution recognizes the supremacy of international law over national law international HR treaties are not invoked before the domestic courts in Uzbekistan;
- The criminal justice system in Uzbekistan is in many respects still based on the previous Soviet system. This means that it includes a thorough and lengthy pre-trial investigation, under complete control of the Public Procurator's Office. This is followed by a trial presided over by a judge, during which the case against the defendant is supposed to be fully examined in order to ascertain the whole, „objective truth“;
- A lack of clear public rules – many rules governing important matters (such as a detainee's access to a lawyer) are only included in the so called „internal“, unpublished regulations;
- Excessive discretion of and lack of transparency in the activities of the Uzbek law enforcement agencies;
- A lack of professionalism on the part of the Uzbek law enforcement officials which brings to extortion of proofs and confessions by applying torture and similar ill-treatment;
- A marked „automaticity“ in the system – which means that, once caught up in the criminal justice process (arrested/suspected), persons are likely to be „prosecuted“, and, almost inevitably, to be convicted and sentenced;
- Corruption.

For more detailed description of the above mentioned institutional problems please See Appendix # 1.

### **C. Promotion and protection of human rights on the ground:**

#### **Torture and similar ill-treatment**

Torture is systematic in the criminal justice system of Uzbekistan. Our studies have demonstrated that the majority of cases of torture occur during the first 72 hours of pre-trial detention. It means that they take place before official charges are taken and measures of restraint decided by the investigating body. During this period the detainees are usually held incommunicado.

For the vast majority of the population in Uzbekistan the risk of being subject to torture or similar ill-treatment increases if a person is from a poor group of the society and cannot pay his / her way out of the detention through bribing his perpetrators. Thus, corruption among the inquiry officers and investigators and poverty of the vast majority of the population are reasons why torture and similar ill-treatment still is pervasive in Uzbekistan.

However, in cases perceived as being politically motivated, the length of incommunicado detention is much longer. Moreover, in cases politically motivated or related to religious fundamentalism and extremism, the chances for a detainee to buy himself / herself out of criminal charges, that is also from

torture and similar ill-treatment, seem very low. In such cases, torture and ill-treatment often continue in the prison, even when the victim was found guilty and sent to serve a prison term.

The most common methods of torture and ill-treatment include:

- Beating, sometimes using rubber clubs, plastic bottles filled in with water or sand or metal or wooden sticks
- Suffocation with gas masks or plastic bags, sometimes using gas-lighters or detention in gas chambers
- Burning the hair on the body or parts of the body with lighters
- Cutting or damaging parts of the body with a knife or similar objects, pretend to cut the face with a knife
- Rape or sexual harassment
- Shackling and binding
- Deprivation of food or sleep
- Denial of access to bathroom facilities
- Denial of medical services
- Pressure by detaining family members and relatives on trumped-up administrative or criminal charges
- Serious threats, including threats of criminal charges or murder to the detainee or family members
- Denial of space and time for accomplishing prayers and follow other religious services
- Instigating physical harassment and attacks between inmates against each other.

It should be noted that it is dangerous in a country like Uzbekistan to convey facts about torture and similar ill-treatment, to criticize such practices and to identify the alleged perpetrators. Victims of torture, their families, human rights activists, journalists and involved lawyers face huge pressure and are subject to constant persecutions.

After the country visit of the UN SR on the issue of torture to Uzbekistan in late 2002 the Uzbekistan has adopted a National Action Plan on implementation of all of the 22 recommendations of the SR. Even though the National Action Plan was mostly composed of measures of general and inspirational character, which haven't brought to concrete positive changes in the situation. The only concrete measure the Uzbek Government has taken in response was criminalizing torture and similar ill-treatment by making amendments into art. 235 of the Criminal Code.

Today the following systemic problems cause torture to remain a rampant and most effective tool of criminal prosecution in Uzbekistan:

- Absence of independent complaint and review mechanism for alleged torture mechanisms. The existing review mechanisms within the MVD, SNB, Public Procurator's Office and Ombudsman are not independent and effective. Our monitoring show that courts tend to take the allegations of the defendants about torture and similar ill-treatment during the pre-trial investigation period as attempts to avoid a criminal punishment;
- Definition of torture and similar ill-treatment secured under art. 235 of the Criminal Code of Uzbekistan does not conform to the definition of torture set under the Convention against Torture of the United Nations.
- Most of torture and similar ill-treatment take place in places of detention of the penitentiary system. Today places of detention in Uzbekistan are completely closed to independent review. No independent observer, including representatives of civil society, have access to places of detention. The ICRC country office has a limited access to the places of detention, but according to its mandate it can submit its findings only to the Uzbek Government, refraining from making them public.

For more detailed information on the situation with torture in Uzbekistan and individual cases please [See Appendix # 4.](#)

### **Detention conditions and treatment for religious prisoners**

The research team found out that persons accused and convicted for anti-state crimes [usually, religiously or politically motivated crimes] were subject to particularly rude conditions of detention and to harsh

treatments. Religious or political prisoners, who are serving prison terms in the same prison facilities than other types of inmates, do not enjoy the same range of rights. Their rights, such as the right to correspondence and written communication with home or the right to receive food and other necessary hygiene items from home, are widely restricted. Letters and other written communications are widely censored and do very rarely reach the recipients. Food and hygiene items, addressed to the religious and political prisoners by their family and their friends, often do not reach them.<sup>1</sup>

The religious and political prisoners, unlike other types of inmates, are annually forced by the prison authorities to write official letters of apologies to the name of the Uzbek people and the head of state. The prison authorities really often deprive them of their rights. They tend to easily blame religious and political prisoners of any breach of internal regulations and rules and to put them into isolated cells. This is a useful tool, in the hands of the Uzbek authorities, to control detainees release, which could be possible under annual amnesty acts. If a prisoner breaks internal regulations twice and more, he might not be eligible for amnesty. Other inauspicious practices are developed by groups of inmates who are willing to cooperate with the prison administration. They are given official power and position, as members of squad. With the help of such squads, the prison authorities maintain a constant control over religious and political prisoners, stay informed about everything in the prison, and use them to build false criminal cases against the religious and political prisoners and to accuse them with breach of internal rules.<sup>2</sup>

Detainees' family is not immediately informed about the detention of their relatives. The notification to the family and to representatives is not fixed in the protocol of detention - there is no such section in the official form of the protocol in Uzbekistan. Detainees do not undergo medical examination immediately after they arrive and before being placed in places of pre-trial detention. This is not part of the required procedural steps and it is neither registered in the protocol of detention. In breach of the Uzbek Criminal Procedural Code, investigators, prosecutors and judges do not ask detainees, suspects or accused about how he/she was treated during pre-trial detention. Detainee cannot have a prompt and immediate access to a legal counsel and to close relatives within 24 hours after the arrest. The national legislation does not provide provisions allowing unmonitored contact with legal counsel and relatives within the first 24 hours.

Discrimination against religious prisoners, in the enjoyment of their fundamental rights, by the prison administration is more than glaring. Religious prisoners, in comparison with ordinary prisoners, are strongly limited in their right to free correspondence with their relatives. Their letters are subjected to wide censorship by the prison administration.

### **Unhindered access to places of detention and independent prison monitoring**

Independent non-governmental investigators, including international NGOs, do not have a full and prompt access to all detention places - that is police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics – and as such have no means to monitor personal treatments and conditions of detention. The procedure for obtaining such authorizations is not clear at all.

The Government's report states that the Central Penal/Criminal Punishment Department allows unhindered access to penitentiary institutions for the members of diplomatic corps, for international non-governmental organizations, for local nonprofit organizations and for the media (including foreign ones). Instructions about the organization of visits to penal institutions are now available and on record at the Ministry of Justice. Uzbekistan is setting up a system that will open to civil institutions' representatives an access to penitentiary facilities. According to the State report, the Central Penal Correction Department would have produced a model agreement to govern access by non-profit organizations to detention places.<sup>3</sup>

This statement must be disallowed. The model agreement has never been made public or otherwise disseminated among the stakeholders. No system allows to representatives of the civil society an access to

<sup>1</sup> The research team interviewed Mamura Qodirova, the mother of a religious prisoner Surat Qodirov, who is now held in prison facility 64/51 in the Koson district of Kashkadarya region, September 12, 2007, Tashkent, Uzbekistan.

<sup>2</sup> The research team interviewed Muqaddas Shahidova, Umida Jumaeva and Mamura Qodirova, mothers of religious prisoners from prison facility 64/51 in Koson district of Kashkadarya region, September 12, 2007, Tashkent, Uzbekistan.

<sup>3</sup> Progress report on the programme of action to comply with the Convention against Torture and the recommendations of the Special Rapporteur, Mr. Theo van Boven, to the Third periodic report of the Uzbek Government to the CAT.

penitentiary facilities. The penitentiary system in Uzbekistan remains a closed system. Official review bodies (regulators, public account bodies, governmental and quasi-governmental supervisory bodies), any other bodies which are involved in the penitentiary environment (probation services, social welfare, child protection, schools and etc.) as well as non-governmental organisation and academics, all rely on detailed and reliable statistical information on how the penitentiary system operates in practice. Such information in Uzbekistan is, almost invariably, for „internal use only” and is not made available to the general public or to outside bodies (this is one of the obstacles in our research). Such statistics are made available to outsiders on an entirely discretionary basis. Having access to detention places, such as police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics, has become even more difficult since the Andijan events, in May 2005.

According to the Law “On Ombudsman”, the Ombudsman’s office visits all detention places, including police lock-ups, pre-trial detention centers, National Security Service detention facilities, detention units of medical and psychiatric institutions and clinics, in order to monitor treatment and conditions of detention. The Ombudsman is empowered with the authority to inspect, as he wants to, as necessary and without notice, any place of detention. The Ombudsman’s institution in Uzbekistan is fully dependent from the executive branch and its visits to detention places may not shed any light on the situation. Reports of the Ombudsman’s office upon visiting detention places, including conclusions and recommendations, are not made public. It is one of the reason why it is so complicated to follow up the recommendations of the Ombudsman’s office and its implementation by the Main Directorate for Penitentiary Institutions of the Ministry of Internal Affairs.

### **Implementation of *habeas corpus* law**

Starting from January 1<sup>st</sup> 2008 Uzbekistan introduced a new institute of criminal justice system “*habeas corpus*”, i.e. from this moment the power of Public Procurator to sanction the application of a preventive measure in the form of pre-trial arrest has been transferred to courts on criminal cases.

The analysis of the new system of sanctioning the pre-trial arrest in Uzbekistan only for the first few months after it has entered into force has revealed the following major problems which should immediately be addressed by the Uzbek Government:

- The need to institute a position of a special judge for implementing *habeas corpus* or supervising over the pre-trial investigation. According to part 5 article 243 of the CPC of the Republic of Uzbekistan in a new wording, the petition for application of pre-trial arrest as a preventive measure is considered by an individual judge. Monitoring conducted with the target groups has shown that in practice the basic principle of the institute of “*habeas corpus*” - the principle of decision of the question on application of pre-trial arrest by an independent judicial body is gravely roughly broken. Absence of a special judge, authorized to solve only question of the application of pre-trial arrest as a measure, sometimes in practice results causes the same judge who passed decision on the application of pre-trial arrest then hear the criminal case concerning the same person. Or often one of the judges decide to apply pre-trial arrest against the detained suspect or accused, and his other colleague-judge from the same court (district, city, etc.) then hears the criminal case against the same person;
- The need to authorise a special judge for *habeas corpus* to pass decisions on all aspects of pre-trial investigation which potentially could restrict constitutional rights of a person. The newly introduced system of “*habeas corpus*” in Uzbekistan provides the court only with the exclusive right of deciding the issue of application of pre-trial arrest as a preventive measure. Other preventive measures (chapter 28 of the CPC of the Republic of Uzbekistan), other compulsory measures during pre-trial investigation and trial (chapters 26-27 of the CPC of the Republic of Uzbekistan), and also other measures limiting in some ways the rights of the suspect (accused), except for court, can also be applied by investigator, pre-investigation inquirer and the Public Procurator (house arrest, a compulsory placement into a medical institution for conducting judicial-psychiatric examination, leaving on parole, a personal guarantee, guarantee of a public association or colleagues of the detained suspect or accused, searching and seizing different objects in personal premises, releasing on the security, interception of messages and telephone communication, placing the minor under supervision, a pledge on appropriate behavior, supervision of the commandment over behavior of military suspect or accused, discharge from an official position, etc.);

- A setback from the established international standard of unsanctioned detention of a person. Part 1 of art. 226 of the Criminal Procedural Code in a new wording reads: “*Detention can not be longer than seventy two hours from the moment of bringing a detainee to police station or location of other law enforcement agency. Upon submitting necessary and sufficient justifications by investigator or the Public Procurator detention can be prolonged by the decision of the court to additional forty eight hours*”. Thus, art. 226 of the CPC in a new wording authorize to detain the person without official sanction and presentation of charges for up to 120 hours;
- Closeness of judicial hearing concerning habeas corpus. Part 6 of article 243 of the CPC in a new wording stipulates hearing of the petition on application of pre-trial arrest in the closed session of the court. Part 4 of article 247 of the CPC (Order of prolongation of pre-trial arrest in the custody) also stipulates hearing of the petition on prolongation of pre-trial arrest term in the closed judicial session.

For more detailed information on the implementation of the new habeas corpus law please See Appendix # 3.

### **Implementation of the law on abolition of death penalty**

Starting from January 1<sup>st</sup> 2008 the Republic of Uzbekistan abolished death penalty as one of the types of punishment for committing the gravest crimes, and replacing the given type of the criminal punishment with life imprisonment or long-term imprisonment. Veritas considers this decision of the Government of Uzbekistan as one of the first necessary steps towards liberalization of criminal justice system.

However, monitoring of the implementation of the new law concerning abolition of death penalty in Uzbekistan and substituting it with life-imprisonment and long-term imprisonment indicates to the following problems:

- The right of prisoners sentenced to life imprisonment or long-term imprisonment to submit a suit for pardon appears over too long period of time:

*“... A suit for pardon can be submitted by a person condemned to life imprisonment after actual serving of twenty five years of the appointed punishment, and if while serving the appointed punishment the life prisoner has firmly followed a way of correction, has no disciplinary punishments record for violation of the established prison internal order, holds honest attitude toward work and training, takes active part in educational activities in the prison - after actual serving of twenty years of the appointed punishment.*

*The suit for pardon can be submitted by the person condemned to long-term imprisonment after actual serving of twenty years of the appointed punishment, and if while serving the appointed punishment the prisoner has firmly followed a way of correction, has no disciplinary punishments record for violation of the established prison internal order, holds honest attitude toward work and training, takes active part in educational activities in the prison - after actual serving of fifteen years of the appointed punishment”.*<sup>4</sup>

Moreover, the possibility of pre-schedule submission of the suit for pardon is put under very strict dependence from the will of the administration of the prison, giving to the prison administration the right to determine “...*whether the prisoner has risen firmly on a way of correction, whether he has broken the established prison internal order, whether the prisoner holds honest attitude to work and training, whether the prisoner takes part active participation in educational activities in the prison*”. In conditions of closeness of the prison facilities and absence of any public rules on management of prisons in Uzbekistan, it is obvious that the above named powers of the prison administration are carried out without any public control;

- The Government of Uzbekistan avoids applying individual approach to every life prisoner or long-term prisoner. The Government tries to bring all life prisoners under identical conditions of imprisonment. It is also demonstrated in the amendment to art. 136 (Order of serving of life

<sup>4</sup> Section (11) of art. 1 of Law “On changes and amendments into some legislative acts of the Republic of Uzbekistan in connection with abolition of death penalty”.

imprisonment) of the Criminal Punishment Execution Code. This amendment was introduced in connection with abolition of death penalty in Uzbekistan:

*“... During the first ten years the life prisoner serves the prison term under strict conditions of imprisonment.*

*After serving of no less than ten years of the prison term the life prisoner who does not have violation of the established prison internal rules in his personal records can be transferred from strict conditions of imprisonment to general conditions of imprisonment.*

*After serving of no less than fifteen years of the prison term the life prisoner who does not have violation of the established prison internal rules in his personal records can be transferred from general conditions of imprisonment to facilitated conditions of imprisonment”.*<sup>5</sup>

Such order of application of measures of encouragement on the life prisoners (transferring from strict conditions to the general conditions and then to the facilitated conditions of the imprisonment, established in the Criminal Punishment Execution Code of Uzbekistan, contradicts a Progression Principle of management of life prisoners. The Progression Principle means that individual planning of management of the life prisoner should be aimed at maintenance of his progressive promotion throughout the prison system with simplified and fair transfer from strict conditions of imprisonment to the general and facilitated conditions of imprisonment. Persons who have committed crimes, differ as well as the crimes they commit;

- Pursuant to Cabinet of Ministers’ decision No. 239-33 of May 5, 1994, “Protection of Uzbek State secrets”, the date when and the place where a death penalty would be executed are categorized as State secrets and are kept completely confidential. This rule can also be found in article 140 of the Code of Criminal Procedure. To date the Uzbek Government hasn’t disclosed this information. This causes immense pain over the relatives of the person executed.

For more detailed information on implementation of the new law on abolition of death penalty please *See Appendix # 2*.

### **Freedom of association and assembly and repression against civil society**

In a country like Uzbekistan it is dangerous to convey facts about human rights violations and protect human rights, to criticize poor human rights records of the government and to identify the alleged perpetrators. Victims of torture, their families, human rights activists, journalists and involved lawyers face huge pressure and are subject to constant persecutions.

The Uzbek Government doesn’t tolerate criticism from the side of the civil society organizations and activists and tends to persecute for doing this. According to our estimation in years 2005-2007 more than 400 local NGOs all over Uzbekistan have been forcedly closed. Other remaining 300 local NGOs have been forced to join the newly created GONGO – National Association of NGOs of Uzbekistan through hands of which the Uzbek Government keeps tight control on the activities of the NGOs.

The Uzbek Government doesn’t register human rights groups as official NGOs. To date the government has registered only 3 human rights groups after long international pressure. According to our studies to date 15 Uzbek human rights activists and independent journalists remain in jail for their civic activity and position.

The government strongly restricts the right to freedom of assembly for the civil society activists. Registered NGOs must inform the government bodies beforehand about all of their public gatherings and events. Unregistered human rights defenders and groups practically can not conduct their meetings and events.

### **D. Identification of achievements, best practices, challenges and constraints:**

In our opinion to date the achievements of the Uzbek Government which could receive only conditional and symbolic appraisals are the following:

<sup>5</sup> Sections (4), (5) and (6) of Art. 136 of the Criminal Punishment Execution Code.

- New *habeas corpus* law;
- New law on abolition of death penalty;
- The recent presidential Decree on “Program of measures dedicated to 60<sup>th</sup> anniversary of the adoption of the Universal Declaration of Human Rights” under which all law enforcement bodies and national human rights institutes were ordered to study the effectiveness and performance of human rights appeals and complaints review bodies in state organs.

Challenges and constraints in our mind are made up from the following:

- Lacks and weak points in the new laws on *habeas corpus* and abolition of death penalty;
- Prison conditions and treatment for religious prisoners;
- Widespread torture and similar ill-treatment in criminal justice system;
- Repression against independent activists and strong government control over the local civil society.

**E. Key national priorities, initiatives and commitments that the State concerned intends to undertake to overcome those challenges and constraints and improve human rights situations on the ground:**

We think the State Party should undertake to overcome the following challenges and constraints in the coming years:

- Ending torture and similar ill-treatment in the criminal justice system: creating independent review mechanism; amending definition of torture in art. 235 of the Criminal Code in accordance with international standards, particularly in accordance with art. 1 of the UN Convention against Torture; bringing perpetrators of torture to justice and punishing them;
- Providing unhindered access to places of detention for independent observers and monitors;
- Stop harassing and discriminating religious prisoners;
- Instituting a position of special judges on *habeas corpus* with power to pass decisions on all aspects of pre-trial investigation trespassing fundamental constitutional rights of a person;
- Strengthening the role and true independence of the National Human Rights Institutes in Uzbekistan; excluding them from the government structures: e.g. National Human Rights Centre is a part of the Uzbek Cabinet of Ministers;
- Strengthening civil society’s independence and capacity.

**F. Expectations of the State concerned in terms of capacity-building and requests, if any, for technical assistance:**

In our mind the State Party shall need the international assistance in overcoming the following challenges and constraints:

- Creating independent review mechanism for torture allegations;
- Providing unhindered access to places of detention for independent observers and monitors;
- Instituting a position of special judges on *habeas corpus* with power to pass decisions on all aspects of pre-trial investigation trespassing fundamental constitutional rights of a person;
- Strengthening the role and true independence of the National Human Rights Institutes in Uzbekistan; excluding them from the government structures: e.g. National Human Rights Centre is a part of the Uzbek Cabinet of Ministers.

**G. Presentation by the State concerned of the follow-up to the previous review:**