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United Nations Office on Drugs and Crime

Regional Office for Central Asia

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CRIMINAL JUSTICE REFORMS IN UZBEKISTAN: BRIEF ANALYSIS AND RECOMMENDATIONS

This document was developed as part of the implementation of the *Action Plan ("Roadmap") on further development of cooperation between the Republic of Uzbekistan and the UNODC in 2017-2019* (signed in November 2017), and taking into account mandate of UNODC in the field of crime prevention and criminal justice

Tashkent, April 2018

About United Nations Office on Drugs and Crime

United Nations Office on Drugs and Crime (UNODC) is a global leader in the fight against illicit drugs and international crime. It was established in 1997 through a merger between the United Nations Drug Control Programme and the Centre for International Crime Prevention, UNODC operates in all regions of the world through an extensive network of field offices.

UNODC is mandated to assist Member States in their struggle against illicit drugs, crime and terrorism, through working in the following areas:

Organized crime and trafficking. UNODC helps Governments react to the instability and insecurity caused by crimes like the smuggling of illicit drugs, weapons, natural resources, counterfeit goods and human beings between countries and continents. It is also addressing emerging forms of crime, such as cybercrime, trafficking in cultural artefacts and environmental crime.

Corruption. Corruption is a major impediment to economic and social development, UNODC partners with the public and private sectors, as well as civil society, to loosen the grip that corrupt individuals have on government, national borders and trading channels. In recent years, the Office has stepped up its efforts to help States recover assets stolen by corrupt officials.

Crime prevention and criminal justice reform. UNODC promotes the use of training manuals and the adoption of codes of conduct and standards and norms that aim to guarantee that the accused, the guilty and the victims can all rely on a criminal justice system that is fair and grounded on human rights values. A strong rule of law will also instill confidence among citizens in the effectiveness of the courts and the humanness of the prisons.

Drug abuse prevention and health. Through educational campaigns and by basing its approach on scientific findings, UNODC tries to convince youth not to use illicit drugs, drug-dependent people to seek treatment and Governments to see drug use as a health problem, not a crime.

Terrorism prevention. On this issue, UNODC is moving towards a more programmatic approach that involves developing long-term, customized assistance to entities involved in investigating and adjudicating cases linked to terrorism.

UNODC has developed and produced an extensive number of publications and online tools on each of the areas of work. In the words of UNODC Executive Director Yury Fedotov:

"If UNODC provides services that you require, or if you would like to support our work, please call on us. Working together to take action against drugs, crime, corruption and terrorism, we can increase security and improve the lives of individuals, families and communities all over the world."

At a time when these problems without borders are becoming widely recognized as threats to individuals and nations alike, requests for coordinated UNODC initiatives at the national, regional and transnational levels continue to grow. Our work enhances security and improves the everyday lives of people across the globe.

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Introduction

«Ensuring the rule of law and further reform of the judicial and legal system of the Republic of Uzbekistan» is the second of the five strategic priorities in the development of Uzbekistan under the *Action Strategy for Five Priority Areas of Development of the Republic of Uzbekistan in 2017-2021* (State Strategy).¹ In order to realise this priority, the government of Uzbekistan has identified the following six goals:

- 2.1. *Ensuring genuine independence judicial authorities, increasing the authority of the court, democratization and improvement of the judicial system*
- 2.2. *Providing guarantees of reliable protection of citizens' rights and freedoms*
- 2.3. *Improvement of administrative, criminal, civil and economic legislation*
- 2.4. *Improving the system of combating crime*
- 2.5. *Further strengthening of the rule of law in the judicial and legal system*
- 2.6. *Improvement of the system of rendering legal assistance and services*

As part of the State Strategy implementation, to ensure judicial independency, increasing quality and transparency of the justice system, a number of normative legal acts have been adopted. For example, the tenancy of judiciary was increased to the unlimited one,² the procedure for the return of criminal cases by the courts for the purpose of additional investigation was cancelled; the maximum period of pre-trial detention was reduced to 48 hours and "compulsory public works" – a new form of punishment not related to deprivation of liberty was introduced.³

As a result, just for 10 months of 2017, courts acquitted 191 persons, whereas in the last five years only 7 persons were acquitted. In addition, in the current year, the investigation of 3,511 criminal cases was terminated for rehabilitating and other grounds. At the same time, the analysis of law enforcement practice shows the existence of problems and gaps in the legislation that prevent the legality and objectivity in the collection, consolidation, verification and evaluation of evidence in the process of investigation and consideration of criminal cases.⁴

As part of the 2018 State Programme accomplishment,⁵ 37 goals and objectives were developed to implement the second strategic priority.⁶ The present analysis of the current reforms, as well

¹ See Decree of the President of the Republic of Uzbekistan No. UP-4947 "Action Strategy for Five Priority Areas of Development of the Republic of Uzbekistan in 2017-2021", 7 February 2017, at http://lex.uz/pages/getpage.aspx?lact_id=3107042 (in Russian).

² See Art. 63(1) of the Law «On Courts» (amended as of 12 April 2017, No. ZRU-428): "A judge shall be appointed or elected in accordance with the established procedure for an initial five-year term, another ten-year term and the subsequent indefinite period of tenure".

³ See Law No. ZRU-421, adopted on 29.03.2017 "On introducing amendments and additions to some legislative acts of the Republic of Uzbekistan in connection with the adoption of additional measures to ensure the reliable protection of the rights and freedoms of citizens".

⁴ See Decree of the President of the Republic of Uzbekistan No. UP-5268 "On additional measures to strengthening guarantees of citizens' rights and freedoms during judicial and investigative activities", adopted on 30 November 2017.

⁵ See Decree of the President of the Republic of Uzbekistan No. UP-5308 "On the State Programme on Implementing the Action Strategy for Five Priority Areas of Development of the Republic of Uzbekistan in 2017-2021 during the "Year of Supporting Active Entrepreneurship, Innovative Ideas and Technologies", dated 22 January 2018.

⁶ See Attachment to the Decree of the President of the Republic of Uzbekistan No. UP-5308 "On the State Programme on Implementing the Action Strategy for Five Priority Areas of Development of the Republic of

as suggestions and recommendations, concern primarily *criminal justice system*. In particular, the system of practices and institutions of governments directed to fulfil the roles and tasks assigned to them in the society, including maintaining public order, preventing and detecting crime, applying criminal sanctions to those who violate laws, rehabilitating those who were punished by mistake or in violation of the law; the system that provides protection of suspects or accused of committing crimes and serving sentences against abuse of investigatory and prosecution powers.

I. The legal basis for criminal justice of the Republic of Uzbekistan

The legal basis for criminal justice of the Republic of Uzbekistan constitute the following main normative legal acts: the Constitution of the Republic of Uzbekistan – the main law of the state; codes – Criminal Code (CC), Code of Criminal Procedure (CCP), Criminal Penal Code (CPC); special laws – «On Courts», «On Prosecutor's Office», «On Advocacy», «On social protection and guarantees of defence lawyers' professional activities», «On Internal Affairs». There are also hundreds of other laws and bylaws, including Resolutions of Plenums of the Supreme Court of the Republic of Uzbekistan, internal regulations and other regulations that clarify, supplement, prescribe the performance of an action depending on the nature of the criminal offence. Finally, considering that Uzbekistan is a subject of international law, the system of criminal justice of the country also regulates a number of international human rights treaties that are obligatory for its implementation in accordance with international law, as well as under the Constitution (Preamble) and the Law "On international treaties of the Republic of Uzbekistan" (Article 27).

II. The main goals and objectives in the reforms of criminal justice in 2018

The State Programme provides for the following measures in the five priority areas:

- ✓ **in the area of improving the system of state and public construction** – to increase prestige and effectiveness of the civil service; review the tasks and structures of executive bodies; increase the independence of heads of ministries, agencies and (other) state authorities in the field; transfer certain powers of central authorities to local authorities; radically increase the availability, quality and efficiency of public services; provide every possible support to the civil society institutions and the media;
- ✓ **in the area of ensuring the rule of law and further reform of the judicial and legal system** - further strengthening the constitutional guarantees of the personal privacy of citizens, including by transferring to courts the right to issue warrants for searches and wiretapping and creating of the Commission under the Oliy Majlis for the Promotion of the Independence of the Judiciary; radically reform the system of national security bodies; provision of video surveillance systems for temporary detention facilities, pre-trial detention centres and penal institutions; provision of Road Patrol and Fixed Patrol Services with the mobile cameras; optimization of the number of stationary patrol posts;
- ✓ **in the area of economic development and support of active entrepreneurship** - creation of favourable legal and organizational conditions for the development of active entrepreneurship and introduction of innovative ideas and technologies; further improvement of legal guarantees for protection and mechanisms for preventing illegal interference in the activities of business entities, tax and customs policy, banking and financial sector; developing a strategy for reforming the agricultural sector; move from the granting individual privileges towards granting privileges to branches and spheres of the economy; active development of the regions;

- ✓ **in the area of development of social sphere** - implementation of a set of measures to further strengthen social protection and health protection of citizens; create an extensive network of social pharmacies; increase employment and real incomes of citizens; define a "consumer basket"; expand social housing construction; provide full and targeted support to socially vulnerable groups of people and persons with disabilities;
- ✓ **in the area of security, inter-ethnic harmony and religious tolerance, as well as foreign policy** - adopt new National Security Concept of the Republic of Uzbekistan; implement set of measures to further strengthen and develop military and military-technical cooperation with foreign counterparts; improve the system of guarding and protection of the state border; counter terrorism, extremism and information threats; strengthen interethnic and interfaith concord, religious tolerance; radically reform the activity of the Ministry of Foreign Affairs and diplomatic missions; improve the effectiveness of protection of the rights and interests of citizens abroad; and continue mutually beneficial foreign policy; develop trade and economic, cultural and humanitarian relations.

In particular, Section 2 "**MAIN AREAS OF ENSURING RULE OF LAW AND FURTHER REFORM OF THE JUDICIAL AND LEGAL SYSTEM**" provides for the following:

2.1. Ensuring genuine independence judicial authorities, increasing the authority of the court, democratization and improvement of the judicial system

- The draft law of the Republic of Uzbekistan:
 - Improvement of the legal basis for the status of judges with a view to ensure the independence of judges. **(1 April)**
 - Elaboration of additional legal measures to ensure the objectivity and thoroughness of pre-investigation checks, inquiry and preliminary investigation, and independence of judges. **(1 April)**

2.2. Providing guarantees of reliable protection of citizens' rights and freedoms

- The draft law of the Republic of Uzbekistan:
 - Further strengthening of the system of protection of citizens' rights and freedoms. **(20 July)**
 - Expansion of judicial control over the inquiry and preliminary investigation in the framework of further expansion of the "Habeas Corpus" institute based on best practices of foreign countries. **(20 July)**
 - Ensuring protection of citizens' rights and freedoms from criminal encroachments, as well as preventing violations of their legitimate interests, humiliation of honor and dignity. **(1 April)**
 - Further strengthening of the protection of citizens from torture or other methods that degrade the honor and dignity of the individual. **(1 April)**
 - Development of specific and transparent mechanisms for the distribution of prisoners to penal institutions with a view to further improve the protection of prisoners' rights. **(1 April)**
 - Development of the draft law "On Personal Data Protection", establishing the legal status of personal data and regulating the mechanism for their protection. **(1 December)**

2.3. Improvement of administrative, criminal, civil and economic legislation

- Introduction of advanced international standards in the field of transparency of the criminal process, consolidation of the adversarial principle between the parties, protection of individual rights in criminal proceedings. **(30 March 2018) Responsible agencies: General Prosecutor's Office, Supreme Court, Ministry of Interior, National Security Service, State Customs Committee (SCC), Ministry of Justice, Chamber of Advocates, Institute for Monitoring of Current Legislation under the President of the Republic of Uzbekistan, Tashkent State Law**

University, Ministry for the Development of Information Technologies and Communications)

- Development of the draft law of the Republic of Uzbekistan "On Law Enforcement Agencies", which provides measures to ensure law and fairness in the activities of law enforcement agencies. **(10 October 2018) Responsible agencies: Office of the President, General Prosecutor's Office, National Security Service, Ministry of Interior, Ministry of Justice, SCC, State Tax Committee (STC))**
- Implementation of effective comprehensive measures to eliminate corruption and causes and conditions that contribute to it. **(1 May 2018) Responsible agencies: GPO, Mol, National Security Service, SCC, STC, Ministry of Justice, ministries and agencies)**
 - Draft legal regulatory act. Draft provides for approval of the Plan of Comprehensive Measures. The Plan provides for the following:
 - further improvement of anti-corruption legislation;
 - revision of the investigative jurisdiction of criminal cases related to corruption, with a view to strengthening the protection of individual rights in preliminary investigations;
 - creating an unacceptable attitude towards corruption in society;
 - measures to prevent corruption in the sectors of education, healthcare, social welfare and other sectors;
 - Timely detection of offenses related to corruption, their elimination, elimination of the causes and conditions that contributed to their commission;
 - Conducting organizational measures, research, as well as international cooperation on combating corruption.
- Development of the draft law of the Republic of Uzbekistan "On Administrative Supervision of Persons Released from Penal Institutions", which provides for the improvement of the administrative supervision system. **(20 July 2018) Responsible agencies: Mol, GPO, Ministry of Justice)**

2.4. Improving the system of combating crime

- Establishment of a probation service for the execution of sentences not related to deprivation of liberty. **(20 November 2018). Mol, GPO, Ministry of Employment and Labour Relations, Supreme Court, Ministry of Justice, Republican Council for the Coordination of the Activities of Citizens' Self-Government Bodies, Youth Alliance of Uzbekistan, Women's Committee of Uzbekistan)**
- Implementation of additional measures to turn internal affairs bodies into a service that has respect and attention in society. **(30 March 2018) Responsible agencies: Mol, GPO, Republican Council for the Coordination of the Activities of Citizens' Self-Government Bodies, Women's Committee of Uzbekistan, Youth Alliance of Uzbekistan)**
 - Draft Resolution of the President of the Republic of Uzbekistan. The draft provides for the following activities on the example of Tashkent city:
 - Introduction of effective mechanisms for ensuring security, preventing crime and delinquency, considering the peculiarities of the capital;
 - Direction of the main forces and means of the internal affairs agencies to the places;
 - Establishment of cooperation between Interior bodies with citizens' self-government bodies and other civil society institutions.

2.5. Further strengthening of the rule of law in the judicial and legal system

- Support for scientific and technical activities of law enforcement bodies by improving the forensic expertise procedure, as well as introduction of new types of forensic expertise and innovative

technologies. **(10 September 2018) Responsible agencies: Ministry of Justice, GPO, Mol, Supreme Court, Ministry of Innovative Development)**

- Draft Resolution of the Cabinet of Ministers. The draft provides for the following:
 - Improvement of forensic activity based on international standards (implementation of "ISO/IEC 17025" standards);
 - Development of an interagency electronic system to monitor timing and quality of forensic examination;
 - Strengthening the material and technical support for the forensic centers;
 - Establishment of new types of forensic examinations.
- Establishment of the Academy of the General Prosecutor's Office. **(1 May 2018) Responsible agencies: GPO, Ministry of Higher and Secondary Education, Ministry of Justice, Ministry of Finance, Ministry of Employment and Labor Relations)**

2.6. Improvement of the system of rendering legal assistance and services

In turn, Section 5 "PRIORITY AREAS IN THE FIELD OF SECURITY, RELIGIOUS TOLERANCE AND INTER-ETHNIC HARMONY, AS WELL AS THE IMPLEMENTATION OF BALANCED, MUTUALLY BENEFICIAL AND CONSTRUCTIVE FOREIGN POLICY" provides among others for the following:

- Determination of measures to consistently improve the system of guarding and protection of the State Border of the Republic of Uzbekistan.
 - Improvement of the material and technical base of the border troops in the system of guarding and protection of the state border; as well as several organizational and legal measures by practical introduction of modern and advanced sources of ensuring border security. **(During the year. Responsible agencies: National Security Service, Ministry of Defense, Mol, Ministry of Finance)**
 - Development of the draft law "On Countering Extremism", aimed at preventing, countering and eliminating the threats of extremism.
 - define the meaning of extremism, mechanisms of counteraction to it, its prevention and addressing; principles, methods, responsible authorized bodies, as well as aspects of international cooperation. **(30 August 2018) Responsible agencies: GPO, National Security Service, Mol, Ministry of Defense, National Guard, SCC)**
 - Identification of measures to prevent spreading of extremist and terrorist ideology in the country with the use of information resources, as well as an Internet.
 - establishment of standalone departments at the appropriate human rights advocacy authorities on timely prevention of the dissemination of extremist and terrorist ideas through global and national information resources;
 - defining the main tasks and functions of these departments in the prevention, detection and elimination of cases of dissemination of extremist and terrorist ideas in the media, the Internet and social resources, as well as the aspects of cooperation of these departments with other institutions. **(1 August 2018) Responsible agencies: Mol, National Security Service, GPO, Ministry of Information Technologies, Press and Information Agency, Committee for Religious Affairs)**

The present analysis considers the legislation and practice of the Republic of Uzbekistan, and provide recommendations on the three main areas of criminal justice reforms in Uzbekistan: 1) Improvement of the judicial criminal system; 2) criminal procedure; 3) criminal law.

III. Proposals and recommendations taking into account the tasks set within the framework of the 2017-2021 State Action Strategy

The main codes and laws governing the criminal justice system of the Republic of Uzbekistan were adopted in the first years of independence (CC and CPC were adopted on 22 September 1994; PEC - on 25 April 1997; the Law "On Courts" - on 2 September 1993; the Law "On the Prosecutor's Office" - on 9 December 1992). By adopting the system of customary Soviet justice, the "new" codes and laws largely duplicated the system of Soviet criminal justice. Despite numerous amendments introduced to these documents almost annually, the criminal justice system of independent Uzbekistan remains, in fact, the same. Unfortunately, until now most of the articles either are implemented in a distorted form, or do not find their implementation in practice, or are completely contrary to international standards and norms adopted by the Republic of Uzbekistan. Thus, the presumption of innocence (Article 26 of the Constitution and part 2 of Article 4 of the Criminal Code of Uzbekistan) - in practice - ends immediately, as soon as a person falls into the field of view of the investigative authorities. The right to defence is not being implemented to the proper extent, since despite the recognition of the principle of equality and adversarial system in the criminal trial in the Criminal Procedure Code (Article 25), the court often takes the side of the prosecution, leaving no chance for the defendant to defend and justify.

It is necessary here to understand that reforming the system of (criminal) justice that existed and is functioning for almost 100 years requires not only absolute support and desire of political leaders - they are present in Uzbekistan - but also courage, even obsession with the idea of a full-scale rethinking of this system, at the level of catalysts for ideas, performers, and the international community. Firstly, because such systemic reforms presuppose revision of not only dozens of laws and bylaws, practices and habits of professionals, including among academic legal community, but also a large-scale work aimed at the consciousness of people in society, with the view to break prevailing stereotypes that reflect understanding of the system in a given society. Secondly, creation of a criminal justice system, as the part of a truly democratic society, should not be understood too narrowly, and only be limited to reviewing certain laws or activities of judicial, law enforcement authorities and lawyers, or to certain changes in existing legislation and changing the signboard on the same "rake". In order to fill the identified gaps, it is necessary to continue the complex reform of the old system, and not to limit reforms to the adoption of new codes with old content.

The reforming efforts should lead to a radical transformation of the entire state machinery of justice, dealing with both criminal law and criminal procedure, and the penal enforcement system. The result of such a transformation should be the public's confidence in the new system free from corruption, built exclusively on the principles of the rule of law, with the aim of protecting human rights and freedoms, and ensuring public safety.

3.1. Aligning national legislation with the accepted international obligations

The system of criminal justice of various countries differs from each other and varies depending on country's state system, level of social and cultural development, history of state system formation, and other enablers. Being a part of domestic legislation, establishment of its own rules, regulations and elaboration of their implementation practice is an expression of the sovereign right of each state.

At the same time, each state, as part of the international community, is bound by internationally recognized principles, norms and standards, because of its international treaty obligations, and, if the norm is recognized by the international custom and/or *jus cogens* - an imperative norm, mandatory for implementation regardless of the will of the state. Uzbekistan is a party to about 70 international human-rights related treaties, including OSCE documents, and six major United Nations international human rights treaties. The Government is engaged in a dialogue on a regular basis not only with the United Nations Charter and Treaty Bodies, but also with special procedures and mechanisms of the Human Rights Council in the form of answering questions, providing information, and inviting to the country.⁷ Uzbekistan has submitted more than 30 state reports to the United Nations treaty bodies⁸ and received relevant recommendations on the elimination of deficiencies in the national legislation and practice of the Republic of Uzbekistan, which violate relevant rights and freedoms of citizens.⁹

1) Brief analysis of the problem

Existing legal instruments governing criminal legal relations in the Republic of Uzbekistan, such as the Constitution, the Criminal Code, the Criminal Procedure Code, the Criminal Executive Code, the Laws "On Courts", "On Prosecutor's Office", "On Advocacy", and "On the Bodies of Internal Affairs", do not always directly prescribe the supremacy of international obligations of the state over its national legislation. Such ambiguity creates difficulties, and, sometimes, the reason for non-observance of the international norm by country's state authorities, despite the fact that the norm is obligatory being a part of international treaty of Uzbekistan.

Thus, the Law of the Republic of Uzbekistan "On Legal and Regulatory Acts" does not include an international treaty to the list of legal and regulatory acts of the country.¹⁰ At

⁷ See the National Report of Uzbekistan, submitted in accordance with paragraph 15 (A) of the Annex to Resolution 5/1 of the Human Rights Council. United Nations Human Rights Council, Working Group on the Universal Periodic Review. Third session, Geneva, 1-15 December 2008.

⁸ There are nine [main international treaties in the field of human rights](#), the most recent of them - on enforced disappearance - came into force on 23.12.2010. Currently, there are 10 treaty bodies, representing the Committees of independent experts; they are created in accordance with the provisions of the treaty, the supervision of which they are carrying out. Nine of them observe implementation of the UN human rights treaties by the States parties, while the tenth - the Subcommittee on Prevention of Torture, established under the Optional Protocol to the Convention against Torture - checks places of detention in the States parties to the Optional Protocol.

⁹ See the Report Status for each of the six UN Committees, where Uzbekistan presents its country reports, here http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=UZB&Lang=EN.

¹⁰ See Art. 5 of the Law "On Legal and Regulatory Acts of the Republic of Uzbekistan" (dated 14.12.2000), which defines the hierarchy of legal and regulatory acts according to their legal power:

the same time, the Law "On International Treaties" provides that "international treaties of the Republic of Uzbekistan are subject to direct and mandatory observance by the Republic of Uzbekistan in accordance with the norms of international law".¹¹ The Law "On Courts" defines that the court in the Republic of Uzbekistan is called upon to exercise judicial protection of the rights and freedoms of citizens proclaimed - inter alia - by "international acts on human rights, rights and interests of enterprises, institutions and organizations protected by law" (Article 2); on the other hand, the Criminal Procedure Code of the Republic of Uzbekistan stipulates that "the procedure for criminal proceedings in the territory of the Republic of Uzbekistan shall be determined [exclusively] by the Criminal Procedure Code" (Article 1). At the same time, the same code - referring to the rule of law - requires all persons, participating in criminal proceedings to "accurately observe and comply with the requirements of the Constitution of the Republic of Uzbekistan, the Code and other legislative acts of the Republic of Uzbekistan" (Article 11). The Constitution of the Republic of Uzbekistan proclaims "the priority of universally recognized norms of international law" in its Preamble, but does not mention the place of the international treaties of Uzbekistan in the legal system of the state and does not establish a mechanism for implementation.

2) *Legal justification of bringing the national legislation into accordance with international obligations of the Republic of Uzbekistan*

One of the universally recognized norms of international law is the principle of *pacta sunt servanda* - treaties must be executed - the norm of international legal custom. The same principle has been enshrined in the Article 26 of the Vienna Convention on the Law of Treaties, to which Uzbekistan is a party since 1995. Article 27 of the same Convention warns that "a party [to the treaty] cannot refer to the provisions of its domestic law as an excuse for not fulfilling the treaty". Article 2 (part 2) of another international treaty binding on Uzbekistan - the International Covenant on Civil and Political Rights (ICCPR) - commits its member states:

"Unless is not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary measures, in accordance with its constitutional procedures and the provisions of this Covenant, to adopt such legislative or other measures as may be necessary to exercise the rights recognized in the present Covenant"

In its General Comment No. 30 (2004), the United Nations Human Rights Committee¹² explains that:

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- 1) The Constitution of the Republic of Uzbekistan
 - 2) Laws of the Republic of Uzbekistan
 - 3) Decisions of the Oliy Majlis of the Republic of Uzbekistan
 - 4) Decrees of the President of the Republic of Uzbekistan
 - 5) Resolutions of the Cabinet of Ministers of the Republic of Uzbekistan
 - 6) Acts of ministries, State committees and agencies
 - 7) Decisions of local government authorities.

¹¹ See Art. 27 of the Law "On International Treaties" dated 22.12.1995 as amended as of 2018.

¹² The UN Human Rights Committee is one of the ten human rights treaty bodies in the UN system. It was created and operates in accordance with Art. 28 of the ICCPR.

"Although paragraph 2 of the Article 2 allows States Parties to implement the rights recognized in the Covenant in accordance with their constitutional procedures, the same principle [reflected in Art. 27 of the Vienna Convention] also works to prevent States Parties from referring to the provisions of constitutional law or other branches of domestic law to justify non-compliance or failure to comply with treaty obligations".

In this regard, it is proposed - when reforming criminal justice in Uzbekistan - to be guided by international obligations of the state in the field of human rights protection. It is necessary to take into account the legal interpretation of the UN treaty bodies, as well as other international instruments that establish norms and standards in the field of criminal justice. The so-called "soft law" - though not formally binding - can serve as the basis for the establishment of a sustainable new justice system in the Republic of Uzbekistan. Examples of nationalization of international norms and standards - as the best practices of various states - will serve as an auxiliary tool in reforms implementation.

3) Recommendations

Following is recommended with a view to ensure proper performance of international obligations by the Republic of Uzbekistan, represented by civil servants of criminal justice:

A) Introduce a directly established ***principle of primacy of international law over the national one*** in the Constitution, as well as in the relevant codes and laws governing the criminal justice of the Republic of Uzbekistan

B) Adopt an ***implementation mechanism***, in accordance with which the norms of international law, which are binding on the Republic of Uzbekistan, will be part of the national legal system. For example - as enshrined in the Constitution of the Russian Federation - Article 15, Part 1:

"The universally recognized norms and international treaties of the Russian Federation are the integral part of its legal system. If the international treaty establishes other norms than those stipulated in the law, then the norms of the international treaty shall apply".

Similar provisions exist in the constitutions of Greece (Article 28), Moldova (Article 4, para 1 and 2), South Korea (Article 6, para 1), Georgia (Article 6, Part 2).

C) Development of a ***mechanism for the direct application of the international norm***, where possible, by court, prosecutor's office, interior authorities, and lawyers.

It is important to note here that the direct application of an international treaty norm in the domestic field extends exclusively to self-executing norms of international law. The concept of "self-executing norms" is given in the constitutions and laws of some states. In the Constitution of Germany, in Article 25, they are qualified as general norms of international law "prevailing over the law and directly generating rights and obligations for the inhabitants of the territory". The Constitution of the Netherlands, Article 93, defines self-executing norms as provisions of treaties and resolutions of international organizations, which may be mandatory for any person because of their content. In the Law "On International Treaties of the Russian Federation" (1995), Article 5, "provisions of officially published international treaties of the Russian Federation, not requiring an

adoption of internal regulations for their application and operating directly" are understood under the self-executing norms.

Thus, self-executing norms must meet the following requirements:

- 1) Have the status of the norm of international law regardless of the legal nature (contractual, ordinary, decision/recommendation of treaty bodies);
- 2) Focus on application by subjects of national law (individuals and legal entities) by their content;
- 3) Have a character of direct action, not requiring an additional domestic act.

An attention should also be paid to the elaboration of a mechanism for interaction between state bodies, citizens and national courts in the process of implementing self-executing norms. For example, within the framework of the existing e-government programme, it is possible to introduce a system for recording self-executing norms to facilitate their implementation in practice and to keep statistics on both the existence of such norms in law enforcement practice in Uzbekistan and the frequency of their application.

3.2. Improvement of the judicial system

The right to be tried by an independent, impartial and competent court established on the basis of and in accordance with the law is an absolute right from which no exceptions can be made.¹³ In this regard, it is necessary to keep in mind that for these rights and guarantees to be ensured, judges should have a guaranteed tenure until they reach the mandatory retirement age or until the expiration of their term of office. Terms of office of judges, worthy remuneration, pensions, conditions for social and physical insurance, retirement age, disciplinary and protective mechanisms, and other working conditions should be provided for and guaranteed by law. The procedure for career promotion for judges should be based on objective criteria, first of all, such as qualifications, professionalism, and experience.¹⁴

1) *Institutional and personal independence and impartiality of the judges*

20 July 2015, the UN Human Rights Committee, having considered the report on the implementation of the International Covenant on Civil and Political Rights, submitted by the Republic of Uzbekistan,¹⁵ has made following comments and recommendations on the effectiveness of the judicial system of Uzbekistan:

¹³ UN HRC, General Comment No. 32, Article 14 "Equality before the Courts and Tribunals and the Right of Everyone to a Fair Trial", paras. 18 and 19; UNCHR, Opinion of 28 October 1992, Miguel Gonzalez del Rio v. Peru, Communication No. 263/1987, para 5.2. See the Arab Charter of Human Rights, Art. 4 (c) and 13 (1).

¹⁴ See "International Standards Relating to Fair Trial and the criminal process in the Republic of Uzbekistan" Practical Guide for Lawyers, Geneva 2011, 17.

¹⁵ Concluding observations on the fourth periodic report of Uzbekistan, CCPR/C/UZB/CO/4, dated 20 July 2015. The Committee has considered the fourth periodic report of Uzbekistan (CCPR/C/UZB/4) at its 3178th and 3179th sessions (CCPR/C/SR.3178 and 3179), held on 8 and 9 July 2015.

“The Committee remains concerned (see CCPR/C/UZB/CO/3, para. 16) about the insufficient independence and impartiality of the judiciary, including the lack of security of tenure of judges—who have their term renewed by the Executive every five years—and regrets the lack of information on the appointment, promotion, suspension and removal of judges. It is also concerned about the independence of the Chamber of Lawyers from the executive branch (art. 14).

The State Party should take all necessary measures to ensure **(a) the full independence and impartiality of the judiciary, including by guaranteeing judges’ security of tenure; (b) that the appointment, promotion, suspension and removal of judges is compliant with the Covenant; (c) that the independence of the Chamber of Lawyers from the executive branch is guaranteed in law and in practice; and (d) that sufficient safeguards are in place to guarantee the independence of lawyers.**¹⁶

The term "independence" of judges, the same as lawyers, has two dimensions: institutional independence and personal independence. Both demand that neither the judiciary nor the judges, who comprise it, including lawyers, be subordinated to any other public authority:¹⁷

- i) *Institutional* independence means that judges, courts, and tribunals are independent of any other branch of government, which means, *inter alia*, that they are not subordinated to other state bodies, in particular, the executive branch, and are not accountable to them. This also means that all other public institutions are obliged to respect and comply with decisions of the judiciary;
- ii) *Personal* independence means that judges are independent of other members of the judiciary. The process of appointing a person to a judicial position must be transparent and must comply with strict selection requirements for judges; in general, it is preferable that the appointment be conducted by judges or an authority independent of the executive or legislative authorities; any method of appointing judges should ensure the independence and impartiality of the judiciary.

In all cases, disciplinary proceedings against judges should comply with the following standards:

(i) Procedures for considering complaints against judges or bringing them to disciplinary liability in connection with acts committed by them in their professional capacity should be established by law. Any complaints or charges against judges should be considered promptly and fairly;

(ii) Judges subjected to disciplinary proceedings, as well as proceedings aimed at suspension of their powers or dismissal, are entitled to an objective hearing of their case,

¹⁶ UN HRC, CCPR/C/UZB/CO/4 (20 July 2015), para. 21.

¹⁷ Human Rights Committee: concluding observations of the Human Rights Committee: Liechtenstein, CCPR/CP/81/Lie, 12 August 2004, para. 12; United States of America, CCPR/C/79/Add.50 paras. 266-304, paras. 288 and 301; Armenia, CCPR/C/79/Add.100, 19 November 1998, para. 8; and the European Court of Human Rights, judgment of 2 September 1998, Lauko v. Slovakia, complaint No. 26138/95, para. 64. Further see "International Principles on the Independence and Responsibility of Judges, Lawyers and Prosecutors", Practical Guide No. 1, International Commission of Lawyers, Geneva 2007, p. 47 etc.

including the right to choose a legal representative, as well as the right to review the decision on disciplinary liability, suspension of their powers or dismissal by an independent and impartial body;

(iii) Judges may not be removed from office or punished for judicial errors committed by *bona fide*,¹⁸ for disagreeing with a specific interpretation of the law, or solely on the grounds that their decision was quashed by the appellate instance or sent to a higher court for review.¹⁹

2) *Specialization of courts, as a measure of securing the right to appear before a competent court*

International standards require ensuring the right for every accused to appear before the competent court.²⁰ The competence of the court is also provided when the judges, considering the cases requiring specialized knowledge and skills, have the qualifications and authority as appropriate for the specifics of the cases.

Thus, the UN Committee on Human Rights, expressing repeatedly its concern in connection with violation by the Republic of Uzbekistan of articles 2, 3, 23, 24, and 26 of the ICCPR, in particular due to the fact that domestic violence against women is still regarded as a family case, cases of forced and early marriages, especially in rural areas do persist, as well as de facto polygamy, despite the legal prohibition of such practices, it is recommended, *inter alia*, "to ensure that law enforcement officers, the judiciary, social workers and medical staff **receive appropriate training on how to detect and deal with cases of violence against women**".²¹

The UN Committee on the Rights of the Child, having considered the second periodic report of Uzbekistan in 2006,²² strongly recommended "that the State party bring the system of juvenile justice fully in line with the Convention, in particular with articles 37, 39 and 40, and with other United Nations standards in the field of juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines); the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty and the Vienna Guidelines for Action on Children in the Criminal Justice System; and the recommendations of the Committee made at its day of general discussion on juvenile justice (CRC/C/46, paras. 203-238). In this regard, the Committee recommends that the State party:

¹⁸ UN Human Rights Committee, Concluding Observations of the Human Rights Committee: Viet Nam, UN Document CCPR/CO/75/VNM, 5 August 2005, para. 10.

¹⁹ See "International Standards Relating to Fair Trial and the criminal process in the Republic of Uzbekistan" Practical Guide for Lawyers, Geneva 2011, p. 15-21.

²⁰ See Universal Declaration of Human Rights (Article 10), the International Covenant on Civil and Political Rights (Article 14.1), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5 (a)), the Convention on the Rights of the Child (Article 37 (d) and 40.2), the UN Basic Principles on the Independence of the Judiciary, Principle 5, the UN Basic Principles on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers.

²¹ UN HRC, CCPR/C/UZB/CO/4 (20 July 2015), paras. 8 and 9, see CCPR/C/UZB/CO/3, para 13.

²² See UN CRC, CRC/C/104/Add.6, 2 June 2006.

- (a) Establish juvenile courts staffed with appropriately trained professional personnel;**
- (b) Take all measures to ensure that detention, including pretrial detention, is used only as a measure of last resort, and not in the case of status offences;**
- (c) Ensure that persons under the age of 18 in custody are separated from adults;**
- (d) Take urgent measures to improve the conditions of detention of persons under the age of 18, and bring them into full conformity with international standards;**
- (e) Strengthen recovery and reintegration programmes and train professionals in the area of social recovery and social reintegration of children;**
- (f) Introduce training programmes on relevant international standards for all professionals involved with the administration of justice;**
- (g) Seek technical assistance from the United Nations Panel Interagency Panel on Juvenile Justice among others.**²³

3) Piloting of jury trial for serious or very serious crimes

"In the field of justice, the state's democracy is determined by the possibility of people's participation in the process of governing justice. There are several ways to involve citizens in this process. The first is the process of election of judges or, at least, participation of representatives of the people in forming the judiciary corps. The second way is the direct administration of justice by the citizens themselves as part of the jury trial. The main idea of the jury trial is that the representatives of the people resolve criminal cases, being guided by the law, common sense, life experience and ideas of morality, ethics, honor and dignity".²⁴

The model of the court of people's assessors, consisting of one judge and two people's assessors, which exists in the criminal legislation of Uzbekistan for many decades, demonstrates its inconsistency, being part of the proceedings, where only seven persons have been acquitted over the past five years.²⁵ Such statistics confirms the fact that the model of people's assessors is one of those remnants of the past that "negatively affects the effectiveness of measures to protect the rights, freedoms and legitimate interests of

²³ CRC/C/104/Add.6, 2 June 2006, para 70.

²⁴ See Dr. Kanafin, Daniyar, *Yearbook of the Legal Policy Research Center 2009*, Almaty, 2010, pp. 21-22.

²⁵ See Decree of the President of the Republic of Uzbekistan No. UP-5268 "On additional measures to strengthening guarantees of citizens' rights and freedoms during judicial and investigative activities", adopted on 30 November 2017.

citizens and, as a consequence, leads to justified discontent of the population, decrease in its trust in law enforcement bodies and in the impartiality of the court".²⁶

In this context, it seems necessary to gradually implement classic jury trial into the judicial system of Uzbekistan in cases of grave and gravest crimes. This model, as is known, allows to ensure the impartiality and independence of the court most effectively, including by acting as an effective anti-corruption mechanism - on the one hand, and as a mechanism for the humanization of judicial practice - on the other hand. In this regard, it is necessary to conduct awareness-raising work among the population about the legal nature and significance of the jury trial for a democratic society.

In order to ensure a more representative jury composition, it is recommended that their number be set no less than twelve; the parties should be given an opportunity to personally interview candidates for jurors and participate in all stages of the formation of the preliminary composition of the jury from the time of the initial selection from the list of candidates until the final formation of the panel; allow unmotivated challenges, apply the random candidates selection process in a more often and open way.

When forming lists of candidates for jurors, it is necessary to exclude any opportunities for manipulations and abuses. This process should be open, simple and understandable for representatives of civil society. For these purposes, it is necessary to introduce in the legislation norms determining the number of jury candidates in an adequate percentage ratio to the population living in the relevant administrative territory. Citizens should have a real opportunity to get acquainted with the lists and check the correctness of their compilation. Powers and responsibilities of state authorities competent to perform relevant functions should be clearly regulated in the law and exclude the interest of these entities in the formation of engaged and non-representative lists of candidates for jurors.

3.3. Criminal Process

1) *Ensuring the right to protection in law and in practice*²⁷

Legal assistance is an essential element of a fair, humane and effective criminal justice system, based on the rule of law. Legal assistance is the basis for the realization of other rights, including the right to a fair trial, as defined in para 1 of the Article 11 of the Universal Declaration of Human Rights, a prerequisite for the exercise of these rights, as well as an important guarantee that ensures the fundamental justice of the criminal justice process and the public trust in it.

Moreover, para 3 (d), Article 14 of the International Covenant on Civil and Political Rights states that everyone should have the right, along with other rights, "to be tried in his/her presence and to defend himself/herself in person or through the defense counsel he/she has chosen; if he/she does not have a lawyer, be informed of this right and have a lawyer assigned to him/her in any such case, when the interests of justice require to do so, free of charge for him/her in any such case when he/she does not have enough means to pay this counsel".

²⁶ Ibid.

²⁷ See "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems", UNODC publication, 2013.

The functioning of a legal assistance system within the criminal justice system can reduce the length of detention of suspects in police stations and detention centers, in addition to reducing the number of prisoners, the number of unjust convictions, reducing the level of prison overcrowding and reducing the burden on the courts, as well as reducing the number of cases of relapse and re-victimization. This can also help protect and guarantee the rights of victims and witnesses of crimes in the criminal justice process. Legal assistance can be used to promote crime prevention by raising awareness of existing legislation.

In 2010, following the submission of the third country report of the Republic of Uzbekistan on the implementation of the ICCPR, the United Nations Human Rights Committee expressed concern about the expansion of the role of the "Ministry of Justice in matters relating to the profession of lawyer, including the application of disciplinary measures against lawyers", and has recommended to the state to **"review their laws and practices and amend them to ensure the independence of lawyers, including through revision of the licensing system"**.²⁸

In the pre-trial stage, when the person is detained and the issue of applying a preventive measure in the form of detention is considered, the Article 243 of the Criminal Procedure Code of the Republic of Uzbekistan (Procedure for application of a preventive measure in the form of detention or house arrest) does not provide for a mandatory participation of a lawyer. A lawyer participates, *if he/she is present in the case*. Hereby, the Article 230 of the Criminal Procedure Code stipulates that every detainee has the right to a first interview with a lawyer before the first interrogation. If one article states that the detainee meets with a lawyer prior to interrogation, in another article, the legislator has provided that at the time of authorization of arrest the lawyer is involved, *if he/she is present in the case*, that is, it is assumed that it may not be. Thus, there is a likelihood of exerting pressure on the detainee by law enforcement investigators by convincing that the defender's participation is futile. This leads to the fact that a certain number of detainees reject lawyer's legal assistance and thus lose the right to defense.

Therefore, it is recommended to provide for compulsory participation of the defense counsel in issuing a sanction for detention in order to exclude the possibility of exerting pressure on the detainee. And, if the detainee has no financial resources to invite to lawyer, appointment of a defender at the expense of the state shall be provided for.

Despite the fact that the rule on the need for a lawyer to obtain any permission to visit a client is excluded from the CPC,²⁹ and lawyer is allowed to participate in the case upon presentation of a lawyer's certificate and submission of an order certifying his authority to conduct a particular case,³⁰ in practice, however, the lawyer is still not able to exercise his professional duties without additional "passes". Thus, for example, lawyer who did not

²⁸ See CCPR/C/UZB/CO/3 (7 April 2010), para. 17.

²⁹ CPC of Uzbekistan, Article 52: "If the suspect, accused or defendant is held in custody or under house arrest, the defense counsel has the right to have meetings with him privately without limiting the number and duration of visits without the permission of state bodies and officials responsible for the production of criminal case".

³⁰ Article 49 of the Code of Criminal Procedure of the Republic of Uzbekistan

participate in court in deciding whether to take into custody - to meet with a defendant - is required to present to the pretrial detention facility (egg., in Tashkent prison) (previously it was called "written confirmation of admission") a letter from the investigator, confirming the participation of a lawyer at the preliminary investigation in this criminal case.

Thus, it seems necessary to assign responsibility for requiring additional documents not listed in the CPC for admission to the client from the moment of detention and imprisonment.

Defender's right for unlimited duration and number of private visits to the client is fixed in the Criminal Procedure Code (Article 52 of CPC). However, in practice this right of the defender is not realized, or is limited under various pretexts: such as i.e., the investigator is busy with other cases and therefore is not able at the moment to write a letter confirming the lawyer's participation in the criminal case; there is no separate room for the appointment or it is occupied; necessity to conduct investigative actions with the accused; etc.

To prevent the defender from seeing his client, pretrial detention facilities report that he/she is in quarantine, and visits are not granted to the defender until, for example, traces of torture disappear. The defendants themselves are afraid of complaining about bad treatment, they are ready to give confessions, as besides physical exertion, they are subjected to moral pressure and are afraid for their family members and children.

In this regard, there is a need for compulsory medical examination of a person at the time of detention (for example, photographing), taking into custody, completing the preliminary investigation, and invite an independent medical expert in case of an appropriate defense petition. This will be a real step in the fight against torture.

Article 6 of the Law "On Advocacy" ("Ob advokature") states that the "lawyer has the right to file petitions and complaints to officials and receive motivated responses from them in writing", while the Article 53 of the Criminal Procedure Code stipulates that the "lawyer has the right to file petitions and challenges", but the right to receive motivated responses to them in writing is not fixed. Accordingly, the investigator, being guided by the CPC, may well respond to the defense's application formally, without motivating his refusal to satisfy the petition.

The Criminal Procedure Code of Uzbekistan (Article 87) provides that "the defense counsel has the right to collect information that can be used as evidence by: interviewing persons who possess relevant information and obtaining written explanations upon their consent; requesting and receiving inquiries, characteristics, explanations, and other documents from the state authorities and other bodies, as well as enterprises, institutions, and organizations. Defender's petition for the attachment of materials collected in accordance with the CPC to the case is subject to mandatory satisfaction by the interrogator, investigator, and prosecutor".

In practice, the introduction of this provision in the CPC has led to the fact that the defender's petitions are entered into the case file by the investigator without any adequate response, and if the lawyer tries to request why the petition is not answered or the petition, for example, to call the witness of the defense is not satisfied, he/she is replied that the

CPC does not provide a response to the defender's petitions, and that the petition is attached as per CPC to the case file and can be heard in court.

Article 377 of the Criminal Procedure Code of Uzbekistan provides for the right to defender to apply - within 3 days after the end of the investigation and familiarization with the case materials - with a petition to supplement investigation, which is - as usual in 99% of cases - unreasonably rejected by the investigator. When approving the indictment, the prosecutor is obliged to check whether the investigation was conducted thoroughly, fully and objectively, whether all the arguments were checked and whether the motions of the defense were examined (para 10 Art. 384 of CPC). However, the prosecutor refers to the performance of this duty with a formality and agrees with the investigator's decision to reject defender's petition as unfounded and communicates the case to the court. Thus, during the preliminary investigation, practically all petitions of the defender remain without satisfaction, arguments in favor of the defendant remain without due attention, the right to defense is realized with a formality. Practically nothing changes when the case goes to court.

With a view of proper law enforcement, it is recommended to fix in CPC the duty of the investigator to take decisions on each point of the defense counsel's petition - either grant or reject, providing the lawyer with a reasoned decision in writing, and attach it to the case file. The prosecutor, in turn, shall be obliged to return the criminal case without approving the indictment in the event that the defense counsel's petition is rejected unreasonably.

The Law "On guarantees of lawyers' activities and social protection of lawyers" fixes the inviolability of the personality of the lawyer: "The inviolability of the lawyer extends to his/her home, office facility, his/her transport and communication facilities, his/her correspondence, his/her belongings and documents" (Article 6). However, in practice, his/her briefcase is inspected and all the technical means - with which the lawyer could record the progress of the process, copy procedural documents and otherwise collect evidence - are taken away. The reason for this was a letter signed by the Chairman of the Supreme Court and the Attorney General, which stated that the employees of the courts and the prosecutor's offices, as well as other citizens are obliged to check their mobile phones at the entrance to the court buildings and the prosecutor's offices. No any direct reference on lawyers was made in the letter, so they also began to be meant "citizens".

In this regard, it seems necessary to fix in the Criminal Procedure Code of Uzbekistan the guarantees of lawyers' activity as stipulated in the Law.

2) Inadmissibility of the use of evidence obtained through the torture or other forms of cruel, inhuman or degrading treatment and punishment against the person

In accordance with Article 1 of the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (hereinafter - Convention against Torture or CAT), "the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or

suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions".

The use of torture or other forms of cruel, inhuman or degrading treatment or punishment is a violation of international law and national legislation of the Republic of Uzbekistan (see. p. 4, Art. 235 Criminal Code of Uzbekistan, Art. 10 of the Law of Uzbekistan "On Courts"). However, the inadequate wording of the Criminal Code - Art. 235, as well as the lack of effective mechanisms for revealing and punishing the use of such impermissible methods, leads to the declarative nature of even the existing wording. In this regard, the UN Human Rights Committee and the Committee against Torture have expressed their concern several times and have recommended the Republic of Uzbekistan - the State Party to ICCPR and the Convention against Torture – to bring legislation and practice in line with these international obligations. In particular, the Committees recommended to:

- (a) make sure that an inquiry is conducted by an independent body in each case of alleged torture;**
- (b) strengthen its measures to put an end to torture and other forms of ill-treatment, to monitor, investigate and, where appropriate, prosecute and punish all perpetrators of acts of ill-treatment, so as to avoid impunity;**
- (c) compensate the victims of torture and ill-treatment;**
- (d) envisage audio-visual recording of interrogations in all police stations and places of detention;**
- (e) make sure that the specialized medical-psychological examination of alleged cases of ill-treatment is carried out in line with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol);**
- (f) review all criminal cases based on allegedly forced confessions and use of torture and ill-treatment and verify whether these claims were properly addressed.³¹**

3) Strengthening witness protection mechanisms in criminal proceedings

To maintain law and order in society, it is extremely important that witnesses can testify in the course of a trial or assist the investigation without being intimidated and fearing retaliation. In this regard, it is necessary to revise existing and adopt new relevant laws, as well as pursue a policy whereby witnesses will be protected if their cooperation with law enforcement authorities or testimony in court can threaten their lives or the lives of their relatives.

See UNODC publications:

³¹ See, e.g., CCPR/C/UZB/CO/36 para 11, and CAT/C/UZB/CO/4.

- "Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime", UNODC publication;
- "Guidelines for Experts and Officials on Justice in Matters involving Child Victims and Witnesses of Crime. Guidelines series on criminal justice matters", publication of UNODC and UNICEF.

4) *Improvement of the mechanism of authorization of detention by the court.*

A judge who considered prosecutor's petition to issue an arrest warrant against a person should not have the right to consider a criminal case against that person in substance. Otherwise, his/her impartiality and objectivity are questioned.

Defender's participation during the examination of the petition for an arrest warrant must be mandatory. Otherwise, this would violate the requirement for mandatory participation of defender in cases where the prosecutor participates. In addition, the person who is considered to be arrested - having the legal right to protection from the moment of actual detention - remains without real protection when being arrested and limiting his/her right to freedom and personal integrity, guaranteed by Article 9 of the ICCPR. There is always a risk that he will be "persuaded" to abandon the defender.

A wanted person, with respect to whom the arrest decision has been made in absentia, must be delivered to the court no later than 24 hours after the detention to verify the lawfulness and validity of the probable cause of chosen preventive measure. Otherwise, the law enforcement authorities still preserve the opportunity to apply to the court for an absentee decision on issuing an arrest warrant against a person, by unreasonably declaring him/her as the wanted person, and he/she is deprived of the right to stand trial when his/her fundamental right to freedom is guaranteed by Article 9 of the ICCPR.

The judge considering the arrest warrant should have the right to decide first on the validity of the probable cause of apprehension and lawfulness of detention, as well as to release the detained person if the detention is found to be unlawful. This right must be granted to the court, as required by Article 9 of the ICCPR and the international judicial practice of its interpretation and application.

It is seen necessary to revise the grounds for the detention of the person provided for in Article 221 of the CPC of Uzbekistan. The prosecutor must justify the petition for detention by submitting to the court specific evidence of attempts by a person to flee, obstruct the administration of justice by destroying evidence, putting pressure on witnesses and/or victims. Otherwise, the arrest warrant is issued by the court upon unreasonable petitions of the prosecutor, which are based only on his/her allegations that the person is suspected (charged) of committing a serious crime and may abscond or influence the course of the investigation and the trial. This contradicts Article 9 of the ICCPR and the international judicial practice of its interpretation and application, as well as the principle of the presumption of innocence, when detention is possible even if the guilt of the person has not yet been proven, while Article 9 of the ICCPR provides for a pre-emptive right to remain at liberty under the guarantee of appearance at the investigation and the court.

The law does not provide for a period during which responses to lawyer's requests should be given, which hinders the real competitiveness of the parties in the process of gathering evidence. The CPC should establish a deadline, not exceeding 24 hours for the provision of response to the lawyer's request related to the defendant's case, against whom the prosecutor has filed the arrest petition to the court. Otherwise, the sense of defender's participation at this stage is lost if the response to the request - that is relevant in terms of submission to the court when deciding whether to issue a warrant to arrest his/her client - is not received promptly. All legislative acts regulating the activities of a lawyer should foresee a shorter period for responding to a lawyer's request, for example, as a rule, within 3 days, and in exceptional cases, when the response requires more time to prepare it - up to 7 days.

The judge who considers a petition for choosing a preventive measure in the form of a person's detention shall - in case of refusal to satisfy it - have the power to select any other measure of pretrial restriction. This judge can be a "human rights judge" or an "investigating judge", and it is he who must have the authority to issue warrants to arrest, to conduct operational search actions, to execute wiretapping, search and other investigative actions that may infringe human rights.

A person in respect of whom the court has chosen a preventive measure in the form of arrest should have the right to periodically appeal this decision to a higher court within a reasonable time when the circumstances of the case have changed, or the person believes that the arrest decision taken against him/her is unlawful and unreasonable. Higher courts are required to consider arrestee's complaint, since this is the only way for judicial control of person's detention (*habeas corpus*). This right should be fixed to bring the CPC of Uzbekistan into compliance with Article 9(4) of the ICCPR.

A person released from custody must be entitled to compensation, regardless of whether he/she is released on rehabilitative grounds in the event if the court finds that his/her detention and arrest were unlawful. This right is also guaranteed by Article 9(5) of the ICCPR.

5) Settlement of the order and procedure for expulsion and extradition of foreign citizens by the Republic of Uzbekistan

Currently, in Uzbekistan, issues relating to expulsion and extradition are regulated mainly by provisions of bilateral agreements that may provide for the compulsory expulsion of foreigners to states in which they may be subjected to torture or cruel treatment in violation of the provisions of Articles 6, 7 and 13 of the ICCPR and Article 3 of the CAT.

In this regard, following is proposed relying on the norms of international law that set the priority of international obligations over regional and national ones, as well as taking into account the recommendations of the Human Rights Committee and the Committee against Torture:

a) Take steps to adopt domestic legislation governing the treatment of refugees and asylum-seekers, in accordance with the Covenant and international refugee law;

- b) Ensure that no one may be extradited, deported or forcibly returned to a country, where there is a risk of torture or cruel treatment to that person, or violation of his/her right to life;
- c) Create a mechanism allowing persons for whom, in their opinion, such compulsory expulsion creates a threat, to appeal decisions on expulsion with suspension of their action;
- d) Review existing bilateral agreements and regional treaties for their compliance with the international obligations of the Republic of Uzbekistan;
- e) Include in the list of grounds for refusal to extradite a person located in the territory of the Republic of Uzbekistan to a foreign state (Article 603 of the CPC of Uzbekistan) the likelihood that the requested person may be subjected to torture or cruel treatment in violation of the provisions of Articles 6, 7 and 13 of the ICCPR and Article 3 of the CAT.

3.4. Criminal Law: Basic conceptual proposals

- 1) *Bringing the Article 235 of the Criminal Code of the Republic of Uzbekistan into accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

In addition to the procedural guarantees (see p. above) against the use of torture and other forms of cruel, inhuman and degrading treatment within the meaning of Article 1 of the CAT, it is necessary to bring into accordance the material criminal legislation of Uzbekistan.

In particular, the UN Human Rights Committee has repeatedly urged the Government of Uzbekistan in its Concluding Observations to "urgently amend its criminal legislation, including Article 235 of the Criminal Code, to ensure full compliance of the definition of "torture" with Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Article 7 of the Covenant, and to ensure that it applies to acts **committed by all persons acting in their official capacity, outside their official capacity or in their personal capacity, when acts of torture are committed at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.**³²

The Committee has also strongly recommended that the measures taken be **strengthened** to put an end to torture and other forms of cruel treatment; monitor, investigate and, as appropriate, prosecute and punish all perpetrators of acts of cruel treatment, to prevent impunity.³³

³² CCPR/C/UZB/ CO/3(17 August 2015), p. 13; CCPR/C/UZB/CO/3 (7 April 2010), p. 10.

³³ Ibid, para 11.

The HRC and the CAT also urge Uzbekistan to stop the practice of granting amnesty to persons convicted of torture or torment, as this practice is incompatible with its obligations under Article 7 of the Covenant and Articles 2 and 14 of the Convention.³⁴

2) *Expanding the range of signs of discrimination, as reflected in the criminal law of the Republic of Uzbekistan in accordance with the international standards of fair trial.*³⁵

The Universal Declaration of Human Rights states:

"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2).

"All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination" (Article 7).

The ICCPR obliges every state participating in the Covenant to:

"[R]espect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Article 2(1)).

In accordance with the Constitution of Uzbekistan, all citizens of Uzbekistan have the same rights and freedoms and are equal before the law without distinction of gender, race, nationality, language, religion, social origin, convictions, personal and social status, and benefits can only be established by law and must correspond principles of social justice.³⁶ The principle of equality is guaranteed by other acts of legislation, such as the Law of the Republic of Uzbekistan "On Courts", which states: "All citizens of the Republic of Uzbekistan are equal before the law and the court without distinction of gender, race, nationality, language, religion, social origin, personal and social status. Enterprises, institutions and organizations are also equal before the law and the court".³⁷

³⁴ See CAT, General Comment No. 2 (2007) on the implementation by States parties of the Article 2 of the Convention and No. 3 (2012) on the implementation by States parties of the Article 14 of the Convention, which confirm that amnesty of those responsible for torture is incompatible with the obligations of the States parties.

³⁵ Other several international fair trial standards and their reflection in the criminal legislation of the Republic of Uzbekistan have been the subject of research by various scientists and international organizations. The most comprehensive analysis containing the entire list of international fair trial standards is reflected in the Practical Guide "International Standards Relating to Fair Trial and the Criminal Process in the Republic of Uzbekistan" developed by the International Commission of Jurists (see Appendix).

³⁶ The Constitution of the Republic of Uzbekistan, Art. 18.

³⁷ The Law of the Republic of Uzbekistan "On Courts", the new edition approved by the Law of the Republic of Uzbekistan of 14.12.2000 No. 162- II, Equality before the law and the court, Art. 6.

Similar formulation can be found in many laws and codes of the Republic of Uzbekistan. The Criminal Code provides that "persons who have committed crimes have the same rights and duties and are equal before the law without distinction of gender, race, nationality, language, religion, social origin, convictions, personal and social status".³⁸ In the CPC, this principle is formulated as follows: "Justice in criminal cases is carried out on the basis of equality of citizens before the law and the court regardless of gender, race, nationality, language, religion, social origin, conviction, personal and social status".³⁹

However, the universally recognized standards for the prohibition of discrimination are broader than the language used in the legislation of the Republic of Uzbekistan and, in particular, includes a prohibition on discrimination based on political grounds. In addition, despite the prohibition on the basis of gender in accordance with the national laws of the country, the Criminal Code of Uzbekistan criminalizes the voluntary sexual intercourse of males (Article 120: "*Besakalbazlyk* (sodomy), that is, the satisfaction of sexual needs of a man with a man without violence shall be punished by deprivation of liberty up to three years"). It is interesting that this "criminal act" is included in the chapter on crimes against sexual freedom.

In this regard, the UN Human Rights Committee (UN HRC) in the case of *Thunen v. Australia* has indicated that "voluntary sexual acts in private situations are protected by the concept of "private life" and their criminalization is a violation of Article 17 of the ICCPR".⁴⁰ In its concluding observations on State reports of the Republic of Uzbekistan on the implementation of the ICCPR, the UN HRC had repeatedly urged the Government of Uzbekistan to exclude Article 120 from the Criminal Code, as this provision is a violation of Art. 2, 7, 17 and 26 of the ICCPR.⁴¹

Thus, it is recommended to include inadmissibility of discrimination on political grounds both in the Constitution and the codes and relevant laws of the Republic of Uzbekistan, as well as to exclude the criminalization of homosexuality, thereby bringing the term of inadmissibility of discrimination in the national law into accordance with international standards.

3) Decriminalization of such unlawful acts as "defamation" and "insulting"

[Article 19](#) of the ICCPR stipulates that:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

³⁸ Criminal Code of Uzbekistan: The principle of equality of citizens before the law, Art. 5.

³⁹ CPC of Uzbekistan: Implementation of justice on the basis of equality of citizens before the law and the court, Art. 16.

⁴⁰ *Thunen v. Australia*, Communication No. 488/1992 of 31 March 1994, CCPR/C/50/D/488/1992, p. 8.2.

⁴¹ See CCPR/C/UZB/CO/3 (7 April 2010), p. 7, CCPR/C/UZB/CO/4 (July 2015), p. 22.

The UN HRCttee, In its General Comment 34 (2011) dedicated to Article 19 of the ICCPR, payed particular attention to the **Limitative scope of restrictions on freedom of expression in certain specific areas** (paras 37-49). The Committee expressed "concern regarding laws on such matters as, lese majesty,⁴² *desacato*,⁴³ disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration [...] All public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."⁴⁴ (para 38).

With regard to the defamation law, the Committee has noted:

"Defamation laws must be crafted with care to ensure that they comply with paragraph 3, and that they do not serve, in practice, to stifle freedom of expression. All such laws, in particular penal defamation laws, should include such defences as the defence of truth and they should not be applied with regard to those forms of expression that are not, of their nature, subject to verification. At least with regard to comments about public figures, consideration should be given to avoiding penalizing or otherwise rendering unlawful untrue statements that have been published in error but without malice. In any event, a public interest in the subject matter of the criticism should be recognized as a defence. Care should be taken by States parties to avoid excessively punitive measures and penalties. Where relevant, States parties should place reasonable limits on the requirement for a defendant to reimburse the expenses of the successful party. States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty. It is impermissible for a State party to indict a person for criminal defamation but then not to proceed to trial expeditiously – such a practice has a chilling effect that may unduly restrict the exercise of freedom of expression of the person concerned and others" (para 47).

4) Criminalization of domestic violence, and adoption of the relevant Law "On Domestic Violence"

The UN HRCttee has repeatedly expressed "serious concern about continuing incidents of violence against women, including domestic violence" in the Republic of Uzbekistan, and recommended the State party to "take effective measures to combat violence against women, including marital rape, and to ensure that violence against women is classified as a crime punishable under criminal law [...], and organize awareness-raising campaigns to prevent all forms of violence against women, including domestic violence, in order to fully comply with the provisions of Articles 3, 6, 7 and 26 of the Covenant".⁴⁵

⁴² See communications Nos. 422-424/1990, *Aduayom et al. v. Togo*, Views adopted on 30 June 1994.

⁴³ Concluding observations on the Dominican Republic (CCPR/CO/71/DOM).

⁴⁴ See communication No. 1128/2002, *Marques v. Angola*.

⁴⁵ Concluding observations of the Human Rights Committee, Uzbekistan (2001), CCPR/CO/71/UZB, p. 19; Concluding observations of the Human Rights Committee, Uzbekistan, CCPR/CO/83/UZB, 26 April 2005, p. 23; Concluding observations of the Human Rights Committee, Uzbekistan, CCPR/C/UZB/CO/3, 7 April 2010, p. 13.

In 2010, the HRCtee once again reminded the Government of the Republic of Uzbekistan about the need to "enact legislation containing specific provisions on criminal liability for all aspects of domestic violence, the prohibition of bride kidnapping and appropriate penalties[;...], provide training for the officials of local government authorities, law enforcement agencies and the police, as well as social and medical personnel on the identification and proper counseling of victims of domestic violence[;...], ensure availability of a sufficient number of fully operational shelters for victims of domestic violence in all parts of the country".⁴⁶

The UN Committee on the Rights of the Child (CRC), in 2011, in its General Comment No. 13 "The right of the child to freedom from all forms of violence"⁴⁷ provides following definition of the violence:

"All forms of "physical or psychological violence, defamation or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse" in accordance with paragraph 1, Article 19 of the Convention. [...] Other terms used to describe the types of harm (bodily injury, defamation, neglect or negligent treatment, maltreatment and exploitation) have the same force" (para 4).

In the same General Comment, CRC explains in detail the notions of "Forms of violence", "Neglect or negligent treatment", "Mental violence", "Physical violence", "Corporal punishment", "Sexual abuse and exploitation", "Torture and inhuman or degrading treatment or punishment", "Violence among children", "Self-harm", "Harmful practices", "Violence in the mass media", "Violence through information and communication technologies". In the same document, CRC encourages States parties to establish juvenile or family specialized courts and criminal procedures for child victims of violence. This could include the establishment of specialized units within the police, the judiciary and the prosecutor's office with the possibility of providing accommodations in the judicial process to ensure equal and fair participation of children with disabilities. All professionals working with and for children and involved in such cases should receive specific interdisciplinary training on the rights and needs of children of different age groups, as well as on proceedings that are adapted to them.⁴⁸

Based on the recommendations of the UN Committees, it seems necessary to criminalize the use of domestic violence in Uzbekistan, to enact the appropriate law "On Domestic Violence", as well as to train personnel to work with victims of this category of crimes.

5) Update the list of crimes in the field of information technologies

There is no international definition of cybercrime and cyberattacks. Crimes are usually grouped into the following categories: (i) crimes against the confidentiality, integrity and

⁴⁶ Concluding observations of the Human Rights Committee, Uzbekistan, CCPR/C/UZB/CO/3, 7 April 2010, p. 13.

⁴⁷ See also General Comment No. 8, "The child's right to protection from corporal punishment and other cruel or degrading forms of punishment (in particular Article 19, Article 28, para 2 and Article 37)", CRC/C/GC/8, 21 August 2006

⁴⁸ CRC, General Comment (2011) No. 13, "The right of the child to freedom from all forms of violence", p. 56.

accessibility of computer data and systems; (ii) computer-related offenses; (iii) Content-related offenses; iv) Crimes related to violations of copyright and related rights.

In 2007, a new section XX1 (Crimes in the field of information technology) was introduced in the Criminal Code of the Republic of Uzbekistan. It contains the following constituent elements of crimes:

- Article 278¹. Infringement of informatization rules
- Article 278². Illegal (unauthorized) access to computer information
- Article 278³. Manufacturing for the purpose of sale or sale and distribution of special means for obtaining illegal (unauthorized) access to a computer system
- Article 278⁴. Modification of computer information
- Article 278⁵. Computer sabotage
- Article 278⁶. Creation, use or distribution of malware

It seems necessary to revise this section in the light of the development of computer technologies, and to add additional constituent elements of crime related, for example, to:

- the activities of banks and personal information of bank customers;
- possible crimes which might occur in the autonomous world but can also be facilitated through ICT. This usually includes online fraud, online drug purchases and online money laundering;
- Sexual exploitation and abuse of children include abuses in understandable Internet slang: "darknet" forums and, increasingly, the use of self-created images through extortion, known as "sextortion". The UNODC does not recommend the use of the term "child pornography", as this creates a value judgment in relation to innocent children.⁴⁹

⁴⁹ You can learn more about why language is important in the Luxembourg guidelines here <http://luxembourgguidelines.org/english-version/> (only in English, French and Spanish).

Annex 1. Code of Conduct for Law Enforcement Officials

Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

(a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.

(b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

(c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.

(d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

(a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.

(b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which:

"[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

Annex 2. Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of

Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia , their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Annex 3. 69/194 United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

Resolution adopted by the General Assembly on 18 December 2014 [on the report of the Third Committee (A/69/489)]

The General Assembly,

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and all other relevant international and regional treaties,

Recalling also the numerous international standards and norms in the field of crime prevention and criminal justice, in particular on juvenile justice, such as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Rules for the Protection of Juveniles deprived of their Liberty, the Guidelines for Action on Children in the Criminal Justice System, the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), the updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice, the Guidelines for the Prevention of Crime, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the guidelines for cooperation and technical assistance in the field of urban crime prevention, the Code of Conduct for Law Enforcement Officials, the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,

Recalling further relevant resolutions of the General Assembly, the Economic and Social Council and the Human Rights Council, as well as the Commission on Human Rights,

Convinced that violence against children is never justifiable and that it is the duty of States to protect children, including those in conflict with the law, from all forms of violence and human rights violations, and to exercise due diligence to prohibit, prevent and investigate acts of violence against children, eliminate impunity and provide assistance to the victims, including prevention of revictimization,

Acknowledging the value of the joint report of the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime and the Special Representative of the Secretary-General on Violence against Children on prevention of and responses to violence against children within the juvenile justice system, the report of the United Nations High Commissioner for Human Rights on access to justice for children and the joint report of the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General on Violence against Children on accessible and child-sensitive counselling, complaint and reporting mechanisms to address incidents of violence,

Noting with appreciation the important work on child rights in the context of crime prevention and criminal justice conducted by United Nations agencies, funds and programmes, including the United Nations Office on Drugs and Crime, the Office of the United Nations High Commissioner for Human Rights and the United Nations Children's Fund, and by the Special Representative of the Secretary-General on Violence against Children and relevant mandate holders and treaty bodies, and welcoming the active participation of civil society in this field of work,

Emphasizing that children, by reason of their physical and mental development, face particular vulnerabilities and need special safeguards and care, including appropriate legal protection,

Emphasizing also that children in contact with the justice system as victims, witnesses, or alleged or recognized offenders, must be treated in a child-sensitive manner and with respect for their rights, dignity and needs,

Stressing that the right for all to have access to justice and the provision that child victims or witnesses of violence and children and juveniles in conflict with the law are entitled to the same legal guarantees and protection as are accorded to adults, including all fair trial guarantees, form an important basis for strengthening the rule of law through the administration of justice,

Recognizing the complementary roles of crime prevention, the criminal justice system, child protection agencies and the health, education and social sectors, as well as civil society, in creating a protective environment and preventing and responding to incidents of violence against children,

Being aware of the different economic, social and cultural contexts of crime prevention and criminal justice prevailing in each Member State,

Recalling its resolution 68/189 of 18 December 2013, in which the Assembly requested the United Nations Office on Drugs and Crime to convene a meeting of an open-ended intergovernmental expert group, in collaboration with all relevant United Nations entities, in particular the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights and the Special Representative of the Secretary-General on Violence against Children, to develop a draft set of model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice, to be considered by the Commission on Crime Prevention and Criminal Justice at its session following the meeting of the open-ended intergovernmental expert group,

1. *Strongly condemns* all acts of violence against children, and reaffirms the duty of the State to protect children from all forms of violence in both public and private settings, and calls for the elimination of impunity, including by investigating and prosecuting with due process and punishing all perpetrators;
2. *Expresses* its extreme concern about the secondary victimization of children that may occur within the justice system, and reaffirms the responsibility of States to protect children from this form of violence;
3. *Welcomes* the work done at the meeting of the expert group on the development of draft model strategies and practical measures on the elimination of violence against children in the field of crime prevention and criminal justice, held in Bangkok from 18 to 21 February 2014, and takes note with appreciation of its report;
4. *Adopts* the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, annexed to the present resolution;
5. *Urges* Member States to take all necessary and effective measures, as appropriate, to prevent and respond to all forms of violence against children who come in contact with the justice system as victims, witnesses, or alleged or recognized offenders, and to provide for consistency in their laws and policies and in the application thereof in order to promote the implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice;
6. *Also urges* Member States to remove any barrier, including any kind of discrimination, that children may face in accessing justice and in effectively participating in criminal proceedings, to pay particular attention to the issue of the rights of the child and the child's best interests in the administration of justice, and to ensure that children in contact with the criminal justice system are treated in a child-sensitive manner, taking into account the specific needs of those children who are in particularly vulnerable situations;
7. *Encourages* Member States that have not yet integrated crime prevention and children's issues into their overall rule of law efforts to do so, and to develop and implement a comprehensive crime prevention and justice system policy with a view to preventing the involvement of children in criminal activities, promoting the use of alternative measures to detention, such as diversion and restorative justice, adopting reintegration strategies for former child offenders and complying with the principle that deprivation of

liberty of children should be used only as a measure of last resort and for the shortest appropriate period of time, as well as to avoid, wherever possible, the use of pretrial detention for children;

8. *Encourages* Member States, where appropriate, to strengthen multisectoral coordination among all relevant government agencies in order to better prevent, identify and respond to the multidimensional nature of violence against children and to ensure that criminal justice and other relevant professionals are adequately trained to deal with children;

9. *Also encourages* Member States to establish and strengthen child rights monitoring and accountability systems, as well as mechanisms for the systematic research, collection and analysis of data on violence against children and on the systems designed to address violence against children, with a view to assessing the scope and incidence of such violence and the impact of policies and measures adopted to reduce it;

10. *Stresses* the importance of preventing incidents of violence against children and of responding in a timely manner to support child victims of violence, including to prevent their revictimization, and invites Member States to adopt knowledge-based, comprehensive and multisectoral prevention strategies and policies to address the factors that give rise to violence against children and that expose them to the risk of violence;

11. *Requests* the United Nations Office on Drugs and Crime to take steps to ensure the broad dissemination of the Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice;

12. *Also requests* the United Nations Office on Drugs and Crime, at the request of Member States, to identify the needs and capacities of countries and to provide technical assistance and advisory services to Member States in order to develop or strengthen, as appropriate, legislation, procedures, policies and practices to prevent and respond to violence against children and to ensure respect for the rights of the child in the administration of justice;

13. *Further requests* the United Nations Office on Drugs and Crime to closely coordinate with the institutes of the United Nations crime prevention and criminal justice programme and with other relevant national and regional institutes with a view to developing training materials and offering training and other capacity-building opportunities, in particular for practitioners working in the areas of crime prevention and criminal justice and for providers of support services for the victims of violence against children and for child witnesses within the criminal justice system, and to disseminate information on successful practices;

14. *Invites* the Commission on Crime Prevention and Criminal Justice and the Human Rights Council, as well as the United Nations Office on Drugs and Crime, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Human Rights, the Special Representative of the Secretary-General on Violence against Children, the Committee on the Rights of the Child and relevant regional and international intergovernmental and non-governmental organizations, to strengthen cooperation in supporting the efforts of States to eliminate all forms of violence against children;

15. *Encourages* Member States to promote country-to-country, regional and interregional technical cooperation in sharing best practices in the implementation of the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice;

16. *Invites* Member States and other donors to provide extrabudgetary contributions for such purposes, in accordance with the rules and procedures of the United Nations.