

## **UNITED NATIONS COMMITTEE AGAINST TORTURE**

**68th Session of the UN Committee Against Torture, 11 November to 6  
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### **Submission of the International Commission of Jurists to the UN Committee against Torture in view of the Committee's Examination of Uzbekistan's Fifth Periodic Report under Article 19 of the Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment**

Submitted on 14 October 2019

*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council in 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **A. Introduction**

1. During its 68<sup>th</sup> session, from 11 November to 6 December 2019, the UN Committee against Torture (hereafter, “the Committee”) will evaluate Uzbekistan’s compliance with its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, “the Convention”), including in light of the State party’s fifth periodic report under Article 19 of the Convention. In this context, the International Commission of Jurists (ICJ) welcomes the opportunity to submit the present briefing to the Committee.
2. The change of government in 2016 has generated a wave of reforms in Uzbekistan,<sup>1</sup> including announced changes to the Criminal Code and Criminal Procedure Code. The recent ratification of the Commonwealth of Independent States (hereafter, “CIS”) Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002, known as the Chisinau Convention, has been was a welcome step towards the compliance of the country’s extradition system with international standards.<sup>2</sup>
3. This submission addresses Uzbekistan’s legislation on extradition, its potential discrepancies with international law, and how they, in turn, have led to documented violations of the Convention, notably under Articles 2, 3 and 16 CAT.
4. The present observations are based predominantly on the ICJ report: *Transnational Injustices: National Security Transfers and International Law* published in 2017, which outlines and compares legal rules, jurisprudence and extradition practice, expulsions and informal practices, such as renditions, in countries of Europe and the CIS region, and assesses their compliance with international law, including human rights and refugee law.<sup>3</sup> In addition, the submission takes into account recent developments since the publication of the above-mentioned report.

## **B. International transfers and ill-treatment (Articles 1, 2, 3, 11 and 16 CAT)**

### **I. Extraditions**

5. Uzbekistan has ratified the two main regional extradition treaties in force among CIS countries, namely, the *CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993* (hereafter, “the Minsk Convention”) and, in August 2019, the *CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002* (hereafter, “the Chisinau Convention”).
6. In the first place, the Minsk Convention contains the obligation to extradite individuals present on a State’s territory for offences that are considered as

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<sup>1</sup> The reforms were encapsulated into the five strategic areas of development of Uzbekistan from 2017 to 2012: [https://strategy.uz/index.php?static=prioritetnye\\_napravleniya](https://strategy.uz/index.php?static=prioritetnye_napravleniya).

<sup>2</sup> ICJ, *Uzbekistan: Ratification of the Chisinau Convention a welcome step to protect people subject to extradition*, 27 August 2019, available at <https://www.icj.org/uzbekistan-ratification-of-the-chisinau-convention-a-welcome-step-to-protect-people-subject-to-extradition/>.

<sup>3</sup> ICJ, *Transnational Injustices: National Security Transfers and International Law*, September 2017, available at <https://www.icj.org/wp-content/uploads/2017/09/Europe-Transnational-Injustices-Publications-Reports-Thematic-reports-2017-ENG.pdf> .

crimes and are punishable by at least one year's imprisonment.<sup>4</sup> It also details the requirements for extradition requests<sup>5</sup> and procedure.<sup>6</sup> Yet, in respect of grounds that could provide a bar extradition, it provides no human rights safeguards, such as the protection against extradition in violation of the *non-refoulement* principle (e.g., Article 3 of the Convention).

7. The Chisinau Convention, on the other hand, offers an extensive list of grounds for refusal of extradition, including circumstances where there are serious reasons to believe that the request, if granted, would give rise to a real risk of the persecution of an individual on the basis of race, gender, religion, ethnic background or political convictions.<sup>7</sup>
8. Uzbekistan has implemented some of the core principles of extradition in its national legislation: the principles of specialty<sup>8</sup> and double criminality<sup>9</sup> are enshrined in its Civil Procedure Code (hereafter, "CPC"), for example.
9. However, perhaps partly because the country has ratified the Chisinau Convention only recently, some key human rights guarantees, which protect, for example, against extradition in circumstances where it would give rise to a real risk of torture or other cruel, inhuman or degrading treatment or punishment, are still not incorporated into Uzbekistan's legislation. Thus, while the Chisinau Convention explicitly mentions persecution on the basis of "political convictions" as a ground for refusal to extradite,<sup>10</sup> this reference is absent from the Uzbekistan legislation, as is the prohibition of extradition for any other grounds enshrined in international treaties binding upon both the requesting and requested State.<sup>11</sup>
10. Likewise, there are no specific provisions regarding the risk of torture or other human rights violations in the CPC, which however prohibits extraditing individuals who have been granted asylum and face a real risk of persecution.<sup>12</sup> In that respect, it is significant that Uzbekistan is not a signatory to the 1951 Convention Relating to the Status of Refugees and has no specialized domestic legislative act on the protection of refugees. While, in 1999, Uzbekistan signed the OSCE Charter for European Security, which contains a commitment to respect the right to seek asylum and to ensure the international protection of refugees, as set out in the 1951 Convention and its 1967 Protocol,<sup>13</sup> this document is not legally binding.
11. Lastly, trial in absentia or a lack of fairness of trial proceedings are not mentioned as grounds for refusal of extradition from Uzbekistan, even though international standards prohibit extraditions if the original trial was conducted without sufficient guarantees to enable the presence of the accused at trial, the latter was held in absentia, and the requesting State does not guarantee the possibility of retrial once the extradition has taken

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<sup>4</sup> Minsk Convention, article 36.

<sup>5</sup> *Ibid.*, article 58.

<sup>6</sup> *Ibid.*, article 70.

<sup>7</sup> Chisinau Convention, article 89.

<sup>8</sup> CPC, article 600.

<sup>9</sup> CPC, article 603.

<sup>10</sup> Chisinau Convention, article 89.1.e.

<sup>11</sup> Chisinau Convention, article 89.1.l.

<sup>12</sup> CPC, article 603.

<sup>13</sup> OSCE Charter for European Security, Istanbul, November 1999, para. 2.

place.<sup>14</sup>

## II. Uzbekistan's practice as Requesting State

In its last Concluding observations on Uzbekistan's previous periodic report, the Committee raised serious concern "at allegations that some individuals extradited from neighbouring countries have been subjected to torture and others detained incommunicado"<sup>15</sup>.

12. As documented in judgments of the European Court of Human Rights<sup>16</sup> and in non-governmental organizations' reports, including ICJ's *Transnational Injustices*<sup>17</sup>, between January 2015 and June 2016, Uzbekistan requested the extradition of many of its citizens it considered as opponents or threats to national security, obtaining the extradition of 542 persons.<sup>18</sup> Members of banned religious groups and other persons labelled as "terrorists" have been particularly at risk of human rights violations following extradition to Uzbekistan during the reporting period.<sup>19</sup> In that regard, the ICJ recalls that the UN Human Rights Committee (hereafter, "HRC") had previously pointed at "the overly broad definition of terrorism and terrorist activities that is reportedly widely used to charge and prosecute members or suspected members of banned Islamic movements"<sup>20</sup>.
13. While systematically offering "diplomatic assurances" that the transferred individuals will not be tortured or ill-treated, respect of such assurances by Uzbekistan remains lacking in practice.<sup>21</sup> As outlined by the HRC in an individual communication directed at Kyrgyzstan arising from several extraditions to Uzbekistan, the assurances received generally "contained no concrete mechanism for their enforcement, [and were] insufficient to protect against such risk [of torture]. [A]t the very minimum, the assurances procured should contain such a monitoring mechanism and be safeguarded by arrangements made outside the text of the assurances themselves which would provide for their effective implementation".<sup>22</sup> In 2018, the European Court of Human Rights criticized the Russian courts' reliance on the assurances of the Uzbek authorities because of their formulation in standard terms and given that it had consistently considered similar assurances unsatisfactory in the past.<sup>23</sup>

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<sup>14</sup> UN Model Treaty, article 3; UN Model Law, Section 8; Second Protocol to the ECE.

<sup>15</sup> CAT, Concluding observations on the fourth periodic report of Uzbekistan, UN Doc. CAT/C/UZB/CO/4, 10 December 2013, para. 23.

<sup>16</sup> See, most recently, *S.B. and S.Z. v. Russia*, ECtHR, Applications nos. 65122/17 and 13280/18, 8 October 2019; *R.R. and A.R. v. Russia*, ECtHR, Applications nos. 67485/17 and 24014/18, 8 October 2019; *A.N. and others v. Russia*, ECtHR, Applications nos. 61689/16 and others, 23 October 2018.

<sup>17</sup> ICJ, *Transnational Injustices*, *op.cit.*; Amnesty International, *Fast-track to torture – Abductions and forcible returns from Russia to Uzbekistan*, Index No. EUR 62/3740/2016, 21 April 2016, p. 6.

<sup>18</sup> CAT, Fifth periodic report submitted by Uzbekistan under article 19 of the Convention, due in 2017, UN Doc. CAT/C/UZB/5, 9 November 2018, para. 121.

<sup>19</sup> See footnotes nos. 16 and 17.

<sup>20</sup> HRC, Concluding Observations on Uzbekistan, UN Doc. CCPR/C/UZB/CO/4, 17 August 2015, para. 11.

<sup>21</sup> See, recently, *A.N. and others v. Russia*, ECtHR, Applications nos. 61689/16 and others, 23 October 2018, para. 22.

<sup>22</sup> HRC, *Zhakhongir Maksudov and others v. Kyrgyzstan*, UN Doc. CCPR/C/93/D/1461, 1462, 1476 & 1477/2006, paras. 8.7 and 12.5.

<sup>23</sup> *A.N. and others v. Russia*, ECtHR, Applications nos. 61689/16 and others, 23 October 2018, para. 22.

14. International human rights authorities, including the UN General Assembly<sup>24</sup>, UN Treaty Bodies, the UN High Commissioner for Human Rights and independent expert mechanisms of the UN Human Rights Council have stated that diplomatic assurances purporting to ensure protection from torture or other ill treatment cannot relieve States of their *non-refoulement* obligations, and thus cannot be presumed to permit a transfer that would otherwise be prohibited<sup>25</sup>.
15. This Committee has categorically stated that “under no circumstances must diplomatic guarantees be used as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return”.<sup>26</sup> It has further recalled that “diplomatic assurances from a State party to the Convention to which a person is to be deported should not be used as a loophole to undermine the principle of non-refoulement as set out in article 3 of the Convention, where there are substantial grounds for believing that the person would be in danger of being subjected to torture in that State”.<sup>27</sup>
16. The ICJ considers all use of diplomatic assurances purportedly mitigating a real risk of torture or other ill-treatment to be inherently incompatible with the *non-refoulement* principle in Article 3 of the Convention. Torture prevention is the only effective assurance against torture. The ICJ therefore urges the Committee to recommend Uzbekistan to set effective measures to prevent torture and other forms of ill-treatment, including by ensuring the recognition of and adherence to the *non-refoulement* principle in extradition proceedings as a refusal ground.

### III. Conclusions

17. Uzbekistan’s legislative framework and reported practice of international transfers may lead to serious violations of the Convention, most notably of Articles 1, 2, 3, 11 and 16.
18. As the Committee has recalled, the prohibition of torture, as defined in Article 1 of the Convention, is absolute.<sup>28</sup> Article 2 (2) of the Convention provides that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture”.<sup>29</sup> The Committee has further recalled that other acts of ill-treatment short of torture are equally prohibited, and that the prohibition of ill-treatment is likewise non-derogable.<sup>30</sup>

<sup>24</sup> GA Resolution 62/159, Preamble.

<sup>25</sup> Human Rights Committee, *Concluding Observations on France*, UN Doc. CCPR/C/FRA/CO/4, 31 July 2008, para. 20; Human Rights Committee, *Concluding Observations on Russia*, UN Doc. CCPR/C/RUS/CO/6, 24 November 2009, para. 17.

<sup>26</sup> Committee against Torture, *Concluding Observations on Spain*, UN Doc. CAT/C/ESP/CO/5, 9 December 2009, para. 13.

<sup>27</sup> See *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.4; *Tursunov v. Kazakhstan* (CAT/C/54/D/538/2013), para. 9.10; and *H.Y. v. Switzerland* (CAT/C/61/D/747/2016), para. 10.7.

<sup>28</sup> CAT, General Comment n° 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, UN Doc. CAT/C/GC/4, para. 8.

<sup>29</sup> CAT, Article 2(2).

<sup>30</sup> See CAT, *General Comment n° 2 (2007) on the implementation of article 2*, UN Doc.

19. Similarly absolute is the principle of *non-refoulement* enshrined in Article 3,<sup>31</sup> which applies whenever there are “substantial grounds”<sup>32</sup> for believing that the person concerned would be in danger of being subjected to torture in the State of destination, either as an individual or as a member of a group that may be at risk of being tortured in that State. The Committee’s practice has been to determine that “substantial grounds” exist whenever the risk of torture is “foreseeable, personal, present and real”<sup>33</sup>.
20. For the purpose of fully implementing Article 3 of the Convention, States parties should take legislative, administrative, judicial and other preventive measures against possible violations of the principle of *non-refoulement*<sup>34</sup>. According to Article 16, States also have a duty to prevent acts of ill-treatment which do not amount to torture, as defined in article 1 of the Convention<sup>35</sup>.
21. As highlighted above (*supra* B.I and B.II), Uzbekistan’s current legislation on extradition does not fully comply with its international obligations under the Minsk and Chisinau Conventions and under the Convention. Individuals subjected to transfers are not sufficiently protected against risks of torture and/or ill-treatment, as provided by Articles 1, 2, 3 and 16 of the Convention.
22. Moreover, complaints of torture and other ill-treatment by Uzbek law-enforcement authorities following extradition proceedings or renditions from neighbouring countries are particularly alarming and must be addressed and remedied by Uzbekistan, as they represent particularly serious violations of core provisions of the Convention, namely Articles 1, 2, 11 and 16.

### **C. Recommendations**

23. In light of the above, the ICJ makes the following recommendations with a view of enhancing Uzbekistan’s compliance with and implementation of the following Convention provisions:
- 24. On the obligation to prevent torture and other forms of ill-treatment (Articles 1, 2, 3 11 and 16)**
  - Fully implement human rights and procedural safeguards and guarantees in extradition proceedings or in connection with other types of transfers, and interpret and apply such safeguards in accordance with Uzbekistan’s international human rights law obligations. In particular, the Committee

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CAT/C/GC/2, 24 January 2008, paras. 3, 6, 19 and 25.

<sup>31</sup> See *Tapia Páez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5; *Núñez Chipana v. Venezuela* (CAT/C/21/D/110/1998), para. 5.6; *Agiza v. Sweden* (CAT/C/34/D/233/2003), para. 13.8; *Singh Sogi v. Canada* (CAT/C/39/D/297/2006), para. 10.2; *Abdussamatov and others v. Kazakhstan* (CAT/C/48/D/444/2010), para. 13.7; and *Nasirov v. Kazakhstan* (CAT/C/52/D/475/2011), para. 11.6.

<sup>32</sup> See *Tapia Páez v. Sweden* (CAT/C/18/D/39/1996), para. 14.5.

<sup>33</sup> See *Dadar v. Canada* (CAT/C/35/D/258/2004), para. 8.4; *T.A. v. Sweden* (CAT/C/34/D/226/2003), para. 7.2; *N.S. v. Switzerland* (CAT/C/44/D/356/2008), para. 7.3; and *Subakaran R. Thirugnanasampanthar v. Australia* (CAT/C/61/D/614/2014), para. 8.3.

<sup>34</sup> CAT, General Comment n° 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, UN Doc. CAT/C/GC/4, para. 18.

<sup>35</sup> CAT, *General Comment No. 2 (2007) on the implementation of article 2*, UN Doc. CAT/C/GC/2, 24 January 2008, paras. 3 and 6.

should recommend to Uzbekistan to take all necessary measures to fully implement the human rights guarantees featured in the Chisinau Convention into its domestic legislation.

- Implement the necessary reforms to give judicial authorities the central decision-making role in extradition proceedings, and ensure their full independence both at an institutional and personal level, in law and in practice. Extradition decisions should be taken by prosecutors only if they enjoy the same level of independence as judges, in law and in practice.
- Ensure that individuals extradited to face trial in Uzbekistan courts are awarded the full protection of the Convention.
- Take effective measures to prevent torture and other forms of ill-treatment, including by ensuring compliance with the *non-refoulement* principle in extradition proceedings.
- Carry out effective, independent and impartial investigations with a view to identifying persons directly and indirectly responsible for rendition operations and abduction practices, as they violate human rights and involve crimes under international law. Those responsible should be prosecuted, tried and, if convicted, sentenced to punishments commensurate with the gravity of their crimes, and to appropriate administrative sanctions to ensure non-repetition.